



# the CODE

Investigation into the Ministry of Community Safety and Correctional Services' response to allegations of excessive use of force against inmates



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## **Ombudsman Report**

**Investigation into  
the Ministry of Community Safety and  
Correctional Services' response to allegations of  
excessive use of force against inmates**

**“The Code”**

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June 2013**

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## Executive Summary

- 1 Prison guards are granted exceptional powers to manage inmates in their custody, including the right to use physical force. However, they are required to exercise their authority humanely and lawfully. Using greater force on inmates than is necessary to gain control, applying force with the intent to injure, or continuing to apply force when it is no longer needed is considered excessive and unreasonable. These are acts of assault<sup>1</sup> that can trigger workplace discipline and even criminal charges.
- 2 As abhorrent as the crimes for which they are incarcerated in Ontario's correctional institutions may be, every inmate is entitled to be treated with dignity, respect, and within the confines of the law. As a society, we all suffer if those tasked with protecting inmates become their abusers.
- 3 In 2010, my Office noticed a disturbing trend. We found a series of cases where provincial correctional staff appeared to have used excessive force against inmates, many of whom were defenseless and vulnerable. Equally shocking, we also found instances in which correctional staff attempted to cover up their rogue behaviour with the assistance of co-workers.
- 4 Initially, the Ministry of Community Safety and Correctional Services was dismissive of the cases we had uncovered. Later, faced with incontrovertible evidence of wrongdoing, the Ministry changed its course and undertook to address this issue by instituting new policies and procedures relating to use of force. Unfortunately, the Ministry's progress was slow, and given the seriousness of the matter, I found it necessary to launch a formal investigation.
- 5 In the past four years, my Office has received more than 350 complaints about unreasonable force. My investigation focused on the two-year period beginning January 1, 2010. Since that time, the Ministry has substantiated that the use of force was excessive in close to half of the cases it investigated: 26 of 55. From January 1, 2010 to January 1, 2013, the Ministry disciplined 108 staff in relation to these incidents, and dismissed five managers and 26 correctional officers. At the time of writing this report, four former correctional staff members were facing charges and one had been convicted of criminal assault on an inmate.

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<sup>1</sup> Throughout this report, the term "assault" is used in the general sense to describe a non-consensual, unreasonable and excessive application of force against an inmate. Except where indicated, use of this term does not imply that criminal charges have been laid or a conviction entered.

- 6 Some cases of excessive force against inmates have been especially egregious. There was Albert,<sup>2</sup> who had an extensive history of mental illness and incarceration. On January 3, 2010, a correctional officer at the Elgin Middlesex Detention Centre kicked Albert in the head, even though Albert was restrained on the ground at the time, under the control of other officers. Correctional staff, including some managers, minimized what had happened, while senior officials didn't even bother to look at photographs showing Albert's bloodied and bruised face – his right eye so blackened and swollen it was barely recognizable. The incident was officially passed off as a case of justified use of force involving no inmate injuries. It was only after my investigation had started that the Ministry discovered the assault and the attempt to conceal it.
- 7 On September 30, 2010, Brian was so terrified after a correctional officer at the Central East Correctional Centre attacked him – including head-butting, punching, throttling, spitting on him and standing on his neck – that he initially explained he had incurred his injuries in a fall. After the courts twice raised concerns about Brian's medical condition, including his loss of consciousness, he was transferred to another institution and monitored for a head injury. It was only then that the facility's officials took notice. They discovered surveillance video showing correctional staff engaged in previously unreported and inappropriate efforts to sanitize the scene and discard blood-soaked evidence.
- 8 Colin, who suffers from mental illness and a brain injury, was incarcerated at the Ottawa-Carleton Detention Centre on October 23, 2010, when a correctional officer repeatedly kicked him in the head and torso. During the assault, Colin was lying face down on the ground, restrained by other officers, his hands cuffed behind his back and his legs in shackles. Colin was left with multiple facial lacerations, contusions and abrasions. His eye was swollen shut. Given the severity of his injuries, Colin was admitted to hospital and referred to a neurologist. At first, correctional staff stood solidly behind the officer who had injured Colin, denying anything untoward had happened. However, once the Ministry sent in its inspectors, stories began to change and falter. Eventually, four officers recanted their original reports of the incident and reluctantly admitted having witnessed the unprovoked and brutal beating. The perpetrator was dismissed and charged criminally with assault.
- 9 It was a manager who blew the whistle on her colleagues, when she witnessed unlawful force being used against inmate Frank at the Toronto Jail on June 30, 2011. Frank had a reputation for being unruly and disruptive. On the pretext of controlling Frank's hostile behaviour, one correctional officer punched Frank.

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<sup>2</sup> Names of people whose stories are related in this report have been anonymized in "A-B-C" sequence (Albert, Brian, Colin, etc.) due to concerns about potential reprisal in the correctional system.



Another manager who had previously experienced confrontations with Frank took the opportunity to exact his revenge while Frank lay on the ground. Standing on Frank's ankles, this manager stomped repeatedly on his legs. After the incident, correctional staff colluded and contrived to justify the use of force against Frank. They pressured a manager who had witnessed the assaults to go along with a manufactured account that painted Frank as the aggressor. The whistleblower stuck by her story that staff had acted without cause or legal authority. Her version of events was later substantiated by a Ministry investigation. The correctional officer and manager involved in the incident were dismissed. Both were charged with criminal assault. Unfortunately, the manager who told the truth was left to contend with distrustful and openly hostile peers, who condemned her for breaching the jail's code of silence.

- 10 George was at the Central North Correctional Centre, becoming progressively anxious while awaiting his psychiatric medication, when he became a target for abuse on August 10, 2011. Correctional staff removed him from his unit and used force on him, saying it was to manage his increasingly erratic behaviour. George claimed he had been the victim of abuse. A subsequent Ministry investigation supported George's story. The Ministry determined that a correctional officer had punched George in the face three times while he was lying restrained on the floor, in handcuffs and otherwise under control. The responsible correctional officer was initially dismissed, and later allowed to resign as a result of a settlement. He was also charged criminally and found guilty of assault.
- 11 Helen was suffering the effects of drug withdrawal at the Sarnia Jail, on August 31, 2011, when a correctional officer attacked her. She did not disclose what had happened until she was being readied for transfer to another facility. The Ministry's investigation into Helen's complaint confirmed that a correctional officer had pushed her against a wall, pinned her by the neck, and later repeatedly hit her with a closed fist while she was restrained on her bunk. The correctional staff who witnessed the incident omitted the damning details in their reports. It was not until much later that four officers admitted what they had seen. In this case, the incentive to hide the truth was particularly powerful. The culprit was extremely influential in the jail and the local corrections community. Two officers closely connected to him had also engaged in a campaign of harassment of witnesses to ensure they kept silent and didn't "rat out" their colleague. The officer who injured Helen and his two code of silence "enforcers" were dismissed.
- 12 Since 2011, the Ministry has tightened its policies on reporting and investigating incidents of use of force, and increased its training and direction



on proper procedures. The Ministry is also in the process of enhancing video surveillance capacity within its facilities to reduce opportunities for unobserved attacks on inmates. In addition, the Ministry has become more vigilant in monitoring such incidents and rigorous in penalizing those who abuse their authority. However, staff violence against inmates and attempts to obscure it have existed in the correctional system for decades. My investigation found that additional steps are necessary to root out this entrenched, aberrant and unlawful behaviour.

- 13** There is a common theme in cases involving brazen acts of violence against inmates. Those responsible for assaults are emboldened by their faith in the code of silence – an unwritten social incentive to protect and show solidarity for co-workers, even if it means conspiring to lie, destroy, and falsify records. Staff who breach this code become victims themselves. They are labelled “rats,” ostracized, treated as pariahs, subject to direct and covert harassment and threats, and their personal safety is put in jeopardy.
- 14** In this report, I have made **45** recommendations to the Ministry, including that it take more direct and assertive action to address the dysfunctional correctional culture and crack the code of silence. I have recommended that further steps be taken to reduce opportunities for staff to engage in unlawful use of force, collude to conceal it, tamper with evidence, and engage in intimidation of witnesses. I have also made recommendations to reinforce the integrity of internal and external investigations, including restricting access to evidence, to prevent information from being improperly shared, directly or indirectly. In addition, I have suggested measures to further improve video surveillance, including the preservation of video evidence, to clarify authorized defensive techniques, and to expand training for correctional staff in proper defensive tactics, de-escalation of conflicts, and dealing with inmates with mental illness and special needs.
- 15** Correctional institutions are dynamic and often violent environments. They can be overcrowded, understaffed, and under great stress. Correctional staff need the ability to exercise force to restrain inmates from harming themselves or others, and to manage the prison population. However, punching, slapping, kicking, and other physical contact used against an inmate who is under control and does not present a threat is inexcusable and morally repugnant. It is my hope that through further refinement of its policies, procedures and practices, the Ministry will be able to reduce the risk of inmates being subjected to unreasonable force.



- 16 I am encouraged by the positive steps the Ministry has already taken, as well as its recent commitment to hire new recruits starting this year. Injecting new blood into the correctional system should assist in relieving staffing pressures as well as institutional tensions. I will monitor the Ministry's implementation of my recommendations closely to ensure the momentum for reform continues, and concrete progress is made.

## Investigative Process

- 17 My Office has received complaints about correctional staff using excessive and unreasonable force against inmates for many years. In 1998, one of my predecessors carried out an investigation on this issue, after which the Ministry, then called the Ministry of Correctional Services, undertook to make changes in policies and procedures.
- 18 At present, in addition to reviewing individual complaints, senior staff of my Office and the Ministry of Community Safety and Correctional Services meet on a quarterly basis to discuss complaint trends. In November 2010, my Office brought a series of incidents involving allegations of excessive use of force to the Ministry's attention. Our review of these cases revealed various policy breaches, including apparent attempts on the part of correctional staff to shield questionable conduct from disclosure.
- 19 The Ministry was initially dismissive of our concerns, and adopted a defensive stance, particularly regarding the suggestion that correctional staff may have engaged in cover-ups of situations where excessive force was used. Still, it agreed to review 13 egregious cases my Office had identified. The Ministry later acknowledged that policy breaches had occurred, including failure on the part of correctional staff to report some incidents. The Ministry undertook to address these issues systemically, but its progress was slow and our attempts to obtain updated information about remedial steps met with delay. In January 2011, the Ministry told us it would be making several improvements to procedures and policies. Six months later, there appeared to be little movement. We made numerous attempts to obtain time frames and draft documents relating to these changes, but the Ministry provided us with no details. Under the circumstances, I decided to launch a formal investigation on my own initiative.
- 20 On August 16, 2011, I advised the Deputy Minister of Correctional Services of my intention to investigate the Ministry's response to inmate complaints of excessive use of force by correctional staff, including how it conducts



investigations and enforces policies relating to the use of force. On the same day, I made a public announcement about the investigation and invited anyone with relevant information to contact my Office.

- 21** Since commencing this investigation, we have received **147** complaints and submissions about excessive use of force from individuals and stakeholder groups. We also communicated with organizations familiar with inmate concerns, including Elizabeth Fry Peel-Halton and Elizabeth Fry Toronto – which undertook to network with affiliated organizations provincewide about our investigation, and later provided a summary of concerns – as well as the John Howard Society of Ontario, and the Criminal Lawyers Association.
- 22** The investigation was assigned to the Special Ombudsman Response Team (SORT), and was conducted by eight investigators under supervision of SORT’s Director, and assisted by Senior Counsel. The team worked in tandem with the Director of Investigations and five other Ombudsman investigators with expertise in correctional services cases.
- 23** The team carried out **182** interviews with senior Ministry officials and staff, including assistant deputy ministers, regional directors and deputy regional directors, institution superintendents, deputy superintendents, health care professionals, correctional officers, and security and operational managers. They also interviewed officials from the Ontario Public Service Employees Union, which represents correctional officers and nursing staff at correctional institutions, the Correctional Investigation and Security Unit’s manager and permanent inspectors, the director and instructors at the Ontario Correctional Services College, and inmates, stakeholders and whistleblowers from within the Ministry.
- 24** SORT investigators also toured several correctional facilities across the province, including Elgin-Middlesex Detention Centre, Kenora Jail, Brockville Jail and Ottawa-Carleton Detention Centre.
- 25** We selected five institutions with historically high complaint volumes, based on our experience, for closer examination: Central East Correctional Centre, Elgin-Middlesex Detention Centre, Ottawa-Carleton Detention Centre, Toronto West Detention Centre and Maplehurst Correctional Complex. SORT obtained and reviewed 28 banker’s boxes of documents from the Ministry relating to these institutions for the period of January 2010 to August 2011, including video recordings and Information Management Unit statistics.

## The Ministry's Initial Response

- 26** After receiving our notice of intent to investigate, the Ministry assembled a team of 30 staff to review the documentation we requested, including all the files on cases of use of force from January 2010 to August 2011 from the five institutions we identified.
- 27** After its internal review, the Ministry ordered a reassessment of all cases of use of force at all institutions from January 2010 to fall 2012. Approximately 2,800 cases were reviewed, covering an 18-month period. As a result of this review, the Ministry asked the Correctional Investigation and Security Unit to reopen and investigate 10 cases. The Unit later substantiated that excessive force was used in three of these cases, and disciplinary action was taken against the staff involved. We reviewed the results of these investigations as part of our investigation.
- 28** We also reviewed various policies and procedures, emails, memoranda, training manuals and Correctional Investigation and Security Unit files, and requested additional documents and updates throughout the investigation.
- 29** SORT also reviewed hours of video of incidents of use of force, and closely monitored news media and social media activity relevant to the investigation.
- 30** The team also did extensive independent research into practices in other Canadian provinces and territories, and in other countries, relating to inmate management and the use of force. We found that many jurisdictions have similar policies and face similar challenges to Ontario.
- 31** Our Office received excellent co-operation from the Ministry and its various branches.



## Use of Force in Ontario's Correctional Institutions

- 32** The Ministry of Community Safety and Correctional Services is responsible for 29 adult correctional institutions across Ontario. These are classified as correctional centres, detention centres, correctional complexes, treatment centres and jails. Collectively, these institutions have a capacity to house 8,857 inmates as well as 489 inmates serving intermittent (i.e., weekend) sentences. A chart from the Ministry that lists all these facilities, their capacity and the inmate count as of April 8, 2013 can be found at Appendix B.
- 33** As of February 28, 2012, the Ministry employed 3,560 correctional officers, 467 operational managers, 77 deputy superintendents and 29 superintendents. There are four regional offices responsible for monitoring institutions in their respective areas.
- 34** **Correctional centres** house inmates who have been convicted of offences and sentenced to periods of incarceration from 60 days to two years less a day. People who are sentenced to terms of two years or more are housed in prisons that are the responsibility of the federal government (Correctional Services Canada), not the Ontario government.
- 35** **Detention centres** and **jails** serve as the point of entry into the provincial institutional system. They are maximum-security facilities that hold people who are awaiting trial, as well as those who have been convicted and sentenced to terms of 60 days or less, and those awaiting transfer to federal or other provincial institutions. In general, detention centres are larger, more modern facilities, while jails are older, smaller institutions.
- 36** **Correctional complexes** have units for people awaiting trial as well as those who have been convicted and sentenced to more than 60 days.
- 37** **Treatment centres** provide various professional clinical services for inmates needing treatment for such conditions as mental illness, substance abuse, sexual misconduct and impulse and anger control issues.
- 38** The Ministry is in the midst of an initiative to modernize its correctional infrastructure that involves building new facilities and closing older ones.

## Reasonable Force

- 39** Prison guards are authorized to use force against inmates under certain circumstances, provided they only use the degree of force necessary for administration or enforcement of the law.<sup>3</sup> The regulations under the *Ministry of Correctional Services Act* specifically refer to the situations in which Ontario’s correctional staff may use force. They state:
- 7.** (1) No employee shall use force against an inmate unless force is required in order to,  
(a) enforce discipline and maintain order within the institution;  
(b) defend the employee or another employee or inmate from assault;  
(c) control a rebellious or disturbed inmate; or  
(d) conduct a search. R.R.O. 1990, Reg. 778, s. 7 (1).  
(2) When an employee uses force against an inmate, the amount of force used shall be reasonable and not excessive having regard to the nature of the threat posed by the inmate and all other circumstances of the case. R.R.O. 1990, Reg. 778, s. 7 (2).
- 40** The regulations also require that all incidents of use of force be reported in writing to the superintendent, indicating the nature of the threat posed by the inmate and all other circumstances of the case (s.7(3)).
- 41** The requirements relating to the use of force are further set out in the Ministry’s Adult Institutions Policy and Procedures Manual, as well as in other policies, directives and institutional standing orders.
- 42** Ministry policy describes “use of force” as any application of physical force against an inmate, expressly excluding routine searches of and application of restraints to compliant inmates. It emphasizes that force is only to be used as a last resort, after every less intrusive alternative (that is reasonable under the circumstances) has been applied. Force is also only to be used as a defensive or control measure and to be discontinued at the first possible opportunity. The application of force beyond what is prescribed or with the wilful intent to cause hurt or mischief is considered excessive, and subject to workplace discipline as well as potential criminal sanctions.
- 43** The use of force against inmates is not uncommon. From August 2011 to April 2012, there were **766** reported incidents in which correctional staff applied force. In this investigation, I am concerned with a subset of these incidents –

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<sup>3</sup> *Criminal Code*, R.S.C. 1985, c. C-46, s. 25.



specifically, cases involving excessive and unreasonable use of force, tantamount to assault.

## Documenting Use of Force

- 44** Documenting incidents of use of force is important for all those involved. Thorough record-keeping assists in ensuring that excessive use of force against inmates and other improper practices come to light. It also serves to protect correctional staff when spurious allegations of excessive use of force are lodged. Ministry policies require certain documents to be prepared in cases where force is used.
- 45** The **offender incident report** is to be completed whenever a serious incident occurs. This report must contain a summary of the incident and is prepared by the operational manager on duty. “Serious” incidents include major disturbances, escapes, fires, deaths or serious injuries, incidents that might result in media attention, use of force on inmates, and contentious matters involving inmates and/or employees.<sup>4</sup> The report must be communicated to the Ministry’s Information Management Unit, the superintendent and the regional office within an hour of the incident.<sup>5</sup> The local police must also be notified.
- 46** Every staff member involved in or who witnesses an incident of use of force must also prepare an **occurrence report** that documents the nature of the threat posed by the inmate that necessitated the use of force, and all other circumstances relating to the incident. This includes an account of the events leading up to the use of force, a detailed description of the force used, a description of the injuries received by the inmate and others, and a list of participants and witnesses.
- 47** If the inmate involved is believed to have acted inappropriately, a **misconduct report** can also be issued. The correctional staff member involved in the incident usually completes this form. Inmates often lose privileges and earned remission (a reduction in the length of their sentence), for misconduct. There is an internal process that allows them to challenge such charges.
- 48** Whenever force has been used against an inmate or an inmate claims to have been assaulted by staff, he or she must be examined by health care personnel,

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<sup>4</sup> Ontario, Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual*, Report Writing (released: 1 March 2012) [*Policy and Procedures Manual*]. See also, *Policy and Procedures Manual*, Use of Force (released 18 November 2011).

<sup>5</sup> *Ibid.*

regardless of whether there are visible signs of injury.<sup>6</sup> Health care staff must document their observations about any injuries on the inmate's health care record and complete the appropriate portion of the **accident and injury report**, which must be initiated by correctional staff. The inmate is also asked to record a statement about their injuries on this form.

- 49 If there is an allegation that a staff member has assaulted an inmate, the inmate must be asked to complete a **notification of right to pursue/decline laying of criminal charges** form. The inmate must indicate on this form whether he or she chooses to have the complaint dealt with through an internal investigation by the institution or pursue a criminal charge via the police.
- 50 The operational manager is also responsible for ensuring inmates are photographed after every application of force, whether or not any injuries are apparent. Ministry policy sets out the requirements relating to the timing and scope of the photographs to be taken. To ensure photographs are taken, inmates who refuse to be photographed after an incident are to be charged with misconduct.<sup>7</sup>
- 51 Incidents of use of force are also noted in the logbooks kept in various areas of the institution.

## Ministry Oversight of Use of Force

### *Internal Review in Institutions*

- 52 The operational manager on duty at the time of an incident of use of force is responsible for notifying senior management and the police, as well as ensuring medical assessment and care is provided to the inmate as soon as possible after force has been used. This manager is also responsible for collecting all the necessary documentation, referred to as the **“use of force package.”** If the work remains incomplete at the end of the manager's shift, this is noted in a logbook, and the next operational manager on duty is responsible for completing the package.
- 53 Various senior officials at the institution, as well as the relevant regional director, are responsible for reviewing the package and deciding whether or not

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Supra* note 4, *Policy and Procedures Manual*, Digital Images of Inmate Injuries (released: 18 November 2011).



to pursue further internal investigation by the facility, referral to the Ministry's Correctional Investigation and Security Unit for investigation, or disciplinary or other action.

- 54 The institution's superintendent is also responsible for reporting back to the inmate after an internal investigation of an allegation of assault by staff is completed. The superintendent has the discretion to transfer the inmate to another facility if he or she was injured in an assault by staff.

### ***Correctional Investigation and Security Unit***

- 55 In the past, the Ministry used various methods for investigating significant issues of correctional staff conduct, including having internal investigations supervised through the Ontario Provincial Police. In April 2001, the Ministry established the Correctional Investigation and Security Unit, as a separate investigative body.
- 56 The Correctional Investigation and Security Unit is responsible for conducting independent, objective investigations, including all investigations of high-level contraventions of Ministry directives, policies, procedures and standards of conduct related to staff, volunteers, inmates and contractors.
- 57 Under s. 22 of the *Ministry of Correctional Services Act*, its inspectors are authorized to conduct inspections and investigations in connection with the administration of the Act. Any correctional staff who obstruct, withhold, destroy, conceal or refuse to furnish information required by a Unit inspector can be dismissed from employment.
- 58 The Unit is funded for 10 full-time inspectors (including one staff inspector) and a manager. At the time this report was written, the Unit was operating with a manager, six full-time permanent inspectors and three temporary inspectors. Its inspectors include former police officers, correctional officers, operational managers, and former Ontario Correctional Services College instructors. There is no formal training for their position, although some have taken courses in how to conduct investigations through the Ontario Police College, the Investigation Enforcement Director's Council, Criminal Intelligence Service Ontario, and my Office.<sup>8</sup>

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<sup>8</sup> Since 2007, the Ontario Ombudsman's Office has offered a training course for administrative investigators on a complete cost-recovery basis. It has trained hundreds of people from Ontario agencies and others around the world. More information: <http://www.ombudsman.on.ca/About-Us/Training.aspx>

- 59 The Unit’s inspectors are responsible for “Level 1” inspections – these involve high-profile or serious breaches of Ministry policies and/or procedures. Investigation of allegations of excessive use of force is one of many areas in the Unit’s mandate. It is also tasked with investigating such things as suspected criminal activity within correctional facilities, sudden inmate deaths, serious injuries to inmates or employees, escapes, hostage situations, riots, acts that could result in civil litigation, and (as of 2010) misuse of Ministry computers.
- 60 The Unit also trains staff from elsewhere in the Ministry to conduct less serious “Level 2” investigations without formal authority under s. 22 of the Act. Level 2 investigations are intended to assist institutions in completing less serious internal reviews of incidents, when the evidence is clear and a formal investigation is considered unnecessary. In the past three years, only one Level 2 investigation involved an incident of use of force, and it was escalated to the Unit when correctional staff failed to co-operate. The Unit is also responsible for intelligence gathering about staff corruption, breach of trust and conduct of staff, volunteers and contractors (on duty or off), and providing advice and direction to the local risk management teams, as well as analyzing trends to support policy development and education.

## Stories From Behind the Bars

*All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.*

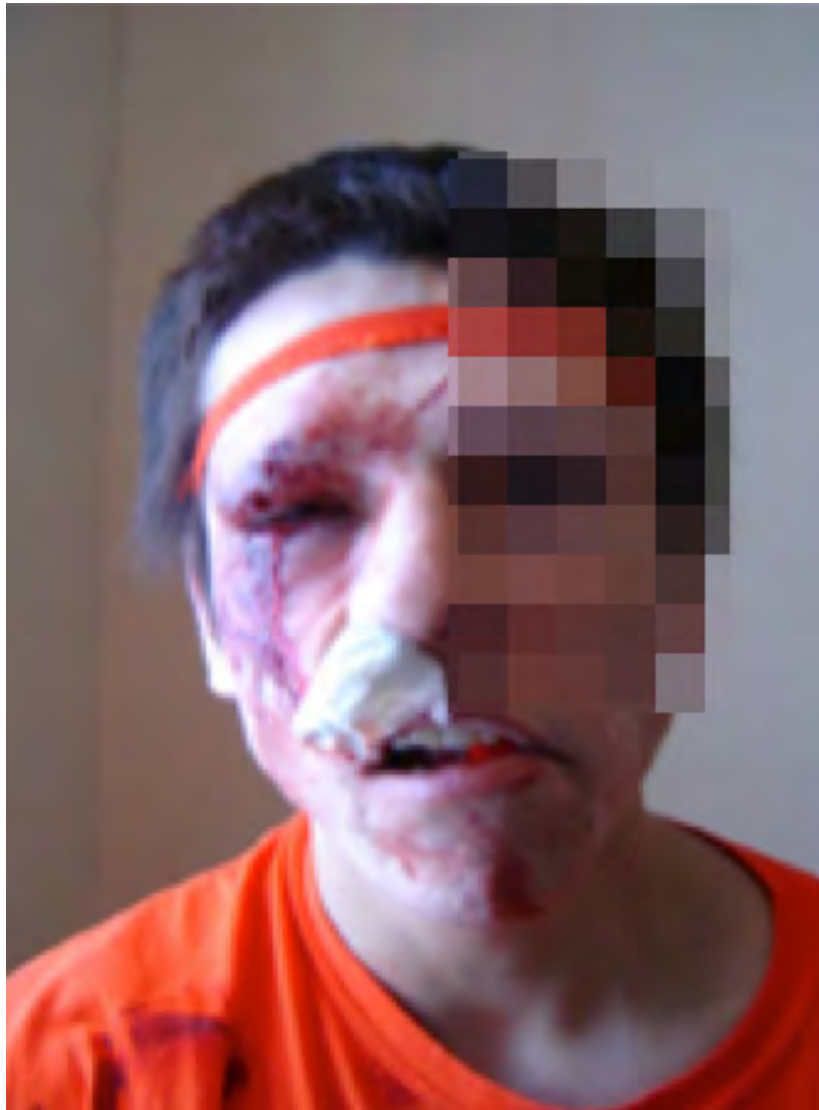
– United Nations, *Basic Principles for the Treatment of Prisoners*, December 14, 1990

- 61 It might be tempting for some to dismiss inmates who are victims of excessive use of force as deserving of their fate; to assume the worst of inmates and the best of their jailers. But it is important to remember that inmates, regardless of why they are incarcerated, are human beings deserving of respect, dignity and humane treatment. They are all individuals with their own stories to tell.
- 62 The following accounts of excessive use of force against inmates have been substantiated by Ministry investigations. They are a selection of the stories we heard about from inmates, whistleblowers within the correctional system, and Ministry officials. Many of the inmates and whistleblowers complained directly to my Office but were reluctant to share their experiences publicly, fearing retaliation and reprisal. The names we have used are not real, but the stories and photos<sup>9</sup> – regrettably – are.

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<sup>9</sup> Photos used in this report have been obscured to protect individuals’ privacy as warranted.

The Pictures Tell the Story – Inmate Albert



**Figure 1 - Inmate Albert. Photo obtained from Ministry of Community Safety and Correctional Services records.**

- 63** Like thousands of inmates in Ontario’s correctional system, Albert suffers from mental illness. He has a lengthy history of incarceration and violent and abnormal behaviour. Albert is often placed in segregation for his own protection and that of others. That was the case on January 3, 2010, at the Elgin-Middlesex Detention Centre. Around 9 a.m. that day, Albert was



extremely agitated. He had covered the observation window in his segregation cell with wet toilet paper, and despite repeated requests from correctional officers, he refused to remove it.

- 64** The accounts of what happened to Albert next differ somewhat, according to the two correctional officers involved. But both officers said they decided to enter Albert's cell because they were worried about his safety. They claimed that as they entered, Albert charged towards them, punching one of the officers in the lip. According to the injured officer, Albert punched him twice, once while he was in the doorway and again after the two officers brought Albert to the cell floor. The injured officer also reported that his shirt was torn in the altercation, and that he hit Albert twice in the face with the back of his hand to distract him. He said he hit Albert just after he entered the cell (after Albert hit him), and again while he was attempting to restrain Albert on the floor. Both officers noted that Albert became compliant after he was restrained and a nurse later assessed him for injuries. The officers also observed that Albert suffered a cut over his right eye, which one described in his report as a "small laceration."
- 65** Once he had calmed down, Albert was handcuffed and moved to another cell where the operational manager photographed his injuries. The manager also placed a 22-second call to the local police to notify them about the incident. He did not describe the extent of Albert's injuries in his reports, but did refer to the injury sustained by one of the correctional officers.
- 66** Another manager who reviewed the reports of the incident sent emails to the involved officers, identifying errors in their dealings with Albert. This manager noted that there were other options available to the officers instead of using force. They could have opened the cell door's feeding hatch to see what Albert was doing. If there was a problem, they could have then notified the manager and obtained approval, as required by institutional policy, prior to opening the cell door.
- 67** The accident and injury report notes that Albert's "psychiatric state prevents a co-operative statement." The nurse who observed Albert explained he did so through the cell's observation window only, as Albert was agitated and spitting bloody saliva. The nurse described a small laceration above Albert's right eye in the health care logbook. Other medical records refer to bruising over Albert's eye. The correctional officer who was purportedly injured did not seek medical attention or complete the required documentation for his injury.
- 68** On January 6, 2010, the centre's superintendent sent a memorandum to the regional director, summarizing what happened to Albert:

[Inmate Albert] was unco-operative, threatening and stepped toward Correctional Officer ..., striking him in the face with a clenched fist. CO [Correctional officer] 1 and CO 2 were trying to clean off the cell window of [Albert] who has a diagnosed mental illness. [Albert] was restrained to the floor where he continued to resist, tearing at staff clothing and attempting to kick. [Albert] was calmed down and staff exited the cell. ...

There was a minor injury to CO 1's lip..., but no injuries to [Albert]. All documentation appears to be in order and photographs were taken. London Police were contacted but will not attend at this time. [Albert] was not charged with misconduct "commits or threatens to commit an assault," due to his mental illness.

A review of the circumstances surrounding this incident indicates that the force used was reasonable and within Ministry guidelines.

- 69 In April 2010, an operational manager was tasked with reviewing incomplete accident and injury reports. Albert's form was one of those in the pile. Using the deputy superintendent's rubber stamp, this manager marked Albert's report to indicate he had been assessed by health care and staff had followed established procedure. The manager completed his review without looking at any of the use of force documents, figuring that since four months had elapsed without Albert complaining about assault, there was no reason to be concerned.
- 70 No further action was taken until more than a year later, when the Assistant Deputy Minister for Institutional Services directed a review of cases involving use of force, in light of my Office's investigation. In October 2011, the Ministry identified Albert's case as one of those requiring further follow-up by the Correctional Investigation and Security Unit.
- 71 Albert's file stood out because of four photographs taken about 15 minutes after the incident. In the photographs, abrasions on Albert's right hand and back are discernible, but it is the graphic frontal view of his face that raised questions about the accuracy of the institution's reporting of the incident. The image captured by the camera shows extensive facial bruising, blood, and a right eye so swollen and blackened it is barely recognizable. Clearly, the photographs document a significant facial injury. Despite this powerful evidence, the Correctional Investigation and Security Unit reported that during its investigation, the involved correctional officers and operational manager did not acknowledge the extent of the injuries shown in the photographs, and

continued to downplay their seriousness. The operational manager – who took the photos – described Albert’s apparent facial bruising as dried blood and attributed the obvious swelling of his right eye to Albert closing his eye as the picture was taken. This manager also hypothesized that a red substance leaking from a visible facial cut was not blood from an injury, but simply a scab that Albert had picked. He remarked that he did not consider the photographic evidence “anything out of the ordinary.”

- 72** In the opinion of the Ministry’s senior medical consultant, Albert’s injuries did not appear consistent with the reported use of force, primarily a strike with the back of an open hand. She said the injuries appeared to be the result of a much more forceful blow to the face and to his body. She felt the injuries were significant and justified immediate and ongoing medical assessment and management.
- 73** When he gave evidence to the Unit, Albert admitted that he had punched the first correctional officer who entered his cell, but said once the two guards gained control over him, they held him down on the ground while one kicked him mid-torso and then in his head, causing the injury to his right eye. The Unit found that Albert’s description of what happened was consistent with the injuries documented in the photographs as well as the opinion offered by the senior medical consultant.
- 74** Because the description of the incident in the institutional reports could not be reconciled with the injuries shown in the photographs, the Unit found that the correctional officers and operational manager involved in the incident had concealed its seriousness and acted with complete disregard for Ministry policies, standing orders and rules of conduct for correctional staff. It characterized the force used as unauthorized, unreasonable and insufficiently reported – and therefore unjustified and excessive.
- 75** The Unit uncovered numerous faults in the institutional reports relating to the incident, including that they failed to reveal any immediate risk or threat justifying entering Albert’s cell, did not accurately describe what happened and minimized Albert’s injuries. The Unit also found that correctional staff breached policies and standing orders, including when they escalated a confrontation, entered Albert’s cell without a manager present, neglected to take follow-up photographs of his injuries and failed to undertake adequate medical assessment. It also determined that management, including the deputy superintendent and superintendent – who admitted they had never reviewed the photographs or related documents – failed to properly examine the incident and investigate as required.



**76** The Unit was particularly critical of a correctional officer who acted as a union representative and accompanied her two colleagues during their interviews. It discovered she had shared the officers' occurrence reports, so each was forewarned about the other's written accounts of the incident before they were interviewed. The Unit found this was an attempt to interfere with and obstruct its investigation.

**77** In summing up what happened to Albert and the attempt to sweep it under the rug, the Unit reported:

At worst, this matter was a use of force incident that went awry and a conscious, concerted attempt was made by all parties involved to cover up and conceal the abuse of a vulnerable inmate. At best, this incident was sorely mismanaged from the outset.

**78** The two officers received suspensions without pay; one for three days and the other for 10. The manager responsible for assembling the documents received a letter setting out the reporting requirements for such incidents. The manager who failed to properly review the accident and injury report was dismissed for dereliction of duty. In addition, the deputy superintendent received a 10-day suspension without pay, later reduced to six days as a result of a settlement. The superintendent received a non-disciplinary letter of counsel.

"I Fell" – Inmate Brian



**Figure 2: Central East Correctional Centre. Photo provided by Parkin Architects Ltd.**

- 79** Life in correctional institutions is normally stressful, but the pressure builds exponentially when normal routines are disrupted. By September 30, 2010, the tension at the Central East Correctional Centre was mounting as inmates experienced their third straight day of “lockdown” – meaning they were restricted to their cells – while staff searched for razors that had been reported missing. That evening, the supper meal service was delayed, and inmate Brian chose to voice his frustration by shouting demands to be fed and banging on his cell door. Soon other inmates joined in, banging their doors and insulting the correctional officers on duty.
- 80** Two officers decided to deal with the instigator. They removed Brian from his cell and escorted him – without incident – to a room at the end of a hallway, out of the view of the video monitoring cameras and other inmates.

- 81** According to the two officers, Brian sat on a bench in the room, then suddenly jumped up, stepped toward one of them and bumped him with his leg. The officer said he used force on Brian to defend against an attempted assault. He later charged Brian with misconduct.
- 82** Brian’s version of events is radically different. He said once he entered the room, a correctional officer stood directly in front of him, verbally accosted him, then “head-butted” him in the nose, causing him to fall backwards onto a bench. The officer punched him, banged his head against the wall, grabbed him by his Adam’s apple, squeezed his throat, and forced him to the floor. While Brian was on the floor on his stomach, the same officer stood over him, threatened and spit on him, and another officer stepped on the back of his neck. He said he was so terrified, he repeatedly apologized for his behaviour during the assault.
- 83** After the incident, the officers told the operational manager Brian had apologized for his behaviour. The manager concluded that the incident arose out of a resolved “personality issue.”
- 84** The resulting reports minimized the extent of Brian’s injuries. The accident and injury report said he had minor injuries to his neck and the top of his head. Brian actually wrote “I fell” in the section of the form reserved for his statement. Much later, during the Correctional Investigation and Security Unit investigation, he said:
- ... the guy that just beat me up was standing there ... every time I was questioned about this, the officers that were involved were right beside me. I felt intimidated. I felt scared...
- 85** Although Brian initially wanted to put the incident behind him, he experienced significant medical problems in the next few days and eventually complained that the force used on him had been excessive. His lawyer and mother also contacted the facility to express concerns about his condition. On October 9, 2010, Brian appeared in court and was sent back to the facility with a notation on the legal document remanding him back to custody that stated he should be given medical attention. Finally, on October 14, 2010, an Ontario Court judge recommended that a doctor see Brian, “as he is losing consciousness.” Brian was transferred to a different facility and monitored for a head injury while Central East Correctional Centre ordered a review of the incident.
- 86** The review revealed several unreported and inappropriate events captured by video surveillance cameras. According to the video, the correctional officer,



who used force on Brian, changed his blood-soaked shirt, used towels to wipe the floor in the area outside of the room where Brian had been taken, as well as down the hallway, and threw an inmate towel and t-shirt in the garbage. He was also seen to spend time alone twice with Brian after the incident.

- 87** It was apparent that Brian was given a towel roll to clean himself, as well as a change of clothes. Brian was photographed and interviewed only after his appearance had been sanitized.
- 88** On October 25, 2010, the regional director referred Brian's case to the Correctional Investigation and Security Unit. The Unit's investigation confirmed that he had been the victim of unnecessary and unjustified force.
- 89** Among its findings, the Unit concluded that the involved correctional officers failed to follow sound practices when handling Brian, the officer who injured Brian did not describe and justify the use of force, and none of the reports about the incident accurately documented Brian's injuries.
- 90** The Unit also criticized the fact that the correctional officer responsible for Brian's injuries was alone with him after the incident, present while Brian was questioned by the operational manager and photographed, and also took Brian's statement for the accident and injury form. In addition, the Unit noted that no follow-up photographs were ever taken of Brian, and the institution's logbooks did not contain any entries about the incident, contrary to Ministry policy.
- 91** The Unit noted that the two officers involved prepared their reports on the incident together, and the operational manager who witnessed this failed to recognize the potential it posed for collusion. The Unit also found that an officer who saw her colleague use excessive force was untruthful and presented a version of events contrived to support her coworker's story and cast Brian as assaultive. In addition, the Unit determined that two correctional officers who witnessed the aftermath of the incident each failed to prepare an occurrence report. One, who had assisted in cleaning up Brian's blood, only admitted his involvement during the Unit's investigation. The Unit concluded the operational manager in charge had been "wilfully blind" when she accepted the correctional officers' accounts of what had happened.
- 92** The adequacy of the health care provided to Brian was also criticized. The Unit observed that the nurse's initial assessment of Brian's injuries took some 46 seconds, while the nurse spent seven minutes discussing the incident with correctional officers in the area. The Unit also noted an institutional physician eventually ordered medical tests for Brian, but they were never carried out. As

a result of this incident, the facility’s medical department has instituted new measures to further ensure that medical information is recorded and accessible by all medical staff.

- 93** After the Unit’s investigation, the two correctional officers directly involved in the use of force were dismissed – but they were reinstated and issued five-day suspensions as a result of a settlement reached between the Ministry and the union.
- 94** The registered practical nurse was initially dismissed, then reinstated and issued a 10-day suspension, again as a result of a settlement with his union.
- 95** The correctional officer who witnessed the incident and failed to report it received a 20-day suspension without pay that was reduced to a five-day unpaid suspension after the union intervened.
- 96** The operational manager who overlooked the severity of the incident received a non-disciplinary letter of counsel.

Conspiracy of Silence – Inmate Colin



**Figure 3: Inmate Colin.** Photo obtained from Ministry of Community Safety and Correctional Services records.

- 97 Inmate Colin suffers from a brain injury incurred as a child in a car accident and also has a psychiatric disability. Colin’s behaviour can be challenging and difficult to manage. On Saturday, October 23, 2010, he was incarcerated at the Ottawa-Carleton Detention Centre. It was a frustrating day for him, as he and other inmates had been locked in their cells to facilitate a large-scale move of



inmates for security reasons. Colin's day took a decided turn for the worse just after dinner, when he got into a dispute with correctional staff.

- 98** The institution's reports on the incident state that when Colin's cell door was opened to allow a correctional officer to collect his meal tray, Colin exited the cell, attempted to go for a walk, and then verbally threatened and attempted to assault the officer – raising his hand aggressively. Two officers tried to stop Colin. Four others soon joined them. Together, the six officers used physical force, including the application of handcuffs and leg restraints, to control Colin and return him to a cell. Other correctional staff, including an operational manager, were present at various times as the incident progressed. Colin was later escorted to the segregation area and charged with misconduct.
- 99** Medical staff assessed Colin after the altercation. They recorded that he had multiple facial lacerations, a large laceration over his left eye, his right eye was swollen shut, and he had suffered contusions to both ears and the back of his head, as well as abrasions to his neck, chest, upper back, hands and wrists. Given the severity of his injuries, Colin was transferred to a local hospital, where he was admitted under observation for a “subgaleal hematoma,” (internal swelling between the skull and the scalp), and referred to a neurologist. Correctional staff reported that Colin was resistant and combative, and force was required to bring him to the wall and later the floor in order to restrain him. They said his injuries likely came from striking his head and face on the floor and possibly the door track at the opening of the cell. However, senior management had some concerns that the extent of Colin's injuries did not seem to fit the official description of what had happened. The regional director asked that the Correctional Investigation and Security Unit review the incident.
- 100** The Correctional Investigation and Security Unit's reconstruction of events – based on institutional records and interviews with Colin, his cellmate, and the involved correctional staff – is markedly different from what was originally reported. The Unit determined that one or two correctional officers were inadvertently locked in Colin's cell after entering to speak with him about a verbal exchange. One of the officers then radioed for the doors to be reopened, and physically removed Colin from the cell, possibly in retaliation for or to warn him about his conduct. These officers later used force to bring the now resisting Colin to the wall and then the floor, and four other officers arrived and joined in their efforts to subdue him. At least three other officers and an operational manager were also present while Colin was being restrained, and by some accounts, 12-15 staff were in the area at different points.

- 101** The Unit noted that Colin likely struck the floor and door rail when one of the officers lost her hold on him and he landed on the floor face down.
- 102** The Unit concluded that the two officers who were initially involved used excessive and unjustified force against Colin, when they initiated physical contact with him. These officers stood by their original account of how the use of force started. The Unit rejected their evidence that Colin had threatened and attempted to assault an officer, and said this version of events “was contrived to fit the evidence.” It also determined that at least one officer used poor judgment when she entered the cell, and the other officer escalated the situation by applying force and removing Colin from the cell. Both were found to have failed to provide accurate reports of the incident.
- 103** Even more disturbing was evidence revealed when four correctional officers recanted their original reports. They admitted to the Unit that after Colin had calmed down – and was under the control of five guards – he was brutally assaulted by a sixth. The Unit found that while Colin lay face down on the floor with his hands cuffed behind his back and his ankles shackled, an officer who had joined in the fray, placed his hands on two of his colleagues for leverage, and delivered two or three kicks to Colin’s head and upper torso. The Unit determined that these kicks – or “stomps,” as some described them – forced Colin’s face into and across the floor and were likely the primary cause of the injuries to the left side and back of his head.
- 104** One officer told the Unit:
- ...one of my fellow officers kicked him in the back of the head and his head went off the track, splitting his head open, and blood started spilling out from underneath him... I was shocked. I was stunned. I stood there and the same officer booted him ... for the second time.
- 105** He said the officer in question:
- ... grabbed me by the belt and held me there to kick him. He used my weight to hold me there while he booted a guy in fucking cuffs... people were walking away – that’s when I knew it was bad.
- 106** A second officer told the Unit he finally stuck his own leg out to stop the kicks. He attributed his initial reluctance to tell the truth to “the blue code or code of silence”:

... I know what to do morally and ethically... I just don't know what to do in here. Because, I mean, part of this whole thing when I said to you that I told my wife and I told my parents and my mom said, "Well, what are you going to do? Are you going to rat him out?" and I said, "I can't. I mean, I can't I may as well throw my uniform in." ... I don't want to see all the people I work with feel like they have to lie. I don't want to see a bunch of good people in my mind... sinking for ... the actions of one person.<sup>10</sup>

- 107** Similarly, another recanting officer acknowledged that the code of silence – the need to show solidarity for fellow officers – influenced her initial decision not to report the assault on Colin.
- 108** On the other hand, two correctional officers and the operational manager who had been in the vicinity continued to insist they saw nothing inappropriate occur. The Unit also found that another operational manager, who had been tasked with reporting the incident to the police, downplayed what had happened. He told police there was a minor injury to an inmate and he was just calling for an occurrence number for the institutional records. This manager later admitted that he had doubted the truth of the reports prepared by correctional staff when he submitted them to senior administrators, but failed to notify anyone of his concerns. The Unit considered the evidence of these staff to be evasive and their rationalizations implausible, and had this to say about the “code of silence”:

The code of silence amongst correctional staff has been recognized as a reality. This investigation has concluded that involved correctional officers and operational managers demonstrated in their reports and interview with the Ministry Inspectors a wilful blindness to the truth and a self-serving conspiracy of silence. Contradictory, self-serving, fabricated reports and interviews by involved correctional staff failed to demonstrate an air of reality, which seriously affected their credibility and reliability.

- 109** In the end, the Unit's findings included that:
- Three correctional officers had used excessive force against Colin;
  - Eight officers and two operational managers had failed to follow Ministry policy in completing reports;

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<sup>10</sup> Punctuation altered for clarity.



- An operational manager had become complicit and failed to provide appropriate direction, report accurately or pass vital information on in a timely manner; and
  - Two operational managers and four correctional officers withheld information and failed to provide a truthful account to a Ministry inspector.
- 110** The officer identified by four co-workers as having kicked Colin in the head and torso categorically denied touching Colin. He was dismissed for unjustified and excessive use of force and charged criminally with assault causing bodily harm.
- 111** The officer who first entered Colin’s cell, participated in the application of force, and submitted an inaccurate report was suspended for 15 days without pay. The officer who assisted her, instigated the initial inappropriate use of force and then participated in the cover-up was suspended for 20 days without pay. Three of the officers who used force on Colin but did not properly report it were given three-day suspensions without pay, as was an officer who witnessed the application of force but failed to submit an accurate report. The operational manager who was present while Colin was brutally kicked and failed to ensure Ministry policies were followed, received a three-day suspension without pay.

*The Devil is in the Details – Inmate Daniel*



**Figure 4: Ottawa Carleton Detention Centre. Photo provided by the *Ottawa Citizen*.**

- 112** Like Colin, inmate Daniel also experienced difficulty with correctional staff at the Ottawa-Carleton Detention Centre on October 23, 2010. He was one of the inmates being moved as part of the massive relocation that day. The correctional staff responsible for transferring Daniel said he did not follow instructions after he was placed in a segregation cell and ordered to lie on the floor face down until the guards had exited the cell. They said Daniel attempted to get up while officers were still in his cell and they had to restrain him until he complied and they could safely exit. Daniel received an institutional misconduct charge for “wilfully disobeying a lawful order of an officer” in relation to his conduct that day. He later received a penalty of 20 days indefinite closed confinement and loss of all privileges.
- 113** Daniel tells a decidedly different story about what happened. Shortly after the incident, he complained to a manager that while he was handcuffed and face

down on the floor, he was kicked in the head and punched several times. He denied disobeying any instructions.

- 114** In response to his complaint, photographs were taken of Daniel, a nurse assessed him, and the police were contacted. Nursing staff recorded that Daniel had a bruise behind his right ear. No further action was taken until more than a year later, when his case was referred to the Correctional Investigation and Security Unit as part of the Ministry’s review in connection with my Office’s investigation.
- 115** After its investigation, the Unit noted that the involved operational manager and two correctional officers did not include any details about Daniel’s injuries in their reports, nor did they provide any information during their interviews that could account for the injuries. They all denied that anyone struck Daniel.
- 116** The Unit observed that although the staff accounts of what happened at the beginning of the transfer were quite detailed, “this began to fall off into generalities during the escort” into the segregation cell.
- 117** Given that the correctional staff failed to describe why force was necessary, the techniques they used, or provide details about Daniel’s injuries, the Unit concluded that the force used was excessive:

It is significant that the time frame referenced by [Daniel’s] allegation ... is identical to the time frames in which the three staff members were not descriptive in their techniques or with regard to injuries received. No plausible explanation was provided by staff to account for injuries to the back of [Daniel’s] head behind his ears.

- 118** The Unit also expressed concern about delayed and inaccurate reports, the Centre’s failure to address Daniel’s complaint, and the severe penalty Daniel received for the purported failure to follow direction.
- 119** All of the correctional staff involved in the incident received non-disciplinary letters of counsel.



*Let's Make a Deal – Inmate Edward*

- 120** Inmate Edward was serving his sentence on weekends at the Brockville Jail. On February 11, 2011, our Office received an anonymous tip – written on one of the forms that we provide to jails to allow inmates to file confidential complaints to us. It said Edward had been assaulted on January 23, 2011, and that correctional staff had tried to “cover up” the incident. The form was dated February 1, 2011 and signed, “Names withheld for fear of reprisal.” Given the confidential information contained in the letter, it appeared to have come from correctional staff. Our Office contacted the jail, which assigned one of its operational managers to conduct an internal inquiry.
- 121** The manager’s review revealed that two pages from a logbook in the area in which the assault took place, covering the date and time in question, had gone missing. Edward also confirmed that correctional staff had slapped or punched him a couple of times, but he was fearful of retaliation and would not name his assailants.
- 122** The relevant staff on duty on January 23, 2011, said Edward had been placed in a small holding cell without a toilet or running water – known by jail staff as the “phone booth” – because he had uttered a gross insult. They spoke with Edward and later moved him to another cell. All denied that any force was used.
- 123** The case was referred to the Correctional Investigation and Security Unit, whose investigation revealed that a correctional officer had used force on Edward in the “phone booth” cell. When the Unit interviewed this officer, he admitted he had struck Edward on the side of the face with an open hand. He attempted to justify this by claiming that Edward began to stand up while guards were speaking to him about his behaviour. The officer said he struck Edward because he interpreted this motion as threatening. The Unit rejected this explanation, noting that within the small confines of the cell, the officer had positioned himself about two feet away from and over Edward while loudly berating him. It found the officer was knowingly in unsafe proximity to an unshackled inmate, and created the conditions making it necessary to use force. It said that in such close quarters, any unexpected movement by the inmate could potentially be misconstrued as threatening.
- 124** Another correctional officer, who initially told the Unit he witnessed nothing, admitted in a second interview that he had seen the officer strike Edward without provocation.

- 125** An acting operational manager involved in the incident also denied anything untoward had happened, but in a second interview acknowledged he knew Edward had been struck, although he did not see it. A third officer said he knew something had occurred, but denied witnessing the incident directly.
- 126** The Unit found that excessive force had been used against Edward and no one had intervened to stop or report it. It was unable to find out who removed the logbook pages, but concluded that the involved acting operational manager and two of the correctional officers colluded to conceal information about the incident. They had all met to discuss whether to prepare reports, and agreed not to do so. The officer who committed the assault had also pressured the others not to report it. The Unit concurred with our Office’s view that the anonymous complaint we received likely came from one or more correctional staff who wanted to expose the assault and cover-up.
- 127** It also found the situation was aggravated by the conduct of the acting operational manager, who admitted he convinced Edward not to complain about the incident. In his second interview, he said a sobbing Edward reported the assault to him, and also complained about the unsanitary cell conditions. Edward wanted to report the situation to the Ombudsman’s Office and was given a complaint form, but the acting manager successfully dissuaded him from using it. Fearful that Edward would reveal the incident to my Office, he made a deal with him. He offered to report the unsanitary living conditions to the jail’s superintendent in exchange for Edward’s silence. When he provided Edward with proof that he had done up a report about the cell conditions, Edward returned the blank complaint form.
- 128** In response to the Unit’s findings, the Ministry issued a six-day unpaid suspension to a correctional officer who witnessed the excessive use of force, failed to protect the inmate or report it, and provided false information to his manager and the Unit.
- 129** The operational manager who witnessed the incident, failed to report it and actively participated in a conspiracy to conceal it received a 15-day suspension without pay.
- 130** The officer who used excessive force on Edward and colluded with colleagues to suppress information about the incident went on a stress-related leave of absence. At the time this report was written, discipline against him was pending his return to work.

## Doing the Right Thing – Inmate Frank



**Figure 5: Toronto Jail. Photo provided by PostMedia.**

- 131** Inmate Frank’s history of non-compliance and institutional misconducts did not win him any popularity contests with correctional staff at the Toronto Jail. However, it was one of the jail’s own operational managers who blew the whistle on how Frank was treated on June 30, 2011.
- 132** Just after 2 p.m. that day, Frank was getting ready to meet with his lawyer when his plans suddenly changed. Correctional staff suspected Frank was in possession of marijuana. They searched him, and finding no contraband, decided they would still transfer him to another cell. They told Frank he would be moved after his meeting with his lawyer. Frank voiced his displeasure at the prospect of changing cells, but proceeded to exit his cell as directed.
- 133** Video evidence shows a correctional officer grabbing Frank’s left arm three times as Frank leaves his cell. Noticeably irritated by this unwanted contact, Frank shakes off the guard’s arm and exits on his own. Frank is then seen,

accompanied by the officer and three operational managers, on his way down a corridor to a room. In that room, the correctional officer takes Frank's left elbow again. Frank once more shakes free, then makes a half-turn toward the officer. Next, the officer can be seen punching Frank in the face, forcing him backwards several feet, out of sight of the video cameras.

- 134** A “code blue” emergency alarm was then called, resulting in a flood of staff to the area. In total, 30 correctional staff, including four operational managers, were present after the alarm went off. Frank was eventually restrained and handcuffed. He never met his lawyer that day. Instead, he ended up at the hospital being treated for a cut on his head and a bruised rib.
- 135** The correctional officer who punched Frank said he thought Frank was going to hit him, based on Frank's “glare” and “body language.” The wording he used in his occurrence report was similar to that used in the reports of two of the operational managers involved in the incident. They indicated that Frank had assumed an aggressive stance and faced the officer with clenched fists.
- 136** However, another operational manager told a substantially different story. She alerted senior management at the earliest opportunity that she had witnessed excess force used against Frank. She said she saw the officer strike Frank without any provocation, and also observed an operational manager repeatedly kick Frank. That operational manager had been moved to another area of the jail because of other confrontations with Frank earlier that week.
- 137** During the Correctional Investigation and Security Unit's investigation, she also testified that she had been pressured to conform to a version of the events that other staff had agreed upon. She said that as she was writing up her report on the incident, one of the other operational managers called her and implied that three operational managers had agreed to report that Frank had threatened the correctional officer, necessitating the use of force. She knew that Frank had not threatened or advanced on the correctional officer, and wrote her report accordingly.
- 138** The Unit found this witness's evidence to be compelling and consistent with the video record. It rejected the evidence of several staff whose accounts were “fraught with inconsistencies” and refuted by video evidence as well as accounts of other witnesses.
- 139** One of the other involved operational managers eventually conceded during his interview with the Unit that there had been no imminent threat when Frank was



first hit. Another acknowledged that the force used might have been “slightly excessive.”

- 140** The operational manager who “stomped” Frank repeatedly – while standing on Frank’s ankles – acknowledged he had done so, but attempted to justify his action as defensive. Most of the blows appeared to be to Frank’s legs, although Frank testified that he was also kicked in the head. This manager also took the photographs of Frank’s injuries after the incident. The Unit criticized this fact, as well as the manager’s failure to capture images of Frank’s legs. Given the animosity over the previous several days between this manager and Frank, the Unit found that this manager had taken the opportunity “to inflict retribution under ‘the guise of a violent scuffle on the floor with an inmate.’ ”
- 141** The Unit concluded that the officer who initiated the incident by striking Frank used excessive force. He was dismissed by the Ministry and charged with criminal assault in January 2012.
- 142** The operational manager who kicked Frank was also found to have used excessive force. He was dismissed and charged with criminal assault.
- 143** The Unit also criticized the fact that some of the involved correctional staff viewed the video of the incident together, which likely influenced how their reports were written. In addition, it found that some staff members failed to submit occurrence reports or prepared incomplete reports, and that Frank was not told he could pursue criminal charges, all of which is contrary to policy.
- 144** As well, it concluded that some of the correctional staff, including three of operational managers, colluded to present details of the incident that were more favourable to staff and less to the inmate. The Unit expressed concern about the apparent code of silence at the jail, which led some staff to wilfully ignore what had happened.
- 145** As for the operational manager who did the right thing by telling the truth about the incident, the Unit commented on the lingering effects of whistleblowing in such an environment. It observed that other staff did not appear to accept this manager or her leadership role. It encouraged senior management to address this situation.
- 146** Unfortunately, she has continued to face distrustful and openly hostile colleagues. It appears that the pressure for peer solidarity ultimately outweighed the value of honesty.

*Three Strikes, You're Out – Inmate George*

- 147** It was around 5:30 p.m. on August 10, 2011, and correctional staff were late in distributing medication at the Central North Correctional Centre. Inmate George was impatient, waiting for his psychiatric medication. He swore and yelled at staff to do their jobs. In response, he was removed from his unit and then three correctional officers escorted him to the weight room down the hall for “counselling.”
- 148** In the weight room, George paced, shadow-boxed and lay on the floor. At around 6:30 p.m., he came out of the room to receive his medication, returned and lay down in a corner. Three correctional officers then entered the room. A few minutes later, an emergency alarm was radioed in for a “non-compliant” inmate. George co-operated as he was handcuffed, then a correctional officer took hold of his left arm and they all walked out of the room.
- 149** According to correctional staff, as they were approaching a sliding door on the way to the segregation area, George pulled away from the officer holding him. George was taken to the ground and leg irons were put on him. Later, the medical unit staff assessed him and placed him under observation. It was recorded that he had red marks on his wrists and ankles, two scratches to his back, and a cut on his inner right wrist.
- 150** Staff charged George with an institutional misconduct. On August 16, 2011, when an assistant deputy superintendent was adjudicating this charge, George complained that correctional staff had used excessive force against him during the incident.
- 151** While George acknowledged that he had been disrespectful to staff, he denied behaving aggressively. He said guards pushed him against a wall without provocation, took him to the ground and repeatedly punched him.
- 152** George complained to our Office, and as is our normal process in such cases, we communicated with the institution during its internal investigation of the case, which was later referred to the Correctional Investigation and Security Unit.
- 153** The Unit found that correctional officers had removed George from his unit, left him in the weight room for about 50 minutes and then relocated him to the segregation unit, all without the requisite authorization from a manager. It also discovered that an alarm was raised even though there was no emergency

situation, and that the incident was not properly recorded in the relevant institutional logbook.

- 154** More significantly, the security video did not match the reports filed by correctional staff. It shows George complying as he is escorted out of the weight room, and then a correctional officer pushing him into the wall without justification. Staff then take George to the floor in what the Unit described as “a fashion that was dangerous, not necessary and was excessive considering that control had already been established.” When George is on the floor, handcuffed and restrained, the same officer is seen striking him three times in the face with a closed fist. The Unit determined these strikes were unjustified and excessive. The officer failed to report this use of force and only disclosed it when the Unit interviewed him.
- 155** The video also revealed that after the initial encounter, while George was being escorted to segregation, another correctional officer pushed his head down in an elevator without any justification. Further, during his escort to segregation under the supervision of an operational manager, staff forced George to walk backwards, bent forward at the waist with his head held down. This method was repeated when George was taken from the segregation unit to the medical unit for assessment.
- 156** The Unit consulted the Provincial Emergency Response and Security Coordinator, as well as other trainers, who confirmed that this escort technique, while apparently commonly deployed at George’s institution, was unauthorized and could cause inmates to have elevated blood pressure and difficulty breathing.
- 157** Photographs were taken of George’s injuries, but follow-up images were not taken within 48 hours, contrary to Ministry policy.
- 158** Four of the involved officers did not submit reports until the next day. Many of the staff who witnessed the use of force against George did not submit reports as required by Ministry policy. In fact, the Unit discovered their practice was to submit occurrence reports only if they had directly applied force to an inmate.
- 159** The reports that were filed contained ambiguous terms for the force applied – for example, they say George was “directed,” “guided,” and “helped” to the floor. George’s conduct was characterized as “aggressive” and “non-compliant,” but no one detailed what he did to warrant these labels.

- 160** Notably, none of the staff reported the three strikes to George’s face. Three officers acknowledged seeing this, but not until the Unit’s investigation.
- 161** Staff gave the Unit various reasons for their substandard reports: It was accepted practice only to record their own actions, they were worried about their reputations and didn’t want to get a colleague in trouble, and/or they were too busy and not given enough time off from regular duties to write proper reports. To make matters worse, management accepted all of the reports, even though they did not meet even minimum requirements and were missing key information, such as names of involved personnel and descriptions of what happened.
- 162** The Unit also criticized the conduct of the assistant deputy superintendent who had adjudicated George’s misconduct, reprimanded him and ordered that George lose all privileges and be held in closed confinement for five days, for refusing a direct order. The Unit found this decision was inconsistent with the occurrence reports and the video that confirmed George complied with staff directions all along.
- 163** It also found that the same assistant deputy superintendent failed to report George’s complaint immediately to senior management, exercised poor judgment and potentially interfered with the investigation when he allowed the officer who hit George to view the video of the incident. It said this senior manager was defensive, deflected responsibility, and directed blame to the Ministry, the process, the investigation and the investigator.
- 164** The Ministry dismissed the officer who struck George. The Ontario Provincial Police also charged him with assault on September 29, 2011. He has since been convicted and sentenced to 12 months probation and 60 hours of community service.
- 165** Some of the correctional staff involved in the incident received unpaid suspensions of 3-20 days; others were issued letters of reprimand or non-disciplinary letters of counsel.



I smell a Rat – Inmate Helen



**Figure 6: Sarnia Jail. Photo provided by the Sarnia Observer/Sun Media.**

- 166** On September 2, 2011, just before she was to be transferred to another facility, inmate Helen told staff at Sarnia Jail she had been choked and punched by a correctional officer a few days before.
- 167** Helen landed in custody at the Sarnia Jail on August 30, 2011. She was experiencing symptoms relating to drug use and was housed in an area containing a single cell. The next day, correctional staff took her to the video courtroom in the jail, then to the health unit for reassessment. Around 9:15 a.m., she was being escorted back to her cell. Helen did not want to return to the isolated location, and told staff she wanted to be placed elsewhere. She stopped in a hallway and turned to speak with an operational manager, who told her there was no space available in the area of the jail designated for female inmates, and that her original cell was the best fit, given her substance-induced condition.

- 168** There is no video evidence to confirm what happened next. But according to Helen, she was in a state of drug withdrawal and feeling unwell. She told staff not to touch her and that, if they did, she would hit somebody. The next thing she knew, a correctional officer dragged and pinned her against the wall by her neck.
- 169** Helen was then taken to her cell. She was upset and tried to stop staff from closing the door, then retreated to her bunk. Soon after, a correctional officer struck her with a closed fist on the right shoulder and then three times on the right side of her head. According to Helen, she did not strike anyone, but she kicked in self-defence to ward off the officer's blows.
- 170** Staff occurrence reports of this incident said Helen verbally and physically threatened staff and kicked two correctional officers during a confrontation. The reports focused on Helen's violent, aggressive and oppositional demeanor and used general statements to refer to the force used by staff, such as "directed up against a wall," "placed on the bunk," "glided her to the bunk," "gained some control," and used "distraction to the face." Based on the documentation, and initial staff accounts, it appeared Helen was the aggressor. In fact, local police charged her with two counts of assault and one of breach of probation.
- 171** However, when the jail's senior management looked into her complaint, they became concerned. There was an issue about the propriety of two "distractions" – strikes using an open hand – that an officer admitted using when Helen was on her bed. As staff were questioned more closely, their stories shifted and inconsistent details emerged. The operational manager admitted seeing the officer who had hit Helen, also hold her by the throat and pin her against the hallway wall. None of this information was in the occurrence reports filed by staff.
- 172** On September 7, 2011, the case was referred to the Correctional Investigation and Security Unit for investigation.
- 173** The Unit quickly discovered something was amiss. On October 13, 2011, as it was preparing to interview witnesses, it received an anonymous call from a staff member at the jail saying that correctional officers were being pressured and intimidated by other officers and operational managers about the statements they would be making. The next day, during the Unit's first witness interview at the jail, information was disclosed indicating that staff had colluded to conceal what had really happened to Helen, and that some were harassing and threatening others to hide the truth. The Unit responded by

moving the interviews out of Sarnia and taking other measures for the protection of witnesses.

- 174** The Ministry also put the correctional staff who were identified as engaging in witness intimidation on paid, non-disciplinary suspension, pending completion of the Unit's investigation.
- 175** The Correctional Investigation and Security Unit pieced together the evidence of what had happened to Helen. It concluded that while the operational manager was attempting to reason with Helen about her cell placement, a correctional officer suddenly interrupted and escalated the situation by holding Helen against the wall with his right hand around her neck, for about five seconds.
- 176** The Unit also found that after Helen was returned to her cell, she was unco-operative. An officer restrained her on her bunk, holding her legs and feet to prevent her from kicking. While she was restrained this way, the same officer who had held her by the neck hit Helen in the head three times – not with an open hand, as was initially claimed, but with his closed fist.
- 177** None of the correctional officers or the operational manager who were involved in or witnessed the incident, referred to the officer grabbing Helen's neck or hitting her in this manner in their reports. The picture became clearer only during the Unit's investigation when four officers provided additional information – two of them only reluctantly, when they were re-interviewed.
- 178** The officer eventually admitted hitting Helen with a closed fist, but he justified his actions as defensive. He admitted his report writing was poor, but he downplayed the severity of the incident, emphasizing that Helen did not suffer significant injuries:

Where are the marks? Where are the scars? Where are the bangs? Where are the nicks ... Nothing. Nothing on the inmate whatsoever.

- 179** Little information about any injuries to Helen was gathered at the time of the incident. It was reported that she had an obvious "goose egg" on her head, but she was not co-operative with the health care staff's efforts to examine her. The Unit said health care staff should have tried to conduct a more thorough assessment once Helen had settled down.
- 180** The Unit also consulted the Provincial Coordinator for Use of Force Programs, who confirmed that taking hold of an inmate by the neck or the throat is not an

approved technique. Any action where an inmate's carotid artery and/or airway can be obstructed is prohibited. As well, a closed-fist punch is not a "distraction" technique taught in defensive tactics training or approved by the Ministry.

- 181** An assistant Crown attorney involved in Helen's criminal prosecution told the Unit the staff reports were vague, inconsistent and lacked proper description of the circumstances relating to the use of force – and she noted that the apparent collusion by staff would be an issue if Helen went on trial for assaulting the guards. On October 11, 2011, she withdrew the charges against Helen, although the jail's records continued to state that Helen had assaulted staff.
- 182** The Unit's investigation concluded that the correctional officer who grabbed Helen by the neck and hit her acted offensively and used excessive force. It rejected this officer's after-the-fact explanation of self-defence as incredible, and called his reports on the incident "a web of half-truths, untruths and lies by omission." The Ministry has since terminated his employment.
- 183** The Unit also found that all of the other involved correctional staff failed in their duty to accurately report what had happened. It determined their accounts contained "half-truths and embellishments fraught with significant lies by omission."
- 184** The Ministry has since terminated the employment of the operational manager and five other officers received suspensions of varying lengths.
- 185** In Helen's case, the problem was not one of staff training. All involved staff members had up-to-date instruction in the use of force. The real culprit was the jail's institutional culture. The Unit concluded that a code of silence existed, leading staff to subvert the truth to protect a colleague, and to engage in a concerted effort to conceal the "rogue" action used against a vulnerable inmate.
- 186** In this case, the offending correctional officer was a senior staff member with 25 years of service who was the president of the union local and reportedly very influential within the jail. He had shared his occurrence report with other staff members, presumably to persuade them to describe the incident in similar fashion. One of the other officers admitted he had lied to protect his colleague. Two others acknowledged it was the fear of backlash for breaking the code of silence that caused them to obscure what had happened. The operational manager also claimed he was intimidated by the officer who assaulted Helen, given his prominence in the local union. He said he feared retaliation for telling the truth – he said he knew another manager who discovered a dead rat



hanging from his truck after he disclosed information about improper staff conduct on another occasion. The manager also claimed he had received threatening phone calls at home in similar circumstances, although he had never alerted his superiors about these incidents.

- 187** The Unit also uncovered inappropriate conduct by two correctional officers who were not involved in the initial incident with Helen. They had close personal ties to the officer who assaulted Helen; one was his son. The Unit determined that these officers interfered in its investigation, exerted pressure on witnesses to “stay solid,” and threatened repercussions if they broke the code of silence. One called a staff witness a “rat,” and both made disparaging comments about her co-operating with the Unit’s investigation. The Ministry subsequently terminated these two correctional officers for their role in intimidating witnesses and obstructing the Unit’s investigation, and, in the case of one, for additional improper conduct.
- 188** Unfortunately, the instinct for solidarity amongst correctional officers runs deep. Even after the Ministry removed the chief instigators from the jail, the involved correctional officers who had told the truth still faced reprisals from their peers. One told the Unit that colleagues have continued to ostracize her. Not only is she socially shunned and forced to sit alone at breaks, but her personal safety has also been placed at risk. She has been left on her own without backup on occasion, and, at times, her requests for assistance have been ignored by colleagues. Another officer also said she was given the “cold shoulder” by colleagues, and made the target of comments about “rats.” This officer eventually left her job, no longer able to endure this environment.

# Restraining Excessive Use of Force

## Revisiting Policies on Use of Force

- 189** After my Office brought concerns about cases of excessive use of force to the Ministry's attention in November 2010, the Ministry began to update its policies and procedures. The latest revision of its use of force policy was issued on November 18, 2011, and the Ministry anticipates making further refinements.
- 190** My Office has looked at many cases involving the use of force in correctional facilities over the years. We have usually found that the problems stem not from a lack of policies, but from inadequate enforcement. We have identified – and flagged to the Ministry – numerous cases where correctional staff failed to prepare reports or properly complete them, including leaving out key details, inmate statements and medical observations; where no initial or follow-up photographs were taken, or were of poor quality or incomplete; where internal reviews were not conducted by management or were cursory at best; and where little or nothing was done to ensure compliance with Ministry policy. The Ministry has sought to redress this, and its policies on use of force and local investigations now contain clear, detailed statements about accountability and responsibility.
- 191** The Ministry also issued a new stand-alone policy on digital images of inmate injuries in November 2011, and a policy consolidating and updating requirements for report writing in March 2012.
- 192** In addition, all institutions are now required to have a risk management team, composed of an operational manager, a security manager and a deputy superintendent. These teams, introduced in 2011, are responsible for collectively reviewing, assessing and recommending action whenever force is used, and specific requirements and responsibilities for reviewing use of force cases are now set out in policy. The Ministry is also in the process of preparing an investigation reference guide for managers.
- 193** Under the new risk management team process, the superintendent assigns files on cases of use of force to an investigating manager. The investigating manager is responsible for initiating and keeping the use of force file and ensuring all the documents (including images of inmate injuries) are in order, the police have been contacted, and health care has been provided to the inmate. This manager is also required to convene the risk management team.

- 194** The team is responsible for identifying any procedural or policy breaches, making remedial recommendations, and initiating corrective action. The team’s report package must be forwarded to the superintendent within five business days.<sup>11</sup> The superintendent reviews this information and ensures appropriate measures are taken.
- 195** The Ministry developed a standardized “local investigations report” that has been in use since 2011 to document investigations of serious incidents, including use of force. Such reports must be prepared for all cases of applications of force or alleged excessive use of force against an inmate.
- 196** The report is a template that enables management to ensure that all necessary documentation relating to an incident involving use of force is collected and reviewed – and to identify the need for follow-up action, such as a Correctional Investigation and Security Unit investigation. The form provides for ascending levels of signoffs, from operational managers right up to the assistant deputy minister. The Ministry is also developing a specialized version of the report for cases of use of force.
- 197** All operational managers and institution administrators have been trained in the local investigation process, and correctional officers have been trained on report writing. The Ministry has also issued several memoranda reinforcing expectations about how these processes should be followed in cases of use of force.
- 198** In November 2011, the Ministry also appointed a Use of Force Auditor, who is provided with copies of all local investigations reports, and is responsible for identifying any problem areas.
- 199** Another recent policy change involves the use of “spit hoods” and other restraints used on inmates to prevent them from injuring themselves or others. In April 2010, my Office received a complaint about the use of a “spit hood” – a mesh bag used to cover the heads of inmates who are prone to spitting – on an inmate at the Vanier Centre for Women. The use of these devices was addressed in the institution’s local standing orders, but there was no provincial policy, although the Ministry told us at the time that it was developing one. In December 2011, the Ministry reviewed the use of spit hoods, hockey helmets and restraint chairs, and in January 2012 it issued a memorandum prohibiting them until appropriate policies were prepared. The policy permitting the use of

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<sup>11</sup> *Supra* note 4, *Policy and Procedures Manual*, Use of Force (released 18 November 2011).

helmets and restraint chairs has since been issued, and the spit hood policy was being finalized at the time of writing this report.

## Revisiting the Correctional Investigation and Security Unit

- 200** The Correctional Investigation and Security Unit does important work, but its investigations of allegations of excessive use of force can take a long time – in one case, it took 18 months to issue a report. Officially, it aims to complete cases in 120 days (four months), but it has not consistently met this goal. During our investigation, it assigned three staff specifically to investigate cases of use of force in an effort to expedite them.
- 201** As part of its response to our investigation, in December 2011 the Ministry created the temporary post of Chief of Oversight and Investigations, filled by an Ontario Provincial Police Superintendent. The Chief was directed to assess the Ministry’s policies and procedures relating to use of force, provide oversight and make recommendations on the Correctional Investigation and Security Unit. On June 20, 2012, the Chief reported on 29 recommendations for improvement.
- 202** One of the Chief’s key recommendations relating to the Unit was that it should operate as an independent arm’s-length branch of the Ministry, reporting directly to the Deputy Minister of Correctional Services. It was also suggested that the Use of Force Auditor report through the independent branch, and that a compliance unit be created to conduct audits. Some of the recommendations directed at increasing the effectiveness of the Unit included:
- Development of standardized reporting and a centrally-based electronic case records management system;
  - Creation of a triage system to prioritize investigations, including projected timelines for completion;
  - Giving top priority to allegations of excessive use of force;
  - Transferring the Unit’s information technology investigations to another area; and
  - Ensuring action plans and status reports, including information on disciplinary processes, are forwarded to the branch for inclusion in the investigation files.
- 203** The Ministry committed to implementing these recommendations in three phases, beginning in spring 2013.



- 204** Between 2010 and 2012, the Unit conducted 327 investigations, of which 55 related to incidents of use of force. The Unit found excessive use of force in 26 of these cases – or close to half.

## Revisiting Sanctions

- 205** Over the past two years, the Ministry has actively pursued cases in which excessive use of force has been alleged. It has disciplined correctional staff for improper conduct such as physical abuse of inmates. Several have been fired and a few have also faced criminal prosecution.

### *Before the Courts*

- 206** There are only a few reported criminal court cases addressing the issue of assault of inmates by staff in Ontario correctional institutions. In one recent decision stemming from an incident in 2009, the court emphasized the socially repellant nature of such conduct.
- 207** According to the judge in *R. v. Rosa*<sup>12</sup>, the labour relations climate at Maplehurst Correctional Complex was particularly fractious on May 23, 2009, and unionized staff were engaged in a work-to-rule protest, or slowdown. That day, correctional officer Frank Rosa was escorting inmate Rudy Deleon from one unit to another when, in Justice Roselyn Zisman’s words, he chose to use the inmate “as a human punching bag to release his stress and frustration with his working conditions and with his employers.”<sup>13</sup> As four other officers looked on and video cameras recorded his actions, Mr. Rosa struck his submissive victim upwards of 14 times, kned him twice, and forcefully pushed him against the wall six times. To compound the situation, Mr. Rosa attempted to cover up the incident and did not tell the truth in his occurrence report or when interviewed months later by the Correctional Investigation and Security Unit. He admitted he made a “jailhouse deal” with the inmate to keep quiet. While the victim did not sustain serious injuries, he was left in fear of future retaliation.
- 208** In sentencing Mr. Rosa, Justice Zisman referred to the exceptional authority exercised and position of trust held by correctional staff:

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<sup>12</sup> [2011] O.J. No. 3147 (Ont. Ct. J.).

<sup>13</sup> *Ibid.* at para. 59.

Correctional officers like police, court or sheriff's officers, are in special positions of power over prisoners. Prisoners who are in custody can do little to protect themselves against assaults by those in whom the law has entrusted their care. They are the least likely to be believed if they allege maltreatment against themselves. Correctional officers are given extraordinary powers over prisoners so they can properly carry out their duties. When a correctional officer assaults a prisoner, it is a serious crime, not only against the prisoner but against the justice system itself. The public expects a high standard of conduct on the part of trained correctional officers and any abuse of power or excessive use of force must not be tolerated. There is no question that the job of a correctional officer is a very difficult one. They are regularly subject to all kinds of abuse from those who are incarcerated and as in this case, are subject to difficult work conditions; however, it must always be remembered that a prisoner who is in custody is vulnerable and defenceless and must be protected from assault and excessive use of force.<sup>14</sup>

**209** The judge also generally denounced the use of violence by guards:

If correctional officers expect prisoners to abide by the law and act in a civilized manner, they should act as role models. Violence by correctional officers begets violence from their prisoners.<sup>15</sup>

**210** In addition, she underscored the public interest in protecting vulnerable prisoners, as well as the need for general deterrence and denunciation of inmate abuse. Calling Mr. Rosa's attack on his victim brazen and gratuitous, she sentenced him to 60 days in jail for assault.<sup>16</sup> His sentence was later upheld on appeal.<sup>17</sup>

**211** While their actions were not on trial, Mr. Rosa's colleagues did not escape the court's censure. Justice Zisman noted that they watched the assault, did nothing to intervene and refused to co-operate in the police investigation. Sentencing Mr. Rosa to jail sent a clear message to those in the correctional system that violence against inmates must not be tolerated.

**212** From January 1, 2010 to January 1, 2013, police charged six Ontario correctional staff members with criminal assault against inmates. One was

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<sup>14</sup> *Ibid.* at para. 70.

<sup>15</sup> *Ibid.* at para. 74.

<sup>16</sup> *Ibid.*

<sup>17</sup> *R. v. Rosa*, [2012] O.J. No. 2035 (Ont. Sup. Ct.).

acquitted on September 8, 2011, of a charge relating to the use of force on an inmate in a psychiatric facility. At the time of writing this report, four other cases were still before the courts and one had resulted in a conviction.

### ***Disciplinary Measures***

- 213** After the Correctional Investigation and Security Unit reports on a case, its report is reviewed by the relevant regional director to determine if an “allegation meeting” is warranted. The local superintendent conducts the allegation meeting, and if the allegations are substantiated, holds a disciplinary hearing. This process generally takes 6-8 weeks. The office of the Assistant Deputy Minister of Institutional Services, in consultation with the labour/management liaison, the regional director, superintendent and representatives from employee relations, legal services and human resources as warranted, determines the disciplinary measures. Unionized employees can also grieve any discipline, and these matters may be heard by the Grievance Settlement Board, or potentially settled between the parties. Management officials may also be entitled to grieve disciplinary matters to the Public Service Grievance Settlement Board.
- 214** From January 1, 2010 to January 1, 2013, the Ministry disciplined 108 correctional staff members for incidents involving excessive use of force and related attempts to cover up abuse. Some of these disciplinary steps were contested through the grievance process.
- 215** To date, one deputy superintendent, four assistant deputy superintendents, 19 operational managers, 82 correctional officers and two health care workers have been disciplined. The discipline issued ranged from a letter of reprimand or retraining, suspension from five to 473 days to dismissal in the case of five operational managers and 26 correctional officers. The Ministry has also counselled or sent letters of counsel to an additional 86 employees, including one superintendent, 10 operational managers, 54 correctional officers and two health care staff.
- 216** In addition, during the same period, the Ministry investigated 69 staff members and has investigations ongoing in 53 incidents. To date, it has determined no further action was warranted in 52 cases, while corrective action is pending on another 17.

## ***Paying the Price – Legal Exposure***

- 217** Failure to reduce or minimize opportunities for excessive use of force exposes the Ministry to civil claims. While many inmates do not have the means or motivation to commence civil suits, one Ontario case recently considered this issue.
- 218** On July 2, 2010, the Ontario Superior Court of Justice awarded \$50,000 to Teddy Bevan, a former inmate with a history of psychological problems and lengthy involvement with the criminal justice system, in compensation for a broken arm he sustained when two correctional officers assaulted him.<sup>18</sup>
- 219** Mr. Bevan testified that while he was incarcerated in October 2003 at the Maplehurst Correctional Complex, he became very agitated when he did not receive the medication prescribed for his anxiety. He swore, spat on the cell floor and banged his head on the cell bars. When two correctional officers prepared to enter his cell to escort him to segregation, he lay on the floor on his stomach with his arms over his head and legs spread out. His right arm was broken when the officers forcefully pulled his arms behind his back.
- 220** The officers, however, testified that Mr. Bevan was aggressive and resistant, and his arm was injured when they used justified force in restraining him.
- 221** In the accident and injury report prepared at the time, Mr. Bevan stated that his right arm was hurt when he was doing push-ups. In court, he recanted this statement, explaining he had been fearful at the time of “ratting out” the officers.
- 222** In considering Mr. Bevan’s civil claim, the judge assessed whether on a balance of probabilities, an unreasonable degree of force had been used against him. Justice Beth Allen noted that in cases where inmates allege that correctional officers have assaulted them, competing interests must be considered:

The duty of a peace officer to exercise their authority to intervene and control often perilous situations must be weighed against an individual’s right to be secure from harm by the unjustified force of state authorities. That protection extends even to those who might be regarded as the least favoured among us, such as inmates in our penal institutions. On the other side of the scale is the necessity that state authorities not be constrained from taking reasonable actions to perform their duties often

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<sup>18</sup> *Bevan v. Ontario*, [2010] O.J. No. 2910 (Ont. Sup. Ct.).



in the midst of some of society's most dangerous elements. While public policy will not tolerate peace officers having unfettered power to use indiscriminate force against persons under their authority, society will equally not countenance recovery by persons injured by peace officers in the lawful exercise of their duties....<sup>19</sup>

- 223** The judge noted that the officers' accounts differed from the descriptions of the incident they gave in their occurrence reports, and that neither officer recalled how Mr. Bevan ended up on the floor. She also referred to Maplehurst's standing orders, which encouraged staff to use various methods to defuse hostile situations, and avoid or minimize injuries to inmates and staff, such as "exiting the cell of an agitated inmate, stepping backwards or sideways to avoid a punch/kick, blocking a punch..." There did not seem to be a need for continued and increased restraint by the officers, the judge found.
- 224** Finally, the judge determined that the force used on Mr. Bevan was unjustified.
- 225** At the time this report was written, there was one civil action pending against the Ministry in relation to inmate Frank's case.

### ***Further Restraint Measures***

- 226** The Ministry's policies and procedures relating to excessive use of force are still in a state of flux. It has taken some positive steps to quell a disturbing trend that my Office brought to its attention. However, my investigation has confirmed there is still significant room for further improvement.
- 227** Before I address specific problem areas, it is useful to have some understanding of the environment in which inmates and their guards interact.

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<sup>19</sup> *Ibid.* at para. 43.

## The Correctional Context

228 During our investigation, there was considerable social media chatter amongst correctional officers concerned about its scope. We monitored these discussions and have included several examples of comments from Twitter users relating to our investigation for illustrative purposes.<sup>20</sup> Many social media users from the corrections community felt that our focus should include consideration of the stressful working conditions they must endure. We also heard directly from officers on the front lines who thought it was unfair to discuss excessive use of force without exploring the underlying issues affecting correctional staff.



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<sup>20</sup> These Twitter comments (tweets) are reproduced verbatim – all were written in English. Usernames were included for the originators of the tweets; other names within the tweets were removed. In the first tweet, the photo depicts the building where the Ombudsman’s Office is located.



“a climate of distrust and animosity permeates the correctional system province-wide/nothing the MOL or Omdusman can fix...”

- @DanSidsworth, September 15 2012

229 Several managers also spoke to us about the multiple factors contributing to violence within Ontario’s prisons.

## Overcrowding



“ontario sleeps three, four five to a cell does that mean Ont/is three, four, five, times more violent...just sayin”

- @DanSidsworth, September 3 2012

230 Correctional officers told us one of the primary causes of conflict is chronic overcrowding of inmates – two or even three to a cell (known as double- or triple-bunking). Senior officials at various institutions echoed this concern. One deputy superintendent suggested there might be a direct correlation between high inmate counts and incidents of use of force. Another said overcrowding often leads to the application of force against inmates:

If you’re overcrowded, your staff are overworked or don’t have enough resources... it creates stress [for staff], or the inmates get stressed out, so they may lash out at staff. There might be guys who shouldn’t be in a group setting, but you put them in a unit because you have no choice, you have no seg [segregation] space...

231 The problem of overcrowding in correctional facilities has been the subject of judicial consideration in sentencing of inmates, numerous media reports, and was addressed in the Ontario Auditor General’s 2010 annual report. Our Office has been aware of this issue for many years. Over the past four years, we received almost 200 complaints about crowded inmate living conditions.



“how about a broad view of our facilities, then narrow your focus. Overcrowding etc. = violence”

- @glenkarcher, April 6 2013



Figure 7: Elgin Middlesex Detention Centre. Photo provided by Sun Media.

## Understaffing

**232** Correctional staff also told us understaffing is a major concern. They said staff shortages result in the reduction of inmate programming and frequent “lockdowns” (when inmates are restricted to their cells). When inmate activities are restricted, they become increasingly frustrated, agitated and more likely to engage in violent activity.



“@Ont\_Ombudsman grateful you are watching...how much more do you need to see? Increased violence, staff shortage, we have that right now”

- @kdnm1966, August 22 2012

**233** In addition, many officers said they have to work long and frequent overtime shifts to compensate for persistent staff shortages. Some told us they work

almost every day. They said this creates a vicious cycle, as more officers book off sick while struggling with overwork, “burnout” and stress-related injuries.

- 234** As of December 31, 2012, the Ministry technically employed 3,560 correctional officers. However, only 3,265 were on full-time active duty. Institutional officials confirmed that they regularly have to juggle operational schedules to accommodate staff attendance problems.
- 235** In 2011-2012, some 342 Ontario correctional officers and 119 operational managers earned more than \$100,000 – and were therefore named on the Public Salary Disclosure “sunshine” list. Given that correctional officers’ salaries top out at \$32.64/hour and those of operational managers at \$74,000 a year, it is reasonable to assume that in many cases these high incomes represent compensation for overtime, payable at time and a half. It seems the Ministry is spending millions each year to support an overburdened and understaffed correctional system.

## Inmate Demographics, Health and Safety



“been working in Jails for 12 years & never seen this before. The inmates are more confident then ever!”

- @Novman\_13, August 7 2012



“@Ont\_Ombudsman Provincial Jails are getting more dangerous every day. Staff need Safety Equipment, Training and government support. Any ideas?”

- @robnimer, September 26 2012



“@Ont\_Ombudsman the Government shut down DS facilities, closed Mental Health Institutions and what did they think would happen.”

- @OPSEULocal617, April 6 2013

- 236** In our interviews, correctional staff described an explosive environment where they are relentlessly subjected to verbal and physical abuse by inmates. They also face the increasing challenges of coping with members of violent gangs inside the facilities, and with inmates who have mental illnesses.



**237** According to Ministry statistics, in 2011-2012, the average daily count of inmates across Ontario was **8,802**. That year, there were **71,329** inmates admitted into the provincial correctional system. Of those, **2,860** were flagged as having some connection with a gang. Nearly 14,000 were flagged as having mental health issues. The same year, there were **3,035** incidents of inmate-on-inmate assault and **191** reported cases of staff assaulted by inmates. Of the latter, **100** resulted in claims to the Workplace Safety and Insurance Board.



“@Ont\_Ombudsman you come from work with this for your family Would you want a vest? Pepper spray? Gun? #HWDC #suit”  
- @zandwyk15, August 30 2012

## Labour Relations



“August 20, 2012: HWDC officers and management in standoff over disciplinary measures”

- @DanSidsworth, August 20 2012



“the incompetence of MGMNT will always be ignored and excused while the CO is always attacked #suits”

- @zandwyk15, August 20 2012

**238** Some managers emphasized to us the difficulty of overseeing staff in this context. They spoke of a strained and strident labour relations climate, frequent work stoppages on the pretext of health and safety, and work-to-rule campaigns. One cited an example of correctional officers working at a deliberately slow pace to protest discipline issued to a co-worker.



“UOF is the flavor of the day regarding discipline.  
Kangaroo court leading to dismissals.”

- @Gimmeabud, April 6 2013

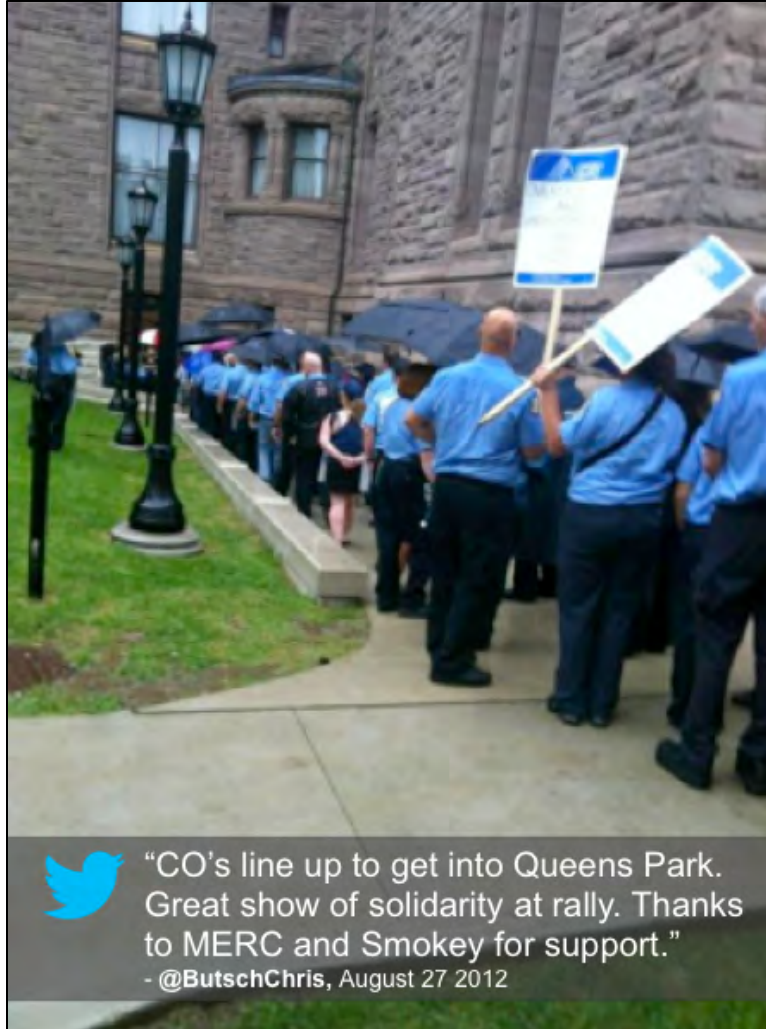
**239** Union leaders and correctional staff told us they were concerned about the Ministry’s “unfair” new inmate-centered approach to use of force. Many were extremely critical of the Ministry’s revised policies and procedures, even though in some cases they admitted they had not actually reviewed the relevant documents.



“Staff being disciplined incl termination b/c of this inv.  
Confusion/hesitation=unsafe responses.Business as  
usual? Not..”

- @jansescape, September 5 2012

**240** On December 19, 2011, officers at the Toronto West Detention Centre refused to work, out of concern that the introduction of new policies and procedures for the use of force without adequate training was a safety hazard under the *Occupational Health and Safety Act*. A Ministry of Labour investigation rejected this claim.



- 241** On February 13, 2012, a union official wrote to the Deputy Minister, Correctional Services, indicating the union was strongly recommending that its members refrain from using any force because of the Ministry’s implementation of new policies and procedures as well as the “abnormal increase in the number of suspensions involving use of force pending investigation.” After the union took this position, some correctional officers refused to work in situations involving the use of force. These cases were resolved at the level of the institutions involved and resulted in a period of suspension for five correctional staff in all.

## No Excuse for the Inexcusable

- 242** Undoubtedly, Ontario’s correctional personnel operate in a dynamic and pressurized atmosphere. There are multiple internal and external influences, including increased demands on the criminal justice, health care and social services systems, which have led to swelling inmate populations and greater risks of conflict inside correctional facilities. It would be unrealistic to believe that my investigation could resolve all of these tensions. Rather, my goal has been to assist the Ministry in ensuring that in this already highly charged climate, inmates are not subjected to unreasonable and excessive physical force at the hands of their jailers.
- 243** Violence might well be an inevitable part of life within the correctional system. Force will likely always have to be used to control and protect some inmates. But excessive use of force is illegal, abhorrent and inexcusable. There is no world in which unprovoked physical attacks on inmates, unnecessary slaps, kicks or punches should be tolerated.
- 244** In the past four years, my Office received more than 350 complaints about excessive use of force. While the Ministry has only substantiated such claims in a handful of cases, many of these have been egregious and involved particularly vulnerable inmates. There have also been instances in which correctional staff deliberately lied, falsified and destroyed records, made deals with inmates, and otherwise obscured and concealed facts about such incidents to shield themselves and their colleagues from discovery. Unfortunately, this shameful conduct appears symptomatic of a longstanding, entrenched and dysfunctional culture.
- 245** To be clear, I do not mean to suggest that all of the thousands of officers serving in Ontario’s correctional facilities are guilty of abusing inmates or covering up assaults. There is no doubt that many are hardworking, conscientious and diligent public servants who understand the importance of their duty to respect and protect inmates under their charge, and do so in a very challenging environment. However, it would be naïve to ignore the influence of a particularly noxious aspect of this culture: The “code of silence.”



“STAND SOLID!

- @Beebs\_D, August 20 2012

## The Code of Silence

*There is a joke that is told by the staff of correctional institutions from time to time. It goes something like this:*

*Question: How many officers does it take to push an offender down the stairs?*

*Answer: None. He fell.*

*– John Jones, When Loyalty Gets in the Way of Honesty)<sup>21</sup>*

- 246** As the stories featured in this report show, the “code of silence” is a persistent, recurring factor in cases of excessive use of force. It is essentially an unwritten social incentive for staff to conceal information that might have negative consequences for a co-worker. As in policing, in the world of correctional services, where personal safety and security often depends on the support of other officers, the pressure to keep silent and even lie to protect colleagues can be prevailing and pernicious. As one Quebec judge recently described it, prison guards sometimes display a “sclerotic solidarity”<sup>22</sup> when faced with testifying against their peers.
- 247** “The code” has been found to operate in institutions across the province, from small local jails to large detention centres. In a November 2010 briefing note, the Correctional Investigation and Security Unit informed the Deputy Minister, Correctional Services that the code of silence was a significant factor affecting the timely completion of its investigations.
- 248** Some correctional staff told us the code of silence was a thing of the past or that it has declined in significance. They said officers are no longer willing to jeopardize their own employment to protect their colleagues. One senior union official flatly denied that officers were reluctant to come forward or that there was a heightened level of loyalty leading to cover-ups. Some Ministry officials we interviewed also disputed the presence of the code in today’s corrections community.
- 249** In contrast, many correctional officers freely admitted to us that the instinct to remain silent and “stay solid” with co-workers continues to be an integral part of corrections culture. As one 30-year veteran officer put it:

It’s a tough thing, because in any area where you’re depending on somebody for your protection, you’re going to protect them too. And

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<sup>21</sup> This quote is from an undated article, which apparently appeared in the *London Free Press*, and was found in the Ministry’s Inspector Study and Training Program Youth Justice Services materials.

<sup>22</sup> *R. v. Bellusci*, [2012] S.C.J. No. 44 at para. 24 [*Bellusci*].



sometimes if people do things that aren't maybe 100%, you're still going to protect them because you need them as protection. And... you don't want to be a rat...

- 250** A superintendent of a large institution also told us the code continues as a “purposeful, systemic way in which correctional officers protect other correctional officers.” He said he is aware of cases where threats of death and physical violence have been made against those who told the truth in the face of the code:

We have some seriously sociopathic individuals wearing blue right now who have no problem whatsoever in paying people back for breaking the blue code.

- 251** Several of the correctional staff we talked to, including senior officials at institutions, acknowledged that the code of silence was not limited to correctional officers, but also influences managers. This is borne out by our investigation, which revealed various ways that correctional managers reinforce the code of silence. Some might enable collusion to go undetected by accepting poorly drafted occurrence reports or failing to investigate an incident thoroughly. In the case of inmate Albert, senior managers neglected to review the damning photographs of his injuries, and in inmate George's case, management accepted occurrence reports at face value, although they did not even meet minimum standards. Some might give staff opportunities to collude, as in inmate Brian's case, where the operational manager let those involved prepare their occurrence reports together. Some might even help staff get their stories straight, as in inmate Frank's case, when an assistant deputy superintendent allowed an officer to view video of the incident before giving his evidence.
- 252** At times, managers might also actively and deliberately participate in a cover-up, as occurred in inmate Edward's case, where the acting operational manager and other staff concealed the incident and attempted to persuade Edward not to complain. As well, in Frank's case, a group of operational managers tried to hide what happened, and in Helen's, the involved operational manager obscured the facts out of fear of retaliation by an influential correctional officer.
- 253** Historically, the code of silence has been a well-established reality of life in the correctional system. As one judge noted in 2004, in finding three Toronto East Detention Centre officers guilty of assaulting an inmate:

All correctional officers referred to their fear of being labelled a “rat,” or breaking the “code of silence” as reprisals could ensue – even being forced out of the institution. As a result, occurrence reports are often not filed, and guards who break the rules are not reported to management... [R]ules are broken daily, which is necessary in order to get the job done. This aspect of the TEDC culture, it appears, condones or even encourages certain individuals in taking on disciplinary functions in breach of the rules, thereby increasing the chances that incidents such as this one will arise.<sup>23</sup>

- 254** Decisions of the Grievance Settlement Board, which adjudicates disputes between the union representing correctional officers and the Ministry, have often cited the code of silence as an issue. They refer to coworkers threatening others to “stay solid,” and the constant fear of being labeled a “rat.” As one board member noted in a decision:

The evidence was overwhelming that the code of silence is a powerful and pervasive force throughout many facilities within the Ministry of Corrections... when a correctional officer engages in serious misconduct at work – for example, an assault on a restrained and compliant inmate – ...[the code of silence forces] correctional officers to look the other way and turn a blind eye to what happened in a truly misguided attempt to protect correctional officers who have abused their position of power and trust. Given their responsibilities to protect inmates under their custody and control as correctional officers, it is simply wrong. But the code of silence does even more harm than permit correctional officers to act wrongfully without consequence. It punishes the wrong people. It punishes those who come forward to tell the truth.<sup>24</sup>

## Truth and Consequences

- 255** Correctional officers are compelled to co-operate with the Correctional Investigation and Security Unit under s. 22 of the *Ministry of Corrections Act*. The Assistant Deputy Minister, Institutional Services told us it is the job of correctional officers to tell the truth, not in an addendum after an allegation emerges and they are facing potential discipline, but from the outset. The Ministry’s policy on staff conduct and discipline cautions staff against obstructing an investigation or withholding, destroying, concealing or refusing

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<sup>23</sup>*R. v. Sammy*, [2004] O.J. No. 598 (Ont. Ct. J.).

<sup>24</sup>*OPSEU v. Ontario (Ministry of Community Safety and Correctional Services) (Gillis Grievance)*, [2008] O.G.S.B.A. No. 84 at paras. 113-14 (ON GSB) [*Gillis Grievance*].

to furnish information required by an inspector under the Act. The policy also warns against falsification of records, harassment and threatening behaviour of others, including co-workers, and failing to report witnessed acts or suspicion of assault, degrading treatment, neglect or any form of abuse.

**256** However, one cannot underestimate the power of the code of silence and the consequences for those who break it. In the corrections world, whistleblowers are known as “rats.” They are treated as outcasts and pariahs. Unless staff have assurance that the Ministry has their backs and are confident that their interests will be protected, their loyalties will be divided. As one superintendent acknowledged to us, the Ministry is not doing a good job of protecting those who tell the truth.

**257** There have been suggestions in a number of Grievance Settlement Board cases that the Ministry should address the problem of the code of silence more directly and effectively. As a vice-chair of the board wrote in one decision:

...the employer may well need to develop a more comprehensive and rational strategy in respect of its treatment of the code. It cannot purport to occupy the high moral ground... painting the code... as an obstacle to justice and integrity in Correctional Services and then be seen... to be somewhat indifferent to its operation.<sup>25</sup>

**258** In another such decision, a vice-chair wrote that it would take a concerted and sustained effort by Ministry management and the union to address the code of silence:

Management has to consider its responsibilities here... Management may have to reconsider whether its approach to the code of silence is effective. In this case, there were a number of correctional officers who were suspended, in part, for writing misleading reports and lying during the investigation, i.e., for following the code of silence. After serving their suspensions, however, those officers returned to their normal work lives and life... The same is certainly not true for the three individuals who came forward. The repercussions for them have not ended.<sup>26</sup>

**259** The fallout from breaching the code can be devastating for those who speak the truth, as noted in another Grievance Settlement Board case:

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<sup>25</sup> *OPSEU v. Ontario (Ministry of Community Safety and Correctional Services) (Zolnierczyk Grievance)*, [2011] O.G.S.B.A. No. 18 at para. 67 (ON GSB).

<sup>26</sup> *Gillis Grievance*, *supra* note 23 at para. 191.

They will likely be labelled a rat and generally ostracized. They will often be harassed in various ways, inside and outside of their institution. They may find that the only way to address the stress associated with being labelled a rat is to change institutions or give up correctional duties.<sup>27</sup>

- 260** The cases of Frank and Helen demonstrate that correctional staff who break the code are shunned, threatened, and risk personal harm for “ratting” on their colleagues. One operational manager at a northern jail told us he has written accurate reports about incidents involving excessive use of force, only to find scratches on his car and nasty notes written on his locker.
- 261** Another correctional officer told us she received threatening phone calls at her home after reporting that she had witnessed excessive use of force against an inmate. She said even her manager chastised her for “causing trouble” when she first reported the incident to him.

### *Life as a “Rat” – Correctional Officer Ian*

- 262** What happened to Correctional Officer Ian clearly illustrates the dilemma faced by officers who break the code of silence. Ian worked as a correctional officer for about 25 years. He worked at several institutions, most recently at the Toronto West Detention Centre. We first met Ian in November 2011 in the course of our interviews with correctional officers about excessive use of force within the correctional system. Then, Ian talked about the stigma associated with being a “rat,” but said he was confident that he would accurately report on any cases of excessive use of force he witnessed. Ian’s resolve was put to the test soon after, on December 6, 2011, when he witnessed a correctional officer slap an inmate without reasonable cause during a weapons search. Initially, none of the four officers present, including Ian, mentioned the slap in their occurrence reports. However, after grappling with his conscience, Ian finally approached the superintendent. Eight days after the incident, he filed an addendum report mentioning the slap. The case was referred to the Correctional Investigation and Security Unit for investigation.
- 263** In its report on the incident, the Unit noted that that all four involved officers had shared their initial reports with one another, and that it was common for them to submit reports to their union representative before filing them with management. The situation was exacerbated by the conduct of an operational

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<sup>27</sup> *OPSEU v. Ontario (Ministry of Community Safety and Correctional Services) (Beltrano Grievance)*, [2008] O.G.S.B.A. No. 143 at para. 125 (ON GSB).

manager who failed to question any of the involved officers about the inmate's allegation of excessive force. This manager also permitted Ian, who was the union local's chief steward, to act as the union representative for the three other officers.

**264** Ian admitted to the Unit that the group had colluded to ensure they “were all on the same page and ... could all be trusted.” He also testified that after coming clean about what happened, he earned derision from his colleagues, and the accusation from one that “you sold your soul to the devil.” The other three officers continued to deny that the inmate had been slapped. The Ministry suspended and then fired them, including the local union president. Ian, the lone correctional officer who had told the truth, received a letter of reprimand. He also suffered more severe repercussions – but in his case, the punishment came from co-workers.

**265** Ian contacted our Office after months of harassment and intimidation at the hands of his colleagues. In his letter of complaint he bluntly observed:

I have broken the “Code of Silence” that exists amongst correctional officers and am now paying the price, as it were. I am now considered a “Rat”...

**266** Ian told us that after he witnessed the fateful slap, he tried unsuccessfully to convince his coworkers to tell the truth. When he finally took the leap and gave an honest account of what happened, he became an instant outcast. At first, he was pressured to file a grievance alleging he had been coerced into co-operating with management. When he refused, things got worse. Fellow officers excluded him from conversations, directed glares and laughter at him and turned their backs when he entered rooms. He was told to “get out of here” during breaks and forced to sit alone. Notes started appearing in conspicuous places around the institution: A sheet with “GUARDS 1<sup>st</sup>” written on it pinned to a bulletin board, an official poster defaced with “GUARDS FIRST,” and another with “THE DEVIL YOU DON’T KNOW.” While the perpetrators remained anonymous and he was not specifically named, the message was clear to Ian. At one point, two officers who had initially supported him told Ian he could no longer come by their office. Someone had called and warned them they were “drawing heat for harbouring a rat.”

**267** Ian kept management apprised of what was happening. He also filed a workplace discrimination and harassment policy complaint. Senior managers at the institution told us they believed Ian's version of events. They had no doubt that he was being ostracized and tormented for breaking the code of



silence, but there was not much they could do. It was difficult to identify the culprits and there was insufficient evidence to justify disciplining others. Much of it amounted to “he said/she said,” and the harassment was often indirect, subtle and anonymous. There was also the matter of the independent investigation into his workplace discrimination and harassment policy complaint, which is still pending.

- 268** For now, telling the truth has effectively cost Ian a job he was once proud to perform and put his career on hold. After months of enduring social exclusion and disdain, he finally left the institution on paid administrative leave. After our Office alerted senior Ministry officials to his plight, the Ministry ramped up its attempts to find him an appropriate alternative placement. Senior management at the institution acknowledged that Ian’s reputation for breaking the code would likely follow him wherever he goes within the correctional system. For many months, Ian sat at home, broken-hearted, and paid to do nothing, a victim of a floridly dysfunctional social system in which honesty can come at an exorbitant price. Recently, Ian was placed in an administrative position with another Ministry.
- 269** The Assistant Deputy Minister, Institutional Services told us the Ministry offers assistance to officers who express fear of reprisal for providing accurate information about cases of excessive use of force. It has transferred some to other institutions, but he noted this is sometimes “difficult, as they’re going to work with other correctional officers” in an environment where news about breaking the code travels quickly and broadly. As well, some officers might be reluctant to relocate. He said the Ministry has also offered to transfer staff to other ministries and helped them via the employee assistance program – and even given them protection in their homes.
- 270** Since January 2010, the Ministry has received complaints from four correctional officers, including Officer Ian, who say they have been threatened for breaking the code of silence in cases of inmate abuse. Three were involved in the incident with inmate Helen. They have remained on staff at Sarnia Jail, but the Ministry has instructed them to address any concerns about retaliation directly to the superintendent, and has provided them with a special number to call local police. The Ministry has also offered them help through the Ontario Public Service Employee Assistance Program. In the case of one officer, the Ontario Provincial Police also did a threat assessment.

## Cracking the Code of Silence

- 271** Some of those we interviewed said the code of silence was a taboo subject for the Ministry. Some officials downplayed the significance of the code or refused to acknowledge its existence. We were told that, at times, Ministry officials have even suggested that the Correctional Investigation and Security Unit remove or reword references to the code of silence in its reports. While some may debate the existence or depth of the code of silence within Ontario's correctional institutions, the evidence obtained in my investigation indicates it is still very much alive and firmly entrenched in corrections culture. It is also clear that the code of silence plays a pivotal role in cases where excessive use of force occurs. The code promotes inmate abuse, as it allows correctional staff to take out frustrations against those in their custody, confident that their colleagues will support them and hide their wrongdoing. The code also penalizes honest employees, who risk their own wellbeing if they fail to abide by it.
- 272** As demonstrated in inmate Helen's case, the Corrections Investigation and Security Unit has the authority to investigate allegations of witness intimidation. The Ministry has also recently shown a willingness to take decisive action when such allegations are substantiated. However, the situation is murkier when retaliation for breach of the code of silence consists of the day-to-day accumulation of workplace snubs, stares, whispered remarks and social slights. Then there are the more insidious cases in which correctional staff delay coming to the aid of those who have broken the code.
- 273** The *Occupational Health and Safety Act* requires that employers take steps to prevent harassment in the workplace, and the Ontario government's Workplace Discrimination and Harassment Prevention Policy provides for investigation of bullying and other inappropriate employee conduct. The Ministry of Government Services oversees administration of this policy. Correctional staff, as in Officer Ian's case, can lodge a complaint under this policy to deal with peer intimidation. Unfortunately, this option is not of much help when harassment is anonymous or subtle.
- 274** The Assistant Deputy Minister, Institutional Services acknowledged to us that the code of silence exists. He said training plays an important role in making officers aware of their responsibilities and accountability, the consequences of the code, and the available help for victims of reprisal. He told us that since our investigation began, he has personally issued memos to correctional staff, toured facilities and given speeches emphasizing zero tolerance of both excessive use of force and reprisals against those who break the code of silence.

He said the Ministry continues to address the code through disciplinary action against officers who have concealed information, and by installing cameras to decrease opportunities for inappropriate conduct.

- 275** The Ministry also pointed to other measures it is implementing to address peer intimidation. Its Statement of Ethical Principles includes admonitions against threatening, harassing, discriminating, humiliating, and degrading treatment of inmates and co-workers, and stresses the need to protect those who might face reprisal for reporting inappropriate behaviour. A new Code of Conduct was being prepared at the time this report was written. The draft version we reviewed addressed a range of staff behaviour, from failing to attend work regularly and participating in illegal strikes, to misusing information technology resources and associating with known criminals, to committing crimes, including assault. It includes prohibitions against discriminating, harassing, threatening or bullying others, and encourages accurate and immediate reporting of inappropriate incidents. However, neither the Statement of Ethical Principles nor the draft Code of Conduct refers specifically to the code of silence.
- 276** The Ministry has also issued a Threats Against Correctional Services Staff and Other Personnel policy, which includes direction on reporting, notifying the police and other measures to address threats. On July 9, 2012, the Director, Management and Operational Support Branch issued a memorandum to regional directors referring to the policy, outlining clear expectations that staff must follow for all incidents of intimidation and/or threats, and directing that the memorandum be shared with correctional staff. On September 19, 2012, the Assistant Deputy Minister, Institutional Services issued an all-staff memorandum emphasizing that every alleged act of workplace violence “by an inmate, a member of the public, a worker or other person” must be reported to the manager or supervisor, an immediate investigation of the incident conducted, and the police contacted. The memorandum included a link to the policy on threats. However, while the policy clearly applies to incidents involving assaults, threats or intimidation by inmates against staff, there is no mention of threats from peers. In addition, the supporting memoranda and guidelines refer only to threats by inmates and former inmates against staff. There is no mention of the code of silence.
- 277** The Ministry has its own workplace violence prevention program, which addresses violence in the workplace through formalized risk assessment. However, once again, the assessment tool makes no explicit reference to harassment and other measures staff employ to enforce the code of silence.

- 278 At present, the impulse to cover up unreasonable force appears virtually reflexive amongst many correctional staff. Until the Ministry makes a concerted effort to tackle the code of silence head-on, it will likely continue to flourish and compromise the safety and security of Ontario’s inmates and correctional employees. While the Ministry has recently made some efforts in this direction, more consistent, direct and forceful action must be taken in order to crack the code. This is not an isolated issue that should be left to local institutions to address. The code is widespread, intractable and insidious. The goal of eliminating it from Ontario’s correctional facilities must be raised to the highest level of the Ministry’s corporate conscience, and pursued aggressively.
- 279 For a start, clear written direction, through memos, policies and other means, must be given to staff that the code of silence – also referred to by some staff as “staying solid” – will not be tolerated. It should be expressly stated that staff who fail to disclose information about inmate assaults, or who engage in attempts to retaliate against those who break the code, face discipline up to and including dismissal. This direction must come from the top to signal the severity of the problem and the intensity of the corporate will to eradicate it.

### **Recommendation 1**

**The Deputy Minister, Correctional Services, should issue a direction to all correctional staff advising that the code of silence will not be tolerated and that all those who remain silent in the face of the code or take steps to enforce it will be subject to discipline, up to and including dismissal.**

### **Recommendation 2**

**The Ministry of Community Safety and Correctional Services should amend its draft Code of Conduct, Threats Against Correctional Services Staff and Other Personnel policy, and Workplace Violence Prevention Program to specifically reference the code of silence and the steps available to staff who find themselves victims of its enforcement.**

- 280 The Ministry should also immediately institute a practice requiring correctional institutions to notify senior corporate officials when allegations relating to retaliation for breaching the code of silence are raised. Local institutions should not be left to address these complaints on their own. The Ministry should ensure that these cases are escalated, thoroughly reviewed, and that third-party investigation under the Workplace Discrimination and Harassment

Prevention Policy or other means takes place expeditiously. As the Correctional Investigation and Security Unit's investigations have shown, formal independent investigation can often ferret out the truth in ways that local review by institutional management simply cannot.

### **Recommendation 3**

**The Ministry of Community Safety and Correctional Services should ensure that senior Ministry officials are apprised of all allegations of retaliation for breaching the code of silence, and that such cases are expedited and subject to thorough, expeditious and independent investigation.**

- 281** The Ministry should also put additional effort into helping officers who face retaliation for breaking the code of silence. Senior Ministry officials at the corporate level must have primary responsibility for addressing this issue. It should not be left to local administrators to protect and find alternative employment for affected staff members. Whenever possible, the Ministry's focus should be on permanently removing those who retaliate against others from the institutional system, rather than on transferring their victims out. At the same time, I recognize that for security reasons, there may be no option but to remove victims from poisoned work environments. Accordingly, the Ministry should proactively seek arrangements, within its organization as well as within other provincial bodies, which would allow affected correctional officers realistic opportunities to find suitable alternative employment. Those subject to workplace harassment for breaking the code of silence should not be left to languish on indefinite leave.

### **Recommendation 4**

**The Ministry of Community Safety and Correctional Services should ensure senior Ministry officials at the corporate level have primary responsibility for assisting officers who suffer backlash for breaking the code of silence, and that they focus on removing employees who take retaliatory measures from the institutional system and actively seek suitable alternative positions for their victims when necessary.**

- 282** There is considerable worth in publicizing lessons learned from real-life events. The Ministry should exercise the initiative to provide staff with examples of cases involving the code of silence and emphasize the consequences for this



conduct. Although information about staff discipline for abiding by or enforcing the code of silence might spread via the grapevine, there is value in the Ministry formally putting its staff on notice. The Ministry does not necessarily have to identify the offending employees by name, but the conduct should be named and shamed to underscore the goal of zero tolerance.

### **Recommendation 5**

**The Ministry of Community Safety and Correctional Services should regularly provide all correctional staff with information about the action it has taken in individual cases to address the code of silence.**

**283** I acknowledge that the Ministry does not have an easy task ahead of it in tackling the code of silence. To effect cultural change sometimes requires drastic measures. The correctional climate has evolved over a considerable amount of time, and has been left to fester.

## Moving the Mountain – Changing Correctional Culture

- 284** Ministry initiatives to tackle excessive use of force – and the code of silence that often obscures it – will only succeed to the extent that correctional employees are receptive to change. Most correctional staff have been in the system for decades. Their customs and practices are likely hardwired, and many might prove resistant to the Ministry’s attempts to alter their course. While it might be easier to train new recruits, untouched by institutional culture, to comply with Ministry policy and procedure relating to the proper application of force, the Ministry has not hired any correctional officers from among the general public since 2010.
- 285** We were told by some correctional staff that, as a result of a lack of rigour in the Ministry’s past recruitment practices, unsuitable people have sometimes been hired. Correctional officers have been found to have criminal affiliations, or guilty of smuggling contraband into institutions. One superintendent told us:
- We have staff members that are criminals. They are not only criminals in regard to contraband lugging. They are criminal in regard to providing consequences to anybody who may break the code [of silence].
- 286** We heard of one extreme case from July 2009, in which a correctional officer at the North Bay Jail arranged to have his co-workers assault an inmate who was accused of sexually assaulting one of the officer’s relatives. The Correctional Investigation and Security Unit, partly on the evidence of text messages arranging for the beating, substantiated the conspiracy. Five staff, including the jail’s deputy superintendent, were fired.
- 287** The Ministry has developed a recruitment modernization program focused on attracting a higher calibre of correctional officer through the use of enhanced recruitment, screening and selection tools such as extensive background checks, psychological and fitness testing. However, this program is not yet in full effect.
- 288** In 2010, to address significant staff shortages, 80 people were conditionally hired – without going through the standard recruitment and testing process. Once security and background testing was done, four were identified as unsuitable, one as a result of his relationship with a biker gang.

- 289** In 2012, 80 regular correctional officers and 72 officers on contract who had worked in the youth services sector were transferred from the Ministry of Children and Youth Services, but they did not go through the enhanced hiring process. They received “conversion” training lasting just over two weeks.
- 290** The Ministry told us it would begin recruiting new candidates for correctional officer positions in March 2013, and it is hoped that the training for these recruits will start in the fall. It posted vacancies for 80 contract positions for the Toronto South Detention Centre in March 2013. It expects to hire and train 100 recruits between October 2013 and March 2014; 200 in 2015, and continue to increase staff in future. The Ministry told us these increases will allow it to reduce overtime costs and lockdowns, and institute better programming for inmates, all of which it hopes will lead to a decrease in tension within institutions and situations requiring the use of force.
- 291** The injection of new blood into the correctional system will provide the Ministry with an opportunity to reinforce proper defensive tactics, as well as its revised policies and procedures. Still, the Ministry should also ensure that any orientation program includes instruction about specific cases involving excessive use of force, as well as the code of silence. Cautionary tales about actual incidents can be powerful learning tools. Recruits should be provided with examples of the consequences – including discipline, dismissal and criminal prosecution – that have accompanied findings of excessive use of force and cover-ups. They should also be instructed on what to do if they are harassed or pressured by co-workers to conform to the code of silence.

## **Recommendation 6**

**The Ministry of Community Safety and Correctional Services should ensure that all new recruits receive instruction on incidents involving excessive use of force and the code of silence, including information about the disciplinary and criminal consequences of this conduct, and how to seek assistance if they are faced with code of silence pressures.**

## Group Preparation and Sharing of Reports

- 292** In situations involving the use of force, the reports prepared by involved staff and witnesses provide necessary evidence to assess whether or not the force was reasonable or excessive. However, the evidentiary value of these reports has often been compromised because of staff consulting with one another. For

instance, after inmate Brian was injured, two correctional officers wrote their reports together while an operational manager looked on. In inmate Frank's case, three operational managers discussed how they would report the incident. And the officer who assaulted inmate Helen shared his report with others in an attempt to influence their evidence. Reports prepared in this manner are clearly unreliable. Even in less contentious cases, there is a significant risk that group preparation of reports will reflect a collective consensus, rather than an independent recall of events.

### ***Separation and Silence***

**293** In response to concerns identified by my Office and the Correctional Investigation and Security Unit about the quality of institutional reports, the Ministry issued a new report writing policy in March 2012, along with writing tips and a guideline. It also instituted refresher training in report writing in spring 2012 for all correctional officers. As of January 2013, more than 90% of correctional officers had been trained on the standards.

**294** The Ministry's policy does not expressly prohibit staff from writing reports in groups. However, the new training materials emphasize that officers should write their own reports and avoid preparing them together. Under the heading "Write your own report," one reference guide states:

- The Occurrence Report is a comprehensive statement by YOU clearly describing YOUR observations and involvement in responding to an issue/incident.
- Write your own Occurrence Report based upon what YOU saw, heard, smelled, touched, tasted; what you witnessed or observed relative to the situation; what you did and what you witnessed others doing.
- When involved in a situation with other officers, do not purposefully collaborate with these staff members in order to produce identical reports. Write your own report.
- If an Occurrence Report is used in court or at an inquiry, your credibility and the credibility of the report will be quickly destroyed if an investigator/lawyer can establish that YOU did not really observe or witness the facts that you documented in your Occurrence Report.<sup>28</sup>

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<sup>28</sup> Ontario Correctional Services College, Ministry of Community Safety and Correctional Services, *Correctional Officer Report Writing – Risk Management Training* (Reference Guide) (Queen's Printer, 2012).

- 295 Despite the Ministry’s recent efforts to improve report-writing practices, my Office’s investigators were told that group preparation of reports, as well as consultation about their content, was still occurring.
- 296 One correctional officer was very open about this practice. He told us that officers routinely discuss incidents of use of force before writing reports to ensure “we’re on the same page,” and to get their facts straight. A security manager at one institution said he has discovered staff copying each other’s reports, even cutting and pasting sections using a computer. He has gone so far as to count the words when reports appear identical, and to question staff about this suspicious consistency. A Correctional Investigation and Security Unit inspector we interviewed said he has seen several cases where the occurrence reports read like they came from a template – the only differences between them were the names of the officers.
- 297 In his June 20, 2012 report, the Chief of Oversight and Investigations recommended that the Ministry develop a policy to separate staff involved in incidents of use of force, where operationally feasible, until they have completed their occurrence reports. At smaller institutions, where segregation may not be practical, he said staff should be under strict orders not to engage in any communication about an incident until the occurrence reports, the local investigations report process, and any subsequent investigation are completed. The Ministry committed to start implementing these recommendations in spring 2013.
- 298 Segregation of staff involved in an incident until an investigation has concluded is consistent with the approach taken in situations where people have been seriously injured or killed in interactions with police. In Ontario, regulations under the *Police Services Act* provide that police officers involved in such incidents must be segregated and cannot communicate directly or indirectly with any other officer involved until the Special Investigations Unit has completed its interviews. These requirements reduce opportunities for witness accounts to be influenced – consciously or unconsciously – through sharing of information. They make similar sense in the correctional context, and I am pleased to see the Ministry is moving in this direction. I will closely monitor the Ministry’s commitment to implement this change in procedure.

### **Recommendation 7**

**The Ministry should implement a policy requiring correctional staff involved in an incident of use of force to remain segregated while preparing their occurrence**



**reports, and to refrain from communicating, directly or indirectly, with each other in regard to the incident until such time as any internal or external investigations of the incident have been completed.**

### ***The Write Stuff***

- 299** In their defence, some officers explained to us that since they tend to all write reports in the same staff room, it is virtually impossible to avoid contact with one another. They also told us they don't have enough time or access to computers to enable each of them to write the detailed, individual reports now expected by the Ministry. While Ministry policy has always directed that staff provide full accounts of incidents of use of force, it only recently began using firmer sanctions to enforce reporting requirements.
- 300** In fairness to the staff who are responsible for filling out the reports, the Ministry should review the resources available to them in order to ensure they have access to technology as well as the time necessary to complete them to the required standard.

### **Recommendation 8**

**The Ministry of Community Safety and Correctional Services should review the resources available to correctional staff and ensure that adequate technology and time is provided to allow for the thorough completion of reports relating to incidents of use of force.**

### ***Share and Share Alike***

- 301** While segregation and prohibiting the sharing of evidence are important precautions, their effectiveness can be undermined through the involvement of union representatives. Correctional Officer Ian testified that staff at the Toronto West Detention Centre regularly gave their reports to their union representatives before submitting them to management. He was also allowed to serve as the union representative for three fellow officers while they were questioned by a manager about an incident in which he too was involved. In inmate Albert's case, the Correctional Investigation and Security Unit observed that the union representative disclosed occurrence reports written by other union members to witnesses before they were interviewed, potentially tainting their evidence and interfering in the investigation.

- 302** The Ministry has recently taken some measures to restrict access to institutional reports. On January 12, 2012, the Assistant Deputy Minister, Institutional Services issued a memorandum to all superintendents emphasizing that occurrence and offender incident reports are the property of the Ministry and are not to be copied for personal use, duplicated for personal retention or forwarded to any person without the written consent of the superintendent. Superintendents were also directed to ensure that all staff members are aware of these requirements and that they are included in institutional standing orders. On October 15, 2012, the Assistant Deputy Minister, Operational Support issued further instructions to regional directors and superintendents about securing and storing occurrence reports. However, there is still potential for union representatives to influence the preparation of reports, as well as the investigation process, through deliberate or inadvertent disclosure of information.
- 303** When staff members consult with union representatives about their reports before they are finalized or formally submitted, it creates the potential for a union representative to suggest changes or otherwise alter the report. The Ontario Court of Appeal recently considered the impact of police officers consulting with lawyers in Special Investigations Unit cases.<sup>29</sup> The Court emphasized that it is vitally important to the reliability and integrity of an officer's evidence that notes record only their own independent recollection. It found that the involvement of lawyers in the note preparation process had the potential to influence how police officers write their accounts, and granted a declaration that police officers involved in a Special Investigations Unit case do not enjoy the right to have a lawyer vet their notes or assist in their preparation. The same logic applies to the correctional system and cases of use of force. The Ministry should expressly prohibit staff from discussing the content of their reports with anyone, including union or legal representatives, while they are in the process of preparing them.

## **Recommendation 9**

**The Ministry of Community Safety and Correctional Services should amend its Report Writing policy to prohibit all correctional staff from conferring with anyone in connection with the preparation of institutional reports, except to respond to requests for clarification during internal management review or external investigation of incidents of use of force.**

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<sup>29</sup> *Schaeffer v. Ontario (Provincial Police)*, 2011 ONCA 716; leave to appeal granted, *Wood v. Schaeffer*, [2012] S.C.C.A. No. 6.

- 304** I also raised concern in both of my investigative reports relating to the Special Investigations Unit – *Oversight Unseen* (2008) and *Oversight Undermined* (2011<sup>30</sup>) – about lawyers representing multiple police officers involved in Special Investigations Unit cases. Joint retainers in these circumstances circumvent the regulatory segregation requirements and communication prohibitions under the *Police Services Act*, since lawyers are not allowed to withhold information from their clients.
- 305** In November 2012, the Law Society of Upper Canada issued a notice to the legal profession strongly discouraging the practice of joint retainers of police officers in these situations, and observing: “It is difficult to see how segregated police officers can properly be jointly represented.”
- 306** While correctional officers are entitled to seek assistance from their union, when they are involved in investigations of the use of force, this right should be balanced with the need to protect the integrity of the investigative process and reduce the risk of contamination of evidence.
- 307** Discussion and sharing of occurrence and other reports with union representatives in such cases should only be allowed in limited circumstances in which the reports have been submitted to and approved by management, and with the express approval of institution superintendents. In such circumstances, union representatives should undertake in writing not to disclose to others any information obtained through discussions with correctional officers or as a result of viewing their reports.

## **Recommendation 10**

**The Ministry of Community Safety and Correctional Services should prohibit correctional officers from sharing with their union representatives any information, occurrence reports or other institutional reports relating to incidents of use of force, unless the reports have been submitted to and approved by management, the superintendent has approved the disclosure, and the representative has undertaken in writing not to disclose the information or reports to others.**

- 308** In addition, the Ministry should ensure that no union representative who has been involved in an incident is consulted or acts on behalf of any other staff member involved in the same incident.

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<sup>30</sup> Both reports can be found here: <http://www.ombudsman.on.ca/Investigations/SORT-Investigations/Completed/Oversight-of-police--Oversight-Undermined.aspx>

## **Recommendation 11**

**The Ministry of Community Safety and Correctional Services should direct that no staff member involved in an incident of use of force be permitted to consult with or represent other involved staff in relation to the incident.**

- 309** Finally, to reduce the risk of information and reports being indirectly shared through a common union representative, joint representation of staff during investigations of incidents of use of force should be prohibited.

## **Recommendation 12**

**The Ministry of Community Safety and Correctional Services should prohibit the practice of joint representation of correctional officers during local and external investigations of incidents of use of force.**

## Intimidation Tactics

- 310** It is not uncommon for the very officers who used force against an inmate to be present when the inmate is questioned, examined by health care staff, photographed or asked for a statement about what happened. This practice can provide opportunities, as in inmate Edward's case, for staff to coerce inmates into making "jailhouse" deals; to forgo complaining about abuse in exchange for some other consideration. It can also have a chilling effect on inmates, who fear repercussions if they speak out against correctional staff.
- 311** In the case of inmate Brian, the Correctional Investigation and Security Unit noted that an involved officer had "unnecessary and ill-advised" contact with Brian after force was used on him. He was present while the nurse assessed Brian's injuries, alone with Brian twice, and supervised him when he changed clothes. This officer was also there while photographs were taken of Brian's injuries and when an operational manager questioned Brian. He was present when Brian wrote "I fell" on the accident and injury form. Brian later admitted he was intimidated by the officer's presence, and that he initially lied about what happened out of fear of reprisal. He told our investigators:

I was scared and didn't want to say "I got beat up." I was worried about the outcome. ... They were there. I was in front of the person and told to

write a statement. The people who beat me up were in front of me. I was obviously afraid of being beat up again.

- 312** We also found cases where the section for the inmate’s statement on the accident and injury form had been left blank. In inmate Albert’s case, the form was prepared by an involved officer, and simply stated that Albert was not mentally capable at the time of making a statement. Such reports are far more persuasive and credible if prepared by someone who does not have a personal stake in how the event is recorded.

### **Recommendation 13**

**The Ministry of Community Safety and Correctional Services should revise its policies relating to the use of force to direct that no staff member involved in an incident of use of force should be present when inmates are photographed, questioned by managers, their statements are taken for the accident and injury form, or when they are being assessed by health care personnel.**

- 313** Typically, officers involved in incidents of use of force are also on hand when health care personnel fill out their sections of the accident and injury form. This can result in subtle and not-so-subtle pressure on health care staff as they complete their observations. Health care workers depend on correctional staff for their personal safety. We were told by several nurses that if correctional officers do not believe they are “solid” or “have their backs,” they sometimes delay opening doors or providing escorts for them. We heard that correctional officers sometimes leave health care workers unprotected, walking away instead of standing beside them while they dispense medication to inmates.
- 314** One Ministry official we spoke to noted that since statements on the accident and injury forms involve medical issues, correctional officers should not have access to this form after it is completed. Health care officials should deliver the form directly to the manager responsible for gathering the use of force package.
- 315** At the same time, some correctional officers and nursing staff we interviewed denied that officers would ever hold a grudge against nurses for writing truthful observations. Senior officials from institutions and the Ministry also told us they had never considered the possibility of correctional staff taking retaliatory action against nurses after seeing statements in accident and injury reports.



- 316** In any event, once the involved correctional officers initiate the accident and injury form, there is no operational reason for them to have further access to it or to the health care observations. Out of an abundance of caution, the Ministry should ensure that involved officers are not present while health care workers complete the forms and that they do not have access to the completed forms containing health care assessments.

#### **Recommendation 14**

**The Ministry of Community Safety and Correctional Services should ensure that correctional officers involved in incidents of use of force are not present when health care staff fill out accident and injury reports, and that such officers do not have access to such reports once health care staff have added their observations.**

## A Picture is Worth a Thousand Words

### Photographing Inmate Injuries

- 317** Photographs of inmate injuries provide essential evidence for determining whether or not unjustified force has been used on an inmate. In the case of inmate Albert, pictures of his swollen and bloody face stood out in striking contrast to the accounts of the incident given by correctional staff. This compelling evidence helped Correctional Investigation and Security Unit inspectors conclude that Albert had been the victim of excessive force.
- 318** For many years, the Ministry has had a policy requiring that photographs be taken of inmates after incidents of use of force. It has also directed that additional photographs be taken within 24-48 hours, given that some injuries such as swelling, welts, scars, and bruising become more apparent over time.
- 319** While this policy is good in theory, historically, our Office has found that photographing requirements are rarely observed. The Correctional Investigation and Security Unit has also identified several cases where images of inmate injuries were not obtained as required. In the case of inmate Albert, the Unit found complete photographs were not initially taken after the incident, nor were any follow-up photos taken of Albert's extensive injuries. Similarly, no follow-up pictures were taken of inmate Brian's injuries, and it took officials 21 days to take follow-up photographs of inmate George's injuries, by which point they were well on their way to healing.
- 320** In early 2010, our Office raised concerns with the Ministry about an increasing number of circumstances in which correctional staff failed to fully comply with the policy on photographing inmate injuries. In response, the Ministry issued a memorandum in May 2010 to all superintendents, reminding them of the policy requirements. Despite this, we still encountered a large number of contraventions.
- 321** On July 27, 2011, the Ministry sent out a memorandum to all institutions about the quality of photos taken of inmate injuries. It directed that an operational manager be designated at each facility to monitor the quality of digital images. The Ministry also conducted a survey to assess the quality of photos produced in institutions across the province. After evaluating the results of the survey, on August 18, 2011, the Ministry issued another memorandum, setting out standards for digitally recording images of inmate injuries. In November 2011, the Ministry issued a separate Digital Images of Inmate Injuries policy,

reinforcing the requirements for recording injuries and requiring that all images of inmate injuries are to be digitally recorded using standardized equipment.

- 322** Although the Ministry has taken positive steps to encourage compliance with this policy, we found that problems persist.

### ***Out-of-Focus and Unlabelled Images***

- 323** The Ministry now requires that a disc of colour photos accompany all use of force packages. However, we continued to find pictures of inmate injuries that were of poor quality, or captured only in black and white, resulting in unclear and virtually useless images with little evidentiary value.
- 324** We have also found unlabelled images of various body parts, making it impossible to verify to whom they belonged. In its revised policy, the Ministry has attempted to address this by prescribing labelling requirements for all images. We spoke to one institution that is developing local guidelines for labelling. However, we continue to see cases where appropriate identification of inmate images is a problem.
- 325** We have also been told that some correctional staff have difficulty with the new photography equipment and are not familiar with all its functions.
- 326** The Ministry should ensure that all institutions have fully functioning technology capable of satisfying the requirements for digital imaging of inmate injuries, and that they have trained correctional staff on its proper use and the policy requirements.

### **Recommendation 15**

**The Ministry of Community Safety and Correctional Services should ensure that all correctional institutions have the required digital imaging equipment necessary to take accurate and clear images of inmate injuries, and that they train relevant staff in its proper use as well as the requirements of the Digital Images of Inmate Injuries policy.**

## ***Improper Staging of Photos***

**327** An additional area of concern is the practice of cleaning all blood away and having inmates change into clean clothes before pictures are taken. While sometimes cleansing injured areas can help ensure a clear view of injuries, some officials we interviewed told us such conduct is more likely an attempt to minimize the visual impact of wounds. Ideally, if it is necessary to clean an area to get a better view of an inmate's injuries, photographs should be taken both before and after. In addition, any clothing and any physical areas of the institution damaged or soiled as a result of an incident of use of force should be photographed to ensure a more accurate record.

### **Recommendation 16**

**The Ministry of Community Safety and Correctional Services should require that images of inmate injuries should be taken prior to any areas of injury being cleansed, as well as after, to ensure accurate images.**

### **Recommendation 17**

**The Ministry of Community Safety and Correctional Services should require that images of inmate clothing and areas of the institution that are damaged or soiled as a result of an incident of use of force are taken and maintained with the file.**

## ***Manipulation of Evidence***

**328** To guard against potential intimidation of inmates, staff involved in using force on an inmate should not be present when photographs of the inmate's injuries are taken. Another reason for this prohibition is that close examination of the inmate's physical injuries may influence correctional staff's recollection of events, so that they direct their statements to explaining away the injuries rather than providing an independent account of the incident.

**329** In some cases, involved staff are not only present while photographs are taken, but are the ones wielding the camera. The operational manager who participated in injuring inmate Frank also took the photos of his injuries. Conveniently, he neglected to capture images of Frank's legs and ankles, although he had personally stood on Frank's ankles and stomped on Frank's legs. He justified his failure to take a complete set of images by saying "there

was no visible injuries on him, he wasn't limping." At the time of writing this report, this operational manager was on suspension and facing a criminal charge of assault.

- 330** Staff who are involved in an incident of use of force have an inherent conflict of interest. They have a natural incentive to downplay inmate injuries and should have no role in photographing them.

### **Recommendation 18**

**The Ministry of Community Safety and Correctional Services should amend its Digital Images of Inmate Injuries policy to expressly prohibit correctional staff involved in an incident of use of force from taking digital images of the involved inmate's injuries, or being present when photographs are taken.**

### ***Out of the Picture***

- 331** Ministry policy also requires that photographs be taken of any injuries incurred by staff members as a result of interaction with inmates. It is common in cases where excessive use of force is alleged, for correctional staff to say they acted in self-defence. We found cases in which officers said they were attacked by inmates and suffered injury, but no photographs of their injuries were taken. For instance, a correctional officer said inmate Albert struck him in the face with a closed fist and injured his lip – but this officer never saw health care staff and no images were taken of the alleged injuries.
- 332** There is also an inconsistent practice relating to storage of images of staff injuries relating to incidents of use of force. Some photos are kept with the use of force files; others are not. Given the relevance of staff injuries in such cases, the Ministry should reinforce the requirement for photographing staff injuries, and ensure copies of such photos are retained with the file relating to the incident.

### **Recommendation 19**

**The Ministry of Community Safety and Correctional Services should reinforce the requirement for photographing staff injuries, and require that images of staff injuries be kept with the related use of force file.**



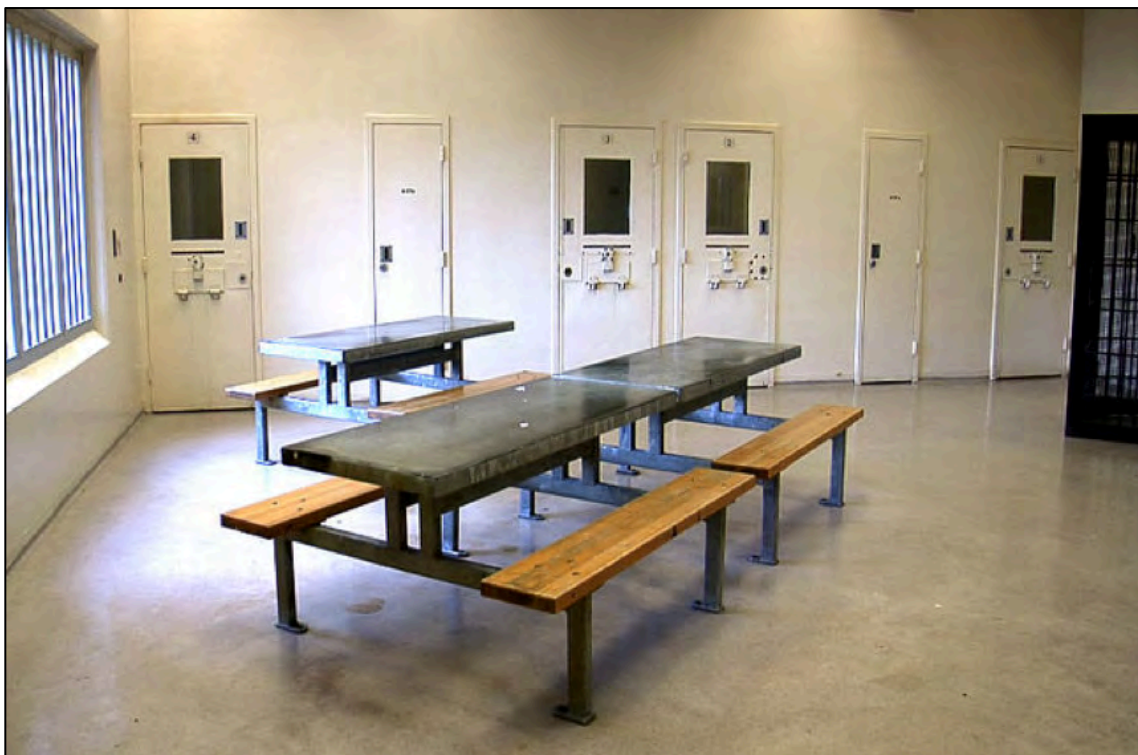
## Caught on Tape – Video Monitoring and Evidence

- 333** As some of the cases we reviewed clearly demonstrate, correctional institution security cameras can provide persuasive and incontrovertible evidence to confirm or refute allegations of excessive use of force. Video cameras can also have a substantial deterrent effect in preventing abuse of inmates.
- 334** Video evidence is often the best evidence available in cases where it is typically the inmate's word against multiple reports filed by correctional staff. For example, after reviewing video of an incident on April 6, 2010, at the Ottawa-Carleton Detention Centre, the Correctional Investigation and Security Unit determined that a correctional officer had punched an inmate without provocation before pushing him into his cell. While the inmate had been disruptive and unco-operative earlier that morning, there appeared no justification for the force captured by the institution's cameras. The video evidence contradicted accounts of the officer who had assaulted the inmate, as well as of other correctional officers who maintained their colleague acted in self-defence to ward off a head-butt by the inmate. The video showed that one officer who supported his colleague's account was actually looking away at the relevant time and therefore could not have seen what happened.
- 335** In an incident at Niagara Detention Centre on August 12, 2010, the Correctional Investigation and Security Unit found that the video didn't correspond to the reports submitted by correctional staff. The officers were having difficulty with an inmate who was reluctant to change cells and was packing his belongings at a frustratingly slow pace. The video showed a correctional officer moving close to the inmate's face and suddenly head-butting the inmate, pushing him onto the bed, and then repeatedly striking him. Other officers were summoned, and amidst the melee, a total of 12 apparent blows were captured on camera. Three officers reported that it was the inmate who instigated the use of force by aggressively moving towards their colleague. However, faced with the video evidence, two of them retracted their original versions of events. The officer who initiated the head strike eventually admitted he had been affected by the inmate's negative attitude, made a poor decision, and lost control.
- 336** Video evidence similarly played a significant role in uncovering a case of excessive use of force that occurred at the Central East Correctional Centre on June 19, 2011. According to staff reports, a correctional officer was conducting a strip search of an argumentative inmate when the inmate suddenly threw his sweater in the officer's face. The officer responded by ordering the inmate to the ground. When the inmate failed to obey this command, the officer directed

the inmate to the floor with his right arm. The inmate continued to resist, and other officers arrived and helped to handcuff him.

- 337** The institution reviewed the video for its internal investigation of the incident. It showed the inmate with his back to the correctional officer, throwing his last article of clothing, a sweater, toward him – but it came nowhere near the officer’s face. What the occurrence reports also had neglected to mention, but the video captured, was the officer deftly catching the sweater, then moving towards the inmate, punching him in the back of the head, grabbing him by the front of the neck in a choking fashion, and pushing him down on the floor. Faced with overwhelming evidence showing unauthorized force, the Ministry dismissed the officer. The Kawartha Lakes Police Service also charged him with criminal assault. An operational manager was also disciplined for his negligence in managing the incident. His 20-day suspension without pay was reduced to 12 days after he filed a grievance with the Public Service Grievance Settlement Board.
- 338** To protect inmate privacy, video cameras are not installed in cells. They are typically located on the perimeter of correctional facilities, such as in the yard area where inmates go for fresh air and exercise, as well as in living units, corridors, and common areas such as “day rooms.”
- 339** Under the Ministry’s new investigations policy and local investigations report process, copies of videos relating to incidents of use of force must be included in the use of force package and reviewed during internal investigations of such cases. This practice applies whenever force is used – not only in cases where it is alleged to be excessive.
- 340** While the Ministry policy reflects the importance of video evidence, there remain some practical limits to its implementation, and areas where further improvement is needed.

## ***Inadequate Video Coverage, Capacity and Compatibility***



**Figure 8: Elgin-Middlesex Detention Centre. Photo provided by Sun Media.**

- 341** The Assistant Deputy Minister, Operational Support told us all of the Ministry’s facilities have at least some video monitoring capability. He provided information about the number of cameras at each location. The scope and quality of video coverage varies amongst institutions. Some have “surveillance” cameras that cannot record images for later viewing. The superintendent of one jail told us none of the cameras at his facility had a “record” function. In November 2011, the superintendent of a large correctional centre told us only about 40% of the security cameras at that facility could record images.
- 342** The number and strategic placement of cameras also differs from institution to institution. One superintendent of a jail told us video cameras at that facility were only installed at doorways, in stairwells, and access points, but not in inmate living areas. A superintendent of a larger centre said his institution had some surveillance “blind spots” where inmates and correctional staff could interact outside the range of video monitoring.

- 343** Our Office has received complaints from inmates alleging that correctional staff deliberately took them beyond the view of video cameras before using excessive force. Correctional Investigation and Security Unit reports have also identified situations of excessive use of force taking place in rooms, elevators or corridors where there were no cameras. This occurred in the assault on inmate Colin at the Ottawa-Carleton Detention Centre.
- 344** There is also a range of video technology used by institutions across the province. While some have new closed-circuit television systems, others have outdated equipment that produces poor, grainy and sometimes indecipherable images. Some of the Correctional Investigation and Security Unit's reports have remarked on problems with video quality. My Office's investigators have encountered similar difficulties in some cases.
- 345** The Correctional Investigation and Security Unit also told us videos obtained from correctional facilities are sometimes incompatible with the equipment it uses. This can result in delayed investigations. One regional director told us that problems with compatibility of videos from a large correctional centre in the area led to delays of several months in reviewing cases of use of force.
- 346** The Ministry is aware of the need to improve the video capacity within its institutions. About two years ago, it assigned an official to conduct an inventory of the video technology used by institutions across Ontario and to source appropriate equipment. The Ministry informed us that over the next three years, it will invest up to \$5 million a year to enhance the closed-circuit television and security systems within its facilities, by installing new or updating current systems. Its upgrade of video systems will start with larger institutions where incidents of use of force are more prevalent.
- 347** In 2011-2012, more than 200 closed-circuit television cameras were installed at the Toronto East Detention Centre, and efforts are underway to install hundreds of cameras at three other detention centres and a correctional centre. The Ministry also plans to install additional cameras in three other facilities in 2013-2014.
- 348** It is encouraging that the Ministry is beginning to outfit its facilities with better closed-circuit television systems. However, I am concerned that there are still institutions that lack sufficient video cameras capable of clearly recording incidents of use of force. The Ministry should take additional steps to minimize opportunities for Ontario's correctional staff to have unobserved contact with inmates and to preserve an accurate video record of inmate and

staff exchanges.

- 349** Ultimately, as a priority, all correctional facilities should have closed-circuit television systems, strategically placed to ensure maximum observation coverage, capable of accurately recording use of force events, and compatible with equipment used by regional offices and the Correctional Investigation and Security Unit.

## **Recommendation 20**

**The Ministry of Community Safety and Correctional Services should continue to enhance closed-circuit television capacity in correctional facilities as a priority, and ensure such systems:**

- **Are placed to allow maximum observation of inmate and correctional staff interactions;**
- **Allow for clear and accurate recording; and**
- **Are compatible with equipment used in regional offices and the Correctional Investigation and Security Unit.**

### ***Erasing the Video Record***

**350** Another challenge with video evidence is that institutions have different practices for storing it. Some routinely record over video that has been gathered. The length of time that videos are kept before they are recorded over varies based on institutional custom and the capacity of the equipment. We heard that some institutions routinely record over video after 60 days; others after 90 days.

**351** Ministry policy now requires that copies of videos be retained in any case where force is used, but sometimes video is no longer available by the time an allegation of excessive use of force is made. The reality is that some correctional staff inadvertently or deliberately fail to disclose cases of use of force, and inmates, fearful of retaliation, sometimes hesitate to alert anyone about abuse. It is not unusual for inmates to raise allegations of excessive use of force only after they have been released or transferred to another facility; we reviewed several such cases. In cases like this, where significant time has elapsed since an incident, video evidence can be critical. However, we are aware of at least one case in which the video evidence had already been destroyed by the time the complaint emerged.



**352** The Ministry should adopt a formal policy ensuring consistency amongst institutions relating to the length of time video recordings are stored, and clarifying the circumstances when videos can be erased or recorded over. In recognition that some allegations of excessive use of force are delayed, video recordings should be retained for a reasonable time. In most cases, a six-month retention schedule would likely suffice. The Ministry should also ensure that the technology installed in its institutions is capable of meeting this standard.

## **Recommendation 21**

**The Ministry of Community Safety and Correctional Services should develop a policy requiring that all correctional facilities retain copies of videos from security monitoring for a consistent and reasonable period of time.**

### ***Transporting Inmates Off-Camera***

- 353** Another issue raised in complaints to our office involves inmates being assaulted by correctional staff while being transported in vans that are not equipped with cameras. One correctional officer acknowledged to us that this occurs, and is typically referred to by staff as “dummying the inmate off-camera.”
- 354** The Supreme Court of Canada recently considered a case from Quebec in which an inmate was charged with uttering a threat after he was deliberately provoked by a prison guard while in transit between court and a penitentiary. In response to the threats, the guard grievously assaulted the inmate, who was chained, shackled, and handcuffed in a prison van. The Court upheld a stay of the threatening charge based on the infringement of the inmate’s constitutional rights.<sup>31</sup>
- 355** In order to protect inmates from potential abuse during transportation, the Ministry should ensure all vehicles used to transport inmates are outfitted with video recording equipment. Several police services follow this practice, which enables them to capture an accurate record of any interaction with detainees. Equipping correctional services vans with video technology would reduce the risk of improper staff contact with inmates.

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<sup>31</sup> *Bellusci, supra* note 21.

## **Recommendation 22**

**The Ministry of Community Safety and Correctional Services should install video cameras in vehicles used for inmate transportation.**

### ***Lack of Cell Coverage***

- 356** For privacy reasons, inmate cells are not equipped with video surveillance cameras. However, much of the questionable interaction between staff and inmates happens in inmate cells. Sometimes cameras installed outside of the cell area are able to capture some of the action, but often there is simply no video record. In his June 20, 2012 report, the Chief of Oversight and Investigations recommended, based on federal penitentiary practices, that the Ministry require hand held video and audio recording equipment to be used during all cases when force is used, including when staff enter cells, when inmates are returned to their cells and when medical treatment is offered. This appears to be a reasonable suggestion, and one that the Ministry has undertaken to implement beginning in summer 2013. I will monitor its progress in this regard.

## **Recommendation 23**

**The Ministry of Community Safety and Correctional Services should implement a policy requiring hand held video and audio recording equipment be used during all use of force incidents.**

### ***Auditing Capacity and Quality***

- 357** To ensure that the Ministry's initiative to upgrade its closed-circuit television systems does not lose momentum, it would be worthwhile for the Ministry to monitor the adequacy of its systems after its enhancement plans are implemented. To accomplish this, it could periodically audit these systems to ensure they are functioning properly, clearly recording events, appropriately positioned, and compatible with the technology used by the regional offices and Correctional Investigation and Security Unit.

## Recommendation 24

**The Ministry of Community Safety and Correctional Services should conduct periodic audits of the closed-circuit television systems in its correctional institutions to ensure they are functioning properly, clearly recording events, appropriately positioned and compatible with equipment used by the Ministry when reviewing and investigating cases of use of force.**

### *Video Replay*

- 358** Some Correctional Investigation and Security Unit investigations revealed that correctional staff involved in incidents of use of force viewed video of the incidents, either while preparing required reports or in advance of interviews with Unit inspectors. In inmate Frank’s case, officers got together and viewed the video; in inmate George’s case, an assistant deputy superintendent allowed the perpetrator to watch the video of the assault.
- 359** It is important that the notes and testimony of correctional staff reflect their personal and independent recollection of events. Videos of incidents should not be used as an aid in these situations. When officers have the opportunity to review video evidence to supplement their memories, there is a risk that their accounts will be improperly influenced and focused on explaining away the recorded images.
- 360** To reduce the risk of tainted witness recollections, the Ministry should amend its report writing and other policies relating to use of force to expressly prohibit correctional staff involved in an incident of use of force from viewing the relevant video. Access to video images in these circumstances should be restricted to institutional managers and other officials directly involved in investigating the incident.

## Recommendation 25

**The Ministry of Community Safety and Correctional Services should amend its Report Writing policy and other policies relating to use of force to ensure that correctional staff involved in an incident of use of force are prohibited from viewing related video images, and access to security videos is restricted to those directly involved in investigating the incident.**

## The ABCs of Use of Force – Enhancing Training

- 361** In the volatile and fluid environment of the correctional system, inevitably situations will arise that require inmates to be controlled through the application of force. Although sometimes it is clear that the force used on an inmate is excessive, distinguishing appropriate and inappropriate use of force can be challenging. Education and training are key in ensuring correctional officers and managers are able to identify where the line should be drawn.
- 362** Correctional officer recruits receive basic training at the Ministry-run Ontario Correctional Services College before they start working in the field. The training includes 12 hours of classroom instruction and 24 practical sessions relating to defensive tactics.
- 363** The “defensive tactics” curriculum is based on using physical restraint techniques as a last resort, when communication and other methods have failed.
- 364** Recruits learn that force is used to gain control, and that only the degree of force necessary to gain control should be used. Once control is established, force is to be withdrawn.
- 365** Officers are also taught that some inmate management techniques are not permitted, such as applying restraints around an inmate’s head or neck, “hogtying” (tying an inmate’s hands and ankles together), or applying “choke” holds. They are also instructed about certain positions that are dangerous, such as restraining an inmate in a prone position and applying pressure to the shoulders, back or lower spine.
- 366** Unfortunately, educational theory does not always translate into practice once officers enter the correctional system.

## Fanning the Flames – De-escalation Training

- 367** As part of their basic training at the college, all correctional officer recruits receive 1.5 hours of instruction on defusing or de-escalating hostile situations. As the training material notes:

The decision to apply force is a judgment call based on a number of circumstances at the time. However, in all cases, the application of force must be a last resort.... In a vast number of situations, the officer’s presence, tone and voice, being calm, using a professional demeanour

will do more to control the offender's acting out behaviour than the application of physical force.

- 368** Recruits are told how to identify what triggers their own emotional response, in order to control themselves in volatile situations. They learn how to approach angry and belligerent inmates, and are cautioned not to take the “bait” when inmates behave in ways designed to incite an emotional reaction, such as anger, intimidation or guilt. They also learn common-sense tips about avoiding escalation of conflict. For instance, they are taught not to appear verbally or physically threatening, not to invade an inmate's personal space or engage in unnecessary physical contact.
- 369** However, these important lessons learned in the classroom can fade in the field. A common feature of many cases of excessive use of force is threatening or provoking action on the part of correctional staff that sparks or inflames a confrontation with an inmate.
- 370** Our Office has heard of numerous cases in which correctional officers entered cells alone, in breach of Ministry policy, to deal with loud, insulting or verbally abusive inmates. Such “counselling” of inmates typically involves officers standing directly in front of them, invading their space as an intimidation tactic. This conduct is in direct contrast to the training provided at the college, and it is unsurprising that in many cases it leads to an escalation of conflict.

### *When the Gloves Come On – Inmate Jason*

- 371** Inmate Jason's case is a striking example of how correctional officers can incite aggressive response through provocative behaviour.
- 372** On August 11, 2011, Jason was at the Central East Correctional Centre and becoming progressively anxious about where he was to be housed. He was worried that his personal safety was at risk from inmates in the unit where he was. Staff placed him in a multi-purpose room while they decided what to do. Jason paced back and forth while he waited and intermittently discussed the situation with correctional staff. An acting operational manager finally directed that Jason be transferred to another unit, an arrangement Jason seemed to accept. But instead of following this direction, correctional officers brought him back to the area he had expressed concern about. Unsurprisingly, Jason refused to co-operate. Staff took him back to the multi-purpose room. They dumped his belongings on the floor, threw some into a bin, kicked an item towards the wall, and, according to Jason, held up some of his things and made

mocking comments. Jason became more agitated. He paced and removed his coveralls. He says he did this because a staff member threatened him through the glass partition at the front of the room, and he feared staff could use the coveralls to grip him and throw him around.

- 373** Correctional staff responded to Jason’s escalating behaviour by calling an alarm, even though Jason did not pose an immediate risk to himself or others. As Jason watched through the glass, four correctional officers came toward the room he was in, donning gloves. One officer later explained that it was a “show of force” to calm Jason down. However, their actions predictably had the opposite effect. Jason, by now on full alert, was positioned at the door to the room in a fighter’s stance. As he told our investigators:

I know that these guys are now putting on their gloves and rallying up to come in the room together, they are not coming to sing “Kumbaya.” These guys are going to try to manhandle me and I wasn’t allowing that to happen. I was going to defend myself in whatever shape or form is necessary... I warned them.... And they laughed. They basically laughed and sneered from the other side of the door.

- 374** When the first officer entered the room, Jason was ready for him. He punched the officer, knocking him to the floor. The next officer met the same fate. Soon more than 30 staff responded. In the end, a total of seven officers were injured while attempting to subdue Jason, including one who suffered a broken hand. Meanwhile, Jason, who unbeknownst to staff was a trained boxer, received abrasions to his forehead and left ankle.
- 375** The Correctional Investigation and Security Unit investigated the incident. It concluded that the entire episode was unnecessary and could have been avoided if staff had followed their supervisor’s directions about Jason’s placement and exercised better judgment, instead of escalating the situation and provoking him when he was already agitated.
- 376** Correctional officers are required to take refresher training in several topics every two years, including defensive tactics. However, the standard defensive tactics refresher training does not include diffusion of hostility. Only correctional officers hired from July 2004 onward, and who are required to complete community escort training, receive retraining on diffusion of hostility. This training is optional for officers hired before July 2004, which means the majority of Ontario’s correctional officers are not required to take it. About 66% of all correctional officers were hired before community escort training and retraining became mandatory. Many of these older officers have elected



not to receive this training. Consequently, a large number of correctional officers receive no refresher training on diffusion of hostility.

- 377** It is unclear why this critical element of handling inmates is not reinforced for all officers serving in Ontario's correctional institutions. The Provincial Coordinator, Use of Force Programs told us seasoned correctional officers should also receive updated instruction in this area. Another trainer at the college told us:

We spend millions of dollars, hours upon hours training people how to defend themselves. We spend far too little time telling them how to deal with people.

- 378** Correctional officers, operational managers, and senior staff at institutions would all benefit from regular training on de-escalating volatile situations. Emphasis on this type of training would likely contribute to improved practices and safer interactions for both staff and inmates.

### **Recommendation 26**

**The Ministry of Community Safety and Correctional Services should ensure that periodic training on diffusion of hostility is provided to all correctional staff, including management personnel.**

## Dealing with Inmates with Mental Illness and Special Needs

- 379** It is a sad reality that many of those incarcerated in Ontario's institutions suffer from mental illness, and/or developmental or other disabilities that affect their behaviour. Some 14,000 inmates who entered the system in 2011-2012 were identified as having mental health issues. Consistent with their disabilities, some inmates display disruptive conduct that is resistant to or intensifies upon application of standard inmate control measures. Correctional staff can unwittingly ignite conflicts with these inmates, leading to unnecessary and potentially excessive use of force. Shamefully, as was demonstrated in the case of inmate Albert (whose mental illness was associated with a long history of violent acts), inmate Colin (whose brain injury and psychiatric disability presented many challenges to correctional staff), and inmate George (whose anxiety over not receiving his medication on time likely contributed to his acting out), these markedly vulnerable inmates are often subjected to punitive treatment and even deliberate abuse.

- 380** The Ministry’s latest Use of Force policy specifically directs that when inmates exhibit signs of mental illness or are known to have mental health issues, correctional staff should consider getting health care staff involved, moving the inmate to a quieter environment and invoking de-escalation techniques. However, without specialized training relating to mental illness and other disabilities affecting behaviour, correctional staff can misinterpret inmate conduct and mismanage or precipitate conflict situations.
- 381** In November 2010, the Ministry introduced a pilot training program on dealing with inmates with special needs and mental health issues. It has continued to provide this training to selected correctional staff. However, to date, it has only trained **214** employees, and of those, only **134** worked in adult institutional services (e.g., correctional officers, operational managers and health care professionals). This number represents a very small fraction – about 3% – of the nearly **4,000** front-line correctional staff in Ontario’s jails, correctional centres, detention centres and treatment centres.
- 382** As this report was being written, the province was in the midst of a coroner’s inquest into the tragic death of 19-year-old Ashley Smith, an inmate in the federal prison system who killed herself in her cell while guards stood watch. As Ms. Smith’s case demonstrates, dealing with individuals with complex emotional, mental health and/or behavioural problems within the correctional system is uniquely challenging. I am encouraged by the fact that the Ministry is beginning to train its staff in this area, but I believe that more effort must be devoted to this initiative. Specialized training on dealing with people who have disabilities that could affect their conduct during incarceration should be provided to all new recruits and become a staple for staff in correctional institutions. Although the Ministry has recently concentrated its attention on training staff on report writing and other policies relating to the use of force, it should ensure that renewed efforts are made to have all correctional staff responsible for dealing directly with inmates trained in this area, as a priority.

### **Recommendation 27**

**The Ministry of Community Safety and Correctional Services should, as a priority, ensure that instruction on dealing with inmates with mental health and special needs challenges is provided during recruit training and as part of ongoing training for all correctional staff who are responsible for dealing directly with inmates.**

## Staying Fresh

- 383** Although correctional officers are required to undergo recertification in defensive tactics every two years, their training is often significantly delayed. Some correctional officers we interviewed said they had not received this training in four or five years. One of the factors contributing to this backlog is a lack of instructors.
- 384** Correctional officers working in institutions are retrained in defensive tactics by teams composed of an instructor and lead instructor. These instructors are volunteers, often correctional officers, who have been specifically trained by the provincial college. There are only 97 in all; 35 of them lead instructors. Some 23 instructor positions are vacant. In addition, not all institutions have both an instructor and a lead instructor, resulting in delays in arranging refresher training.
- 385** Some correctional institutions told us they are unable to keep up with staff training because they are understaffed. The institutional training manager at one detention centre told us the institution is years behind in its refresher training because of staff shortages and difficulty in securing a venue and transportation. A deputy superintendent at the same centre confirmed that scheduled training days are often cancelled because of staffing problems.
- 386** Unless regular refresher training is provided, staff could forget proper techniques and resort to other methods to control inmates. Some correctional officers told us that they did not remember the techniques they were trained on at college, but felt fortunate that they were able to rely on various martial arts skills they had acquired on their own time.
- 387** Reports by the Correctional Investigation and Security Unit have noted that unauthorized practices have become commonplace at some institutions. In two cases from the Central North Correctional Centre – including inmate George’s – staff considered it acceptable to have a handcuffed inmate walk backwards, bent at the waist, with his head down. The Unit consulted with Ministry trainers, who confirmed that this technique is not approved and can cause breathing difficulties as well as elevated blood pressure. The Unit observed that having inmates assume this position seemed to be an accepted practice at that facility; in one case, the inmate was walking in this manner under the direct supervision of an operational manager. The Ministry’s policy restricts using restraints that are linked together or “hogtying” inmates, as this can cause positional asphyxia and lead to cardiac arrest. The position these inmates were placed in essentially mimicked this prohibited technique.



Figure 9: Central North Correctional Centre - Inmate George during escort. Photo obtained from Ministry of Community Safety and Correctional Services records.

**388** It is critical that correctional staff receive regular and proper training in defensive tactics. Training should not be a perennial casualty to understaffing. It is incumbent on the Ministry to ensure that correctional staff receive updated training. It is insufficient for the Ministry to say training is required. It must go further to ensure that the resources are available to enable institutions to meet this obligation. It is also time for the Ministry to consider establishing permanent positions responsible for training in the field.

#### **Recommendation 28**

**The Ministry of Community Safety and Correctional Services should ensure that correctional staff are regularly trained in authorized defensive tactics, and take steps to create permanent field training positions.**

## Inconsistent Defensive Training

- 389** Once correctional officer recruits leave the Ontario Correctional Services College, they may be exposed to an array of use of force techniques in the field – not all of them sanctioned. While volunteer instructors must sign a letter acknowledging that they will teach within the curriculum, the training delivered to seasoned correctional officers is not monitored provincewide for quality or consistency.
- 390** One of the trainers we spoke to at the college noted that it is worrisome that some long-serving defensive tactics instructors consistently fail the test to become lead instructors. He questioned whether these instructors should remain in the program. He recommended to senior Ministry management that monitoring teams be established to ensure that instructors only teach the accepted defensive tactics curriculum. He expressed concern about what is being taught in the field:
- There are a lot of tactics out there that we don't authorize for training. A lot of people do a lot of things [like martial arts] outside of their correctional officer job... we don't know if they're teaching variations on a theme on what we do ... without someone being there to watch.
- 391** Flawed defensive tactics training in institutional settings could contribute to the development of inappropriate and institution-specific use of force practices.
- 392** Training in defensive tactics is only as good as the trainers. The Ministry should take steps to ensure that its training program is consistent throughout the correctional system, and that instructors teach only authorized techniques. Its failure to do so puts inmates at risk – and also correctional staff, who could find themselves and their jobs in jeopardy for using methods that they wrongly believed were acceptable defensive tactics.

### **Recommendation 29**

**The Ministry of Community Safety and Correctional Services should establish a system for monitoring the quality and consistency of instruction in defensive tactics delivered to correctional staff by volunteer instructors.**

## Reality Check – Tactics in the Field

- 393** Several of the correctional officers and senior managers we interviewed questioned the adequacy of the current defensive tactics training. Some felt it was theoretical, unrealistic, and of little use in real life institutional settings. As one correctional officer put it:

They are pretty fancy moves that look great on an instruction video, but in close quarters in a jail... There are no rules.

- 394** It is unclear whether these observations reflect a lack of understanding on the part of the college about the real-life situations faced by correctional staff, or a failure on the part of correctional staff to appreciate and apply the authorized techniques they are taught.
- 395** There is no comprehensive list of approved defensive tactics, and we were told that some flexibility is essential to account for situations when correctional staff must make split-second decisions in defending themselves and others from imminent harm. However, it would be useful if the Ministry surveyed correctional employees to determine what defensive measures they typically employ in dealing with inmates. This could be done on a no-names basis to encourage open and honest dialogue. Once it is determined what is actually happening in the correctional system, then training and direction could be focused on areas where safe and proper defensive strategies and actual correctional practice appear to diverge.

### **Recommendation 30**

**The Ministry of Community Safety and Correctional Services should survey correctional staff to determine the physical restraint and control techniques actually being used in its institutions in order to focus its training efforts on problem areas.**

### ***Unnecessary Distractions***

- 396** Correctional officers commonly use what are referred to as “distractions” to encourage resistant inmates to co-operate. According to Ontario Correctional Services College training materials, distraction techniques are intended to separate the inmate’s mind from his or her body, allowing officers an opportunity to take control. Distractions may range from simple yelling or



screaming to very complex pain distraction and misdirection techniques. It is quite common to see references in occurrence reports to “distractions” or “open-handed distractions.” Usually, these notations mean the officer hit the inmate with an open hand. Provided these tactics are used in circumstances when they are required to control a resistant inmate, they will generally not be considered an unreasonable use of force. However, our investigation found that there was considerable confusion about whether other forms of physical distraction are permissible – in particular, closed-fist punches.

- 397** When inmate Helen was repeatedly hit with a closed fist, the Correctional Investigation and Security Unit not only found that the use of force was unprovoked, but it was told by the Provincial Coordinator, Use of Force Programs that a closed-fist punch is not a distraction technique taught in defensive tactics training or approved by the Ministry. If the Ministry does not authorize the use of punches, can they ever be acceptable? The answer appears to be “maybe” and “it depends.”
- 398** In February 2012, an inmate wrote to our Office alleging that on January 18, 2012, correctional officers at the Ottawa-Carleton Detention Centre had entered his cell, jumped him and broken his hand. There was no evidence to support the inmate’s allegation that he was assaulted in his cell, but there was video showing correctional staff struggling to gain control of him on the ground, and an officer punching him seven times on the side of his body. According to the institution, the inmate was intoxicated on “homemade brew” and became threatening and resistant while being escorted to segregation. The inmate had not broken his hand as he alleged; medical examination revealed he had an old wrist injury.
- 399** Still, during the facility’s internal review of the matter, the deputy superintendent expressed concern about the extent of force used on the inmate. The risk management team determined that the force used was justified, given the inmate’s condition. The regional director observed that the inmate should have been handcuffed before being escorted to segregation, as his intoxication put him at higher risk of becoming abusive or violent. However, in discussing the case with my Office, she justified the “approved distraction techniques” used by officers to control him. She said that although “open-handed distractions” are more widely used, given the inmate’s inebriated state and the degree to which he was struggling, the closed-handed punches helped bring him under control quickly.
- 400** Initially, she told us the Ontario Correctional Services College had a list of all approved distraction techniques and said she would obtain it for us. However,

she later said there was no such list and that the type of distraction that staff use is a matter of judgment.

- 401** In a recent investigation carried out by the New South Wales Ombudsman,<sup>32</sup> it is noted that in some jurisdictions such as the United Kingdom and New Zealand, correctional staff are required to use prescribed holds and are not allowed to improvise. At the same time, the New South Wales Ombudsman also observed that there are differing views on the feasibility of this approach “due to the fluid and unpredictable nature of incidents.”
- 402** Some approved control measures are taught by the Ontario Correctional Services College. Officers also learn to avoid certain restraints, which are expressly prohibited. But there is no list setting out what is permitted and what is not. Ministry officials have indicated that formally prescribing approved techniques would be impractical, since officers need some flexibility to respond to real-life situations. There is some merit to this argument, but it would assist correctional staff, as well as those responsible for monitoring their conduct, if greater clarity could be provided on what distractions and management techniques are generally permissible, and in what circumstances.
- 403** For example, the Ministry could issue a list of standard authorized techniques taught at the college. The Ministry could also include reference to those measures that present risk of harm to inmates, and which are prohibited – such as the problematic Central North Correctional Centre practice of making restrained inmates walk backwards, bent at the waist.

### **Recommendation 31**

**The Ministry of Community Safety and Correctional Services should issue a list of standard authorized defensive techniques taught at the Ontario Correctional Services College, as well as prohibited control measures.**

- 404** The Ministry could also specifically instruct staff that given the dynamic and sometimes volatile nature of correctional life, there are exceptional situations in which measures not listed as authorized may be used. However, it should keep track of any deviations from standard practice. The Ministry should require correctional staff to identify cases in which unlisted techniques have been

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<sup>32</sup> Austl., New South Wales, Ombudsman, *Managing use of force in prisons: the need for better policy and practice* (Special Report to Parliament under s. 31 of the Ombudsman Act 1974) by Bruce Barbour (ISBN 978-1-921884-71-9, NSW Ombudsman, July 2012) at 15.

employed, and provide a detailed account of why they felt it necessary to use extraordinary distraction or control measures.

### **Recommendation 32**

**The Ministry of Community Safety and Correctional Services should amend its Use of Force and related policies to expressly direct that use of physical techniques to control inmates that are not specifically approved is restricted to exceptional cases, where they are justified in the circumstances.**

### **Recommendation 33**

**The Ministry of Community Safety and Correctional Services should amend its Report Writing policy to require that any use of physical techniques to control inmates that are not listed as authorized must be expressly identified and the reason for their application fully explained in related institutional reports.**

### ***Lack of Management Training***

- 405** While correctional officers are – at least in theory – required to take regular refresher training in defensive tactics, operational managers do not receive this training. Ministry officials told us that most cases operational managers rise from within the ranks of correctional officers and are experienced in defensive techniques. Still, we learned that some correctional managers may never have worked as correctional officers or received even basic instruction in defensive tactics.
- 406** As well, some operational managers who were once correctional officers told us defensive tactics training has changed over the years and they are unfamiliar with current authorized practices.
- 407** Operational managers told us insufficient and outdated training on defensive techniques, causes them considerable difficulty in their work. They are responsible for supervising correctional officers when they use force. Ministry policy requires that they be consulted before restraints are applied to inmates. They must also gather all reports relating to incidents of use of force and ensure they are complete and accurate. They said they find it a challenge to provide guidance and supervision when they don't understand the terminology used by officers in their reports, and are sometimes unfamiliar with the techniques employed. One manager said:

It's funny, once you become an operational manager, there's no use of force training. I can't figure it out... If they're going to manage staff to use force, they're going to manage an incident where force is going on, they have to be versed in it. They have to understand it. They don't have ... any of the routine training that the correctional officers get... it blows me away.

- 408** Operational managers are even more disadvantaged when it comes to supervising correctional officers who are members of the Institutional Crisis Intervention and Cell Extraction Teams, which receive specialty training in use of force and defensive techniques, and are authorized to use techniques above and beyond those generally used by correctional officers.
- 409** The Provincial Coordinator, Use of Force Programs told our investigators:
- There is a major gap. It is inadequate. There is a faction that believes, "Oh, they're operational managers they're all trained, they know all this stuff." Well, they don't. .... Some of these people, the last time they had use of force theory would have been 15 years ago.
- 410** To illustrate the problem, he referred to one operational manager who participated in a competition for a defensive tactics training position. He explained that this individual could only identify two of the five situations in which force is authorized. Yet he was responsible on a daily basis for supervising incidents in which force is applied.
- 411** Deputy superintendents and superintendents are also responsible for ensuring that only appropriate defensive tactics are used against inmates. Under the Ministry's revised use of force policy, greater emphasis is now being placed on their role in reviewing documentation of such incidents, and ensuring that any force employed is within authorized limits. However, senior managers also do not receive any training in defensive tactics beyond what they learned if they were trained as correctional officers years before.
- 412** There is a significant disconnect between the expectation that operational managers and senior institutional managers will ensure that only reasonable force is used, and the level of training they receive in defensive tactics. This should be remedied. All supervisory staff should be as familiar with the latest authorized defensive tactics and terminology as the officers they manage.

## Recommendation 34

**The Ministry of Community Safety and Correctional Services should ensure that all operational managers, and senior managers within its institutions receive regular training in defensive tactics.**

### *Risky Business – Untrained Community Escorts*

- 413** Another area in which training is deficient – and potentially affects the safety of inmates, officers, and the public – relates to escorting inmates out in the community. Correctional staff must accompany inmates to medical appointments, funerals and hospital. Two correctional staff must accompany inmates at all times on such occasions, known as “community escorts.” The Ministry’s requirements relating to use of force and reporting apply during escorts.
- 414** Since 2004, the basic training program for correctional officers has included instruction on community escorts. This includes training on the use of expandable batons and oleoresin capsicum spray (similar to pepper spray). Only staff who are certified in the use of this spray are authorized to carry it. However, we learned that because of staff shortages, those who were trained before 2004 – as well as operational managers who have never received community escort training – sometimes accompany inmates to medical and other community appointments, armed with weapons they are not trained to use. As of fall 2011, only 21 operational managers in the province were certified to use the spray. As one trainer said in our interviews: “I’ll tell you right now, they’re sending operational managers every day out in the field with weapons they are not authorized to carry.” The Ontario Correctional Services College has records confirming which correctional staff are certified in the use of these weapons, but operational managers do not have ready access to this information.
- 415** Our office has received complaints from inmates alleging that they were assaulted while being escorted outside of a correctional facility. One correctional officer from a jail told us that in her experience, it is common for excessive use of force to occur during community escorts. She gave the example of an inmate with special needs who complained to her that two officers assaulted him when they accompanied him outside of the jail. When she reported this incident to her manager, he said the inmate was being “an asshole” and “got what he needed.” The correctional officer refused to provide our Office with details so that we could follow up. She explained she

had already suffered reprisal, including physical assault, at the hands of her colleagues for simply reporting the inmate's allegation of assault to a manager.

- 416** Sending correctional staff out into the community with inmates with weapons they have not been trained to use is a recipe for disaster. The risks associated with misuse of community escort weapons calls for prompt remedial action.

### **Recommendation 35**

**The Ministry of Community Safety and Correctional Services should ensure that only correctional staff trained, and properly certified, accompany inmates into the community and use oleoresin capsicum spray and batons, and that institutions are provided with a updated list confirming which staff hold current certification in their use.**

### Training the Overseers

- 417** Although Correctional Investigation and Security Unit inspectors consult with instructors at the Ontario Correctional Services College to confirm the propriety of certain defensive techniques, they do not receive any formal training in defensive tactics. The Chief of Oversight and Investigations noted to us that inspectors need to know what the policies and standards are if they are expected to reach conclusions on whether officers have complied with them. In his June 20, 2012 report, the Chief recommended that all inspectors receive appropriate training based on core competencies. While he did not specifically mention use of force training, the Ministry should ensure, consistent with the intent behind this recommendation, that inspectors are trained on the various policies and standards they are responsible for overseeing.

### **Recommendation 36**

**The Ministry of Community Safety and Correctional Services should ensure that inspectors responsible for investigating allegations of excessive use of force receive defensive tactics and other training relevant to the use of force in a correctional context.**



## Failure to Review New Policies

- 418** The Ministry has spent considerable time redrafting its policies and procedures relating to the use of force. But its efforts will be in vain unless correctional staff actually read and understand them.
- 419** Several correctional managers expressed frustration to us about the frequency of the recent changes, including numerous revisions of the local investigations report, which led to confusion and duplication of work when they failed to use the latest version. Some also expressed concern about the introduction of the Risk Management Team approach prior to completion of training on this new process.
- 420** From frontline correctional officers to superintendents to regional directors, staff admitted to us that they had not read or “fully” reviewed the policy revisions relating to the use of force. Some correctional staff complained that there are too few computers on their units to enable them to view new policies; others stated they were simply too busy. Many of the most vitriolic critics of the new policies had not actually read the relevant documents.
- 421** The Ministry has repeatedly emphasized that the basic requirements relating to use of force have not changed in its new policies, and that the revisions are directed primarily at reinforcing the responsibilities of various levels of correctional staff. Still, it is important for all concerned to be familiar with them.
- 422** We found at least one institution that was quite diligent in ensuring its staff were aware of new policies. The superintendent of this detention centre told us she sent policy revisions out by email to all staff, posted them in living units at the facility, and ordered that they be read at muster (daily pre-shift meetings).
- 423** The Ministry has issued memoranda to institutions to reinforce the new policies, including directing that they be read at muster for a period of time. However, lack of familiarity with the policy requirements appears to persist. Some growing pains are to be expected when new policy is introduced, but given the apparent resistance to policy change within the correctional system, the Ministry will likely need to take additional steps to underscore the importance of all correctional staff becoming familiar with its policies and procedures. Additional training might be required, or, at a minimum, correctional staff should be required to review and formally acknowledge in writing that they have read and understand all relevant policies.

### **Recommendation 37**

**The Ministry of Community Safety and Correctional Services should take additional steps to ensure that correctional staff are familiar with all policies and procedures relating to the use of force, including conducting additional training, and requiring that all staff acknowledge that they have read them.**

### Local Variations

- 424** In the past, there was significant variation across the province in applying the Ministry’s policies relating to the use of force. At some institutions, if force was used but there was no visible injury to the inmate, the incident was not reported. The Ministry’s new investigations policy is directed at removing these local inconsistencies, and we were told that it has helped. However, inconsistency continues in some areas.
- 425** Sometimes it is a matter of terminology. On September 18, 2012, the Assistant Deputy Minister, Institutional Services issued a memorandum clarifying that force should be defined as either “excessive” or “reasonable” – not “inappropriate,” as some staff were writing in reports.
- 426** Our investigation identified several contradictory practices amongst correctional institutions.

### ***Notifying Inmates of the Right to Lay Criminal Charges***

- 427** Every inmate who alleges that he or she was assaulted by correctional staff has the right to pursue charges – or to opt to rely on an internal investigation into the incident. The Ministry requires that in these circumstances, inmates be provided with a form known as the “notification of right to pursue/decline laying of criminal charges” form. But we heard conflicting explanations from senior ministry officials and institutional managers of how the form is to be used and who is responsible for giving it to inmates. We learned that it is common for some correctional staff to offer this form to inmates whenever force is used, not just when there is an allegation that force was excessive. In such cases, usually the same correctional officer who applied the force must give the inmate the option of pursuing criminal charges. This is a source of considerable irritation for correctional staff. As one deputy superintendent put it:

I'm going in and using force against an inmate as part of my job and then I'm going back to the inmate and saying, John, do you want to charge me?"

- 428** On the other hand, some officers indicated they have never offered the form to an inmate, regardless of the circumstances.
- 429** Recently, the Ministry accepted the Chief of Oversight and Investigations' recommendation that superintendents be given the responsibility for telling inmates about their right to lay charges against staff. This change would address concerns about this task falling to the officers involved. But given that there is only one superintendent per institution, the Ministry will have to review the logistics of this approach. Realistically, it should consider allowing some delegation of this responsibility to ensure that inmate notification is not delayed as a result of the superintendent's other duties.
- 430** At a minimum, correctional staff involved in an incident of use of force should never be involved in advising inmates of their right to have them charged. This is not only awkward for staff, but potentially intimidating for inmates who may have been subjected to unreasonable force.
- 431** To avoid further confusion as well as conflicts of interest, the Ministry should take steps to clarify the process to be followed for notifying inmates of their right to lay criminal charges, including ensuring that those involved in using force on an inmate are not responsible for communicating with the inmate about this option.

### **Recommendation 38**

**The Ministry of Community Safety and Correctional Services should immediately clarify the process around the “notification of right to pursue/decline laying of criminal charges” form, and ensure that correctional staff involved in using force on an inmate are not responsible for communicating with the inmate about the option of bringing criminal charges.**

## ***Calling the Police – When to Do It***

- 432** Correctional staff we interviewed also expressed some uncertainty about when police should be called in cases where force is used. The most recent version of the Ministry’s policy on the use of force refers generally in one section to the operational manager contacting police, but only provides specific direction regarding police notification in cases where inmates allege they have been assaulted by staff. Senior Ministry officials told us the police must be called whenever force is used, and this is consistent with a question-and-answer document distributed to correctional institutions in November 2011.
- 433** On December 2, 2011, the Assistant Deputy Minister, Institutional Services issued a memorandum to all regional directors confirming that all incidents of use of force and allegations of assault must be reported to the local police. Recently, the Assistant Deputy Minister, Operational Support also told us the Ministry would be issuing a policy to address the notification of police, and that the Ontario Association of Chiefs of Police had already been consulted about this.
- 434** Given that the description of “use of force” covers a wide breadth of physical contact, it is somewhat ambitious to suggest that the police should be contacted in every case it is applied. There is also a risk that a large volume of routine police contacts could lead to the “boy who cried wolf” syndrome, where police might adopt a dismissive and complacent attitude towards such calls. In many of the cases we reviewed, contact with police appeared to be a pro forma gesture – a few minutes in which the main objective seemed to be obtaining a police case number for the file. On the other hand, since any use of force could be revealed to be excessive upon closer scrutiny, a cautious approach requiring regular contact with police might well be justified.
- 435** At a minimum, given the present ambiguity, the Ministry should amend its policy to expressly indicate which situations warrant contacting the police. The Ministry should also, preferably in consultation with police authorities, outline what basic information institutional staff should communicate to police. The Ministry should ensure that different types of situations are clearly distinguished in terms of context and severity, and that sufficient details are provided to local police to enable them to make an informed decision about how to respond.

## Recommendation 39

**The Ministry of Community Safety and Correctional Services should amend its Use of Force and related policies to clarify which situations warrant contacting the police and provide guidance on the details that should be communicated.**

### *Calling the Police – Who Should Do It*

- 436** In addition to the issue of when police should be contacted about incidents of use of force, there is the question of who should make the call. It is important to ensure that calls about such incidents are taken seriously. Police should be given enough information to make an informed response. At present, operational managers must contact police in cases of use of force. This contact must be noted in the offender incident report, which must be sent to the superintendent, regional director and Information Management Unit within an hour of the incident.
- 437** There is nothing preventing an operational manager who is directly involved in such an incident from being the police contact. That is what happened in inmate Albert's case, where the involved operational manager made a 22-second call to police, did not accurately describe Albert's injuries and only emphasized that an officer had been hurt. It was no surprise that police took no action. There is always a danger that managers associated with an incident will be selective in the information they communicate, consciously or unconsciously, and will discourage police from responding.
- 438** The Chief of Oversight and Investigations has recommended that superintendents, not operational managers, should have the discretion to contact police in such cases. The Ministry accepted the Chief's recommendation, and will begin providing superintendents with discretion to contact police in summer 2013. Superintendents will delegate their responsibility to deputy superintendents or shift supervisors as necessary to cover periods when they are absent. This change should resolve some concerns about the quality of police notification in such incidents, but the Ministry will have to monitor it carefully.
- 439** Time is of the essence in criminal investigations. Delays can result in evidence disappearing or being degraded. The Ministry will have to be vigilant to ensure that restricting police notification to superintendents does not hamper the ability of local police to carry out timely investigations of incidents that might involve excessive use of force.

- 440** As well, given that superintendents' authority will have to be delegated in some cases, the Ministry should make sure there is no potential for managers connected with an incident being assigned the task of contacting the police about it.

#### **Recommendation 40**

**The Ministry of Community Safety and Correctional Services should prohibit management staff associated with a use of force incident from notifying the police about the case.**

#### **Recommendation 41**

**The Ministry of Community Safety and Correctional Services should monitor any change to its policy relating to police notification to ensure timely notification of police relating to incidents of use of force.**

### Adjusting the Risk Management Team Focus

- 441** The Ministry's new Risk Management Team concept aims to ensure institutions conduct thorough and consistent reviews of use of force situations, and holds senior personnel accountable based on their areas of responsibility. However, our investigation revealed that further refinements are necessary to ensure timely and adequate reviews.

### *Local Investigation Backlogs*

- 442** Detection and deterrence of inmate abuse is most effective when authorities act swiftly to identify and address problematic conduct. We heard from several institutions that the new local investigation and reporting requirements have slowed down the internal review process. Members of the risk management teams are hard pressed to find time away from their other duties to review incidents diligently and prepare the new local investigations reports.
- 443** In January 2013, we learned there were about 100 cases awaiting local investigation at the Central East Correctional Centre. The Toronto Jail had some 70 cases on its wait list, and the Ottawa-Carleton Detention Centre told us it had an extensive backlog.



- 444** An inmate at the Toronto Jail complained to our Office that staff assaulted him on April 10 and 16, 2012. Five months later, there was still no investigation report on the incident. On August 20, 2012, the jail’s superintendent sent out a memorandum identifying factors delaying completion of internal investigations, including failure to review initial reports for accuracy and signoff, and missing reports. In another case we reviewed, it took the Ottawa-Carleton Detention Centre five months to complete a local investigation.
- 445** Time is the enemy in any investigation. Delays can result in physical evidence disappearing and witness memories fading. In the intervening period, misconduct and abuse can continue unchecked, and ultimately, delay may compromise the ability to substantiate and punish abuse. The volume of cases awaiting investigation at various institutions is a disturbing trend.
- 446** In his June 20, 2012 report, the Chief of Oversight and Investigations recommended that larger institutions appoint a person dedicated to managing the local investigations report process. He also recommended the Ministry establish a common electronic data collection system and install a local investigations report database in each institution, to eliminate time wasted faxing and mailing documents to regional offices and the Correctional Investigation and Security Unit. The Ministry accepted these recommendations. It committed to implementing better management of the local investigations report process and reviewing the database recommendations in spring 2013. I will monitor the Ministry’s progress in introducing these changes, but my primary concern in this area is the mounting backlog of investigations. The Ministry should actively monitor what is happening in the field and ensure that Ontario’s correctional institutions have the resources necessary to conduct timely local investigations.

#### **Recommendation 42**

**The Ministry of Community Safety and Correctional Services should regularly monitor the number of incidents of use of force that are awaiting local investigation and the length of time institutions are taking to review such cases, and ensure that correctional institutions have the necessary resources to conduct timely and thorough local investigations.**

## ***Agreeing to Disagree***

- 447** Not all members of risk management teams have the same expertise and degree of experience, and they might well have differences of opinion. However, the Ministry's local investigations policy does not deal with the issue of dissent.
- 448** We reviewed a case of use of force that occurred on January 8, 2012, at the Central East Correctional Centre where the health care assessment of the inmate's injuries did not match the involved correctional officers' descriptions of how they occurred. The institution's security manager, who was a member of the risk management team, noted that bruising on the inmate's face didn't appear to jibe with officers' accounts that the inmate banged his own head on the floor. In the local investigations report, the manager wrote:
- I have received information from the Health Care Manager and Team Lead stating that it would be next to impossible for this person or any other person to receive injuries in these places, without causing injuries to different parts of the head at the same time.
- 449** The risk management team requested additional follow-up by the security manager and asked for a report from one of the involved nurses. But the superintendent ultimately signed off on the local investigations report, deeming the force used appropriate. Our Office discussed this case with the Ministry's Use of Force Auditor, who conducted a review and identified a number of problem areas.
- 450** The Ohio Department of Rehabilitation and Correction requires that a Use of Force Committee, composed of various officials, review all incidents of use of force. Unlike in Ontario, its policy expressly provides that a member of the committee who dissents with the majority can attach his or her findings and conclusions to the committee's report. In this manner, any concerns are identified and can form the basis for further review.
- 451** The effectiveness of Ontario's Risk Management Team approach is significantly undermined if dissenting views are not formally recorded and adequately addressed. The fact that a member of the risk management team has concerns is sufficient to warrant closer scrutiny. The Ministry should ensure that any conflicting interpretations or questions raised about the facts in an incident of use of force – by health care professionals, members of the risk management team, or other relevant officials – are expressly recorded in the local investigations report. If a decision is made not to take any further action,

the other members of the team and the superintendent should be required to explain in the report why these concerns did not warrant further consideration.

### **Recommendation 43**

**The Ministry of Community Safety and Correctional Services should amend its Use of Force and related policies to require that any concerns or dissenting views about an incident of use of force that are expressed by health care staff, members of the Risk Management Team or other relevant officials are recorded in the local investigations report, and that if no further action is recommended, the Risk Management Team and superintendent explicitly record why a decision was made not to pursue these matters.**

### Use of Force Auditor

- 452** The Ministry introduced the Use of Force Auditor position in November 2011. The Auditor’s responsibilities include reviewing all incident reports in cases of use of force, conducting random reviews of documentation, photographs and video recordings, recommending and providing advice to senior management about specific incidents, improvements to policies and procedures and further investigation. The Ministry also engaged the Justice Audit Service Team from the Ministry of the Attorney General to assist in development of the audit process, and to conduct spot audits of institutions on request.
- 453** The Use of Force Auditor conducted informal reviews of three cases prior to formally assuming responsibility for audits. Between November 2011 and January 26, 2012, **43** more files were reviewed from across the province. Two were referred to the Correctional Investigation and Security Unit for investigation, and in **17** cases, institutions were directed to reopen or continue local investigations.
- 454** Some of the issues identified by the Auditor for further investigation included reports that gave conflicting – or suspiciously similar – accounts of the same incident, incomplete or missing local investigations reports, failure to report use of force depicted on video, and lack of follow-up on allegations of use of force. Other problems were identified, such as:
- Involved operational managers improperly taking part in the Risk Management Team reviewing the incident;

- Reports not meeting minimum standards, including failure to identify all participants, witnesses, injuries and treatment, details of the force used and inmate actions that necessitated force (it should be noted that many of these reports predated the Ministry’s recent training on report writing);
  - Photographs of inmate injuries failing to meet required standards, including incomplete, missing, or improperly labelled images;
  - Failure to include complete information about police contacts; and
  - In one case, unauthorized use of a “spit hood.”
- 455** The Auditor provided the relevant regional directors and superintendents with a detailed gap analysis to enable them to address issues with particular files and to improve the quality of files in future.
- 456** As of January 16, 2013, the Use of Force Auditor had also conducted **60** formal reviews and two spot audits in conjunction with the Justice Audit Service Team, which conducted another spot audit on its own. The Auditor has continued to identify areas of concern, including the poor quality of occurrence reports, failure of offender incident reports and local investigations reports to meet timelines, photographs not meeting requirements (including missing photographs and improper labelling), incomplete reports, and lack of detailed action plans or recommendations in cases where problems were flagged through local investigation.
- 457** The Auditor noted one case in April 2012 where there were photos showing correctional staff stepping on an inmate’s bare feet and the leg iron chains fastened around his ankles. These actions were not described in the institutional reports and had not been flagged by the investigating manager. Witness reports and follow-up photographs were also missing from this file.
- 458** In another review completed November 15, 2012, the Auditor observed that officers had been permitted to view video of an incident before filing their reports.
- 459** The Auditor followed up with institutions on these reviews, and the Ministry indicates there have been improvements. In an internal Ministry presentation on the use of force audit process from October 3, 2012, it was noted that, overall, completion of files in cases of use of force has improved; collection of required reports is better, police are contacted more consistently, video is increasingly included, photographs are taken more regularly, labelling of digital images has improved, and health care staff are seeing inmates in a timely fashion.

- 460** In the presentation, the Ministry also pointed to areas that still require improvement, including ensuring that offender incident reports are done on time, occurrence reports meet policy requirements, and regional offices only close files after confirming all required actions have been completed.
- 461** As well, it noted some initiatives that are not working according to plan, including:
- Local investigations report timelines are not being met;
  - There are problems with the local investigations report form;
  - The requirement for superintendents to sign off on all local investigations reports has proven difficult for those managing large institutions; and
  - The requirement for misconduct if an inmate refuses to have photos taken has caused problems in some cases.
- 462** The Ministry said these concerns are being addressed in its recent revisions to the Use of Force policy and local investigations report.
- 463** The Use of Force Auditor has the potential to be a valuable asset in helping to ensure that cases of excessive use of force or breaches of related policies do not go undetected. However, there are no criteria to assist the Auditor in choosing incidents for closer examination; cases are generally selected at random. The arbitrary nature of this selection process could reduce the ability of the Auditor to identify problem cases.
- 464** One inmate complained to our Office that staff at the Central East Correctional Centre assaulted him on January 8, 2012, fracturing his wrist and cheekbone. Our review of the case raised questions, and given the serious nature of the inmate's injuries, we suggested that the Auditor consider it further. The Auditor did so, and confirmed several problems. The occurrence reports lacked detail and did not meet minimum reporting standards. There were inconsistencies in the reports, follow-up photographs were not taken within the required time, and not all of the inmate's injuries were photographed. The regional office has since developed an action plan to ensure this institution complies in future with Ministry requirements. However, this case would likely not have received additional attention if we had not raised it with the Auditor.
- 465** The Ministry has established checks and balances to protect inmates against excessive use of force. There are now more stringent requirements for internal investigations conducted by the risk management teams and monitoring by regional officers. The Auditor is another mechanism to combat inmate abuse

and promote proper operational practices. But consideration should be given to establishing criteria to identify cases that justify more in-depth review, in addition to randomized reviews.

- 466** Any cases involving serious injury – fractures or other conditions requiring hospital treatment – should warrant closer consideration and be flagged for review by the Auditor. Similarly, the Auditor should have a means of tracking cases by institution, as well as the correctional staff involved, to identify trends. A spike in cases involving particular facilities or individuals might justify closer examination. As well, whenever exceptional force is used, employing techniques not specifically authorized through Ontario Correctional Services College training, the Auditor should review the case as an additional safeguard.

#### **Recommendation 44**

**The Ministry of Community Safety and Correctional Services should ensure criteria are developed to guide the Use of Force Auditor in selecting cases for in-depth review, including consideration of the nature of the injury, the type of physical force used, and trends involving particular institutions and staff members.**



## Conclusion

- 467** Under section 21 of the *Ombudsman Act*, I am empowered to reach certain opinions and make recommendations relating to maladministration that my investigations uncover.
- 468** In this case, it is my view that in order to reduce the risk of excessive use of force, the Ministry must focus on the malignant peer pressures that continue to influence the attitudes and actions of some correctional officers. Changing an embedded institutional culture, shifting values away from peer solidarity towards greater respect for and awareness of the needs of inmates, will be a daunting task. I am encouraged by the Ministry's recent efforts to revise and strengthen its policies, ensure more rigorous investigation of allegations of excessive use of force, and take more decisive steps to address problems with inmate abuse once it is uncovered. I am also hopeful that new recruitment efforts will yield positive results. However, it is my opinion that the Ministry's failure to act sooner and more effectively to develop and implement preventive policies, practices and strategies to insulate inmates from excessive use of force is unreasonable and wrong, in accordance with s. 21(1)(b) and (d) of the *Ombudsman Act*.
- 469** The Ministry has taken some solid initial steps in the right direction, but it will need to follow through. It has a duty to ensure the welfare of everyone in its correctional institutions, particularly those entrusted to its custody. It must take all reasonable precautions to protect inmates from abuse by those responsible for their protection. This includes ensuring vigorous action is taken to eradicate the code of silence that threatens the security of inmates and staff alike.

## Recommendations

**470** Accordingly, I am making the following recommendations under s. 21(3) of the *Ombudsman Act*.

### Code of Silence

#### Recommendation 1

**The Deputy Minister, Correctional Services, should issue a direction to all correctional staff advising that the code of silence will not be tolerated and that all those who remain silent in the face of the code or take steps to enforce it will be subject to discipline, up to and including dismissal.**

#### Recommendation 2

**The Ministry of Community Safety and Correctional Services should amend its draft Code of Conduct, Threats Against Correctional Services Staff and Other Personnel policy, and Workplace Violence Prevention Program to specifically reference the code of silence and the steps available to staff who find themselves victims of its enforcement.**

#### Recommendation 3

**The Ministry of Community Safety and Correctional Services should ensure that senior Ministry officials are apprised of all allegations of retaliation for breaching the code of silence, and that such cases are expedited and subject to thorough, expeditious and independent investigation.**

#### Recommendation 4

**The Ministry of Community Safety and Correctional Services should ensure senior Ministry officials at the corporate level have primary responsibility for assisting officers who suffer backlash for breaking the code of silence, and that they focus on removing employees who take retaliatory measures from the institutional system and actively seek suitable alternative positions for their victims when necessary.**

#### Recommendation 5

**The Ministry of Community Safety and Correctional Services should regularly provide all correctional staff with information about the action it has taken in individual cases to address the code of silence.**

### **Recommendation 6**

**The Ministry of Community Safety and Correctional Services should ensure that all new recruits receive instruction on incidents involving excessive use of force and the code of silence, including information about the disciplinary and criminal consequences of this conduct, and how to seek assistance if they are faced with code of silence pressures.**

## Use of Force Reports

### **Recommendation 7**

**The Ministry should implement a policy requiring correctional staff involved in an incident of use of force to remain segregated while preparing their occurrence reports, and to refrain from communicating, directly or indirectly, with each other in regard to the incident until such time as any internal or external investigations of the incident have been completed.**

### **Recommendation 8**

**The Ministry of Community Safety and Correctional Services should review the resources available to correctional staff and ensure that adequate technology and time is provided to allow for the thorough completion of reports relating to incidents of use of force.**

### **Recommendation 9**

**The Ministry of Community Safety and Correctional Services should amend its Report Writing policy to prohibit all correctional staff from conferring with anyone in connection with the preparation of institutional reports, except to respond to requests for clarification during internal management review or external investigation of incidents of use of force.**

### **Recommendation 10**

**The Ministry of Community Safety and Correctional Services should prohibit correctional officers from sharing with their union representatives any information, occurrence reports or other institutional reports relating to incidents of use of force, unless the reports have been submitted to and approved by management, the superintendent has approved the disclosure, and the representative has undertaken in writing not to disclose the information or reports to others.**

## Representation during Use of Force Investigations

### **Recommendation 11**

**The Ministry of Community Safety and Correctional Services should direct that no staff member involved in an incident of use of force be permitted to consult with or represent other involved staff in relation to the incident.**

### **Recommendation 12**

**The Ministry of Community Safety and Correctional Services should prohibit the practice of joint representation of correctional officers during local and external investigations of incidents of use of force.**

## Restricting Involved Officer Contact with Inmates and Health Care Staff

### **Recommendation 13**

**The Ministry of Community Safety and Correctional Services should revise its policies relating to the use of force to direct that no staff member involved in an incident of use of force should be present when inmates are photographed, questioned by managers, their statements are taken for the accident and injury form, or when they are being assessed by health care personnel.**

### **Recommendation 14**

**The Ministry of Community Safety and Correctional Services should ensure that correctional officers involved in incidents of use of force are not present when health care staff fill out accident and injury reports, and that such officers do not have access to such reports once health care staff have added their observations.**

## Photo and Video Records

### **Recommendation 15**

**The Ministry of Community Safety and Correctional Services should ensure that all correctional institutions have the required digital imaging equipment necessary to take accurate and clear images of inmate injuries, and that they train relevant**

staff in its proper use as well as the requirements of the Digital Images of Inmate Injuries policy.

#### **Recommendation 16**

**The Ministry of Community Safety and Correctional Services should require that images of inmate injuries should be taken prior to any areas of injury being cleansed, as well as after, to ensure accurate images.**

#### **Recommendation 17**

**The Ministry of Community Safety and Correctional Services should require that images of inmate clothing and areas of the institution that are damaged or soiled as a result of an incident of use of force are taken and maintained with the file.**

#### **Recommendation 18**

**The Ministry of Community Safety and Correctional Services should amend its Digital Images of Inmate Injuries policy to expressly prohibit correctional staff involved in an incident of use of force from taking digital images of the involved inmate's injuries, or being present when photographs are taken.**

#### **Recommendation 19**

**The Ministry of Community Safety and Correctional Services should reinforce the requirement for photographing staff injuries, and require that images of staff injuries be kept with the related use of force file.**

#### **Recommendation 20**

**The Ministry of Community Safety and Correctional Services should continue to enhance closed-circuit television capacity in correctional facilities as a priority, and ensure such systems:**

- **Are placed to allow maximum observation of inmate and correctional staff interactions;**
- **Allow for clear and accurate recording; and**
- **Are compatible with equipment used in regional offices and the Correctional Investigation and Security Unit.**

#### **Recommendation 21**

**The Ministry of Community Safety and Correctional Services should develop a policy requiring that all correctional facilities retain copies of videos from security monitoring for a consistent and reasonable period of time.**

#### **Recommendation 22**

**The Ministry of Community Safety and Correctional Services should install video cameras in vehicles used for inmate transportation.**

#### **Recommendation 23**

**The Ministry of Community Safety and Correctional Services should implement a policy requiring hand held video and audio recording equipment be used during all use of force incidents.**

#### **Recommendation 24**

**The Ministry of Community Safety and Correctional Services should conduct periodic audits of the closed-circuit television systems in its correctional institutions to ensure they are functioning properly, clearly recording events, appropriately positioned and compatible with equipment used by the Ministry when reviewing and investigating cases of use of force.**

#### **Recommendation 25**

**The Ministry of Community Safety and Correctional Services should amend its Report Writing policy and other policies relating to use of force to ensure that correctional staff involved in an incident of use of force are prohibited from viewing related video images, and access to security videos is restricted to those directly involved in investigating the incident.**

#### **Staff Training**

#### **Recommendation 26**

**The Ministry of Community Safety and Correctional Services should ensure that periodic training on diffusion of hostility is provided to all correctional staff, including management personnel.**



### **Recommendation 27**

**The Ministry of Community Safety and Correctional Services should, as a priority, ensure that instruction on dealing with inmates with mental health and special needs challenges is provided during recruit training and as part of ongoing training for all correctional staff who are responsible for dealing directly with inmates.**

### **Recommendation 28**

**The Ministry of Community Safety and Correctional Services should ensure that correctional staff are regularly trained in authorized defensive tactics, and take steps to create permanent field training positions.**

### **Recommendation 29**

**The Ministry of Community Safety and Correctional Services should establish a system for monitoring the quality and consistency of instruction in defensive tactics delivered to correctional staff by volunteer instructors.**

### **Recommendation 30**

**The Ministry of Community Safety and Correctional Services should survey correctional staff to determine the physical restraint and control techniques actually being used in its institutions in order to focus its training efforts on problem areas**

### **Recommendation 31**

**The Ministry of Community Safety and Correctional Services should issue a list of standard authorized defensive techniques taught at the Ontario Correctional Services College, as well as prohibited control measures.**

### **Recommendation 32**

**The Ministry of Community Safety and Correctional Services should amend its Use of Force and related policies to expressly direct that use of physical techniques to control inmates that are not specifically approved is restricted to exceptional cases, where they are justified in the circumstances.**

### **Recommendation 33**

**The Ministry of Community Safety and Correctional Services should amend its Report Writing policy to require that any use of physical techniques to control inmates that are not listed as authorized must be expressly identified and the reason for their application fully explained in related institutional reports.**

### **Recommendation 34**

**The Ministry of Community Safety and Correctional Services should ensure that all operational managers, and senior managers within its institutions receive regular training in defensive tactics.**

### **Recommendation 35**

**The Ministry of Community Safety and Correctional Services should ensure that only correctional staff trained, and properly certified, accompany inmates into the community and use oleoresin capsicum spray and batons, and that institutions are provided with a updated list confirming which staff hold current certification in their use.**

### **Recommendation 36**

**The Ministry of Community Safety and Correctional Services should ensure that inspectors responsible for investigating allegations of excessive use of force receive defensive tactics and other training relevant to the use of force in a correctional context.**

### **Recommendation 37**

**The Ministry of Community Safety and Correctional Services should take additional steps to ensure that correctional staff are familiar with all policies and procedures relating to the use of force, including conducting additional training, and requiring that all staff acknowledge that they have read them.**

### ***Notification relating to criminal charges***

### **Recommendation 38**

**The Ministry of Community Safety and Correctional Services should immediately clarify the process around the “notification of right to pursue/decline laying of**

criminal charges” form, and ensure that correctional staff involved in using force on an inmate are not responsible for communicating with the inmate about the option of bringing criminal charges.

### *Contacting the Police*

#### **Recommendation 39**

**The Ministry of Community Safety and Correctional Services should amend its Use of Force and related policies to clarify which situations warrant contacting the police and provide guidance on the details that should be communicated.**

#### **Recommendation 40**

**The Ministry of Community Safety and Correctional Services should prohibit management staff associated with a use of force incident from notifying the police about the case.**

#### **Recommendation 41**

**The Ministry of Community Safety and Correctional Services should monitor any change to its policy relating to police notification to ensure timely notification of police relating to incidents of use of force.**

### *Local Investigation Delays*

#### **Recommendation 42**

**The Ministry of Community Safety and Correctional Services should regularly monitor the number of incidents of use of force that are awaiting local investigation and the length of time institutions are taking to review such cases, and ensure that correctional institutions have the necessary resources to conduct timely and thorough local investigations.**

## ***Follow up on Risk Management Team Concerns***

### **Recommendation 43**

**The Ministry of Community Safety and Correctional Services should amend its Use of Force and related policies to require that any concerns or dissenting views about an incident of use of force that are expressed by health care staff, members of the Risk Management Team or other relevant officials are recorded in the local investigations report, and that if no further action is recommended, the Risk Management Team and superintendent explicitly record why a decision was made not to pursue these matters.**

## Use of Force Auditor

### **Recommendation 44**

**The Ministry of Community Safety and Correctional Services should ensure criteria are developed to guide the Use of Force Auditor in selecting cases for in-depth review, including consideration of the nature of the injury, the type of physical force used, and trends involving particular institutions and staff members.**

## Follow-Up

### **Recommendation 45**

**The Ministry of Community Safety and Correctional Services should report back to my Office in six months' time on the progress in implementing my recommendations and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**

## Response

**471** The Ministry of Community Safety and Correctional Services was provided with an opportunity to make representations concerning my preliminary findings, conclusion and recommendations. On May 22, 2013, the Deputy Minister of Correctional Services responded, indicating what steps the Ministry would be undertaking to implement my recommendations.

**472** The Deputy Minister observed:

Excessive use of force will not be tolerated in our correctional institutions, and the investigation of all use of force incidents must withstand the strictest scrutiny. As you noted in your draft report, the Ministry has taken some solid initial steps to strengthen the system and help prevent excessive use of force incidents from happening in the future. [...]

Still, more work needs to be done. The majority of corrections staff conduct themselves responsibly and carry out their duties professionally. At the same time, it is clear that we must do more to crack the “code of silence” that hampers investigations and intimidates inmates and staff members who come forward. [...]

Your report will serve as an excellent road map to build on the measures the Ministry has already taken to strengthen compliance, accountability and oversight in our institutions.

**473** He noted the Ministry is committed to ensuring the safety and security of its facilities, staff and those in its custody, and undertook to provide status reports to my Office every six months.

**474** The Deputy Minister’s full response is attached at Appendix A of this report.

**475** I am satisfied with the Ministry’s response to my report and will continue to monitor its progress in implementing my recommendations.



André Marin  
Ombudsman of Ontario





## **Appendix A: Response from the Ministry of Community Safety and Correctional Services**



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and Correctional Services

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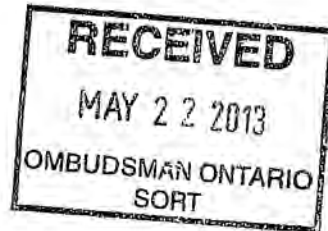
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Office of the Ombudsman Of Ontario  
10<sup>th</sup> Floor, South Tower  
483 Bay Street  
Toronto ON M5G 2C9



May 22, 2013

Dear Mr. Marin,

Thank you for the opportunity to review a draft of your report on excessive use of force in Ontario's correctional institutions. I am pleased to attach a detailed initial response to your recommendations.

Excessive use of force will not be tolerated in our correctional institutions, and the investigation of all use of force incidents must withstand the strictest scrutiny. As you noted in your draft report, the ministry has taken some solid initial steps to strengthen the system and help prevent excessive use of force incidents from happening in the future.

The ministry has:

- Restructured its investigations and oversight model to ensure greater transparency, accountability and robust oversight in the investigation of use of force incidents, based on the recommendations of seconded Ontario Provincial Police Commander Stephen Rooke. The new investigations and oversight model is being led by Commander Rooke, and will continue to report directly to me.
- Updated its use of force investigation policies and oversight to clarify expectations and ensure accountability. The use of force policy package is quite thorough and addresses a number of the recommendations in your report.
- Implemented Local Risk Management Teams in all institutions to conduct investigation reviews, and a Use of Force Auditor has been appointed to randomly review use of force reports for policy compliance and management of an incident.
- Provided additional training to ensure all of our institutional staff and managers clearly understand our expectations with respect to use of force.

Still, more work needs to be done. The majority of corrections staff conduct themselves responsibly and carry out their duties professionally. At the same time, it is clear that we must do more to crack the 'code of silence' that hampers investigations and intimidates inmates and staff members who come forward.

The ministry has introduced a number of key initiatives to deliver cultural change within Correctional Services, including:

- Partnering with the Ontario Human Rights Commission and the Ministry of Government Services on a Human Rights Project Charter to support ongoing efforts to identify and eliminate discrimination within Correctional Services.
- Modernizing the recruitment process to attract highly skilled candidates that better reflect the diversity of the population we serve.
- Adopting a zero tolerance policy for any behaviour which threatens the safety of inmates and staff, and interferes with our investigations.

Your report will serve as an excellent road map to build on the measures the ministry has already taken to strengthen compliance, accountability and oversight in our institutions. More than 50 per cent of your recommendations will be addressed in a package of policies that will be implemented in summer 2013. We will work with our bargaining agents on the effective implementation of policy changes. Several of your recommendations are outside the ministries' sole authority and will require Correctional Services to work with other organizations such as partner ministries and bargaining agents to review implications and develop an effective and appropriate response.

The ministry is committed to ensuring the safety and security of our facilities, staff and those in our custody. We will continue to work to improve the delivery of correctional services and will provide a report-back in six month intervals detailing our progress in addressing your recommendations.

Thank you again for the opportunity to respond to your report.

Sincerely,

A handwritten signature in black ink that reads "Stephen Rhodes". The signature is written in a cursive, flowing style.

Stephen Rhodes  
Deputy Minister of Correctional Services  
Ministry of Community Safety and Correctional Services

MSCS Response to the Ombudsman Draft Report

**RECEIVED**  
MAY 22 2013  
OMBUDSMAN OFFICE  
OTTAWA

**CODE OF SILENCE**

**Recommendation**

**Response**

1. The Deputy Minister of Correctional Services should issue a direction to all correctional staff advising that the code of silence will not be tolerated and that all those who remain silent in the face of the code or take steps to enforce it will be subject to discipline, up to and including dismissal.
2. Amend the draft Code of Conduct, Threats Against Correctional Services Staff and Other Personnel Policy, and Workplace Violence Prevention Program to specifically reference the code of silence and the steps available to staff who find themselves victims of its enforcement.
3. Ensure that senior ministry officials are apprised of all allegations of retaliation for breaching the code of silence, and that such cases are expedited and subject to thorough, expeditious and independent investigation.

The Deputy Minister will issue a communiqué in Summer 2013.

The Code of Conduct and Professionalism and, the Threats Against Correctional Services Staff and Other Personnel Policy is being revised to reference the "code of silence", and outline management and employee responsibilities, including that staff who violate the policies are subject to discipline, up to and including dismissal. The revised policies will be issued in Summer 2013. The ministry will also be initiating discussions with the Ministry of Government Services, which has responsibility for the OPS-wide Workplace Violence and Prevention Policy.

The ministry's three assistant deputy ministers of Correctional Services will issue a joint communiqué to all correctional services staff in Summer 2013 advising of the notification process for allegations of retaliatory conduct, and emphasizing that such cases will be subject to thorough and expeditious investigations. Investigations undertaken in these cases will be conducted by an external body (i.e. not the workplace of an impacted employee), such as CISU or the Ministry of Government Services.

## MCSCS Response to the Ombudsman Draft Report

<b>CODE OF SILENCE</b>	
Recommendation	Response
<p>4. Ensure senior ministry officials at the corporate level have primary responsibility for assisting officers who suffer backlash for breaking the code of silence, and that they focus on removing employees who take retaliatory measures from the institutional system and actively seek suitable alternative positions for their victims when necessary.</p>	<p>The ministry has worked with staff who have been victimized for breaking the "code of silence" to provide the necessary supports, including work reassignment where necessary, and will take disciplinary action against any staff found engaging in retaliatory conduct or other actions which violate the Ministry's Code of Conduct and Professionalism.</p> <p>We are currently conducting a review to ensure that all cases have been identified, and that all victims are receiving meaningful assistance and supports. When appropriate, we will seek alternative workplaces for impacted staff. Senior ministry officials at the corporate level now have primary oversight for cases involving "code of silence" and for assisting victims. All cases are required to be brought to the attention of the three assistant deputy ministers of Correctional Services for review and action.</p>
<p>5. Regularly provide all correctional staff with information about the action it has taken in individual cases to address the code of silence.</p>	<p>The Ministry of Community Safety and Correctional Services does not have unilateral control with respect to the actions that are permitted to be taken as part of the disciplinary process. There are OPS-wide policies and procedures, as well as collective agreements in place governing the actions and steps that can be taken when employees are the subject of allegations, investigations and discipline.</p> <p>The ministry is reviewing this recommendation and its legal and labour relations implications, and will enter into discussions with the Ministry of Government Services and other parties as required to develop an effective and appropriate response.</p>



MCSCS Response to the Ombudsman Draft Report

CODE OF SILENCE	
Recommendation	Response
<p>6. Ensure that all new recruits receive instruction on incidents involving excessive use of force and the code of silence, including information about the disciplinary and criminal consequences of this conduct, and how to seek assistance if they are faced with code of silence pressures.</p>	<p>Further to the work the ministry undertook to enhance and modernize its recruitment and selection system, a revised training program and curriculum for new recruits is also under development. While use of force policies and the Statement of Ethical Principles has always been an integral part of the ministry's training program for new correctional officer recruits, enhanced training in these vital areas, including the introduction of the Code of Conduct is being developed to reflect the ministry's revised and strengthened policies and procedures being issued this Summer. The new curriculum will include training on appropriate use of force, as well as clear instruction on what constitutes – and what the legal consequences are for – excessive use of force. All new recruits will also receive training on the ministry's zero-tolerance policy with respect to "code of silence", and the procedures to follow if ever they find themselves faced with it. The new curriculum will be in place for the next recruit training session, which is scheduled to begin in Fall 2013.</p>

MCSCS Response to the Ombudsman Draft Report

USE OF FORCE REPORTS	
Recommendation	Response
<p>7. Implement a policy requiring correctional staff involved in an incident of use of force to remain segregated while preparing their occurrence reports, and to refrain from communicating, directly or indirectly, with each other in regard to the incident until such time as any internal or external investigations of the incident have been completed.</p>	<p>A revised policy will be issued in Summer 2013 directing that use of force occurrence reports must be completed independently. Staff members will be prohibited from discussing or communicating the contents of their reports while investigations are ongoing, and any collusion in the preparation of reports will be subject to disciplinary action. Both the Correctional Investigation and Security Unit and the Use of Force Auditor will actively look for signs of collusion in reports.                      The policy also directs that, if possible*, staff should remain physically separated until their reports are completed.                      *There are times that it is not possible to both physically separate staff and ensure that reports are written as soon as possible following an incident. Smaller institutions in particular would be challenged, given that they have limited space. The ministry's new policy places emphasis on ensuring that staff members are not communicating regarding the contents of their reports, either while the reports are being written or while investigations are ongoing.</p>
<p>8. Review the resources available to correctional staff and ensure that adequate technology and time is provided to allow for the thorough completion of reports relating to incidents of use of force.</p>	<p>By the end of the end of the 2013/14 fiscal year, the ministry will complete a review of the current resources available at all institutions and develop an implementation plan for any facilities identified as not having adequate resources/technology.                      The revised policies being issued in Summer 2013 will provide for a greater window to complete reports, and establish clear timelines for management review.</p>

MCSOS Response to the Ombudsman Draft Report

USE OF FORCE REPORTS	
Recommendation	Response
<p>9. Amend Report Writing Policy to prohibit all correctional staff from conferring with anyone in connection with the preparation of institutional reports, except to respond to requests for clarification during internal management review or external investigation of incidents of use of force.</p>	<p>The revised Report Writing policy released on October 23, 2012, directs that information in an occurrence report must be based on the individual employee's observation.</p>
<p>10. Prohibit correctional officers from sharing with their union representatives any information, occurrence reports, or other institutional reports relating to incidents of use of force, unless the reports have been submitted to and approved by management, the superintendent has approved the disclosure, and the representative has undertaken in writing not to disclose the information or reports to others.</p>	<p>By Fall 2013, the ministry will initiate discussions with the Ministry of Government Services and the bargaining unit that represents correctional staff to determine how best to address this recommendation.</p>

MCSGS Response to the Ombudsman Draft Report

<b>REPRESENTATION DURING USE OF FORCE INVESTIGATIONS</b>	
<b>Recommendation</b>	<b>Response</b>
<p>11. Direct that no staff member involved in an incident of use of force be permitted to consult with or represent other involved staff in relation to the incident.</p> <p>12. Prohibit the practice of joint representation of correctional officers during local and external investigations of incidents of use of force.</p>	<p>By Fall 2013, the ministry will initiate discussions with the Ministry of Government Services and the bargaining unit that represents correctional staff to determine how best to address these recommendations.</p>

MCSOS Response to the Ombudsman Draft Report

RESTRICTING INVOLVED OFFICER CONTACT WITH INMATES AND HEALTH CARE STAFF	
Recommendation	Response
<p>13. Revise policies relating to the use of force to direct that no staff member involved in an incident of use of force should be present when inmates are photographed, questioned by managers, their statements are taken for the accident and injury form, or when they are being assessed by health care personnel.</p>	<p>A revised policy will be released in Summer 2013 stating that no staff member involved in a use of force incident can be present when inmates are photographed, questioned, giving statements or being assessed by health care staff.</p>
<p>14. Ensure that correctional officers involved in incidents of use of force are not present when health care staff fill out accident and injury reports, and that such officers do not have access to such reports once health care staff have added their observations.</p>	<p>The revised Report Writing policy, released on October 23, 2012, specifies who is required to complete each section of the Accident and Injury Report. A review has been initiated to determine how best to address the recommendation regarding access to the reports.</p>

MCSCS Response to the Ombudsman Draft Report

<b>PHOTO AND VIDEO RECORDS</b>	
Recommendation	Response
<p>15. Ensure that all correctional institutions have the required digital imaging equipment necessary to take accurate and clear images of inmate injuries, and that they train relevant staff in its proper use as well as the requirements of the Digital Images of Inmate Injuries policy.</p>	<p>In November 2011, the ministry established a standard for the number and type of cameras for all institutions. A follow up survey will be completed by Summer 2013 to ensure compliance with this standard. The ministry will also ensure that all institutions have instruction for staff on the proper use of the technology.</p>
<p>16. Require that images of inmate injuries should be taken prior to any areas of injury being cleansed, as well as after, to ensure accurate images.</p>	<p>Current policies require that digital images of injuries are to be taken as soon as possible. When an inmate or staff member is injured, immediate medical treatment is the priority. The ministry is reviewing this recommendation and will develop a policy stating that photos should be taken of injuries prior to cleansing/treatment with the approval of the responding health care officials.</p>
<p>17. Require that images of inmate clothing and areas of the institution that are damaged or soiled as a result of an incident of use of force are taken and maintained with the file.</p>	<p>A revised policy will be issued in Summer 2013 that includes the requirement to take images of relevant areas within an institution, when applicable. With respect to the recommendation regarding images of inmate clothing, there may be times that this is not operationally possible, such as in cases where inmates are taken to the hospital. The ministry has initiated a review of that portion of the recommendation to determine how best to address it.</p>



MCSCS Response to the Ombudsman Draft Report

PHOTO AND VIDEO RECORDS	
Recommendation	Response
<p>18. Amend Digital Images of Inmate Injuries policy to expressly prohibit correctional staff involved in an incident of use of force from taking digital images of the involved inmate's injuries, or being present when the photographs are taken.</p>	<p>A revised policy will be issued in Summer 2013 specifying that staff involved in use of force incidents are not to be present when images are taken.</p>

MCSRS Response to the Ombudsman Draft Report

PHOTO AND VIDEO RECORDS	
Recommendation	Response
<p>19. Reinforce the requirement for photographing staff injuries, and require that images of staff injuries be kept with the related use of force file.</p>	<p>A revised policy has been drafted stating that images of injuries to a staff member should also be taken. The ministry will review the revised policy to determine if further changes are required to address how and where photos are stored and retained, while ensuring the protection of personal health information.</p>
<p>20. Continue to enhance closed-circuit television capacity in correctional facilities as a priority, and ensure such systems:</p> <ul style="list-style-type: none"> <li>▪ Are placed to allow maximum observation of inmate and correctional staff interactions;</li> <li>▪ Allow for clear and accurate recording; and</li> <li>▪ Are compatible with equipment used in regional offices and CISU.</li> </ul>	<p>The modernization of correctional services is a top priority. A multi-year plan has been developed to retrofit all correctional facilities with upgraded CCTV systems designed to provide maximum observation and allow for quality and robust recording using software platforms that are fully compatible with the systems used in our regional offices and by CISU. The initial phase is targeting larger facilities, and over \$10M has been invested over the past two years. Projects are underway and expected to be complete by Summer 2013 at Elgin Middlesex Detention Centre, Hamilton Wentworth Detention Centre and Central East Correctional Centre. Projects will soon be underway at Ottawa Carleton Detention Centre and Maplehurst Correctional Centre, and are expected to be completed by Spring 2014. Both of the new facilities – the Toronto South Detention Centre and the South West Detention Centre, in Windsor – will also be equipped with CCTV systems that meet our new standards. All remaining facilities are scheduled to be refreshed as part of the ministry's CCTV five-year refresh plan, initiated in 2011.</p>
<p>21. Develop a policy requiring that all correctional facilities retain copies of videos from security monitoring for a consistent and reasonable period of time.</p>	<p>As of September 2011, the ministry has prescribed a <i>minimum</i> 30-day retention period for all new installations of video surveillance systems. This is consistent with other similar jurisdictions. As we install new systems as part of our correctional services modernization initiatives, extended retention will be available based on defined incidents or site specific requirements.</p>

MSCS Response to the Ombudsman Draft Report

PHOTO AND VIDEO RECORDS	
Recommendation	Response
<p>22. Install video cameras in vehicles used for inmate transportation.</p>	<p>The ministry is responsible for transporting inmates being transferred between correctional institutions, and for escorting inmates into the community as needed. The most common reason for a community escort is an inmate who needs to attend a hospital.</p> <p>All ministry vehicles used for the transfer of inmates between correctional institutions are equipped with recording camera systems. Vehicles used for community escorts are equipped with non-recording audio/visual equipment that allows escorting staff to view the inmate compartment of the vehicle.</p> <p>The ministry has initiated a review of the feasibility of equipping its community escort vehicles with the same technology utilized in the vehicles used for inmate transfers. Our review should be completed by Fall/Winter 2013.</p>
<p>23. Implement a policy requiring hand held video and audio recording equipment to be used during all use of force incidents.</p>	<p>The ministry is conducting extensive research, including reviewing the best practices of other jurisdictions, and surveying our correctional counterparts across the country regarding their policies and procedures in this area.</p> <p>A pilot project is under development for the recording of all incidents where Institutional Crisis Intervention Teams and/or Cell Extraction Teams are deployed.</p>
<p>24. Conduct periodic audits of the closed-circuit television systems in correctional institutions to ensure they are functioning properly, clearly recording events, appropriately positioned and compatible with equipment used by the ministry when reviewing and investigating cases of use of force.</p>	<p>The ministry has provided staff resources to ensure oversight of our CCTV and security systems, and full audits were completed from June to September 2011. Upon retrofit activities, audit reports are updated to reflect any changes in technology.</p> <p>Preventative maintenance contracts are in place for a large number of sites and vendors have been identified to provide emergency repairs to ensure full operation of systems where contracts are not in place. At each site, there is a policy requirement that the administration verify system recording on a regular basis.</p> <p>The ministry is exploring further options for a provincial plan to ensure all sites have preventative maintenance coverage and a compliance process in place.</p>

MCSCS Response to the Ombudsman Draft Report

PHOTO AND VIDEO RECORDS	
Recommendation	Response
<p>25. Amend report writing and other policies relating to use of force to ensure that correctional staff involved in an incident of use of force are prohibited from viewing related video images, and access to security videos is restricted to those directly involved in investigating the incident.</p>	<p>Video recordings are kept in secure locations, and are not accessible to staff without the approval of management. A revised policy will be issued in Summer 2013 prohibiting staff involved in a use of force incident from viewing any of the digital video images associated with the incident prior to the completion and submission of their reports.</p>

MCSCS Response to the Ombudsman Draft Report

STAFF TRAINING	
Recommendation	Response
<p>26. Ensure that periodic training on diffusion of hostility is provided to all correctional staff, including management personnel.</p>	<p>Training in diffusion of hostility is provided as part of basic recruit training, as well as part of the training for community escorts. It will also be part of the direct supervision training the ministry will be providing in Fall 2013 for staff who will be working at the new Toronto South Detention Centre, and later for staff who will be working at the new South West Detention Centre in Windsor. The training will also be incorporated into refresher training that is provided to all staff.</p>
<p>27. As a priority, ensure that instruction on dealing with inmates with mental health and special needs challenges is provided during recruit training and as part of ongoing training for all correctional staff who are responsible for dealing with inmates directly.</p>	<p>The Ontario Correctional Services College's training program for new recruits has been updated to include instruction on working with inmates with mental health or other special needs. This training will also be part of the training program the ministry is providing in Fall 2013 for staff who will be working at the new Toronto South Detention Centre, and later for staff who will be working at the new South West Detention Centre in Windsor. It will also be incorporated into refresher training that is provided to all staff on a regular basis. The ministry and the bargaining unit that represents correctional officers have also established a joint sub-committee to discuss this important issue and explore ways to deliver effective training to correctional officers. Additionally, the ministry is participating in the Mental Health Strategy for Corrections in Canada, a Federal-Provincial-Territorial partnership that intends to increase information and resources for correctional staff.</p>
<p>28. Ensure that correctional staff are regularly trained in authorized defensive tactics, and take steps to create permanent field training positions.</p>	<p>The ministry has established a Defensive Tactics program to provide regular training to all staff in the field. Currently, there are approximately 125 trainers across the province that provide refresher training to staff, onsite at our institutions. The recommendation to create permanent field training positions is under review.</p>



MCSGS Response to the Ombudsman Draft Report

STAFF TRAINING	
Recommendation	Response
<p>29. Establish a system for monitoring the quality and consistency of instruction in defensive tactics delivered to correctional staff by volunteer instructors.</p>	<p>The Ontario Correctional Services College currently monitors the quality of training delivered by Associate Instructors, who are themselves subject to a rigorous training program. The ministry will explore options to expand oversight.</p>
<p>30. Survey correctional staff to determine the physical restraint and control techniques actually being used in its institutions in order to focus its training efforts on problem areas.</p>	<p>Revised policies will be issued in Summer 2013 reinforcing the requirement to provide accurate and precise descriptions in reports. A revised Use of Force Occurrence Report and Use of Force Local Investigation Report will also be issued at the same time, and will include the requirement that staff outline the specific use of force techniques used in an incident, and the reasons for employing them.</p>
<p>31. Issue a list of standard authorized defensive techniques taught at the Ontario Correctional Services College, as well as prohibited control measures.</p>	<p>The Ontario Correctional Services College will post materials identifying standard and authorized defensive techniques on its training intranet, which is accessible to all correctional staff. A communiqué will be issued to all staff advising them when the information is available and where it can be accessed. It is expected that the materials will be available by Summer 2013.</p>
<p>32. Amend its Use of Force and related policies to expressly direct that use of physical techniques to control inmates that are not specifically approved is restricted to exceptional cases, where they are justified in the circumstances.</p>	<p>Training in use of force and defensive tactics are provided to all new recruits, and during refresher training provided to all staff on a regular basis. Training includes guidance and instruction on approved techniques, with an emphasis that the type and amount of force used in an incident is based on the specific threat posed and circumstances of that incident. Students are taught that any force used must be reasonable and necessary under the circumstances. The updated use of force policies being issued this Summer will further clarify and strengthen expectations and accountability in this area.</p>



MCSCS Response to the Ombudsman Draft Report

STAFF TRAINING	
Recommendation	Response
<p>33. Amend Report Writing policy to require that any use of physical techniques to control inmates that are not listed as authorized must be expressly identified and the reason for their application fully explained in related institutional reports.</p>	<p>Revised policies will be issued in Summer 2013 reinforcing the requirement to provide accurate and precise descriptions in reports. A revised Use of Force Occurrence Report and associated templates will also be issued at the same time, and will include the requirement that staff outline the specific use of force techniques used in an incident, and the reasons for employing them.</p>
<p>34. Ensure that all operational managers, and senior managers within Institutions receive regular training in defensive tactics.</p>	<p>Training in this area is mandatory for all managers. The Ministry will review expanding opportunities for defense tactics refresher training for managers.</p>
<p>35. Ensure that only correctional staff trained, and properly certified, accompany inmates into the community and use oleoresin capsicum spray and batons, and that institutions are provided with an updated list confirming which staff hold current certification in their use.</p>	<p>The ministry will be issuing a communiqué in Summer 2013 to all correctional staff reinforcing that only correctional staff trained and properly certified will be able to carry approved community escort/defensive tactics equipment. All institutions will be provided with an updated list confirming which staff members hold current certification for the use of this equipment.</p>
<p>36. Ensure that inspectors responsible for investigating allegations of excessive use of force receive defensive tactics and other training relevant to the use of force in a correctional context.</p>	<p>The Ontario Correctional Services College will complete this training by Fall 2013.</p>

MSCS Response to the Ombudsman Draft Report

STAFF TRAINING	
Recommendation	Response
<p>37. Take additional steps to ensure that correctional staff are familiar with all policies and procedures relating to use of force, including conducting additional training, and requiring that all staff acknowledge that they have read them.</p>	<p>Upon issuing the revised Use of Force and associated policies, staff will be required to sign an acknowledgement that they have received copies of the policies and are aware that they are required to read them. New recruits will also receive copies and be required to sign the acknowledgement prior to graduation. The Use of Force policy revisions will also be incorporated in all applicable training.</p>

MCSCS Response to the Ombudsman Draft Report

NOTIFICATION RELATING TO CRIMINAL CHARGES	
Recommendation	Response
<p>38. Immediately clarify the process around the "notification of right to pursue/decline laying of criminal charges" form, and ensure that correctional staff involved in using force on an inmate are not responsible for communicating with the inmate about the option of bringing criminal charges.</p>	<p>Revised use of force policies will be issued in Summer 2013 directing that the investigating manager, who by definition would not be involved in an incident he/she is investigating, is responsible for ensuring that inmates are notified of their rights to pursue or decline the laying of criminal charges.</p>

MSCS Response to the Ombudsman Draft Report

<b>CONTACTING THE POLICE</b>	
Recommendation	Response
<p>39. Amend Use for Force and related policies to clarify which situations warrant contacting the police and provide guidance on the details that should be communicated.</p>	<p>The ministry and the Ontario Association of Chiefs of Police have established a working group to discuss mutual issues and improve communication between correctional facilities and local police services. The working group is currently drafting a protocol for the reporting of use of force incidents to police, which will expressly indicate which situations warrant police notification.</p>
<p>40. Prohibit management staff associated with a use of force of incident from notifying the police about the case.</p>	<p>The current Use of Force policy, implemented in November 2011, emphasizes the need to notify police as soon as possible of incidents requiring police investigation, and directs that either the initial incident manager or the relieving manager is responsible for making the contact. Revised use of force policies will be issued in Summer 2013 stating that staff involved in a use of force incident are not permitted to notify the police about the incident.</p>
<p>41. Monitor any change to policy relating to police notification to ensure timely notification of any police relating to incidents of use of force.</p>	<p>The current Use of Force policy, implemented in November 2011, places significant emphasis on oversight and accountability: Following a use of force event, timely reporting to the police is currently directed to be completed by the incident manager or relieving manager. Oversight of the reporting is completed first by the investigating manager and then through the chain of command up to the Regional Director. The revised use of force policies being issued in Summer 2013 continue to place emphasis on timely reporting of use of force incidents to the police.</p>

MCSCS Response to the Ombudsman Draft Report

<b>LOCAL INVESTIGATION DELAYS</b>	
Recommendation	Response
<p>42. Regularly monitor the number of incidents of use of force that are awaiting local investigation and length of time institutions are taking to review such cases, and ensure that correctional institutions have the necessary resources to conduct timely and thorough local investigations.</p>	<p>The ministry will implement a process to collect and regularly monitor the number of use of force incidents that are awaiting investigation, and the length of time institutions are taking to review cases. We will also ensure that all institutions have the necessary resources to conduct thorough and timely investigations. The information gathered will be provided to the ministry's Use of Force Auditor for review and follow-up, and the auditor will provide periodic updates and highlight any contentious issues to the Assistant Deputy Minister of Institutional Services.</p>

MCSCS Response to the Ombudsman Draft Report

FOLLOW-UP ON RISK MANAGEMENT TEAM CONCERNS	
Recommendation	Response
<p>43. Amend Use of Force and related policies to require that any concerns or dissenting views about an incident of use of force that are expressed by health care staff, members of the Risk Management Team or other relevant officials are recorded in the local investigations report, and that if no further action is recommended, the Risk Management Team and superintendent explicitly record why a decision was made not to pursue these matters.</p>	<p>The ministry will review this recommendation and address it as part of the revised use of force policies being issued in Summer 2013.</p>



MCSGS Response to the Ombudsman Draft Report

USE OF FORCE AUDITOR	
Recommendation	Response
<p>44. Ensure criteria are developed to guide Use of Force Auditor in selecting cases for in-depth review, including consideration of the nature of the injury, the type of physical force used, and trends involving particular institution and staff members.</p>	<p>The Use of Force Auditor is a newly created position, responsible for conducting audits of use of force incidents to determine compliance with all ministry policies. Currently cases are selected at random, ensuring review of cases from all institutions. The ministry has implemented a new incident reporting process, standardizing what is required for use of force incident reports, which should assist the Use of Force Auditor in selecting cases for review. The ministry is reviewing this recommendation to determine if any further changes are required and should be completed by Fall/Winter 2013.</p>

MCSCS Response to the Ombudsman Draft Report

REPORT BACK	
Recommendation	Response
45. Report back to my office in six months' time on the progress in implementing my recommendations and at six month intervals until such time as I am satisfied that adequate steps have been taken to address them.	The ministry will report back to the ombudsman within six months and at six month intervals thereafter.

## **Appendix B: Correctional Institution Counts and Capacities, as of April 8, 2013**

(Provided by the Ministry of Community Safety and Correctional Services)



**Institutional Counts and Capacities**  
**(April 8, 2013)**

INSTITUTION	COUNT	CAPACITY
ALGOMA TREATMENT & REMAND CENTRE 800 Great Northern Road Sault Ste. Marie, ON P6A 5K7	122	145
BRANTFORD JAIL 105 Market Street Brantford, ON N3T 6A9	86	83
BROCKVILLE JAIL 10 Wall Street Brockville, ON. K6V 4R9	47	48
CENTRAL EAST CORRECTIONAL CENTRE 541 Hwy. 36 Box 4500 Lindsay, ON K9V 4S6	874	961
CENTRAL NORTH CC 1501 Fuller Ave. Penetanguishene, ON L9M 2H4	1,062	1,118
CHATHAM JAIL 17 Seventh Street Chatham, ON N7M 4J9	53	62
ELGIN-MIDDLESEX DETENTION CENTRE 711 Exeter Road London, ON N6E 1L3	447	382
FORT FRANCES JAIL 310 Nelson Street Fort Frances, ON. P9A 1B1	16	22
HAMILTON-WENTWORTH DETENTION CENTRE 165 Barton Street East Hamilton, ON L8L 2W6	501	556
KENORA JAIL 1430 River Drive Kenora, ON. P9N 1K5	150	159
MAPLEHURST CORRECTIONAL COMPLEX Box 10, 661 Martin Street Milton, ON L9T 2Y3	1,106	1,144
MONTEITH CORRECTIONAL COMPLEX 3052 Rese Road, P.O. Box 90 Monteith, ON POK 1PO	201	230
NIAGARA DETENTION CENTRE 1355 Uppers Lane, Box 1050 Thorold, ON L2V 4A6	281	250
NORTH BAY JAIL 2550 Trout Lake Road North Bay, ON P1B 7S7	106	110
ONTARIO CORRECTIONAL INSTITUTE Box 1888, 109 McLaughlin Road South Brampton, ON L6Y 2C8	170	186

<b>INSTITUTION</b>	<b>COUNT</b>	<b>CAPACITY</b>
OTTAWA-CARLETON DETENTION CENTRE 2244 Innes Road Ottawa, ON K1B 4C4	598	585
QUINTE DETENTION CENTRE 89 Richmond Blvd. Napanee, ON K7R 3S1	241	228
SARNIA JAIL 700 North Christina Street Sarnia, ON N7V 3C2	104	92
ST. LAWRENCE VALLEY C&TC P.O. Box 8000 1804 Highway #2 East Brockville, ON K6V 7N2	101	100
STRATFORD JAIL 30 St. Andrew Street Stratford, ON N5A 1A3	49	50
SUDBURY JAIL 181 Elm Street West Sudbury, ON P3C 1T8	181	179
THUNDER BAY CORRECTIONAL CENTRE P.O. Box 1900, Hwy. 61 South Thunder Bay, ON P7C 4Y4	95	156
THUNDER BAY JAIL 285 McDougall Street Thunder Bay, ON P7A 2K6	112	130
TORONTO INTERMITTENT CENTRE 160 Horner Avenue Toronto, ON M8Z 0C2	158	290
TORONTO JAIL 550 Gerrard Street East Toronto, ON M4M 1X6	586	504
TORONTO EAST DETENTION CENTRE 55 Civic Road Scarborough, ON M1L 2K9	361	408
TORONTO WEST DETENTION CENTRE 111 Disco Road, Box 4950 Rexdale, ON M9W 5L6	614	599
VANIER CENTRE FOR WOMEN 655 Martin Street, PO Box 1040 Milton, ON L9T 5E6	288	316
WINDSOR JAIL Box 7038, 378 Brock Street Windsor, ON N9C 3Y6	136	133





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