SCHEDULE "A"

INTRODUCTION

1. Four years ago, the Government of Ontario made a legally binding commitment to a vulnerable group of people – prisoners with mental health disabilities. Ontario explicitly recognized that segregation was harmful for this group and agreed, as part of a binding settlement agreement, to prohibit segregation for individuals with mental illness unless it would cause undue hardship. Four years later, two independent reviews have revealed that Ontario has not lived up to that commitment.

2. The Ontario Human Rights Commission (OHRC) brings this application under s. 45.9(3) of the *Human Rights Code*[1] to remedy that failure. The OHRC seeks to ensure that Ontario is compelled to meet its legal obligations, and to keep its promise to people with mental health disabilities.

3. Segregation, also known as solitary confinement, refers to the physical and social isolation of a prisoner, with high surveillance and minimal stimulation, for up to 23 hours per day. It has been described as the "most austere and depriving form of incarceration" legally administered in Canada.[2] The United Nations Special Rapporteur on Torture has determined that segregation "of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment".[3]

4. On October 10, 2012 Christina Jahn filed an application with the Human Rights Tribunal of Ontario alleging that she had been held in segregation for over 200 days because of her mental health disabilities, and that women in Ontario's correctional facilities could not access the same level of mental health services as men. Because Ms. Jahn's circumstances reflected systemic discrimination issues in Ontario's correctional system, the OHRC intervened in the proceeding to seek public interest remedies aimed at protecting the *Code* rights of all individuals with mental health disabilities.

5. On September 24, 2013, the Government of Ontario (hereinafter "Ontario", the "Ministry of Community Safety and Correctional Services", or "MCSCS") agreed to settle the litigation. Ms. Jahn and the OHRC agreed to resolve the application on the basis of a series of legally binding commitments made by Ontario regarding the use of segregation and treatment of people with mental health disabilities in Ontario's correctional system.

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[1] RSO 1990, c H 19.

[2] Office of the Correctional Investigator, News Release, "Office of the Correctional Investigator Releases Administrative Segregation in Federal Corrections: 10 Year Trends - Federal Corrections Overuses Segregation to Manage Inmates" (28 May 2015), online: <http://www.oci-bec.gc.ca/cnt/comm/press/press20150528-eng.aspx>.

[3] Juan E Méndez, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment* , UN GAOR, 66th Sess, UN Doc A/66/268 (2011) at para 78, online: <https://ccrjustice.org/sites/default/files/assets/UN-Special-Rapporteur-Report-on-Solitary.pdf>.

6. In the agreement (the "*Jahn* settlement"), Ontario recognized "that segregation can have an adverse impact on inmates with mental illness" and committed to prohibiting the use of segregation for any individual with mental illness barring undue hardship. The government also agreed to a number of other binding public interest remedies, including providing mental health screening for all individuals upon admission, access to mental health services, and a series of internal accountability mechanisms to track and monitor its segregation use.

7. However, in April and May 2017, respectively, both the Ombudsman of Ontario[4] and Ontario's Independent Advisor on Corrections Reform, Howard Sapers,[5] released reports on segregation showing that Ontario has not been complying with the *Jahn* public interest terms. Ontario has accepted the Independent Advisor's findings.[6]

8. Specifically, and as set out in more detail below, Ontario has not complied with the *Jahn* public interest remedies requiring it to:

   - Prohibit the use of segregation for people with mental illness barring undue hardship;

   - Provide mental health screening upon admission and related health assessments and services on a continuing basis;

   - Accurately document, review and report on the use of segregation in Ontario's correctional facilities.

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[4] Ombudsman of Ontario, *Out of Oversight: Out of Mind: Investigation into how the Ministry of Community Safety and Correctional Services tracks the admission and placement of segregation inmates, and the adequacy and effectiveness of the review process for such placements* (Toronto: Office of the Ombudsman of Ontario, 2017) online: < https://www.ombudsman.on.ca/Resources/Reports/Out-of-Oversight,-Out-of-Mind.aspx> [Ombudsman Report]. The Ombudsman of Ontario launched this investigation in light of serious issues raised in an increasing number of complaints related to segregation.

[5] Independent Advisor on Corrections, *Segregation in Ontario: Independent Review of Ontario Corrections* (Toronto: Queen's Printer for Ontario, 2017) online: <https://www.mcscs.jus.gov.on.ca/english/Corrections/IndependentReviewOntarioCorrections/IndependentReviewOntarioCorrectionsSegregationOntario.html> [Independent Advisor's Interim Report]. On November 8, 2016, Ontario announced that it had appointed Howard Sapers as an Independent Advisor on Corrections Reform to review its use of segregation. His terms of reference requires that he provide an interim report regarding segregation, including consideration of the *Jahn* remedies, and a final report to inform Ontario's approach to long-term correctional reform (Ministry of Community Safety and Correctional Services, News Release, "Ontario Appoints Independent Advisor on Corrections" (8 November 2016) online: <https://news.ontario.ca/mcscs/en/2016/11/ontario-appoints-independent-advisor-on-corrections.html>. His interim report was released to the public on May 4, 2017 (Ministry of Community Safety and Correctional Services, News Release, "Ontario Taking Action to Reform Correctional System" (4 May 2017) online: <https://news.ontario.ca/mcscs/en/2017/05/ontario-taking-action-to-reform-correctional-system.html>.

[6] Ontario Taking Action to Reform Correctional System, *ibid.*

9. It has now been four years since Ontario signed the *Jahn* settlement and made these legally binding commitments. Since then, segregation for people with mental illness should have significantly decreased. Instead, the Independent Advisor found that "between October 2015 and December 2016, the percentage of segregated individuals with suicide risk and mental health alerts increased. Most institutions are still regularly segregating individuals with mental illness for weeks or months at a time."[7]

10. Given the evidence of extensive, ongoing segregation for people with mental health disabilities – and the severe consequences of the practice for this population – the government must be ordered to comply with its *Jahn* settlement obligations on strict timelines.

11. Ontario has also failed to ensure that it has the information necessary to implement its *Jahn* settlement obligations. Ontario has failed to effectively define what constitutes segregation, identify those in its care with mental health disabilities, and track its segregation use – all of which are necessary to comply with the *Jahn* settlement. The government must be ordered to take steps to ensure it has this information so that it is able to comply with its *Jahn* settlement obligations.

12. Ontario's ongoing failure to comply with the *Jahn* settlement also demonstrates that further oversight of the government's conduct is now required. The OHRC seeks orders for additional measures to ensure meaningful, ongoing compliance and accountability. These include specific mental health screening and segregation reporting directives, an external human rights expert's involvement with implementation, and appointing an Independent Reviewer to monitor and report on Ontario's compliance with the *Jahn* settlement and any related orders.

I) ONTARIO HAS CONTRAVENED THE TERMS OF THE *JAHN* SETTLEMENT

13. Ontario has contravened its *Jahn* settlement commitments in the following manner:

    1) Ontario has failed to prohibit the use of segregation for people with mental illness barring undue hardship (Public Interest Remedies #5 and #6);

    2) Ontario has failed to provide mental health screening on admission and related health assessments and services on a continuing basis (Public Interest Remedies #2, #4 and #7);

    3) Ontario has failed to accurately document, review and report on the use of segregation in its correctional facilities (Public Interest Remedies #5 and #6).

[7] Independent Advisor's Interim Report, *supra* note 5 at 67.

1) Ontario has failed to prohibit the use of segregation for people with mental illness barring undue hardship (Public Interest Remedies #5 & #6).

14. As part of the *Jahn* settlement, Ontario explicitly acknowledged the adverse impact of segregation for people with mental illness, and agreed not to use segregation for any individual with mental illness unless it could demonstrate that alternatives to segregation were considered and rejected because they would cause undue hardship.

15. These commitments are set out in the text of the *Jahn* settlement's Public Interest Remedies #5 and #6:

> Public Interest Remedy #5
>
> The Ministry will promptly amend the Inmate Management Policy on Discipline and Misconduct to require staff to:
>
> […]
>
> (c) not use segregation to discipline inmates with mental illness, unless the Ministry can demonstrate that alternatives to segregation have been considered and rejected because they would cause an undue hardship (including for reasons related to security and/or health and safety concerns)
>
> […]
>
> Public Interest Remedy #6
>
> The Ministry will amend its segregation policies to state that segregation for inmates with mental illness shall not be used unless the Ministry can demonstrate alternatives to segregation have been considered and rejected because they would cause an undue hardship (including for reasons related to security and/or health and safety concerns). The Ministry recognizes that segregation can have an adverse impact on inmates with mental illness. […]

16. Ontario has failed to comply with these obligations under the agreement. The information reported by the Independent Advisor and Ombudsman shows that Ontario is not considering alternatives to the point of undue hardship before placing individuals with mental illness in segregation. This was a key aspect of the *Jahn* settlement, and the breach of these terms by Ontario has a significant daily effect on the rights and lives of individuals with mental health disabilities in Ontario's correctional facilities.

a) Alternatives to segregation are frequently not being considered at all.

17. In a significant number of segregation cases involving individuals with mental illness, alternatives to segregation are being considered at all. The Independent Advisor found that rather than being used as a last resort, segregation is actually the default approach for

those with mental health needs, stating that "[m]any of the men and women in segregation today simply should not be there. Segregation is frequently used as the default tool to manage individuals with mental health needs, those at risk of self-harm or suicide…"[8] In an examination of regional reports on individuals segregated for 30 continuous days or longer, the Independent Advisor found that even where it was clearly indicated that individuals had mental health needs, in many cases there was no exploration of alternatives to segregation:

> A review of the regional reports on inmates that have been segregated for 30 or more days reinforces concerns regarding the operationalization of the duty to accommodate. Policy requires Regional Directors to provide details about whether an inmate has a mental illness, what alternatives have been considered and rejected, and whether a Treatment Plan is in place on the 30-day segregation reports. The Review Team examined the regional reports from August 2016 in detail, and they showed almost no exploration of alternate placement options (see Table 4). Of the inmates where regional offices clearly indicated that there were possible or existing mental health concerns, only 73% included any comment regarding alternatives that had been considered. Eastern Region had by far the most comprehensive 30-day report; without their report, only 35% of segregated inmates with noted mental health concerns had any comments regarding alternative housing.[9]

b) Meaningful analysis as to whether alternatives amount to undue hardship is not occurring.

18. Even in situations where alternatives to segregation are being considered for individuals with mental illness, meaningful analysis as to whether they would amount to undue hardship is not occurring.

19. For example, with respect to Ontario's regional reports on individuals in segregation for 30 or more days, the Independent Advisor found that even in limited cases where alternatives to segregation were considered, in most cases the ultimate result did not meet Ontario's human rights obligations:

> Of those that did explore alternatives to segregation, most were inadequate to comply with the Ministry's human rights obligations. Some only said that there was no option. Of those comments that did provide details, the only alternatives considered were protective custody or a special needs unit – even when the relevant institution did not have a special needs unit.[10]

[8] *Ibid* at 65.
[9] *Ibid* at 72.
[10] *Ibid.*

20. The Independent Advisor also found that, although institutions are directed to contact regional offices regarding accommodations that may amount to undue hardship, as of January 2017 there had been no such notifications.[11] The Independent Advisor commented that, "[g]iven that lack of resources, space, staff and programs are frequently cited as barriers to appropriate accommodation, it is concerning that regional-level discussions regarding what would constitute undue hardship are not occurring."[12]

c) Ontario has not taken sufficient steps to support or develop alternatives to segregation.

21. Considering alternatives to the point of undue hardship also requires Ontario to develop and implement suitable alternative placements. It is not sufficient for Ontario to assert undue hardship while maintaining a *status quo* that fails to support any alternatives beyond segregation. MCSCS' own policies acknowledge that undue hardship is a high threshold and that "accommodations should almost never be denied because of cost."[13]

22. Both the Independent Advisor and the Ombudsman's findings show that Ontario's policy-level changes requiring that alternatives to segregation be considered to the point of undue hardship for individuals with mental illness were not accompanied by steps to support alternatives at the operational level. The Independent Advisor found that Ontario changed its policies to prohibit segregation for individuals with mental illness barring undue hardship without taking steps to provide implementation supports, or additional resources or spaces:

> …in September 2015 the Ministry overhauled its segregation policies to bring them into compliance with human rights standards and introduced a prohibition, to the point of undue hardship, on placing inmates with mental illness in segregation. Ideally, these changes should have resulted in a significant decrease in the use of segregation, and in particular served to divert a large number of individuals with mental health needs into more appropriate care placements. At the time the policies were updated, however, no training, implementation supports or additional resources or space were offered to institutional managers or frontline staff.[14]

23. The Ombudsman reported that, while Ontario had begun to create alternatives and add additional resources in some facilities, in most cases segregation remains the only available option other than general population for individuals with mental illness:

> Nearly every person our Office spoke with said there are often only two placement options for inmates: general population or segregation. For inmates with mental illness or other *Code*-related needs, general population is often unsuitable, but the only other available choice is segregation. The

[11] *Ibid* at 75.
[12] *Ibid.*
[13] Ministry of Community Safety and Correctional Services, *Undue Hardship: Providing Accommodation Short of Undue Hardship* (2015), cited in Independent Advisor's Interim Report, *supra* note 5 at 182.
[14] Independent Advisor's Interim Report, *supra* note 5 at 5.

> Ministry has begun creating "step-down" units in some facilities and announced the hiring of 239 segregation-related staff to provide segregated inmates more professional support (e.g. mental health nurses) and access to programming. But segregation continues to be the only resort, not the last, for many inmates. When meaningful alternatives to segregation do not exist, there is a limit to what segregation reviews can accomplish.[15]

2) Ontario has failed to provide mental health screening on admission and related health assessments and services on a continuing basis (Public Interest Remedies #2, #4 and #7).

24. As set out in more detail below, Ontario committed under the *Jahn* settlement to address the needs of individuals with mental health disabilities by: a) ensuring that all people are screened for mental health issues on admission (Public Interest Remedy #2); b) providing physician or psychiatrist-developed treatment plans for individuals with mental health disabilities (Public Interest Remedy #4); and c) ensuring that individuals with mental health disabilities placed in segregation are offered baseline and ongoing health assessments and care by a physician or psychiatrist (Public Interest Remedy #7).

25. Ontario has failed to provide mental health screening, services and ongoing assessments in accordance with the *Jahn* settlement terms. These healthcare processes and protections are a means of addressing the *Code*-related needs of individuals with mental health disabilities in Ontario's correctional facilities. Ontario's ongoing failure to comply with these obligations has a daily impact on the lives and rights of such individuals.

a) Ontario has failed to provide mental health screening on admission in accordance with Public Interest Remedy #2.

26. Public Interest Remedy #2 requires Ontario to ensure that all individuals go through mental health screening upon admission to a correctional facility, and be continually reassessed using the screening tool. All those who screen positive for mental health issues are to be assessed by a physician as soon as possible, and mental health professionals are to follow up with inmates with mental health care needs.

27. The text of Public Interest Remedy #2 is as follows:

> Public Interest Remedy #2
>
> The Ministry will ensure that all inmates are screened for mental health issues on admission to a correctional facility.
>
> The Ministry commits to establishing mental health screening, using an evidence based, gender-responsive screening tool approved by a correctional psychiatrist, of all inmates upon admission to ail provincial

[15] Ombudsman Report, *supra* note 4 at para 169.

> correctional facilities within 18 months. A copy of the mental health screening tool will be provided to the Commission.
>
> The Ministry will provide training on the mental health screening tool to all corrections staff who will be using the tool and will implement the use of the tool at all provincial correctional facilities within 24 months.
>
> The Ministry has advised that it is currently piloting mental health screening using a gender-responsive, evidence-based screening tool in several selected facilities. The Ministry will commit to continuing to use this form of mental health screening until it establishes and implements mental health screening, using an evidence based, gender-responsive screening tool approved by a correctional psychiatrist, for all inmates upon admission to all provincial correctional facilities, as required above. Information gathered during this pilot will inform the implementation of the screening tool that is ultimately established.
>
> The Ministry will ensure that a physician conducts an assessment of all inmates who screen positive for mental health issues as soon as possible upon admission to all corrections facilities, and determines whether a further referral to a psychiatrist is necessary.
>
> The Ministry will continuously reassess inmates using the mental health screening tool, and will commit to mental health professionals following up with inmates who have a mental health care need.

28. Four years later, the mental health screening required under the *Jahn* settlement for all individuals upon admission is frequently delayed and not occurring in a timely manner.

29. MCSCS' *Institutional Services Policy and Procedures Manual* directs that all inmates must receive mental health screening upon admission.[16] This screening process consists of two stages, the BJMHS and JSAT:

> In 2015 the Ministry rolled out a two-stage mental health screening process. Upon admission, an initial health assessment screen (the Brief Jail Mental Health Screener or BJMHS) is completed by an admitting nurse. If the inmate screens positive for potential mental health concerns, they are referred to clinical staff – mental health nurses, social workers or psychologists – for the completion of a more in-depth mental health assessment using the Jail Screening Assessment Tool (JSAT). From there, an inmate can be referred to a variety of mental health clinicians or other professional staff as necessary.[17]

[16] Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Placement of Special Management Inmates* (6 December, 2016), cited in Independent Advisor's Interim Report, *supra* note 5 at 101.
[17] Independent Advisor's Interim Report, *supra* note 5 at 68.

30. MCSCS has determined that the BJMHS is supposed to be administered at admission or within 48 hours, where possible, and that the JSAT assessment, if necessary, should then take place within 72 hours (3 days) of the initial screening.[18]

31. In his interim report, the Independent Advisor highlighted the timeliness of the mental health screening process as one of five key areas where operational realities are not in aligned with MCSCS policy, finding that "[t]his screening is not taking place in a timely manner across the system."[19] Early results of an evaluation of the mental health screening reviewed by the Independent Advisor show that while the majority of institutions are completing the BJMHS within the two-day timeline, there is significant delay in completing the JSAT assessment. The Independent Advisor reported that the second stage of the mental health screening was not being completed until, on average, 11 days after the first step, and that at some institutions this was as much as 38 days later:

> There was considerably more delay administering the JSAT: for those admitted in June 2016 and identified as requiring a JSAT through the completion of the BJMHS, an average of 11 days passed between the two assessment stages. Provincial averages ranged from 3 to 38 days across institutions. According to Ministry policy, referrals to psychiatrists or other mental health professionals are to take place after the JSAT screening, meaning that some individuals with significant mental health needs may have waited over a month to receive appropriate medical attention.[20]

32. The extent of the delay in administering the mental health screening and providing referrals to physicians for appropriate medical attention do not align with the *Jahn* settlement requirement that Ontario ensure that all inmates are screened for mental health issues on admission, and that a physician conduct an assessment for all those who screen positive "as soon as possible upon admission".

b) Ontario has failed to provide access to mental health services in accordance with Public Interest Remedy #4.

33. Public Interest Remedy #4 requires physicians or psychiatrists to develop treatment plans for inmates who screen positive for mental health issues through the mental health screening tool. The treatment plans identify issues and goals, outline interventions, identify who is responsible for treatment and interventions, and set out how they will be implemented.

[18] *Ibid.*
[19] *Ibid* at 101.
[20] *Ibid* at 68.

34. The text of Public Interest Remedy #4 is as follows:

> Public Interest Remedy #4
>
> For those inmates who screen positive for mental health issues through the aforementioned gender-responsive, evidence-based, mental health screening tool, a physician will develop an appropriate treatment plan. This treatment plan may be developed in consultation with mental health professionals. The treatment plan will be: accessible to all inter-professional team members involved in the case; identify the issues and goals, including addressing behavioural issues, illness, etc.; outline interventions; identify who is responsible for treatment and interventions; and set out how the treatment plan will be implemented. The Ministry agrees that amendments to or variance from the treatment plan can only be made in consultation with a primary care physician or a psychiatrist, as appropriate.
>
> Those inmates with a major mental illness will be referred as soon as possible to a psychiatrist, who will develop an appropriate treatment plan. The treatment plan will: be accessible to all inter-professional team members involved in the case; identify the issues and goals, including addressing behavioural issues, illness, etc.; outline interventions; identify who is responsible for treatment and interventions; and set out how the treatment plan will be implemented. The Ministry agrees that amendments to or variance from the treatment plan for inmates with a major mental illness can only be made by a psychiatrist. Inmates with a major mental illness will also be assessed on an ongoing basis, as medically required in order to meet the requisite standard of care, by a psychiatrist.
>
> In addition to psychiatrists, inmates will also be referred to other mental health resources as required to support the inmate where appropriate. The program personnel engaged in discharge planning will also be advised at the earliest opportunity to begin planning for the inmate's return to the community.

35. Treatment plans are not being established in accordance with Public Interest Remedy #4, even in situations where individuals have confirmed mental health issues and have been in long-term continuous segregation.

36. The Independent Advisor's review of MCSCS regional reports on individuals who have been in segregation for 30 or more days showed that there are individuals with confirmed mental health issues without treatment plans.

37. MCSCS requires Regional Directors to prepare reports on individuals who have been held in segregation for 30 or more days (30-day segregation reports). These reports are to include details about whether an individual has a mental illness, what alternatives to segregation have been considered and rejected, and whether a Treatment Plan is in place

for the individual. The Independent Advisor's Review Team examined the 30-day segregation reports for August 2016. In total, according to the regional reports, there were 64 individuals with documented mental health concerns who had been in segregation for 30 days or longer. Of those individuals, only 15 had treatment plans. An excerpt of the information provided in the Independent Advisor's Report is set out below:

Excerpt from Independent Advisor's Interim Report, Table 4 - Breakdown of August 2016 regional reports on inmates in segregation for 30 or more days.

	Inmates in segregation 30+ days	**Segregated inmates with documented mental health concerns***	**Inmates with mental health issues that have treatment plans in place**
Northern region	11	2	0
Central region	52	14	None documented
Eastern region	103	38	15
Western region	39	10	0

*Note that the official ministry summary of this information shows a considerably higher proportion of inmates in segregation with mental health concerns (47% with mental health alerts, 51.4% with substance abuse alerts and 44.1% with suicide alerts). Here we have only included inmates where the regional office itself clearly documented possible or confirmed mental health issues in their self-reporting.

c) Ontario has failed to ensure that individuals with mental health disabilities placed in segregation are offered baseline and ongoing health assessments and care in accordance with Public Interest Remedy #7.

38. Public Interest Remedy #7 requires that individuals with mental health issues or mental illness placed in segregation be offered baseline health assessments by physicians or psychiatrists, who will determine whether changes should be made to the individual's treatment plan. In addition, physicians or psychiatrists will conduct health assessments prior to every five-day segregation decision/review.

39. The text of the *Jahn* settlement's Public Interest Remedy #7 is as follows:

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

> Ministry will provide or offer to provide a baseline assessment by a psychiatrist, who will determine what, if any, changes are required to the inmate's treatment plan.
>
> The Ministry agrees that a physician will, subject to the inmate's consent, conduct an assessment of an inmate prior to each 5-day segregation decision/review. For inmates with a major mental illness, the Ministry agrees that a psychiatrist will, subject to the inmate's consent, conduct an assessment of an inmate prior to each 5-day segregation decision/review.
>
> The Ministry will ensure that all inmates in segregation are offered individualized mental health services as appropriate on an ongoing basis.

40. Ontario has failed to comply with the requirements to provide baseline and ongoing health assessment for individuals in segregation.

41. The Independent Advisor made a number of findings that demonstrate Ontario's failure to comply with these aspects of the *Jahn* settlement. First, the Independent Advisor found that MCSCS policies regarding these requirements were unclear, and at times contradictory. While MCSCS made policy updates to its *Institutional Services Policy and Procedures Manual* requiring baseline and ongoing health assessments for segregated individuals, these requirements were not incorporated into its *Health Care Services Policy and Procedures Manual*.[21] Instead, the *Health Care Services Policy and Procedural and Manual,* which the Independent Advisor identified as the current policy directly governing health services for segregated inmates, dates back to 1999 and only requires that a doctor visit "when necessary".[22]

42. Second, the Independent Advisor found that, in some institutions, partly due to the policy discrepancies described above, neither the required baseline nor five-day healthcare assessments were occurring.[23] Although a 2015 MCSCS compliance audit found that 87% of inmates were medically examined upon admission to segregation, based on interviews with healthcare professionals from different institutions, the Independent Advisor stated that "this assessment is not being administered by doctors; in general, primary care physicians and psychiatrists will not visit individuals in segregation unless a specific medical issue arises. Several clinical professionals raised the possibility that no baseline segregation medical assessments were happening at all."[24]

43. The Independent Advisor also found that, at most institutions, the five-day healthcare assessments by doctors for segregated individuals were not occurring:

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[21] Ministry of Community Safety and Correctional Services, *Health Care Services Policy and Procedures Manual: Health Care Examination of Segregated Inmates* (October 1999), cited in Independent Advisor's Interim Report, *supra* note 5 at 179.
[22] Independent Advisor's Interim Report, *supra* note 5 at 36.
[23] *Ibid* at 69–70.
[24] *Ibid* at 69.

> Similarly, at most institutions five-day assessments by doctors for segregated inmates with mental illness are not taking place. As described by one health care manager, there was "no way" this standard could be implemented based on current resources. To get a more comprehensive picture of medical visits in segregation we analyzed one region's August 2016 report on inmates who had been detained in segregation for 30 or more days. Of the 38 inmates who were identified as having "possible mental health issues" or "mental health issues," only 14 (37%) had been seen by a medical professional (primary care physician, psychiatrist or mental health nurse) in the month of August. [25]

3) Ontario has failed to accurately document, review and report on the use of segregation in its correctional facilities (Public Interest Remedies #5 and #6).

44. As part of the *Jahn* settlement Ontario agreed to a series of accountability mechanisms relating to its segregation use, including documenting alternatives considered, and reporting to the Minister and Assistant Deputy Minister, Institutional Services, on the circumstances of individuals in longer-term continuous or aggregate segregation. These mechanisms are meant to safeguard against individuals with mental illness being placed or remaining in segregation in the absence of undue hardship.

45. Regulation 778 under the *Ministry of Correctional Services Act*[26] sets out review and reporting requirements for Ontario's segregation use. A superintendent must review administrative segregation placement decisions at least once every five days,[27] and for any individual in segregation for 30 continuous days report to the Minister on the reasons for continued segregation.[28]

46. Public Interest Remedies #5 and #6 impose additional documentation, review, and reporting obligations. They require that:

- The five-day and 30-day segregation reviews for individuals with mental illness document what alternatives to segregation were considered and rejected, including any treatment plans in place that may assist the individual in leaving segregation;
- Reports to the Minister about individuals who have been in segregation for 30 continuous days indicate whether the individual has a mental illness, and what alternatives to segregation were considered and rejected, including any treatment plans in place that may assist the individual in leaving segregation; and
- The Assistant Deputy Minister, Institutional Services, be notified when any individual has been in segregation for a period in excess of 60 aggregate days in one year, and whether that individual has a mental illness.

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[25] *Ibid* at 69–70.
[26] RRO 1990, Reg 778.
[27] *Ibid* at s 34(3).
[28] *Ibid* at s 34(5).

47. The text of the *Jahn* settlement's Public Interest Remedies #5 and #6 is as follows:

> Public Interest Remedy #5
>
> The Ministry will promptly amend the Inmate Management Policy on Discipline and Misconduct to require staff to:
>
> […]
>
> (d) notify the Assistant Deputy Minister, Institutional Services, when any inmate has been in segregation in excess of 60 aggregate days in a year, and will indicate if the inmate has a mental illness.
>
> […]
>
> Public Interest Remedy #6
>
> […]
>
> The Ministry will continue to review the circumstances of inmates who are placed in segregation at least once every five days and again after a period of 30 continuous days in segregation. For inmates with mental illness, the Ministry shall document in the segregation reviews what alternatives have been considered and rejected, including whether a treatment plan is in place that may assist the inmate in leaving segregation. The Ministry will commit to notifying the Assistant Deputy Minister, Institutional Services, when any inmate has been in segregation for a period in excess of 60 aggregate days in one year, and will indicate if the inmate has a mental illness.
>
> Any report to the Minister under section 34(5) of RRO 1990, Reg. 778 under the *Ministry of Correctional Services Act* of the reasons for an inmate to be in continuous segregation for over 30 days will indicate if the inmate has a mental illness, and shall document what alternatives have been considered and rejected, including whether a treatment plan is in place that may assist the inmate in leaving segregation. […]

48. MCSCS' segregation reporting fails to meet the *Jahn* settlement requirements. Findings from both the Independent Advisor and the Ombudsman demonstrate: a) a failure to include required information in the five-day and 30-day segregation reviews and reports; b) a failure to properly prepare and manage 30-day reports; and c) a failure to report on individuals who have been in segregation for 60 aggregate days in a year.

a) Ontario has failed to include required information in its five-day and 30-day segregation reviews and reports in accordance with Public Interest Remedy #6.

49. The Independent Advisor found that "[a] significant proportion of five-day and 30-day segregation reviews are inadequate or incomplete".[29] The Independent Advisor's review of 30-day regional segregation reports for August 2016, for example, revealed that few of them provided the required information about alternatives to segregation:

> Policy requires Regional Directors to provide details about whether an inmate has a mental illness, what alternatives have been considered and rejected, and whether a Treatment Plan is in place on the 30-day segregation reports. The Review Team examined the regional reports from August 2016 in detail, and they showed almost no exploration of alternate placement options (see Table 4). Of the inmates where regional offices clearly indicated that there were possible or existing mental health concerns, only 73% included any comment regarding alternatives that had been considered. Eastern Region had by far the most comprehensive 30-day report; without their report, only 35% of segregated inmates with noted mental health concerns had any comments regarding alternative housing.[30]

b) Ontario has failed to prepare and manage 30-day reports in accordance with Public Interest Remedy #6.

50. The Ombudsman found that the 30-day reports with individualized information were not being circulated beyond regional offices. As stated above, Regulation 778 requires, in cases where an individual is segregated for 30 continuous days, that superintendents report to the Minister on the reasons for continued segregation. The *Jahn* settlement requires that these reports to the Minister indicate if the individual has a mental illness, and document what alternatives to segregation have been considered and rejected, including whether a treatment plan is in place that may assist the individual in leaving segregation. The Ombudsman found, however, that the Assistant Deputy Minister, Associate Deputy Minister and Deputy Minister were not receiving reports with information about the individualized circumstances of people in segregation:

> We also discovered that detailed 30-day reports for individual inmates are not circulated beyond regional offices. Instead, each regional office sends a "30+-Day Segregation Report" to the Assistant Deputy Minister's office, which passes the information along to the statistics unit (PESAR). The statistics unit produces a high-level report that does not give the details of individual segregation placements. The report consists primarily of pie charts that represent what proportion of inmates in each region have been segregated for certain periods of time. It also includes some province wide statistics about the use of segregation, such as how many inmates are in segregation for each purpose allowed by regulation (e.g., inmate in need of

[29] Independent Advisor's Interim Report, *supra* note 5 at 101.
[30] *Ibid* at 72.

> protection). It is this report, rather than the regional 30-day segregation reports for individual inmates, that is provided to the Assistant Deputy Minister, Associate Deputy Minister, and Deputy Minister.[31]

c) Ontario has failed to report on individuals who have been in segregation for 60 aggregate days in a year in accordance with Public Interest Remedy #5.

51. Both the Independent Advisor and the Ombudsman found that the *Jahn* settlement requirement to report on individuals in segregation for 60 aggregate days in a year was not being met. The Ombudsman reported that despite MCSCS' policy changes requiring the 60-day segregation reports, most correctional staff the Ombudsman's office spoke to were unaware of the requirement. Indeed, one Ministry employee confided that "there hasn't been a [60-day] report generated to date…we can't figure out how to do it."[32] Similarly, the Independent Advisor found that prior to December 2016, neither local institutions nor the Ministry had been producing the required 60-day aggregate reports.[33]

52. Finally, both the Ombudsman and Independent Advisor found that, even when the appropriate reviews and reports are generated, that they are done in a *pro forma* manner, with little critical analysis.[34] The Independent Advisor comments that this lack of critical analysis contributes to the inappropriate segregation placements for individuals with mental illness:

> Given the extensive, detailed paper trail and the cascading reporting system, how is it possible for a mentally ill inmate to languish in segregation for years? In part this happens because, although placements are (at times) reviewed every five days, the 30-day reviews are (at times) generated and (at times) passed along, very little critical analysis is actually done along the way. The purpose of the five-day, 30-day and 60-day individual segregation reviews and reports is not to complete paperwork, but to release individuals from segregation at the earliest opportunity.[35]

II) ONTARIO HAS FAILED TO ENSURE THAT IT HAS THE INFORMATION NECESSARY FOR MEETING ITS *JAHN* SETTLEMENT OBLIGATIONS.

53. Ontario has failed to take steps to ensure that it has the information necessary to meet its *Jahn* settlement obligations. This includes: a) a failure to effectively define segregation; b) a failure to effectively identify individuals with mental health disabilities; and c) a failure to accurately track the duration of segregation placements.

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[31] Ombudsman Report, *supra* note 4 at para 164.
[32] *Ibid* at para 99.
[33] Independent Advisor's Interim Report, *supra* note 5 at 83.
[34] Ombudsman Report, *supra* note 4 at para 124; Independent Advisor's Interim Report, *supra* note 4 at 82.
[35] Independent Advisor's Interim Report, *supra* note 5 at 82.

54. Ontario's failure to ensure it has this information leaves it unable to meet its commitments to: prohibit segregation for people with mental illness barring undue hardship; provide baseline and ongoing health assessments to individuals in segregation with mental health disabilities; and accurately document, review and report on the use of segregation in Ontario's correctional facilities.

55. Ontario's failure to take these steps must be remedied in order for it to comply with its obligations under the *Jahn* settlement.

a) Ontario has failed to effectively define segregation.

56. As the restrictions and safeguards set out in Public Interest Remedies #5, #6 and #7 apply to segregation placements, an understanding of what constitutes a segregation placement is necessary in order to comply with these terms.

57. However, both the Independent Advisor and the Ombudsman reported that there is no consistent understanding of what constitutes segregation across Ontario's correctional facilities. The Independent Advisor noted that "[t]here is no functional definition of "segregation" in provincial legislation or regulations. Rather, Ministry policy refers to segregation as an "area," without referencing the treatment of the inmate or conditions of confinement…" [36] The Ombudsman found that "a fundamental pillar of Ontario's approach to segregation – the definition of segregation – is confusing and provides insufficient guidance to frontline and senior Ministry staff."[37] The Ombudsman reported that there is "confusion and disagreement around what segregation actually means. In dozens of interviews, correctional staff and Ministry officials expressed conflicting understandings of what conditions of confinement and placements amounted to segregation."[38]

58. The Ombudsman's report sets out multiple issues with how segregation is understood. First, the Ombudsman identified instances where correctional and MCSCS staff were not able to consistently or accurately determine whether or not a placement constituted segregation[39] and consequently, whether the restrictions and safeguards imposed by *Jahn* would apply. Second, the Ombudsman noted cases where placements – despite actually constituting segregation – were given a variety of different labels. [40] Third, the Ombudsman reported that non-segregation units being developed and used in Ontario's correctional facilities may be imposing segregation-like conditions, but without imposing comparable restrictions and protections:

> Other correctional facilities have developed similar "non-segregation" units where inmates are removed from the general population and their social interaction limited. The Vanier Centre for Women has an "Intensive

[36] *Ibid* at 27.
[37] Ombudsman Report, *supra* note 4 at para 45.
[38] *Ibid* at para 6.
[39] *Ibid* at paras 47, 53.
[40] *Ibid* at paras 69, 73.

> Management, Assessment and Treatment" unit where inmates spend varying amounts of time outside their cells based on their individual circumstances. While the purpose of this unit is to support inmates with complex behavioural and mental health needs, the result is that some inmates are kept in segregation-like conditions without any of the accompanying procedural protections.[41]

59. Without being able to correctly and consistently identify when an individual's placement constitutes segregation, Ontario cannot be meeting the *Jahn* settlement requirements under Public Interest Remedies #5, #6 and #7 restricting segregation use, imposing accountability mechanisms, and ensuring healthcare assessments for those in segregation.

b) Ontario has failed to effectively identify individuals with mental health disabilities.

60. In order to meet its commitment not to use segregation for any individual with mental illness barring undue hardship, and the accompanying accountability and documentation requirements, Ontario must be aware of the individuals in its care for whom this would apply. However, both the Independent Advisor and the Ombudsman found that correctional officers were not able to accurately identify which individuals have mental health considerations that would need to be taken into account with regard to segregation use.

61. The Independent Advisor found that "[c]orrectional staff currently rely on unverified mental health information when making segregation placement decisions and completing segregation reports and reviews."[42] While health information is obtained from processes like the required mental health screening, it is recorded on confidential charts, which are not available to correctional officers.[43] Instead, correctional officers rely on 'mental health alerts' which can be placed on individuals' files in MCSCS' Offender Tracking Information System (OTIS).[44] The 'mental health alerts', which are "rarely, if ever, validated by health care professionals,"[45] are defined by MCSCS as follows:

> Mental health alerts are applied to inmates because they represent possible management concerns. These can be based on confirmed information or observations made by any supervising Ministry staff; however, the presence of a mental health alert does not indicate a confirmed diagnosis of mental illness. To be included in the mental health alert category, one of the following alerts must be present: the observation of bizarre or abnormal behaviour, developmental delay, current psychiatric treatment, psychiatric prescription drugs, or previous psychiatric assessment/treatment.[46]

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[41] *Ibid* at para 50.
[42] Independent Advisor's Interim Report, *supra* note 5 at 101.
[43] *Ibid* at 76.
[44] *Ibid* at 77.
[45] *Ibid;* Ministry of Community Safety and Correctional Services, "Segregation – Technical Data Briefing (14 September 2016), [MCSCS Technical Data Briefing].
[46] Independent Advisor's Interim Report, *supra* note 4 at 77; MCSCS Technical Data Briefing, *ibid.*

62. MCSCS' definition for a 'mental health alert' is under-inclusive of those with mental illness. This is because having a mental health illness may not result in an individual presenting "possible management concerns". In a meeting with the OHRC, MCSCS acknowledged that there could be individuals with mental health disabilities, such as depression or anxiety, who do not have mental health alerts on their file because they do not present management concerns.[47]

63. The Independent Advisor found that the lack of accurate mental health information undermined appropriate placement decisions, and affected the accuracy of the *Jahn* settlement reporting requirements:

> As a result of these gaps, there is often no consistent way for non-clinical staff to accurately verify which individuals may have ongoing mental health needs. Instead, correctional staff often make placement decisions – including at times assumptions that segregation is the most appropriate housing – based on their personal and historical experience with individual inmates. A lack of accurate mental health information can also undermine appropriate individualized accommodations when considering segregation placements. The mental health alerts that are used to inform placement and review decisions and provide statistics about the mental health needs of the inmate population are based almost entirely on correctional officers' lay interpretation of observed inmate behaviour. This has implications for the accuracy of the mental health information in the segregation placement decisions, the segregation reviews and the 30- and 60-day reports.[48]

64. The Ombudsman's investigation identified specific cases demonstrating inaccuracy and inconsistency regarding Ontario's awareness and consideration of mental illness in determining its segregation placements and related reporting. One of these cases involved an individual who did, in fact, have an alert on his file confirming a mental illness. Despite this, an initial assessment form completed when the individual was placed in segregation indicated that he had no known or suspected mental illness, that no mental health provider was consulted prior to the segregation placement, and that he had no *Human Rights Code*-related needs.[49] The Ombudsman found that the subsequent five-day segregation reviews for this individual contained errors and inconsistencies regarding the individual's mental health status, and repeatedly indicated that the individual had no *Code*-related needs and that no care plan existed or was required.[50] After the Ombudsman contacted the Deputy Regional Director at MCSCS responsible for reviewing this individual's placement, the individual was transferred to a treatment centre.[51]

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[47] MCSCS staff stated this during the September 14, 2016 Technical Data Briefing meeting with the OHRC.
[48] Independent Advisor's Interim Report, *supra* note 5 at 78.
[49] Ombudsman Report, *supra* note 4 at para 128.
[50] *Ibid* at para 129.
[51] *Ibid* at para 130.

65. Without accurate information about an individual's mental health status, it is not possible for Ontario to be complying with the requirements to prohibit segregation for those with mental illness to the point of undue hardship, or report on the mental health status of those in segregation.

c) Ontario has failed to accurately track the duration of segregation placements.

66. Problems with Ontario's tracking of segregation durations means that review and reporting requirements are not being triggered at appropriate times, and do not include accurate information about how long individuals have been in segregation.

67. Both the Independent Advisor and the Ombudsman found that Ontario was not accurately tracking the length of segregation placements. The Independent Advisor reported that "[t]here are difficulties getting accurate segregation placement times due to data entry or formatting errors, and institutions that 'start the clock' again when inmates are taken to court, taken out of official segregation areas, or briefly transferred to alternate housing."[52] The Ombudsman's investigation revealed numerous cases where Ontario was unable to accurately track segregation duration, particularly due to uncertainty about what constitutes continuous segregation and how to track individuals transferred from one facility to another.[53]

III) ONTARIO HAS FAILED TO EFFECTIVELY IMPLEMENT ITS *JAHN* SETTLEMENT COMMITMENTS.

68. Ontario has failed to take sufficient steps to implement its *Jahn* settlement commitments.

69. Since agreeing to the *Jahn* settlement, Ontario has provided various updates suggesting that it that it has taken steps to comply with its settlement obligations. It has provided copies of its mental health screening tools, policies revised to reflect various *Jahn* commitments, and information about delivering related instructions and training to those working in Ontario's correctional system.

70. Throughout this time, the OHRC has repeatedly expressed concern in correspondence, submissions and meetings with MCSCS about whether the *Jahn* terms are being effectively implemented.[54] For example, during a June 14, 2016 meeting with MCSCS,

[52] Independent Advisor's Interim Report, *supra* note 5 at 88.
[53] Ombudsman Report, *supra* note 4 at paras 6, 54, 66, 86, 139, 140.
[54] See, for example: Ontario Human Rights Commission, "Submission of the OHRC to the Ministry of Community Safety and Correctional Services Provincial Segregation Review" (29 February 2016) online: <http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review>; Ontario Human Rights Commission, "Supplementary Submission of the OHRC to the MCSCS Provincial Segregation Review"(18 October 2016) online: <http://www.ohrc.on.ca/en/supplementary-submission-ohrc-mcscs-provincial-segregation-review; Ontario Human Rights Commission, "Re: MCSCS Corrections Reform - Findings from Tour of Kenora Jail" (28 February 2017) online: <http://www.ohrc.on.ca/en/re-mcscs-corrections-reform-findings-tour-kenora-jail>.

the OHRC questioned whether Ontario was meeting its obligation not to use segregation for any individual with mental illness unless alternatives had been considered and rejected as amounting to undue hardship, and been documented. In response, MCSCS advised that alternatives to segregation to the point of undue hardship were being considered and documented for all individuals with mental illness in accordance with the *Jahn* settlement terms.

71. The Independent Advisor and Ombudsman's findings show that the steps Ontario has taken have not, in fact, been sufficient to implement its *Jahn* commitments. Four years after making a legally-binding commitment to prohibit segregation barring undue hardship for people with mental illness – one of the most vulnerable groups in Ontario's correctional system – segregation remains the default placement for these individuals.

72. The Independent Advisor specifically addresses the deficiencies in Ontario's approach to the systemic transformation required by the *Jahn* settlement:

> For nine months after the settlement agreement there was no ministry lead assigned to work on the government's response. When a team was finally assembled in the summer of 2014, they were already significantly behind schedule. They scrambled to complete the in-depth policy reviews and reforms, systemic reports, inmate rights guides, enhanced mental health services, additional segregation reporting and develop and deliver the ministry-wide mental health training.
>
> […]
>
> …A stressed management team and insufficient policy, evaluation and analytic capacity have resulted in organizational coordination issues and strategic planning gaps.[55]

73. Overall, the Independent Advisor found that with respect to segregation reform, Ontario's "implementation has been rushed and at times insufficiently coordinated."[56] While recognizing Ontario's commitment to addressing its segregation issues, the Independent Advisor has cautioned that "concerns about capacity and coherence remain."[57]

74. In light of these circumstances, a more robust approach to ensuring meaningful implementation and monitoring of Ontario's *Jahn* obligations is warranted. Accordingly, it would be appropriate for the Tribunal to make orders for both specific compliance, and the additional measures for expert involvement and independent review set out in Schedule "B".

[55] Independent Advisor's Interim Report, *supra* note 5 at 54–55.
[56] *Ibid* at 58.
[57] *Ibid.*

SCHEDULE "B"

REMEDIES REQUESTED

Ontario has contravened its legal obligations under the *Jahn* settlement by failing to: (a) prohibit the use of segregation absent undue hardship for individuals with mental illness, (b) provide mental health screening upon admission and related health assessments and services on a continuing basis; and (c) accurately document, review and report on the use of segregation in Ontario's correctional facilities.

In order to remedy these contraventions, the Commission respectfully requests that the Tribunal make the following orders addressing:

a) Compliance with the *Jahn* settlement public interest terms;
b) Measures to ensure meaningful compliance; and
c) Measures to ensure ongoing compliance and accountability.

(a) Compliance with the terms of the *Jahn* settlement

1. Ontario shall comply with *Jahn* settlement Public Interest Remedies #2, #4, #5, #6 and #7 within 60 days of the date of this order.

2. Without limiting the generality of the foregoing, Ontario shall implement the following necessary elements of meeting the terms of the *Jahn* settlement within 60 days of the date of this order:

    - **Definition of Segregation:** A definition of segregation that complies with international human rights standards, which define segregation as the physical isolation of individuals to their cells for 22 to 24 hours a day. The definition must clarify when situations where individuals end up in segregation-like conditions (including, lockdowns or confinement in disciplinary units, protective custody units, special needs units, stabilization units, behavioural management units, and medical units) amount to segregation.

    - **Awareness of individuals with mental health disabilities:** A system that identifies which individuals in MCSCS' care, custody or control have mental health disabilities (including those at risk of suicide or self-harm). This system must capture all individuals with such disabilities, not just those who present management concerns, and clearly indicate when segregation should be prohibited to the point of undue hardship on account of an individual's mental illness.

- **Tracking the duration of segregation placements:** A system that accurately tracks both continuous and aggregate segregation placements.
    - The system must track situations where an individual is transferred from segregation in one facility to segregation in another facility as a single, continuous segregation placement.
    - A segregation placement must be tracked as continuous in the system until an individual is returned to housing that is no more restrictive than general population.

(b) Measures to ensure meaningful compliance

Delay in mental health screening and access to treatment

3. In order to remedy timeliness issues regarding Ontario's compliance with Public Interest Remedies #2 and #4 under the *Jahn* settlement, Ontario shall, within 60 days of the date of this order, ensure that the following timelines are being complied with on a system-wide basis:

    - The mental health screening required by the *Jahn* settlement Public Interest Remedy #2, including all stages of mental health screening shall be completed by clinical staff no later than 72 hours after admission;
    - Any necessary referrals arising out of the mental health screening shall be made within 24 hours of completing the screening;
    - Any appointments with healthcare professionals shall occur within two weeks of referral;
    - Treatment plans developed in accordance with the *Jahn* settlement Public Interest Remedy #4 shall be established within two weeks of referral; and
    - Individuals shall be reassessed using the mental health screening process at least once every 6 months.

Inadequate segregation documentation and reporting

4. In order to remedy contraventions of the segregation reporting requirements set out in the *Jahn* settlement Public Interest Remedies #5 and #6, all reports to the Minister and Assistant Deputy Minister regarding individuals with mental illness in segregation shall, as of the date of this order:

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

Expert Involvement

5. Ontario shall work with an external expert or experts on human rights and corrections to assist in implementing the terms of this order. That expert shall be approved by the Commission.

(c) Measures to ensure ongoing compliance and accountability

Data Collection

6. To ensure ongoing compliance, Ontario shall collect data tracking any ongoing use of segregation for individuals with mental health disabilities (including those at risk of suicide or self-harm). The data shall be disaggregated by facility, region and sex/gender, and account for the following:

    a) Individuals with mental health disabilities in correctional facilities;
    b) Individuals with mental health disabilities in segregation, duration of segregation placements (continuous and aggregate), and legal rationale for segregation placements;
    c) Individuals with mental health disabilities in alternative housing units, unit classification, duration of alternative housing placement (continuous and aggregate), and reason for alternative housing placement.
    d) Baseline data about overall populations in correctional facilities, segregation and alternate housing units.
    e) Instances of self-harm, increased medical treatment, hospitalization, and deaths occurring during segregation or alternative housing placements.

7. This data shall be publicly released every six months in a manner that allows for meaningful analysis of how segregation and alternative housing is used on and affects individuals with mental health disabilities (including those at risk of suicide or self-harm).

Internal Monitoring of Compliance

8. Ontario shall establish internal mechanisms to monitor the implementation of and ongoing compliance with the terms of the *Jahn* settlement and any additional remedies ordered by the Tribunal.

Independent Monitoring of Compliance

9. Ontario shall appoint an Independent Reviewer to report on compliance with the *Jahn* terms and any additional remedies ordered by the Tribunal. The Independent Reviewer shall be approved by the Commission.

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

11. The Independent reviewer shall issue a report no later than 4 months following the date of this order, setting out, in the Independent Reviewer's opinion:

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

12. The report shall be sent to the parties and the Tribunal. Within 2 weeks of receiving the report, Ontario shall publicly post the report on the Ministry's website.

Tribunal remaining seized

13. The Tribunal shall remain seized of this matter pending full implementation of the *Jahn* settlement terms and any additional remedies ordered.