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### **Do Independent External Decision Makers Ensure that “An Inmate’s Confinement in a Structured Intervention Unit Is to End as Soon as Possible”? [Corrections and Conditional Release Act, Section 33]**

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May 9, 2021

# Do Independent External Decision Makers Ensure that “An Inmate’s Confinement in a Structured Intervention Unit Is to End as Soon as Possible”? [Corrections and Conditional Release Act, Section 33]

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**Do Independent External Decision Makers Ensure that “An Inmate’s Confinement in a Structured Intervention Unit Is to End as Soon as Possible”?**  
**[Corrections and Conditional Release Act, Section 33]<sup>1</sup>**

9 May 2021

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**Table of Contents**

<b>Executive Summary</b> .....	1
<b>1) Introduction</b> .....	5
<b>2) Description of the population</b> .....	6
<b>3) Number of reviews for each stay</b> .....	9
Mental Health Flag.....	9
Racialized Status .....	9
<b>4) IEDM decisions</b> .....	12
<b>5) Timing of Release</b> .....	15
<b>6) Non-reviews</b> .....	17
<b>7) Other issues that we could not examine</b> .....	20
<b>8) Conclusions</b> .....	21

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<sup>1</sup> The analyses and the writing of the report was carried out by the three of us based on data received in January 2021 from Correctional Service of Canada (CSC). Even though they are not paying for this work, it is probably worth mentioning that the views implied or expressed in this report are those of the authors and are not necessarily those of CSC or Public Safety Canada. We do wish to thank Public Safety Canada and CSC for giving us the opportunity to do this work for them by giving us access to their data. Some expenses that we incurred in doing this work have been covered by the Geoffrey Hinton Criminology Fund. Finally, we would like to thank the many people who read and commented on earlier drafts of parts or all of this paper.

## Executive Summary

The Government of Canada established Correctional Service Canada's (CSC) Structured Intervention Units (SIUs) to be a substitute for "Administrative Segregation" as it officially was known, or Solitary Confinement as it is more commonly known. The goals – explicit in the legislation governing federal penitentiaries (the *Corrections and Conditional Release Act*) – included provisions that SIUs were to be used as little as possible and that prisoners would be transferred from them as soon as possible.

Elaborate review procedures were established. Some of these were internal – involving CSC employees – but one of them was 'external'. At certain points in a prisoner's stay in an SIU, an "Independent External Decision Maker" (IEDM) is charged with the responsibility of reviewing the actions of CSC. IEDMs are not CSC employees; they are appointed by the Minister. In certain circumstances, including the circumstances which form the basis of this report, the law would suggest that they can *determine* whether a prisoner should stay in the SIU. Unfortunately, we know nothing about their selection and training, nor do we have any information about mechanisms that might be available to ensure a standardization of approach to their decisions.

**The importance of IEDMs to the legitimacy of the SIU regime.** It would appear that, from CSC's perspective, IEDMs are important for the legitimacy of the SIU regime. In April 2021, the Commissioner made reference to a document that listed the IEDMs as one of two bodies put in place in 2019 to provide "oversight" of the SIUs. The fact that the other oversight body (the Implementation Advisory Panel) has not existed for eight months, but is nevertheless listed in the document as if it is currently operational, is quite disturbing as that could be seen as reflecting CSC's approach to oversight of the SIUs.

This report examines some aspects of the operation of the IEDMs – the only SIU oversight mechanism that is currently active – using administrative data provided to us by CSC in January 2021. These administrative data deal only with IEDM reviews of the length of an SIU stay (CCRA: s37.8). We did not have data on other important reviews carried out by IEDMs, most notably the reviews that are required when a prisoner does not get the requisite number of hours out of the cell.

**Limitations on available information.** We were able to look at IEDM decisions under s.37.8 and the consequences of those decisions. However, as outlined in our full report, there are important issues that we were unable to explore. At a very basic level, we were not able to get access to any information which informed the decisions made by IEDMs. That information is important because it might have provided insights into what records IEDMs had, and what they saw as important in making a decision.

The response by CSC to a recent *Access to Information Act* request (made by someone else and shared with us) suggests that the government or CSC is reluctant to allow public scrutiny of IEDM decisions. Part of the disclosure that was provided included an (apparently) 25-page decision by an IEDM on various matters (multiple stays in an SIU and not receiving the required time out of cell). The vast majority of the review was redacted, though the prisoner's name, age, and the fact that he was Indigenous was included, as was one footnote. The footnote, composed apparently by the IEDM, read "This information was received by email from my assistant, who had spoken with a regional project manager, who had spoken to the Institution. This is a less than ideal way to receive information, as this kind of 'hearsay' information is unreliable."

As we explain in more detail in our report (see pgs 14-15; 20-21), we do not know how information is chosen for sharing with IEDMs (and by whom) and what information is routinely sent to IEDMs. Our more

general point is that the IEDM process is – thus far in the history of SIUs – an almost completely secretive process. It is hard to have confidence in a process that is supposed to provide “independent oversight” when that process itself, and the logic behind each decision, is not open to scrutiny.

**Unnecessary complexity of the timing of reviews by IEDMs.** As already mentioned, our review of the IEDM process is limited to reviews under Section 37.8 of the *Corrections and Conditional Release Act*. As we detail in the full report, the combination of the [legislation](#), the [Corrections and Conditional Release Regulations](#), and the [Commissioner’s Directives](#) appeared to us – and to others we consulted – to make the interpretation of the timing unusually complicated. One might have thought that it would be straightforward to understand when IEDMs must review a case to determine if a person should be released from an SIU. It is not. We would suggest that readers should consult these documents themselves and attempt to answer a simple question, “If a person is placed in an SIU, what is the maximum number of days that can elapse before an IEDM must communicate to the institution and to the prisoner a decision on whether the prisoner should be transferred to the general penitentiary population?” A number of people wondered aloud, as we have, whether this unnecessary complexity reflected poor drafting or was a deliberate attempt at obfuscation.

Generally speaking, our reading of the various provisions referred to above would suggest that after about 60-67 days in the SIU, a prisoner’s stay must be given to an IEDM for review. CSC data suggest that 97% of cases are referred to the IEDM within 67 days (15% on that 67<sup>th</sup> day). However, some are not referred until after 70 days (See Table 2, page 8).

**How can someone be in an SIU for a very long time and not be reviewed by an IEDM?** More disturbing is a finding (Table 15, page 17) that there were 105 cases in which the person stayed in the SIU for at least 76 days (and in some cases more than 120 days) and there was no record of the case ever being sent to an IEDM for a review under s37.8. To the extent that CSC relies on the process of IEDMs to provide legitimacy for the SIUs, these cases are more than a minor problem. On pages 18-19 we have summarized the characteristics of five cases where a prisoner had been in an SIU for over 120 days but, apparently, never had a referral to an IEDM for a review under s.37.8.

More generally, as already pointed out, an IEDM review of time in the SIU typically is initiated automatically by virtue of the *Corrections and Conditional Release Act* at the end of the prisoner’s second month in the SIU and is communicated to CSC at the time the prisoner has already spent about three months in the SIU. Three months in the SIU is an exceptionally long stay and it is difficult to see how this long time-frame could help shorten stays in any meaningful way. In previous reports (e.g. our 23 February 2021 report) we typically divided “length of stay” into categories. In Table 4 of that report, our longest category of stay in the SIU was 62-380 days. 21% of the person stays were at least 62 days.

**Release from the SIU.** We had thought that if an IEDM made a decision that a prisoner should be removed from the SIU that it would happen almost immediately. We were wrong. Indeed, we found that if the decision was that a person was to be removed from the SIU, they tended to stay longer (measured from the time that the case was referred to the IEDM) than if the IEDM had decided that the prisoner should stay in the SIU (see Table 14 page 16). It turns out that the timing of the “required” release from the SIU can be determined by CSC. The IEDM may have “independent” authority to decide that someone should be released from the SIU, but CSC can structure the timing of that release to meet its own unarticulated needs.

**Black prisoners’ stays in SIUs are longer than the stays of other groups.** Because IEDM reviews for “length of stay” typically occur after about 2 months in an SIU, reviews of this type are relatively rare. But it also

means that second (or third, etc.) reviews are exceedingly rare. Unless, as it turns out, you are a Black person who has been placed in an SIU. Looking only at those who actually got IEDM reviews (excluding long stay people who never were reviewed), we noticed that Black people were significantly more likely than other groups to be reviewed 2 or more times by IEDMs (Table 5, page 10). Black prisoners in SIUs are also more likely than other groups to be in the SIU for more than 2 months (See Table 7, page 11). Indeed, this effect is really the result of Black prisoners being considerably more likely than others who were transferred into an SIU to stay 121 or more days. This fact came to our attention because they were being reviewed more often by IEDMs. Most importantly, however, the IEDM review process is not correcting this disparity in the treatment of Black prisoners in CSC's SIUs.

**This review process does not help remove those with mental health issues more quickly.** Roughly 10%-11% of those with and without a “mental health need flag” had three or more reviews by an IEDM (Table 4; page 9). It appears that the mental health of an individual – or this mental health flag used by CSC – does not play a significant role in determining whether the SIU is an appropriate place for an individual to remain.

**IEDM decisions.** As already explained, if a person is in an SIU for about 2 months, their case will typically be reviewed during the third month by an IEDM under s.37.8. We had 380 reviews by IEDMs. In 30% there was no decision rendered by an IEDM because CSC made a decision to transfer the prisoner out of the SIU before the IEDM could transmit a decision (see Table 9, page 12). Of the reviews with decisions rendered by IEDMs (remain in vs. remove), the vast majority (87%) were that the prisoner should stay in the SIU (Table 9, page 12).

But this overall finding obscures another equally important finding: The 12 IEDMs had significantly different patterns of decision making (Table 10; page 13). The proportion of cases referred to IEDMs in which the IEDM decided that the prisoner should remain in the SIU varied considerably. Looking at decisions that the prisoner should remain in the SIU, one IEDM stated that 38% should remain in the SIU. Another IEDM stated that 86% of the cases they reviewed should remain in the SIU. There are a number of possible explanations for this variability across IEDMs in addition to the most obvious one (that IEDMs vary in the threshold they use for the decision that a person should be released from the SIU). Some of these possible explanations are outlined on pages 14-15. Generally, however, given the fact that we know nothing about the information that is available to the IEDMs, assignment of cases, etc., this disparity of outcome is a mystery to us.

**Conclusion.** These findings on the limitations and problems of IEDM reviews of prisoners in Canada's SIUs need to be interpreted within the context of our previous findings that 28% of the stays in SIUs can be described, given international standards, as solitary confinement and 10% can be considered, by these same international standards to be torture. This is how Canada's SIUs function *with* IEDM reviews. We cannot guess what those percentages would be if there were no IEDM reviews.

There are substantial gaps in our knowledge about the IEDM process. These include the nature of the information that is used by IEDMs, their own logic in making decisions, and the timing of the implementation of their decisions. We found it difficult to describe ‘time in SIU’ decisions by IEDMs as “binding” since the timing of release seems to be, in reality in some cases, completely in the control of CSC. We outline some of the gaps in knowledge in section 7 (pages 20-21). We are confident that others could add to this list.

What our findings clearly demonstrate, however, is that IEDM reviews as they currently exist are not adequate. Without access to considerably more information about the manner in which these reviews are carried out, it is difficult for us to know whether this system of oversight can be made adequate. Most disturbing to us, however, is not the fact that we were not able to examine in detail how the IEDM process actually works, but that *nobody* seems to be doing this.

There are a number of ways in which more adequate independent review could be imposed on this system. One goal of any form of external review of length-of-stay in SIUs is that they should be open to examination. There may be reluctance on the part of CSC to openness in this process. We base this on the fact that to date CSC has not publicly released *any* systematic empirical investigations about any aspect of the functioning of their SIUs. Indeed, in an *Access to Information Act* request (made by others and shared with us) the “average number of hours SIU prisoners were out of their cell in Feb 2021” was requested. This applicant might have wanted to know this statistic in order to compare it with data we had released in one of our three previous reports. Regardless, CSC’s response to this was remarkable: “No document currently exists to allow us answering (sic) this question specifically. The creation of a record to produce an answer would generate an excessive amount of time and effort that would interfere with CSC’s operation.” In our second report (15 November 2020) two of us presented detailed information about ‘time out of cell’ (though not presented simply as ‘average number of hours’) in six different tables. We are a bit surprised to learn that the creation of one statistic would interfere with the operations of an organization with 17,101 employees, 2,522 of whom are listed as being at “Headquarters and Central Services” including a research division of about 20 people. We expect that there is a bit more behind their response than what was said.

On the other hand, if the purpose of the request under the *Access to Information Act* was to find out whether CSC routinely examines the overall operation of its SIUs, the applicant did, indeed, get the answer.

**Do Independent External Decision Makers Ensure that “An Inmate’s Confinement in a Structured Intervention Unit Is to End as Soon as Possible” [*Corrections and Conditional Release Act*, Section 33]**

**Jane B. Sprott, Anthony N. Doob, and Adelina Iftene**

**1) Introduction**

A posting on the website of Correctional Service Canada (CSC) (accessed 21 April 2021) under the title “[Overview: Structured Intervention Units](#)”, gives an interesting view of what constitutes “Oversight” of the Structured Intervention Units (SIUs). CSC says that:

Two external oversight bodies were put in place in 2019

\* Independent External Decision Makers (IEDM)

\* An Implementation Advisory Panel (IAP)

We were very surprised to see this because the “Implementation Advisory Panel” is no longer active. The dissolution of the IAP had been communicated by the Panel to the Commissioner, the Minister, and the public. Indeed, when the Panel’s “final” (and only) report came out in August 2020, it received considerable publicity<sup>2</sup>. Of course the CSC statement – dated March 2021 -- does not explicitly state that the Panel still exists, but reasonable people might conclude that if, in a document dated in March 2021, a panel is identified as an “oversight” body, it probably does exist. They would, of course, be wrong: it was an “oversight body” that ceased to exist eight months ago.

We have no idea whether this misleading information was posted as a result of incompetence or purposeful deception. We did notice, however, that in an April Fools Day “Update to Stakeholders” email, the Commissioner made reference to “a helpful [infographic](#) explaining how SIUs work” dated February 2021 which contained this same misleading information. We are unaware, however, of any subsequent emails from her telling her stakeholders that it was, in fact, an April Fools joke.

Although the IAP no longer exists, the Independent External Decision Makers (IEDMs) still do exist. The work of this group is crucial. They are the last group still standing that is continuously involved in the oversight of individual cases for the purpose of ensuring that the rights of those in the SIU are respected and that the abusive practices from the era of administrative and disciplinary segregation are not perpetuated under a different name. Furthermore, [in response](#) to the concerns we raised in our [first report](#) on the use of the SIUs, Commissioner Anne Kelly pointed specifically to the IEDMs as a crucial source of protection against abuses through the independent monitoring of practices “in real time” and through binding decisions, both of which allegedly increase transparency and accountability. Thus, given the importance IEDMs play within the SIUs structure, for this report we decided that we should examine what data we have on their decisions.

According to the [Corrections and Conditional Release Act](#), Independent External Decision Makers perform different types of reviews: first, when an individual does not receive the required time out of cell/ meaningful human contact and second, when a certain length of stay in an SIU is exceeded. We have no information about IEDMs reviews on “time out of cell” and thus we will focus solely on their reviews for the length of stay in an SIU (s.37.8).

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<sup>2</sup>See Appendix D of the October 2020 report. All reports can be found here: [Solitary Confinement Reports](#)



In order to understand the process by which an SIU stay comes to be reviewed by an IEDM under s.37.8, one must simultaneously follow the *Corrections and Conditional Release Act* (CCRA), [Commissioner's Directive-711](#) and [Guidelines 711-1](#) and [711-2](#). Very generally, once the individual is placed in SIU by an officer, the Institutional Head (IH) must first decide, within 5 working days of transfer, if the person shall remain in the SIU (CCRA: 29.01(2)). If they do, 30 days after this decision (so roughly on day 35 of the SIU person-stay), the IH again reviews the case and renders a decision about whether or not the individual is to further remain in the SIU (CCRA: 37.3(1)(b) and Commissioner's Directive 711 at para 56.b.).

If the IH decides the individual is to remain in the SIU, the case then, according to the CCRA, moves up to the Commissioner to make a determination (s.37.4). The [Corrections and Conditional Release Regulations](#)<sup>3</sup>, however, allow for this decision to be made by any person designated in the Commissioner's Directives and the Commissioner's Directive 711 indicates that this determination is to be made by the Senior Deputy Commissioner (SDC) (s.62). The decision at this stage should be rendered within 30 days from whenever the IH rendered their decision (perhaps by day 60-65 of the SIU person-stay). If, for the purpose of this determination, the SDC decides the stay should continue, the case moves further to an IEDM, who must review the stay and render a decision within 30 days (CCRA s.37.8) (meaning within, perhaps, 90-95 days into the SIU stay). In general, then, cases should be sent onward to an IEDM at around day 60-65 and the IEDM should render a decision by day 90-95. If the IEDM does not recommend that the prisoner be transferred from the SIU, the IEDM performs another review after 60 days. (CD 711, Annex C)

The data we have for this report are "all referrals made to an IEDM, under section 37.8 of the CCRA, prior to December 1, 2020.". Through a different process, the IEDM can also render a decision under 37.81 for those cases where a health professional recommendation had not been followed. In this case, the decision would have to be rendered "as soon as practicable." In our data documentation from CSC there was a notation that "there have been no IEDM reviews under section 37.81 as of November 30, 2020".

## 2) Description of the population

There were 265 stays in an SIU in which a prisoner received 1 or more reviews by an IEDM under s.37.8. Table 1 provides basic demographic information – aside from fewer women, the population is generally similar to the overall SIU population (see table 3, pg 10 of our [first report](#), dated October 2020). We note

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<sup>3</sup>See s.5(1): "A staff member who is designated by name or position for that purpose in Commissioner's Directives may exercise the powers, perform the duties or carry out the functions that are assigned to the Commissioner by any of the following provisions of the Act... (b.1) section 37.4"

that there were only two women who stayed long enough to be reviewed by IEDMs. For those interested, we have provided details of these two cases in Footnote 4<sup>4</sup>.

Table 1: Population characteristics of SIU stays that received one or more IEDM review related to length of stay (s.37.8)

Female	0.8% (2)
Male	99.2% (263)
Total	100% (265)
<hr/>	
18-24	15.5% (41)
25-29	29.8% (79)
30-39	32.8% (87)
40-62	17.0% (45)
50-64	4.9% (13)
Total:	100% (265)
<hr/>	
White	30.9% (82)
Indigenous	40.4% (107)
Black	15.8% (42)
Other/Missing	12.8% (34)
Total:	100% (265)
<hr/>	
Mental health need flag	26.4% (71)
No mental health need flag	73.6% (194)
Total:	100% (265)

For each stay that was reviewed, we had the date – or dates in the event of multiple reviews – when the IEDM was notified that a review under section 37.8 of the CCRA was to be carried out. For each of the 265 stays, the first time the IEDM was notified that a review under section 37.8 was to be carried out should be roughly 60 days into the stay. Generally, we do see most cases being referred to IEDMs around that time – 74.3% of stays were referred between 55-62 days into the stay. Day “67” seems to have some special significance with 40 referrals made that day (Table 2). This is, perhaps, the normal “outside” limit based on

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<sup>4</sup>Case A: Debby is an Indigenous woman in her 20s. CSC has mental health concerns flagged and she had experienced 4 previous stays in administrative segregation. She was past the mid-point of her 7-year sentence for a serious offence against the person when the SIUs opened up in November 2019. Debby was placed in the SIU for the safety of the institution. Despite the mental health concerns, most of the time she did not get her four hours out of cell (87% of her days in the SIU) or her 2 hours of meaningful human contact (88% of her days). However, CSC says that she only refused to leave her cell all day 4% of the time. She was referred to an IEDM after 48 days in her SIU stay. Twenty days later – and before the IEDM rendered a decision -- she was transferred out of the SIU to different institution.

Case B: Carol is also an Indigenous woman in her 20s serving a two-year sentence for an offence against person. CSC has flagged her as having mental health issues and as being at risk for self-inflicted injuries. She was part way through a two year sentence for a violent violence and she had no record of previous stays in segregation. She was placed in the SIU because of CSC’s concerns about the safety of the institution. During her 70 days in an SIU, she refused to leave her cell all day on only one occasion. Nevertheless, she did not get her four hours out of cell on 61% of her days in the SIU and only got her 2 hours of meaningful human contact on about half of those days. Her case was referred to an IEDM 61 days into her SIU stay and she was released back into the mainstream population 9 days later (before the IEDM’s decision was received).

the manner in which days are counted. However, there were a few (N=6) people referred 70+ days into their stay (Table 2). We have no explanation for those relatively late referrals.

Table 2: Number of days till the first IEDM review (s.37.8)

<b>Number of days into SIU stay until case is referred to an IEDM to review re:length of stay</b>			
	Frequency	Percent	Cumulative Percent
Days	48	1	.4
	49	2	.8
	51	1	.4
	53	1	.4
	54	3	1.1
	55	20	7.5
	56	36	13.6
	57	32	12.1
	58	21	7.9
	59	18	6.8
	60	37	14.0
	61	21	7.9
	62	12	4.5
	63	8	3.0
	64	3	1.1
	66	1	.4
	67	40	15.1
	68	1	.4
	69	1	.4
	70	1	.4
	71	1	.4
	72	1	.4
	75	1	.4
	76	1	.4
	94	1	.4
Total	265	100.0	

Of the 265 person-stays that were reviewed by an IEDM, 78 (29%) had multiple reviews (Table 3). As explained earlier, if the IEDM decides the person is to remain in the SIU they are reviewed again within about 60 days. Thus, those with more reviews obviously end up in SIUs for much longer time periods. In total, there were 389 reviews under s.37.8 conducted by IEDMs.

Table 3: Number of SIU stays X the number of times reviewed.

Number of SIU stays that were reviewed	Number of IEDM reviews for length of stay (s.37.8)
187 stays	Received 1 review
50 stays	Received 2 reviews (a total of 100 reviews)
15 stays	Received 3 reviews (a total of 45 reviews)
9 stays	Received 4 reviews (a total of 36 reviews)
3 stays	Received 5 reviews (a total of 15 reviews)
1 stay	Received 6 reviews (a total of 6 reviews)
Total Number of stays = 265	Total Number of Reviews = 389

### 3) Number of reviews for each stay

We next explore the number of reviews each stay received. As shown in Table 3, 78 stays had multiple reviews. The stays that received additional reviews means that they experience longer stays as each subsequent IEDM review occurs after about 60 days.

Mental Health Flag: It was surprising to see that there was no significant relationship between the number of reviews a stay had and whether or not there was a mental health need flag associated with the SIU stay. Said another way, among cases that had already been in the SIU for at least roughly 60 days (thus triggering an IEDM review), those with mental health needs were not removed more quickly through this process than those without any mental health needs – 10%-11% of each group had three or more reviews. It appears that the mental health of an individual – or this mental health flag used by CSC – does not play a significant role in determining whether the SIU is an appropriate place for an individual to remain.

Table 4

**Is there a mental health need flag at start of SIU stay? \* Number of reviews for each stay Crosstabulation**

		Number of reviews for each stay			Total
		1.00	2.00	3 or more	
Is there a mental health need flag at start of SIU stay?	No	134	40	20	194
		69.1%	20.6%	10.3%	100.0%
	Yes	53	10	8	71
		74.6%	14.1%	11.3%	100.0%
Total		187	50	28	265
		70.6%	18.9%	10.6%	100.0%

Chi-square=1.45, df=2, ns

Racialized Status: Also of concern was that there was a significant relationship between the number of reviews and the ethnicity of the person – Black people were significantly more likely to have additional reviews. Roughly 45% of Black people had two or more reviews compared to 32% of white people, 22% of Indigenous people and 29% of everyone else (Table 5). This suggests that Black people may be staying longer in SIUs than others and that the IEDMs oversight through this review process is not correcting this disparity.

Table 5

**Ethnicity \* Number of reviews for each stay  
Crosstabulation**

	Number of reviews for each stay		Total
	1.00	2 or more	
White	56	26	82
	68.3%	31.7%	100.0%
Indigenous	84	23	107
	78.5%	21.5%	100.0%
Black	23	19	42
	54.8%	45.2%	100.0%
Other/Missing	24	10	34
	70.6%	29.4%	100.0%
Total	187	78	265
	70.6%	29.4%	100.0%

Chi-square=8.50, df=3, p<.05

For the 265 SIUs stays reviewed, we have the total length of time in SIUs. If the stay had not yet ended (44 of the 265 stays had not yet ended), an end date of 13 December 2020 was used<sup>5</sup>. All cases obviously have been in for close to 60 or more days – but one sees that 28.6% of Black prisoners have been in for 181 days (roughly 6 months) or more compared to 14.6% of whites and 7.5% of Indigenous people (Table 6).

Table 6

**Ethnicity \* Total days in SIU -- up until 13Dec2020 if still in  
Crosstabulation**

	Total days in SIU -- up until 13Dec2020 if still in			Total
	57 thru 120 days	121 thru 180 days	181 thru 380 days	
White	53	17	12	82
	64.6%	20.7%	14.6%	100.0%
Indigenous	82	18	7	107
	76.6%	16.8%	6.5%	100.0%
Black	18	12	12	42
	42.9%	28.6%	28.6%	100.0%
Other/missing	22	8	4	34
	64.7%	23.5%	11.8%	100.0%
Total	175	55	35	265
	66.0%	20.8%	13.2%	100.0%

Chi-square=18.72, df=6, p<.01 (1 cell < 5)

Looking at *all* SIU stays<sup>6</sup> (stays that started between 30 November 2019 and 30 September 2020) we see that Black prisoners are significantly more likely to have longer stays (again using an end date of 13 Dec

<sup>5</sup>13 December 2020 was chosen because that was the date that the data were gathered from CSC so we know the people still in SIUs were in as of that date.

<sup>6</sup> In carrying out this part of our analysis, we ran across a small number of errors in the administrative data we received from CSC, none of which made any substantive difference. But there may be some very minor differences in

2020 if the stay had not yet ended). 27% of Black prisoners have stays that are over 60 days, compared to 19%-21% of all other groups (Table 7).

Table 7

**Ethnicity \* Total days in SIU (up to 13Dec2020 if still in) Crosstabulation**

	Total days in SIU					Total
	1 thru 5 days	6 thru 15 days	16 thru 31 days	32 thru 61 days	62 thru 380 days	
White	189	177	112	117	144	739
	25.6%	24.0%	15.2%	15.8%	19.5%	100.0%
Indigenous	147	183	153	141	151	775
	19.0%	23.6%	19.7%	18.2%	19.5%	100.0%
Black	69	65	33	41	76	284
	24.3%	22.9%	11.6%	14.4%	26.8%	100.0%
Other/missing	51	43	22	27	38	181
	28.2%	23.8%	12.2%	14.9%	21.0%	100.0%
Total	456	468	320	326	409	1979
	23.0%	23.6%	16.2%	16.5%	20.7%	100.0%

Chi-square=30.73, df=12 p<.01

Having discovered this concerning fact, we broke down the “62 or more days” group into two groups (Table 8) so that we could look at extremely long stays in SIUs (121 days or more). Looking more closely at those staying over 61 days, one can see that Black prisoners have the largest proportion (12.7%) staying 121 or more days (Table 8).

Table 8

**Ethnicity \* Total days in SIU (up to 13Dec2020 if still in) Crosstabulation**

	Total days in SIU						Total
	1 thru 5 days	6 thru 15 days	16 thru 31 days	32 thru 61 days	62 thru 120 days	121 thru 380 days	
White	189	177	112	117	99	45	739
	25.6%	24.0%	15.2%	15.8%	13.4%	6.1%	100.0%
Indigenous	147	183	153	141	108	43	775
	19.0%	23.6%	19.7%	18.2%	13.9%	5.5%	100.0%
Black	69	65	33	41	40	36	284
	24.3%	22.9%	11.6%	14.4%	14.1%	12.7%	100.0%
Other/missing	51	43	22	27	22	16	181
	28.2%	23.8%	12.2%	14.9%	12.2%	8.8%	100.0%
Total	456	468	320	326	269	140	1979
	23.0%	23.6%	16.2%	16.5%	13.6%	7.1%	100.0%

Chi-square=41.63, df=15, p<.001

N's from those reported in our previous reports. We should point out that in our experience, minor errors (e.g., dates that make no sense, duplicate entries) like the ones we found are very common in administrative data and should not be seen as reflecting badly on CSC. Perhaps most importantly though, none of the minor errors we found made *any* difference whatsoever to any of the conclusions that can be drawn from the data.

#### 4) IEDM decisions

As Table 3 demonstrated, we have 265 SIU stays that were reviewed one or more times, resulting in a total of 389 reviews. We have decisions for 380 of those reviews (9 reviews were pending decisions and are thus removed). Only 33 decisions (8.7%) concluded that the prisoner should be removed from the SIU (Table 9). The fact that so few decisions were to remove the person perhaps explains why this process is not correcting two important issues: shortening stays for those with mental health needs (Table 4) and reducing the disparity in the length of time Black prisoners spend in SIUs (Tables 5 thru 8).

Two other outcomes would seem to suggest that there was, no longer, a dispute between the prisoner and the CSC: decision was moot (N=8) and the prisoner had been transferred out before the decision had been made (N=115). One could argue then, that of the 380 reviews with outcomes, IEDM decisions were rendered in 68% – 33 decisions to remove and 224 decisions to remain.

Table 9: IEDM Decisions re: Length of Stay Reviews

Decision moot as determined by IEDM	2.1%	(8)
Inmate to be removed from SIU	8.7%	(33)
Inmate to remain in SIU	58.9%	(224)
N/A – Inmate transferred out of SIU before decision rendered	30.3%	(115)
Total decisions	100%	(380)

Another way of looking at these data would be to recognize that there were, essentially, two outcomes from these decisions: 1) the prisoner (unambiguously) is to remain in the SIU (224 decisions) or 2) the prisoner should be, or already had been, removed (33 + 115 = 148) or the decision is moot (8). We had these outcomes linked to anonymized individual IEDMs. Table 10 shows that there is significant variation across IEDMs in those two outcomes. Looking across the 12 IEDMS, one sees a low of 37.5% of decisions that the person should remain in (IEDM #8) up to over 75% of decisions that the person should remain in (IEDM #6 and #11).

Table 10

IEDM Number	IEDM decision		Total
	Inmate to remain in SIU	Transferred out/to be removed/moot	
1	22	25	47
	46.8%	53.2%	100.0%
2	26	9	35
	74.3%	25.7%	100.0%
3	18	15	33
	54.5%	45.5%	100.0%
4	27	23	50
	54.0%	46.0%	100.0%
5	18	10	28
	64.3%	35.7%	100.0%
6	30	9	39
	76.9%	23.1%	100.0%
7	23	8	31
	74.2%	25.8%	100.0%
8	12	20	32
	37.5%	62.5%	100.0%
9	16	13	29
	55.2%	44.8%	100.0%
10	8	11	19
	42.1%	57.9%	100.0%
11	6	1	7
	85.7%	14.3%	100.0%
12	18	12	30
	60.0%	40.0%	100.0%
Total	224	156	380
	58.9%	41.1%	100.0%

Chi-square=26.12, df=11, p<.01.

Removing IEDM#11 because of low Ns: Chi-square = 23.92, df=10, <.01

Looking at the 33 decisions to remove the person, Table 11 shows that 13 (39%) of those 33 decisions were from IEDM#8. Indeed, IEDM #8 stands apart from the others having 40% of their decisions being that the person should be removed (Table 11). This stands in contrast to IEDM #6 and #7 who, with a similar volume of reviews as #8, never recommended the removal in any of cases they reviewed. We have no explanation for the variation in decisions across IEDMs.

We also do not know why there is so much variation in the proportion of reviews that are no longer applicable because the person was transferred out before the decision was rendered – from a high of almost half (48.9%) of IEDM #1 outcomes to as few as 17% for IEDM#2 (Table 11).



Table 11

IEDM Number		IEDM decision			Total
		Inmate to be removed from SIU	Inmate to remain in SIU	No decision necessary because transferred out/moot	
1	2	22	23	47	
	4.3%	46.8%	48.9%	100.0%	
2	3	26	6	35	
	8.6%	74.3%	17.1%	100.0%	
3	3	18	12	33	
	9.1%	54.5%	36.4%	100.0%	
4	1	27	22	50	
	2.0%	54.0%	44.0%	100.0%	
5	2	18	8	28	
	7.1%	64.3%	28.6%	100.0%	
6	0	30	9	39	
	0.0%	76.9%	23.1%	100.0%	
7	0	23	8	31	
	0.0%	74.2%	25.8%	100.0%	
8	13	12	7	32	
	40.6%	37.5%	21.9%	100.0%	
9	4	16	9	29	
	13.8%	55.2%	31.0%	100.0%	
10	4	8	7	19	
	21.1%	42.1%	36.8%	100.0%	
11	0	6	1	7	
	0.0%	85.7%	14.3%	100.0%	
12	1	18	11	30	
	3.3%	60.0%	36.7%	100.0%	
Total	33	224	123	380	
	8.7%	58.9%	32.4%	100.0%	

In considering the reasons for the statistically significant variation in the decisions made by the 12 IEDMs, the most obvious is that the IEDMs have different thresholds for when they believe that a prisoner should be removed from the SIU. Unfortunately, we – like everyone outside of CSC or the panel of IEDMs -- have almost no information about these decisions or the decision-making process. There are other possible explanations for this significant variability, in addition to the “different threshold” explanation, some of which may raise very different concerns:

- a) Individual IEDMs may be assigned different types of cases. We have no information about how cases are assigned to IEDMs.
- b) Individual IEDMs may differ in the information that they request from CSC for making their decisions. Furthermore, we have no information about what information is actually provided to IEDMs and how they use it.

- c) IEDMs may differ on the factors that they believe are important in determining whether a person should stay in the SIU. The legislation provides IEDMs with very little guidance about how their decision should be made.
- d) CSC may be providing different IEDMs with different type of information (e.g., different institutions may provide different information to particular IEDMs, perhaps on the basis of what is known about the IEDM’s response to previous cases.)

The overriding problem – and one which we expand on in the conclusion – is that the process by which IEDM reviews for “length of time in the SIU” take place is opaque. Hence the significant variations in decision-making cannot be satisfactorily explained.

### 5) Timing of Release

As shown in Table 3, 265 SIU stays were reviewed by IEDMs for the length of stay. Of those 265 stays, 222 prisoners had ultimately been released from the SIUs. We refer to those stays as having “completed” reviews or being “completed” stays since there will be no further IEDM reviews for length of stay for them. Of these 222 completed stays, 160 (72%) had one review and were then released (Table 12).

Table 12: “Completed” reviews only: Number of SIU stays and the number of reviews.

Number of SIU stays reviewed	Number of IEDM reviews for length of stay (s37.8)
160 stays	Received 1 review
41 stays	Received 2 reviews (a total of 82 reviews)
11 stays	Received 3 reviews (a total of 33 reviews)
8 stays	Received 4 reviews (a total of 32 reviews)
2 stays	Received 5 reviews (a total of 10 reviews)
Total Number of stays = 222	Total Number of Reviews = 317

We next examine what may be the simplest cases – those SIU person-stays that are “completed” (i.e. the person is released) after only one review. We have 160 stays that were reviewed once and then the person was released. Table 13 shows the decisions for these 160 stays. In half (50%) the person was released before the decision was rendered. Overall the IEDMs recommended that the person remain in the SIU in 31.3% (N=50) of these stays and in 16.3% (N=26) the IEDMs recommended removal.

Table 13: “Completed” reviews AND only one review: IEDM Decisions re: Length of Stay (s37.8)

Decision moot as determined by IEDM	2.5% (4)
Inmate to be removed from SIU	16.3% (26)
Inmate to remain in SIU	31.3% (50)
N/A – Inmate transferred out of SIU before decision rendered	50.0% (80)
Total decisions	100% (160)

Table 14 shows the length of time between the date the file was referred to the IEDM and the date that the SIU stay ended. Decisions should be rendered within 30 days so we have created four time groupings: 1) being released within 30 days of sending the file to the IEDM; 2) released within 31 to 40 days of referring

the file to the IEDM; 3) released within 41 to 60 days; and 4) released 61+ days after referring the file to the IEDM. We do not have the date when CSC received the decision from the IEDM (in those cases where a decision was made.)

We expect that most people would probably think that if the decision is to release the person, the release may happen sooner than if the decision is to remain in. That is not the case (Table 14). 30% (N=8) of those who the IEDM decided should be removed were released within 30 days whereas for those where the IEDM decided the stay should continue, 26% (N=13) were released within 30 days. More perplexingly, 26.9% (N=7) of those who the IEDM decided should be removed were released more than 61 days after referring the case to the IEDM. That stands in contrast to the group who the IEDM decided should remain in – only 4% (N=2) remained in past 61 days (Table 14).

Table 14

**IEDM decision \* number of days in SIU from the date the file was REFERRED to the IEDM to leaving the SIU**

		number of days in SIU from the date the file was REFERRED to the IEDM to leaving the SIU				
		Released within 30 days of referring file to IEDM	released 31 to 40 days after file was referred to IEDM	released 41 to 60 days after referring file to IEDM	released 61+ days after referring file to IEDM	Total
IEDM decision	Decision Moot as Determined by IEDM	1	2	0	1	4
		25.0%	50.0%	0.0%	25.0%	100.0%
	Inmate to be removed from SIU	8	8	3	7	26
		30.8%	30.8%	11.5%	26.9%	100.0%
	Inmate to remain in SIU	13	13	22	2	50
		26.0%	26.0%	44.0%	4.0%	100.0%
	NA - Inmate transferred out of SIU before decision rendered	77	2	1	0	80
		96.3%	2.5%	1.3%	0.0%	100.0%
Total		99	25	26	10	160
		61.9%	15.6%	16.3%	6.3%	100.0%

We are thus seeing long delays from the moment the IEDM presumably, according to the legislation, should have issued the decision to remove the individual from the SIU to the time when the individual is actually released. Some of these apparent delays are not trivial. In some cases, the delay essentially doubles the time the individual actually spends in SIU.

It should be pointed out that if a decision is made to remove a prisoner from the SIU, the timing of the transfer depends on where CSC intends to transfer the prisoner. [Guidelines 711-1](#) is very clear: “Where the decision-maker approved an inmate’s transfer out of an SIU to a mainstream population at the same site, the transfer will be effected immediately” (paragraph 66). However, if, at the time that CSC decides to remove the prisoner from the SIU, CSC decides that the prisoner should go to a different institution, the timeline is essentially unspecified and unreviewable: “Where an SIU inmate is approved for a transfer to another institution, but the inmate cannot be immediately physically transferred, they will remain in the SIU until the transfer can be effected” (Paragraph 69). Of course, after being approved to be transferred to another institution, CSC could, in the end, decide that the person should be transferred to the mainstream population of the same institution in which the SIU is located. In this case, the prisoner would stay in the

SIU for an indeterminate period until that revised decision was made. It could easily, then, account for a rather long delay where the prisoner was kept in the SIU for days or weeks after the IEDM had apparently said that the prisoner should be removed from the SIU (See Table 14).

## 6) Non-reviews

As we explained at the outset, we had 256 stays that were reviewed by an IEDM at least once under s.37.8 of the CCRA. To those who have followed our previous reports that number may appear low, as in our [third report](#) (February 2021) we reported 413 stays that lasted 62 days or longer. We look more carefully at longer stays here. Looking at those who were admitted into an SIU between 30 November 2019 and 30 September 2020 (N=1,979), we examined whether or not a stay was sent to an IEDM to review under s.37.8 by the length of time in the SIU (Table 15).

What we are surprised about, obviously, is the fact that there are 105 person-stays [29+27+49=105] in which the person was in the SIU for 76 or more days and they never had their case sent to an IEDM for a review under s. 37.8 (Table 15). As the most extreme example, 137 SIU stays ended up being longer than 120 days and 49 of them – or 35.8% -- were never once sent to an IEDM to review under section 37.8.

Table 15

### Total number of days in SIU \* Flag for whether or not the stay was sent to be reviewed by an IEDM Crosstabulation

		Flag for whether or not the stay was sent to be reviewed by an IEDM		Total
		case never sent to an IEDM	case sent one or more times to IEDM	
Total number of days in SIU	up to 65 days	1580	21	1601
		98.7%	1.3%	100.0%
	66 to 75 days	30	40	70
		42.9%	57.1%	100.0%
	76 to 90 days	29	51	80
		36.3%	63.7%	100.0%
	91 to 120 days	27	64	91
		29.7%	70.3%	100.0%
	over 120 days	49	88	137
		35.8%	64.2%	100.0%
Total		1715	264	1979
		86.7%	13.3%	100.0%

Data: all SIU stays that started before 1 Oct 2020. 55 of the 1,979 stays had not yet ended – for those stays an end date of 30 Nov 2020 was used since we had cases sent to IEDMs on or before that date.

Perhaps the long-stay cases that are not getting referred to an IEDM are because the Senior Deputy Commissioner said the person should be removed (in 37.4) thus not requiring an IEDM review but CSC took a somewhat relaxed view as to when that transfer really had to take place. Or possibly CSC has found or read into the legislation an understanding which allows there to be a delay or no review.

Whether or not there is a reason that can be squeezed out of some ‘special’ reading of the CCRA, the *Corrections and Conditional Release Regulations*, and the Commissioner’s Directives is, perhaps, less important than the simple fact that CSC’s own data show that a large number of people did not have their “length of time in SIU” reviewed by an IEDM.

We decided to look more carefully at a subset of these “long stays” in SIUs that were not associated with a “time in the SIU” review by an IEDM. Our hope was that by looking at details of the cases, we could uncover hints as to why the review did not occur. We chose five cases at random. All were men, since there were no women with long stays who were not reviewed by an IEDM. The 5 randomly chosen cases involving men are as follows:

Case 1: Larry<sup>7</sup> is an Indigenous man in his 50s serving an indeterminate sentence for an offence against the person. He has been a prisoner in a CSC facility for over 20 years and had more than 20 stays in segregation before the switch to SIUs. Between 30 November 2019 (the first day of the shift to SIUs) and mid-December 2020, he has had five separate stays in an SIU. His last stay started toward the end of the period for which we have data and as a result we have no end-date for that stay in the SIU. His first and third stay in an SIU were coded as relating to the safety and security of the institution; his second, fourth, and fifth stays were said to be related to his own safety.

In his second visit to the SIU, Larry was kept in the SIU for more than four months without being reviewed by an IEDM. During this stay, there was not a single day when he was out of his cell for the full four hours mentioned in the legislation, and in 96% of his days, he did not receive the 2 hours of meaningful human contact. That stay was followed by two relatively short stays in an SIU, but about 2 months after his second stay in the SIU ended, he was back in the SIU for a fifth time. Larry had no indicators in our records of a mental health problem until his 5<sup>th</sup> stay in the SIU, at which point CSC indicated that he had mental health challenges.

One possibly important fact that may be relevant to understanding why his long (second) stay in the SIU was not examined by an IEDM relates to the fact that after this second stay, he was transferred to an institution in a different region. Because Larry was to be transferred to the mainstream population of another institution (in this case in a different region), the time that he can be kept in the SIU before the transfer takes place has no outside limit. Hence it is possible that CSC decided that he should be transferred out of the SIU before he had spent 60 days in the SIU (and thus an IEDM review of length of stay was not required) and it just took them some time (more than two months) to arrange appropriate transportation.

Case 2: Jamie is a Black male in his mid-30s who had been in penitentiary for about 9 years for procuring and exercising control for sexual purposes over a person under 18. He is reported to have had over 20 administrative segregation stays before the advent of SIUs and had no mental health indicators on his file. Jamie had been placed in SIUs “for the safety and security of the institution” once because of an alleged assault against another prisoner and three times, including his fourth stay, because of threats to staff. Two

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<sup>7</sup> We do not have names of prisoners; hence just chose names haphazardly from an available list and then modified them slightly to ensure anonymity. We have made the various other facts of each slightly vague (e.g., we’ve given rough ages and offences, etc.) in order to make it difficult for the prisoners to be identified. All descriptive information about the case is, however, entirely consistent with the records we received from CSC.

of his earlier SIU stays were for just a few days; one was a bit over a month. In his fourth SIU stay, he was kept in the SIU for over 5 months without an assessment for 'length of stay' by an IEDM. During this fourth stay in an SIU, Jamie had never received 4 hours out of the cell nor did he ever receive the full 2 hours of meaningful human contact. CSC records suggest that in only one of the days during this more-than-5-month-stay did Jamie actually refuse to leave the cell all day. All of Jamie's transfers into and out of the SIU were associated with the same institution. We have no idea why Jamie never received a "length of stay" assessment by an IEDM.

Case 3: Will is a white male in his late 20s, without any indicators of any mental health problems. He was serving a 10 year sentence for attempted murder. He has been in penitentiary for over 5 years and up until the end of November 2019 had been placed in administrative segregation on more than 10 occasions. He was transferred to the SIU in the same institution in which he had been serving time. The stated reason was that Will had requested the transfer for safety reasons. He spent more than 7 months in the SIU cell. Notwithstanding the reason for transfer to the SIU, Will missed getting the legislation's promise of 4 hours out the cell on 47% of the days he was in the SIU and he missed his two hours of 'meaningful human contact' 18% of the time. Missing his time out of cell was not, in CSC's records, attributed to his refusal: CSC tells us that Will only refused to leave the cell all day on 3% of his days in the SIU. At the end of his stay in the SIU, he was transferred back to the mainstream population in the same institution. As with Jamie, we have no idea why Will's stay in the SIU was never reviewed for "length of stay" by an IEDM.

Case 4. Jason is an Indigenous male in his mid-20s serving a sentence of 4 years for an offence against person. He had been in penitentiary for about two years when he started his third stay in the SIU which lasted about 4 months and was never reviewed by an IEDM. The stated reason for placing him in an SIU that time was that there was "an alleged assault against another inmate." Jason had been in an SIU twice before this 4 month stay, though these only lasted a bit over a week (for his first stay) and almost 3 weeks for his second stay. CSC reported that Jason had no indications of mental health issues. Those two earlier short stays were precipitated by alleged assaults against staff. All of his transfers (in and out of the SIU) were in the same institution. Jason almost never got his full four hours out of his SIU cell just as he almost never received his 2 hours of meaningful human contact. Most of the time (in 72% of the days) Jason is recorded as having refused to leave his cell. As with Jamie and Will, the failure to have an IEDM review of Jason's time in the SIU is mysterious.

Case 5: David's first stay in an SIU lasted over 5 months. David is in his mid-20s and is described as being of South-East Asian background. He is serving an 8-year sentence for attempted murder. He has no indications of any mental health issues. He had, however, experienced administrative segregation about half a dozen times before the SIUs were opened. In 2020, David spent more than 5 months in an SIU in the same institution in which he had been serving time. After that, he was returned to the mainstream population of this same institution. A little over a month later, David was again transferred to an SIU, but that time he only stayed about a week before being returned to the mainstream population. During his long stay in the SIU, David missed his 4 hours out of cell 63% of the time and missed his 2 hours of meaningful human contact about 41% of the time. His long stay in the SIU was said to be the result of information that he would otherwise be assaulted. Like Cases 2, 3, and 4, we don't know why David's case did not receive a "time in the SIU" review by an IEDM.

## 7) Other issues that we could not examine

There were a number of issues that we found, in writing this report, that we were unable to address. These included the following:

**Issue 1:** How do cases get assigned to a specific IEDM? That is, who assigns IEDMs to specific cases and on what basis are they assigned? The IEDM is in contact with Regional Senior Project Officer (RSPO) (para 76, CD 711). This is the point of contact with CSC. IEDMs can ask for information through this Officer, and this is how their recommendations and decisions are shared with CSC. Then the RSPO contacts the SIU Manager who facilitates everything. It is not clear if it is the RSPO who distributes and assigns the cases. It is possible that the cases sent to the (regional) co-chair of the IEDMs who then distributes them. It would seem to be important to know the basis on which they are assigned to specific IEDMs.

**Issue 2:** What does “as soon as practicable” mean? This is a term that appears often in the legislation for various procedures under which a case may be reviewed by the Institutional Head or IEDM (other than the process under s. 37.8). What is “practicable” often relates to what resources one is willing to put into the event happening. It appears to us that this discretion should be governed by some maximum time limits.

**Issue 3:** Is there any way of ensuring that IEDM decisions are carried out in a timely fashion? How can IEDM decisions be challenged? (Challenges can probably be carried out through a judicial review in Federal Court, but that process may not be easily accessible to people in SIUs). We can see that prisoners get certain information about the decision, but to what extent do they (and/or their legal council), in practice, see what the IEDM has based the decision on?

**Issue 4:** What information do IEDMs consistently receive when reviewing cases? Presumably they receive the decision rendered by the Commissioner or Senior Deputy Commissioner.

- Do they also get the prisoner’s file? The CCRA directs that in making a determination the following ought to be considered (s. 37.82 (2): the prisoner’s correctional plan, the appropriateness of the prisoner confinement in the penitentiary, the appropriateness of the security classification, anything else deemed relevant.
- The IEDM may require any staff member to provide information in relation to the case or to produce a document. (CCRA s 37.7). What, in practice, does this mean?
- Prior to rendering a decision an IEDM must ensure the prisoner is given an opportunity to make written representations (s 37.72 CCRA). What information does the prisoner – and/or their legal council – receive ahead of time in order to make meaningful representations? For example, does the prisoner – and/or their legal council -- always receive CSC’s reasons for arguing that the prisoner should stay in the SIU?
- Prior to making a determination, the IEDM *may* communicate with the prisoner (s. 37.73). Section 80 (g) CD 711 notes that the SIU Manger in an Institution will facilitate the requests of the IEDM such as oral interviews or provision of additional documents. Thus, it appears the prisoner has a right to make written submissions. There is no right to verbal communications, but the IEDM may reach out and talk to the prisoner if they want to. How often does this happen, and what information is given to the prisoner – and/or their legal counsel – before verbal communication takes place? What happens if the prisoner requests to talk to the IEDM? Can the IEDM decline?

Overall, it is unclear what is the consistent package of information an IEDM receives for cases being reviewed under s.37.8.

**Issue 5:** Why does it take so long to actually remove someone from an SIU? We understand that arranging transfer can take time, but these people have been in the SIU for months prior to a removal decision. Given that stays are to be as short as possible one would assume that CSC would be working on issues around transferring out of the SIU as soon as the prisoner is placed in there.

**Issue 6:** When the IEDM decides upon the removal of a prisoner under s. 37.8 the IEDM “shall determine whether the inmate should remain in the unit.” But, under s. 37.83 (3) the IEDM “shall direct the removal” of the prisoner [if corrective action not taken re: time out of cell]. It is unclear what the difference in the language used means and whether these decisions are intended by the legislator to be binding or not. The bottom line is this: are decisions under 37.8 binding on CSC?

**Issue 7:** What is the justification for the fact that there is no transparency around IEDM decisions? We are aware of the following two things:

- CCRA 37.77: An independent external decision-maker may, in accordance with regulations made under paragraph 96(g.1), publish or otherwise disseminate information, other than personal information, relating to any determination made by the independent external decision-maker.
- CCR Regulation 23.02: For the purposes of section 37.77 of the Act, a representative sampling of information related to any determination of the independent external decision-maker may be published in print and electronically and those publications are to be made available to offenders, staff members and the public.

There does not appear to be any requirement to release information. Just to illustrate this point, we were shown the results of an access to information request involving SIUs. One of the items was an IEDM decision. The complete decision was redacted except for the prisoner’s name, age, and the fact that he was an Indigenous person.

There are few circumstances where court proceedings are so secret that nobody but the individual parties can see the results. We find it surprising that almost everything about the process of IEDM reviews is secret. Indeed, it is even unclear whether these reviews can be made public through Access to Information requests and where (CSC; PSC or IEDMs) to even send such requests. We understand the importance of protecting the privacy of prisoners. We find it harder to understand the importance that the government apparently places in not allowing public scrutiny of the review process of prisoners by IEDMs.

There are other bodies who are charged with the responsibility for deciding whether a prisoner should stay in an SIU after first being transferred to one. The original “Panel” did not request information on these interim decisions. Because we are reliant on data that come from the Panel’s November 2019 request, we do not have this information. To understand “length of stay” in the SIU, however, we believe that the new panel, if there ever is one, needs to look more broadly at the overall review process.

## 8) Conclusions

Given that our three previous reports documented alarming non-compliance with the intent of the legislation such that, applying the [Mandela Rules](#) definitions, an estimated 28% of stays in SIUs constituted solitary confinement and 10% constituted torture or other other cruel, inhuman or degrading treatment, it is not surprising that CSC appears determined to highlight two independent oversight bodies: the currently (9 May 2021) non-existent Implementation Advisory Panel (IAP) and IEDMs who “review inmate cases on an ongoing basis, in real-time”.



First, as we explained earlier, the IAP has not existed for about eight months and, even when it was operational, it concluded that it could not do its work because CSC refused to comply with data requests (see Appendix D in the [October 2020 report](#)).

Second, with respect to IEDMs reviewing cases on an ongoing basis in “real time”, while we do not disagree with this statement – we understand that time is real – given that an IEDM decision to remove a person only comes into play roughly three months into the stay, it is difficult to see how this process could result in significantly shorter stays for very many prisoners. Furthermore, one has to remember that our previous findings pertaining to the use of what is internationally referred to as solitary confinement and torture (see our [February 2021 report](#)) were documenting the operation of these SIUs with IEDM oversight.

Said differently, it may well be that the IEDMs are, in some cases, contributing to shorter stays in the SIUs. Furthermore – in another area on which we have no data – it is possible that some SIU prisoners are getting more time out of cell and meaningful human contact than they would if there were no IEDM oversight. That is an interesting question. We, on the other hand, are looking to see whether the operation of the SIUs conforms to the promise to rid Canada of what is internationally defined as solitary confinement and torture. We can see that the IEDM review system does not do that. And we see hints – in some of our findings – as to why the current system is inadequate.

Beyond the exceptionally long timeline set for when an SIU stay can reach an IEDM, there are other concerns related to the opacity of the legislation. One of the three authors of this report is a law professor. In addition, we consulted a number of other lawyers practicing prison law about the interpretation of the current legislation, the *Corrections and Conditional Release Regulations*, and Commissioner’s Directives and Guidelines. We cannot guess why these are written in a way that appears designed to make it difficult or impossible to understand this process. We would suggest that anyone interested in prison law might want to look at the law, regulations and relevant commissioner’s directives and think about whether reasonably intelligent prisoners could figure out the timing of their reviews and what kind of written submissions they should make to the IEDM. In addition, the legislative framing of the process also allows for opportunities for CSC to bend and adapt the rules and timeframes to what is convenient for them, which evades the whole reason why the SIUs were created in the first place (i.e. because the old segregation regime was found unconstitutional).

Once again, the findings in this report should be read in the context of our previous findings regarding the implementation of the SIUs and its significant shortcomings. We are concerned to see that mental health needs (as identified by CSC itself) does not appear to impact the length of stay or the IEDM decisions and that these decisions do not rectify in any way the significant racial disparity in the length of stay. We are also concerned by the fact that there was a hard to explain and statistically significant variation among the removal decisions of the various IEDMs. The high number of decisions for prisoners to remain in SIU, the delays in removing prisoners from SIUs when a removal decision was rendered, as well as the lack of reviews in some very long stay cases, are – or should be – all raising red flags.

Based on this report, and the three previous reports that we have carried out, it is clear that change is desperately needed. In Section 7 of this report, we have listed some questions that we had about the IEDM review process that we believe need answering but were not central to our findings. They are, however, central to ensuring the transparency and accountability of the process and are relevant in further interpreting and understanding the importance of our findings.

Our findings also point to the importance of there being an oversight body that can look systematically not only at the kind of data that we, as volunteers, have been looking at, but also at other more detailed data related to the operation of the SIUs and the practice of solitary confinement.