



**“Ensuring Truly Independent Segregation Reviews”**

**Submission in response to  
the Ministry of the Solicitor General’s consultation  
on proposed changes to Regulation 778,  
regarding segregation reviews**

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## Introduction

- 1 My team and I appreciate the opportunity to comment on the Ministry of the Solicitor General's three proposed changes to *O. Regulation 778*:
  - Independent reviews of segregation placements at least once every five days; and a report to the Minister, with reasons, for anyone placed in segregation for 15 continuous days;
  - A 15-day cap on disciplinary segregation (misconduct) placements – already in place in practice, pursuant to the Minister's October 2016 directives; and
  - Allowing an inmate the option of waiving her/his right to a parole hearing, and then permitting the Ontario Parole Board to not hold a parole hearing for that inmate.
- 2 This submission responds to the first of the three proposed changes.
- 3 The Ministry has summarized this proposed change as follows:

Remove the current requirement for the Superintendent to conduct a review of the segregation placement once in every five-day period and replace it with an independent review process.

The Assistant Deputy Minister of Institutional Services or their designate will review the circumstances of each inmate placed in segregation conditions for non-disciplinary reasons at least once every 5 days. To ensure an independent review process, the designate will be not a superintendent or anyone who reports directly or indirectly to a superintendent.

Require a report be sent to the Minister or delegate outlining the reasons for the continued segregation conditions of any inmates who are in segregation conditions for a period of fifteen continuous days.<sup>1</sup>

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<sup>1</sup> <<https://www.ontariocanada.com/registry/showAttachment.do?postingId=30187&attachmentId=41376>>.

## Background

- 4 The Office of the Ombudsman of Ontario is uniquely positioned to be able to share informative observations gleaned from our oversight of more than 1,000 public sector bodies, including the Ministry of the Solicitor General and the adult correctional facilities it oversees.
- 5 In the 2018-2019 fiscal year, my Office received **5,711** complaints about adult correctional facilities, including **266** complaints about segregation placements.<sup>2</sup> In addition to receiving and resolving thousands of complaints, my staff and I make regular visits to correctional facilities to observe first hand the challenging realities for inmates and frontline Ministry employees.

## Truly independent reviews for segregation

- 6 I welcome and support the proposal to require independent reviews for administrative segregation placements at least every five days. This proposal corresponds with my view that the things that can cause the greatest harm require rigorous procedural protections. Segregation is known to cause extremely serious deleterious effects on inmates, making strong, independent reviews of segregation placements a necessity.
- 7 Unfortunately, the government's proposal, as currently drafted, indicates that these reviews will be conducted by the Assistant Deputy Minister or her/his designate. **These will not be independent reviews, since an official of the Ministry is not independent of the Ministry.**
- 8 I commented on the importance of using external decision-makers to review Segregation placements in my Office's May 2016 submission to the Ministry, entitled *Segregation: Not an Isolated Problem*:

One option to ensure that inmates are being treated in accordance with the Ministry's regulation and policy, as well as procedural fairness, is to provide for independent and impartial review of all segregation placements. In addition to ensuring that the reviews occur as scheduled, external observers, removed from correctional culture, would be able to apply the segregation criteria in the regulation objectively. They could ensure that segregation is truly being used only as a last resort. This

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<sup>2</sup> <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/annual-reports/2018-2019-annual-report#Trends%20in%20cases%20%E2%80%93%20correctional%20services>>.

independent oversight panel should be appointed by the Minister and tasked with reviewing all segregation placements.<sup>3</sup>

- 9 I am again calling on the Ministry to implement this recommendation, to create a truly independent oversight panel for segregation, with members appointed by the Minister.
- 10 My Office’s investigation of segregation in Ontario, which resulted in our 2017 report, *Out of Oversight, Out of Mind*, found that the Ministry had often failed to provide meaningful oversight of inmates in segregation, and that in some cases the reviews conducted by Ministry staff simply rubber-stamped inadequate reporting by facilities. This is why oversight by a truly independent review panel is necessary. As I stated in that 2017 report:

External observers, removed from correctional culture, would be able to apply the segregation criteria objectively and ensure that segregation is truly being used as a last resort.<sup>4</sup>

### **Recommendation 1**

**The Ministry should create a truly independent oversight panel for segregation, with members appointed by the Minister.**

- 11 The Ministry’s proposal also indicates that the independent reviews will be limited to administrative segregation placements, even though the harmful effects of segregation can apply equally to disciplinary segregation.
- 12 As indicated in our 2016 submission, the independent panel should review all segregation placements – whether administrative or disciplinary.<sup>5</sup>

### **Recommendation 2**

**The independent oversight panel should review all segregation placements – administrative and disciplinary – at least every five days.**

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<sup>3</sup> <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2016/segregation-not-an-isolated-problem>>, Paragraph 80.

<sup>4</sup> <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2017/out-of-oversight,-out-of-mind>>, Paragraph 174.

<sup>5</sup> <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2016/segregation-not-an-isolated-problem>>, Recommendation 11.

## How segregation hearings should work

- 13 The government's proposed changes to Regulation 778 provide few details on how the independent review process would function.
- 14 My 2016 submission set out a vision, based on best practices, for how an independent hearing process should work, based on our extensive experience and research. Ombudsman staff review hundreds of individual complaints each year about segregation, and have also examined academic research and best practices around the world.<sup>6</sup> My recommendations for an independent review process were as follows (Recommendations 12 through 19 in our previous submission):
- The independent panel appointed by the Minister should hold administrative hearings within the first five days of each segregation placement. The inmate should be allowed to attend in person or through video conferencing with a representative of his or her choosing. The inmate should be given the opportunity to prepare and to know the case that he or she will have to meet. The Ministry should provide inmates with access to duty counsel. The hearing should be held in as neutral a venue as possible, and never in an inmate's cell or on a living unit.
  - Before the review hearing, a segregated inmate should be required to meet with a rights advisor who can inform the inmate of his or her rights, including the right to obtain legal representation.
  - At the segregation review hearings, the burden of proof must be on the facility and the Ministry to show that the inmate's temporary placement in segregation is justified.
  - At the segregation review hearings, the independent panel should evaluate the mental and physical well-being of each inmate, and the panel's decision should take these factors into account.
  - The independent panel should issue a decision within one day. Written reasons will be issued if any of the parties request them within 30 days of the hearing.
  - The independent panel should be empowered to remove inmates from segregation immediately, as well as grant a broad range of other remedies.

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<sup>6</sup> <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2016/segregation-not-an-isolated-problem>>.

- The independent panel should be empowered to recommend that Superintendents initiate investigations and discipline proceedings, as appropriate, for correctional staff found to have violated the segregation regulation and policy.
- The independent panel appointed by the Minister should be subject to the Ombudsman's jurisdiction.<sup>7</sup>

15 I urge the Ministry to review and carefully consider these 2016 recommendations, and incorporate them into its independent hearing process.<sup>8</sup>

16 To ensure the independent review process is strong and effective, I recommend that details of the hearing process as outlined above be enshrined in the amended Regulation.

### **Recommendation 3**

**The Ministry should review and carefully consider my Office's 2016 recommendations that set out how an independent hearing process for segregation in Ontario should work.**

### **Recommendation 4**

**The Ministry should include full details of the independent hearing process in the amended Regulation.**

## **Review by the Minister**

17 I welcome the proposal to require that the Minister or designate receive a report, with reasons, for any segregation placement lasting 15 continuous days.

18 To ensure that senior officials of the Ministry are aware of the circumstances of those segregation placements, the Ministry should clarify in the Regulation the senior officials to whom the Minister can delegate the authority to receive those reports. Under no circumstances should the authority be delegated to anyone at a correctional facility.

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<sup>7</sup> <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2016/segregation-not-an-isolated-problem>>, Recommendations 12 – 19.

<sup>8</sup> These 2016 recommendations around the independent hearing process were also restated in my Office's April 2017 report *Out of Oversight, Out of Mind* – see recommendation 31 <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2017/out-of-oversight,-out-of-mind>>.

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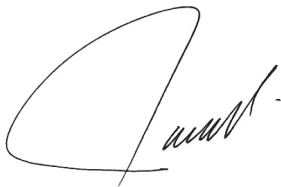
- 19 In addition, I encourage the Ministry to eliminate the need to report to the Minister on these long segregation placements by implementing my 2016 recommendation that it limit all segregation placements – administrative and disciplinary – to a maximum of 15 days.<sup>9</sup>

**Recommendation 5**

**The Ministry should prescribe in the Regulation the senior officials to whom the Minister can delegate the authority to receive the reports for segregation placements lasting 15 continuous days.**

**Recommendation 6**

**The Ministry should, in the longer-term, aim to limit all segregation placements (administrative and disciplinary) to a maximum of 15 days.**



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<sup>9</sup> <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2016/segregation-not-an-isolated-problem>>, Recommendation 3.