

Diffusion de l'information en vertu de l'article 37.77 de la LSCMLC

Janine Lespérance, Décideuse externe indépendante (2019-2024)

2024-10-27

(English follows)

Raisonnement

Les DEI ne sont pas tenu.e.s de rendre les informations publiques. Cependant, l'existence de dispositions législatives sur la publication suggère que le législateur, lors de la création du rôle du/de la DEI s'attendait dans une certaine mesure à ce que les DEI fassent preuve de transparence publique.

Un.e DEI peut publier ou diffuser « les renseignements, à l'exception des renseignements personnels, relatifs à ses décisions » (*Loi sur le système correctionnel et la mise en liberté conditionnelle*, art. 37.77); Il s'agit d'un « échantillonnage représentatif de renseignements » (*Règlement sur le système correctionnel et la mise en liberté conditionnelle*, art. 23.02). La législation ne précise pas la portée ou la nature précise des informations qui peuvent être partagées.

La législation ne définit pas d'identité organisationnelle collective pour les DEI (c'est-à-dire que les DEI ne sont pas un tribunal ou une commission). En vertu de l'art. 37.77, chaque DEI semble disposer du pouvoir individuel de publication.

On peut soutenir que la transparence est un élément essentiel d'une surveillance efficace, particulièrement dans le contexte correctionnel. De plus, à mon avis, un mécanisme destiné à promouvoir l'imputabilité devrait lui-même être imputable. Même si les DEI ne sont pas des fonctionnaires, ils sont rémunérés par des fonds publics. Je considère que la mise à la disposition d'informations sur les travaux des DEI s'aligne sur le *Code de valeurs et d'éthique du secteur public*, notamment les valeurs de respect de la démocratie et d'intégrité. Une meilleure information et connaissance du travail des DEI peut contribuer aux débats parlementaire et public sur la législation appropriée dans ce domaine.

Contexte et méthodologie

L'approche générale se base sur les résultats des discussions internes, notamment dès septembre 2022, avec le sous-groupe des DEI basé.e.s dans l'Est du Canada. La démarche s'est aussi appuyée sur un avis juridique sur les pouvoirs des DEI. Différentes possibilités ont été discutées, notamment des informations quantitatives, de courts extraits de textes de décisions et des résumés de questions ou de décisions. Nous sommes parvenus à une entente commune sur une approche acceptable : publier des textes de décisions complets – mais caviardés – sélectionnés dans certaines catégories, à savoir :

- Tenir compte des facteurs liés aux antécédents sociaux autochtones (*LSCMLC*, art. 79.1(1))
- Les ressources dans les UIS et les limitations contextuelles ou structurelles ayant un impact sur les opportunités offertes aux détenus à l'UIS
- La santé mentale
- Les « refus » des détenus de quitter les UIS et les alternatives limitées aux placements dans les UIS
- La situation particulière des femmes incarcérées
- Le recours aux transferts interrégionaux pour mettre fin aux placements dans les UIS
- Les identités, les besoins spécifiques, les personnes vulnérables et la discrimination systémique
- La divulgation de renseignements par le SCC (*LSCMLC*, art. 37.7)
- Les « groupes de menace à la sécurité » et les options d'intégration
- L'isolement hors les UIS
- Le non-respect des décisions des DEI
- L'encouragement au sein des UIS (*LSCMLC*, art. 37.83)
- Les conclusions des décisions en vertu des art. 37.83(3) et 37.8 de la *LSCMLC*

Nous avons convenu que ces thèmes sont apparus fréquemment dans nos examens, mais pas toujours dans la même mesure pour chaque DEI. Il ne s'agit en aucun cas d'une liste exhaustive des questions examinées dans les examens des DEI, et plusieurs de ces catégories se chevauchent de diverses manières. De plus, de nombreux sujets peuvent survenir lors d'un processus d'examen donné.

L'échantillonnage représentatif ci-dessous vise à fournir des renseignements sur:

- Les différents types de décisions des DEI
- La structure potentielle d'une décision d'un.e DEI
- Les sources d'informations qu'un.e DEI peut prendre en compte dans sa décision
- Les questions de fond, de procédure et d'interprétation pouvant survenir dans le processus décisionnel d'un.e DEI

Pour sélectionner les décisions, j'ai examiné toutes les décisions que j'ai rendues (537 décisions complètes entre 2019 et 2024, plus 704 avis de fin de processus,¹ dont certains contiennent des observations ou des recommandations), en m'appuyant notamment sur les sections de résumés des décisions et parfois sur une base de données de décisions rudimentaire (dans Excel). J'ai identifié certaines décisions basées sur la mémoire.

Les décisions dans lesquelles les thèmes ci-dessus ont été discutés de manière significative ont été sélectionnées. La conclusion globale de la décision, qu'elle soit « positive » ou « négative », n'a pas été un facteur dans le choix des décisions. La qualité

¹ Ces chiffres peuvent ne pas être exacts en raison de la possibilité d'erreurs administratives.

perçue de la décision n'était pas un critère manifeste. J'ai enlevé certaines décisions de la liste afin de réduire la taille de l'échantillon et par manque de temps pour le caviardage.

J'ai initialement caviardé les textes de décisions pour supprimer les renseignements permettant d'identifier toute personne (caviardage en noir dans le texte ci-dessous), y compris en remplaçant les noms par des lettres de l'alphabète aléatoires (p. ex., M. A, M. B...). Dans plusieurs cas, j'ai supprimé les dates, les noms d'établissements et les noms d'unités ou de rangées spécifiques. J'ai ensuite transmis ces décisions expurgées à la Division de l'accès à l'information et de la protection des renseignements personnels du Service Correctionnel du Canada, ce qui a entraîné d'importantes expurgations supplémentaires (en blanc).

Les DEI n'ont pas eu accès à des expert.e.s indépendant.e.s en protection de la vie privée pour les aider dans ce travail. Dans ce contexte, j'apprécie la volonté du SCC d'offrir ses services aux DEI, ainsi que le fait que le bureau de l'AIPRP ait effectué le travail de rédaction dans un délai très court.

Ce travail a été fait avec d'importantes contraintes de temps et de ressources à la fin de mon mandat.

Limites

L'échantillon ci-dessous présente plusieurs limites:

- Surtout, il s'agit d'un échantillon du travail d'un.e seul.e DEI sur 14 personnes qui ont exercé ce rôle depuis 2019, année durant laquelle le rôle des DEI est entré en vigueur. Il ne fournit pas une représentation globale ou précise des approches et interprétations de tou.te.s les DEI.
- Ça ne représente peut-être pas un échantillon représentatif idéal ou « scientifique », même dans le cas de mes propres décisions. Les thèmes énumérés ci-dessus ne sont pas tous représentés de manière égale.
- Les établissements de l'Est (de l'Ontario vers l'est) sont surreprésentés puisque ma charge de travail en tant que DEI s'est concentrée sur ces établissements. Toutefois, certaines décisions concernent des institutions de l'Ouest du pays.
- Je n'ai rendu aucune décision concernant directement un établissement pour femmes, donc aucune ne figure dans le texte ci-dessous.
- Il ne remplace pas un rapport systématique sur le fonctionnement de toutes les UIS depuis 2019, ni sur le fonctionnement de la surveillance des DEI.
- Il n'illustre pas adéquatement le « dialogue » entre les DEI et le SCC. Les DEI rendent de nombreuses décisions concernant les mêmes établissements, et potentiellement les mêmes individus, ce qui peut affecter les conclusions ou la profondeur des discussions dans toute décision donnée sur les questions soulevées. Les décisions des DEI sont souvent prises dans le contexte d'une « chaîne » de décisions. De plus, pour certains des problèmes évoqués, le SCC peut

avoir fourni des éclaircissements ou des explications, ou apporté des améliorations à la suite de la décision.

- Le besoin d'éviter de partager des renseignements personnels limite considérablement l'utilité et la clarté du texte ci-dessous; cela rend l'analyse et les résultats plus difficiles à comprendre. Les informations ci-dessous ne sont malheureusement pas présentées dans un format convivial et accessible.

Malgré ces défaillances, j'espère que l'échantillon de décisions ci-dessous contribuera à une plus grande transparence du système correctionnel.

Dissemination of information under s. 37.77 of the CCRA

Janine Lespérance, Independent External Decision-Maker (2019 – 2024)

2024-10-27

Rationale

IEDMs are not required to make information public. However, the existence of legislative provisions on publication suggests the legislature had some expectation of IEDMs demonstrating public transparency when creating the IEDM role.

An IEDM may publish or disseminate “information, other than personal information,” relating to any IEDM determination (*Corrections and Conditional Release Act*, s. 37.77); this is meant to be a “representative sampling” of information (*Corrections and Conditional Release Regulations*, s. 23.02). The legislation does not clarify the precise scope or nature of the information that may be shared. The legislation does not set out a collective, organizational identity for IEDMs (i.e. IEDMs are not a tribunal or commission). Under s. 37.77, each IEDM seems to have the individual power to share information.

Arguably, transparency is an essential element of effective oversight, particularly in the correctional context. More, in my view, a mechanism intended to promote accountability should be accountable itself. While IEDMs are not government employees, they are remunerated with public funds. I consider that making information available about IEDM work aligns with the *Values and Ethics Code for the Public Sector*, especially the values of respect for democracy and integrity. Greater information and knowledge about IEDM work can contribute to parliamentary and public debate about appropriate legislation in this area.

Background and Methodology

The general approach used results from internal discussions, especially as of September 2022, with the sub-group of IEDMs based in Eastern Canada. The approach was also informed by a legal opinion on IEDM powers. Different possibilities were discussed, including quantitative information, short excerpts of decision texts, and issue

or decision summaries. We came to a common understanding on an acceptable approach: publishing full – but redacted – decision texts selected under certain categories, namely:

- The consideration of “Indigenous Social History” factors (CCRA, s. 79.1(1))
- Resources in SIUs and contextual or structural limitations on opportunities for SIU inmates
- Mental health
- Inmate “refusals” to leave SIUs and limited alternatives to SIU placements
- The specific situation of incarcerated women
- The use of inter-regional transfers to end SIU placements
- Specific identities and needs, vulnerable persons, and systemic discrimination
- Information disclosure from CSC (CCRA, s. 37.7)
- “Security threat groups” and integration options
- Isolation outside SIUs
- Non-compliance with IEDM decisions
- Encouragement in SIUs (CCRA, s. 37.83)
- Conclusions in s. 37.83(3) and s. 37.8 decisions

We agreed these themes have arisen frequently, though not always to the same extent for each IEDM. It is by no means an exhaustive list of issues that are considered in IEDM reviews, and several of these categories overlap in various ways. Also, many issues may arise in any given review process.

The representative sampling below aims to provide information about:

- The different types of IEDM decisions
- The potential structure of an IEDM’s decision
- The sources of information an IEDM may consider in their decision
- Substantive, procedural, and interpretive issues that may arise in the IEDM decision-making process

To select decisions, I reviewed all decisions I have issued (537 full decisions between 2019 and 2024, plus 704 end of process decisions,² some of which contain observations or recommendations), relying particularly on decision summary sections and sometimes to a rudimentary decision database (in Excel). I identified some decisions based on memory.

Decisions in which the themes above were discussed significantly were selected. The overall conclusion of the decision, whether “positive” or “negative,” was not a factor in the selection of decisions. Perceived quality of the decision was not an overt criterion. I removed some decisions from the list to reduce the sample size and due to lack of time for redaction.

² These numbers may not be exact due to the possibility of administrative error.

I initially redacted the decision texts to remove information that would make anyone identifiable (“placeholder” redactions in Black), including by replacing names with random alphabet letters (e.g. “Mr. A, Mr. B...”). In many cases I removed dates, institution names, and specific unit/range names. I sent the pre-redacted decisions to CSC’s Access to Information and Privacy division, which resulted in significant additional redactions (in white). There is some inconsistency in the form of redactions.

IEDMs have not had access to independent privacy experts to assist in such work. In this context, I appreciate CSC’s willingness to provide its services for IEDMs, as well as the ATIP office having done the redaction work on a very short timeline.

This work was carried out under significant time and resource constraints at the end of my mandate.

Limitations

The sample below has several limitations:

- Importantly, it is a sampling of the work of only one IEDM out of 14 individuals who have done this work since 2019, when the IEDM role came into effect. It does not provide a holistic or accurate representation of the approaches and interpretations of all IEDMs.
- It may not represent an ideal or “scientific” representative sampling of even my own decisions. The themes listed above are not all equally represented.
- Eastern institutions (from Ontario eastward) are overrepresented, since my caseload as an IEDM has focused on these institutions. However, some of the decisions do concern Western institutions.
- I have not issued any decision directly concerning a women’s institution, so none are in the text below.
- It is not a substitute for a systematic report on the operation of all SIUs since 2019, nor on the operation of IEDM oversight.
- It does not adequately illustrate the “dialogue” between IEDMs and CSC. IEDMs issue many decisions concerning the same institutions, and potentially the same individuals, which may affect findings or the depth of discussion in any given decision on issues that arise. IEDM decisions are often issued in the context of a “chain” of decisions. Moreover, for some of the problems discussed, CSC may have provided clarifications or explanations, or made improvements following the decision.
- The need to avoid sharing personal information significantly limits the utility and clarity of the text below; it makes analysis and findings harder to understand. The information below is unfortunately not presented in a user-friendly, accessible format.

Despite these limitations, I hope the sample of decisions below will contribute to greater transparency in the correctional system.

Name:
FPS Number: ██████████
Correctional Institution: Maximum-security Institution
Date of Notification: July 18, ██████████
Date of Decision: September 18, ██████████
Independent External Decision-Maker: Janine Lespérance

**DECISION UNDER SUBSECTION 37.83(1) OF THE
 CORRECTIONS AND CONDITIONAL RELEASE ACT,
 S.C. 1992, C.20**

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s.19(1)

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SUMMARY

A long period was reviewed. I became less isolated as the period continued. He consistently engaged in interventions, before and during his SIU stay. His participation in other SIU activities was much less consistent. There was an unexplained delay in approving a recreation group for him.

the assessment was rushed and not with someone he had pre-existing rapport with. Various issues, mainly preceding his SIU placement, made him feel CSC did not adequately give weight to factors in his most recent reclassification from medium to maximum security. That issue is relevant for recommendations. Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps to provide opportunities to leave his cell and interact with others in the SIU.

s.19(1)

I. INTRODUCTION

[1] On July 18, [REDACTED], Correctional Service Canada (“CSC”) notified the Independent External Decision-Makers (“IEDMs”) that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act* (“CCRA”) concerning [REDACTED] is necessary. He was incarcerated in the Structured Intervention Unit (“SIU”) at a Maximum-security Institution (“[REDACTED]”) in [REDACTED].

[2] If I do have a legal basis to review [REDACTED]’s situation, I must answer this question: did CSC take all reasonable steps to provide [REDACTED] at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?¹

¹ CCRA, s. 37.83(1).

II. BACKGROUND

- [3] [redacted] is [redacted] years old. He is an [redacted] [redacted]. Since [redacted], he has been serving a life sentence. He is [redacted] his parole eligibility date. Since I [redacted], CSC has classified him at the maximum-security level. He previously had a medium-security classification and was incarcerated at [medium-security institution ([redacted])].
- [4] His transfer to the SIU was authorized July 12, [redacted], under para. 34(1)(b) of the CCRA. According to the transfer authorization, he was residing in [redacted] s unit [redacted], but he became unwelcome among other inmates there. He did not want to integrate [redacted] Range” ([redacted]).
- [5] The SIU transfer was not approved in the “5-day” Warden decision of July 18. The Warden did not render a “30-day” decision, despite para. 37.3(1)(b) of the CCRA.
- [6] [redacted] s SIU placement has now been authorized three times.

III. SOURCES OF INFORMATION

- [7] I have considered CSC documentary information, notably the SIU daily activity log (“the log”), and [redacted]’s Sept. 12 oral comments (see annex for details), made in a videoconference interview. [redacted] and [redacted] were with [redacted] to support him during the interview. [redacted] s lawyer [redacted] participated via videoconference. I also spoke to [redacted] Sept. 15.

IV. ANALYSIS

1. Do I have a legal basis to review [redacted]’s time-out-of-cell opportunities?

- [8] Yes, I do.
- [9] IEDMs only do reviews in specific situations. If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.²
- [10] CSC’s log shows [redacted] was isolated from July 12 to 16, triggering a review. I do not have reasons to believe he spent a lot more time out of cell than the log shows.
- [11] At the time of finalizing this decision, I learned [redacted] was removed from the SIU today, Sept. 18, for his transfer to [redacted]. I am issuing the decision anyway,

² CCRA, s. 37.83(1).

because aspects of the analysis continue to be relevant for his and other cases, and not issuing the decision at this stage would not conserve IEDM resources.³

2. What is the relevant period of review?

[12] This review focuses on July 12 to Sept. 11 (“the period reviewed”), a period of 62 days.

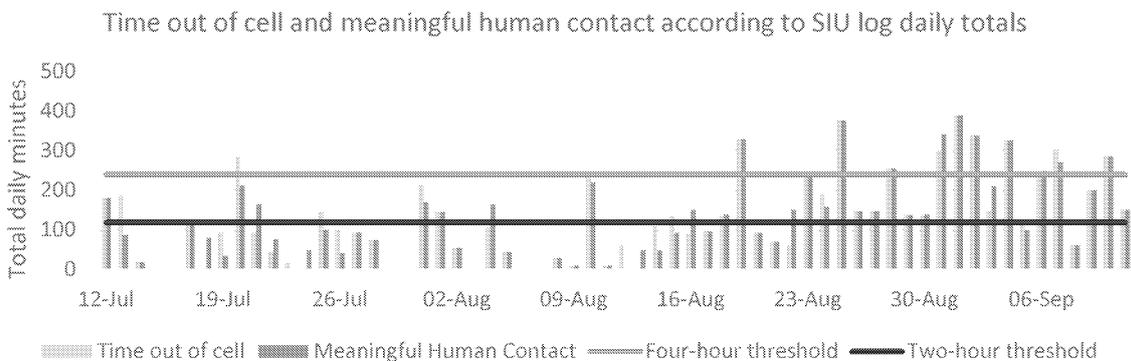
[13] An IEDM is not limited to only examining the days that triggered the review. The IEDM decides the appropriate period to review, based on legal and practical factors. Considering the human rights at stake, the need to avoid gaps in oversight, and the importance of fully understanding a situation to make recommendations, it is appropriate for an IEDM to examine a longer period, especially if many days have passed since the review was triggered.

[14] In this case, I have decided to examine the period as of [redacted]’s transfer to the SIU, a lengthy period. The delay for issuing this decision is not ideal. It is due mainly to IEDM caseload and difficulty reaching the lawyer [redacted] initially named (see annex).

3. How much time did [redacted] spend out of his cell and interacting with others each day?

[15] According to CSC’s log, [redacted] spent four hours or more out of his cell on 12 days during the period reviewed (about 19% of all days). He had two hours or more of social interaction on 29 days (about 47% of all days). The averages for time out of cell and interaction were both just over three hours daily, with the average for interaction being slightly higher.

[16] As shown by the graphic below, the situation improved during the period reviewed, especially as of mid-August.



³ See: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353.

[17] Various factors may explain these daily totals, but they show whether CSC's efforts to reduce isolation were successful.

4. Were the quantity and timing of offers adequate?

[18] Yes, I find the basic minimums were met.

[19] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates daily, between 7AM and 10PM.⁴ Showers do not count towards time out of cell.⁵ Offers should generally be adequately spread throughout the day.

[20] According to CSC's log, [redacted] had the chance to spend more than four hours outside his cell and have at least two hours of social interaction on each day during the period reviewed. He usually had five or more chances to get out of his cell, for an hour or more, throughout the day. On some days, his only interaction opportunity was through fencing at the outdoor yard.

[21] In my interview with [redacted], he did not make specific comments on the quantity of time-out-of-cell opportunities he had.

5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[22] There was no special situation during the period reviewed, but staffing and infrastructure affected opportunities for [redacted]

[23] Special situations or contextual circumstances can affect SIU activities. There are legal exceptions for some specific situations, including epidemics and staff work refusals.⁶ However, if those situations do not exist, CSC must provide the regular opportunities. Moreover, even if an exception applies, CSC must continue efforts.

[24] CSC did not invoke any exceptions for the period reviewed, nor record any particular incidents or operational challenges that affected [redacted]'s opportunities.

[25] [redacted] explained current [redacted] staffing levels and the layout of [redacted] which often causes movement down the main hallway to be delayed or blocked – limit the number of times and the amount of time she can spend with [redacted] and others.⁷ Even so, SIU inmates may have more support than those in [redacted]'s mainstream population.

6. What type of opportunities did [redacted] have?

⁴ CCRA, s. 36(1) – (2).

⁵ CCRA, s. 36(3).

⁶ CCRA, para. 37(1)(c); CCRR, s. 19(1).

⁷ IEDM interview with [redacted] et al, yyyy-mm-dd.

[26] Recreation was the most frequent type of opportunity, but [redacted] had program opportunities and Indigenous support as well.

[27] Apart from leisure time, SIUs are meant to provide inmates access to programs, interventions, and services that reflect their needs and interests.⁸ Activities may aim to help them achieve their correctional plan goals or reintegrate a mainstream population.⁹ I must consider whether there was a reasonable variety of activities for [redacted] in light of his profile.

6.1. Profile information

[28] According to file information, [redacted]

[29] [redacted] He has pro-social support from his partner, parents, and siblings. He has had private family visits (“PFVs”).

s.19(1)

[30] File information on his level of education is inconsistent.

[redacted] ¹ His CPU encourages him to obtain job skills or a trade certification.

[31] He has completed several programs during his sentence,

[32] [redacted] s CPU summarizes

⁸ CCRA, para. 32(1)(b).

⁹ CCRA, para. 36(1)(b).

¹⁰ Pre-sentence report, yyyy-mm-dd, p. 3.

¹¹ CPU, yyyy-mm-dd, p. 13.

¹² CPU, yyyy-mm-dd, p. 14.

¹³ CPU, yyyy-mm-dd, p. 6.

6.2. Types of opportunities during the period reviewed

[33] had the following types of opportunities:

- recreation: indoor common room and outdoor yard
- staff interactions (especially with his Parole Officer (“PO”) and Correctional Managers (“CMs”))
- correctional programs
-
- support from the and
- inmate committee meeting (with a unit 2 representative, once)
- s.19(1)
- periodic mental health evaluations
- personal phone calls

[34] had some type of program opportunity on 32 days (about 52% of all days). I consider this a low to moderate level of programming. There was a variety of activities. However, he did not get the chance to participate in

[35] Regarding support, the log shows to got to see staff between zero to three times per week, for a total of twelve recorded meetings during the period reviewed. He got to go to once (Aug. 16).

[36] He requested to meet with staff from - on July 19, soon after his transfer to the SIU, and again on Sept. 11. On other occasions, he spoke of their support for him;¹⁴ and of crafts he had done at which he wished he could do at A call was set up with the- According to the log, it took place Aug. 10 and lasted 2.5 hours. During the interview, I was informed of a plan to set up a video call with

6.3. Mental health state and support

[37] In my interview with he said he had been asking for mental health support for a long time. He became emotional and distressed when describing difficult past experiences and ongoing stressors. Strategies provided by the had worked closely with, notably involving writing things down, have been beneficial for him. However, they “haven’t really been working” lately. spoke at length and without pause about his institutional history. For a significant amount of time, and I were “frozen” and muted (but could still see and hear and thus unable

¹⁴ Activities entry, SIU activity log, yyyy-mm-dd.

¹⁵ Activities entry, SIU activity log, yyyy-mm-dd.

to interject, due to a technology issue with the videoconference. [redacted] noted that working on [redacted], as [redacted] has been,

[38] In contrast to [redacted]'s comments about him seeking support, CSC records show

[39] There are a few log records showing [redacted] appeared [redacted]:

[redacted] saw him that day, but Mental Health services did not attend to him immediately.

[40] Presumably, the referral would have been addressed Aug. 18, if [redacted] had met with the psychologist for the "28-day" evaluation that day. Even so, the value of a referral is questionable, if staff simply wait until a planned periodic assessment before meeting with someone, despite an earlier referral.

6.4. August 24 mental health evaluation

[41] [redacted] participated in one mental health assessment, on [redacted] with a [redacted] s.19(1) registered social worker. The Aug. 15 referral was addressed then.

[42] Records show [redacted] described some symptoms during that interview, including [redacted]. It was noted, "[w]hen asked if he wanted a mental health service to work on support to help alleviate [redacted]

[redacted] No referrals were generated.

[43] In my interview with [redacted] he described that when he did go out for the 14-day assessment, the staff member said they only had ten minutes, and she kept looking at her watch. When he spoke of paperwork issues, he was told "well that's I [redacted]". He said he was made to feel insignificant.

[44] [redacted] submitted that the meeting did not appear

[45] I do not have reason to doubt [redacted]'s observations about the staff member being rushed or how he subjectively felt. Considering the concerns previously raised about his mental health, and his non-participation in previous evaluations, CSC should have taken particular care on that occasion to ensure staff had the time and training to build rapport, give him space, and encourage his engagement in mental health services during the meeting. I agree with [redacted]'s observation about the meeting not appearing trauma-informed.

[46] In my interview with [redacted], he named a psychologist, [redacted], he would feel more comfortable working with.

¹⁶ Mental health form – "14-day" evaluation, yyyy-mm-dd.

[47] I do not have information on whether the individual named works at I or would be available to assist him. CSC did not show there were efforts to find out whether had a pre-existing therapeutic relationship with any mental health practitioner, and whether he could work with that person. It is understandable if an inmate cannot be guaranteed a certain practitioner. However, it would be good for CSC to try to respect inmates' choices, especially for those who have experienced systemic racism and may distrust authority figures, including mental health professionals.

7. Did CSC make efforts to allow to interact with other inmates?

[48] I find there were efforts to encourage to join a group, and he did have interactions with other inmates during the period reviewed. However, it appears there was a significant delay before the approval of a first group for him.

[49] Having a recreation group often reduces someone's isolation in the SIU a lot. Having a group provides a person with more chances for interaction and often encourages their participation in activities.

[50] According to CSC information, was initially not interested in having a recreation group.¹⁷ However, he expressed interest in one on July 20 in a meeting with his PO.¹⁸ It is not clear when CSC approved his group. Log entries about recreation interaction opportunities are inconsistent. A memorandum implies a group was approved for him on Aug. 1,¹⁹ 12 days after his initial request. CSC did not provide information to explain this delay.

s.19(1)

[51]

[52] In my interview with he implied prior issues with other inmates made him want to avoid them: However, through further questioning, it appeared this concern was actually mainly regarding individuals in 's mainstream population, and not within the SIU. He did not raise concerns or give information about the delay in the approval of his recreation group.

[53] s placement in a recreation group coincides with the notable increase in time out of cell and social interactions referred to above.

8. Did CSC encourage to participate in time-out-of-cell and interaction opportunities?

¹⁷ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁸ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁹ Supplementary information memorandum – rec group, yyyy-mm-dd.

- [54] did not take advantage of all opportunities. Staff made encouragement efforts, but additional measures, such as providing some opportunities earlier or more frequently, may have been useful.
- [55] An inmate may turn down opportunities in the SIU; there is a legal exception for “refusals.”²⁰ Even so, IEDMs must assess whether CSC encouraged them to participate in activities.²¹ Encouragement can take various forms. An IEDM may also examine whether CSC discouraged a person’s participation in activities.
- [56] The log shows took recreation time on 41 different days, mostly after Aug. 18. The information strongly suggests that being in a group encouraged him to take more recreation time. That and getting a job resulted in him spending more time out of his cell.
- [57] CSC’s log shows that accepted 4 of 26 social programs opportunities, 1 of 8 correctional programs opportunities, and 12 of 12 Indigenous cultural support opportunities. For social programs and the he seems to have usually not explained his reasons for refusals to staff. Twice, he turned down offers due to timing conflicts with other activities (a lawyer call and a Warden meeting).
- [58] Log entries show was offered supplies and support getting certain items he had requested, which I consider encouragement measures, in that they may have contributed to general well-being. There are also records of verbal encouragement efforts, such as offering him programming at a different time and meeting with him outside of programming.
- [59] At least once, avoided coming out in order to trigger an IEDM review.²² In relation, said he had made requests to see the IEDM that are not documented.²³ There is a note that he asked the Warden about meeting with an IEDM on Aug. 21. Also, completed a request form to see an IEDM on Aug. 12, which CSC only provided me on Aug. 31. In that request, indicated he had been unaware he could place a written request to see an IEDM; he previously thought he had to refuse interactions or programming. In cases when CSC knows of a pending IEDM review, but the IEDM has not yet been able to look at the case, CSC could inform the inmate about it. This would avoid someone continually isolating themselves to trigger oversight, which is an unfortunate consequence of the law’s structure.
- [60] It seems clear that Indigenous interventions are the most meaningful form of interaction for For correctional programs, he turned down all seven offers for the , which was offered by CPO. However, he accepted the first and only opportunity to participate in the Institutional

²⁰ CCRA, para. 37(1)(a).

²¹ CCRA, s. 37.83(1).

²² Social program entry, SIU activity log, yyyy-mm-dd.

²³ IEDM interview with yyyy-mm-dd.

Maintenance Program. Offering that program can thus be considered a form of encouragement. Offering more opportunities for support likely would have contributed to him spending more time out of his cell; he never turned down this type of opportunity.

[61] commented that when he had been at had worked closely with the whole Indigenous team and was benefitting greatly from I interventions. They said he was very respectful toward them and culture.²⁴

9. Did any other issues affect in the SIU?

[62] raised several issues relating to the circumstances of his SIU stay. Many of the issues he raised are more relevant for formulating recommendations than to the question of whether CSC provided sufficient opportunities in the SIU.

9.1. s September 12 comments

[63] spent most of the lengthy interview describing issues and institutional history that weigh on him. He feels he cannot win, is “defenceless,” “trapped,” and that he has been “buried.” He said he has who needs a father, and he has done everything to go back in society.

[64] He spoke of efforts he has made to remove himself from a conflictual situation, on : he said an assessment for decision (“AFD”) says he assaulted someone,²⁵ but this never happened; he just and left. He has submitted file correction requests to his PO and the Warden. He said it is “next to impossible” to get his file corrected about this and other issues, including false allegations about him made by others. His paperwork does not reflect the fact he is trying to do well.

[65] is frustrated about his current maximum-security classification. He takes responsibility for an incident occurring at () that led to his security reclassification; he said it was a mistake. He said he someone who was , and who people feared for their safety around. He said he was so disappointed in himself he was sick to his stomach. He said he had worked with was not consulted about his transfer to maximum security.

[66] Regarding the possibility of him integrating at he said CSC wants him to go to another range where he would be in a “bad situation” due to some other individuals present, who he previously resided with at and may threaten his progress.

[67] He spoke of various past issues with CSC, such as not doing his escorted temporary absence (“ETA”) paperwork; making assumptions about drug use rather than testing him, despite him being open to it; being informed after he had spent a

²⁴ IEDM interview with Elder Y, yyyy-mm-dd.

²⁵ See: AFD – institutional transfer, yyyy-mm-dd, p. 3. The AFD actually states and another inmate “ ” each other during an argument.

long time working a job that it was not considered a position of trust; his complaints about staff not being properly addressed, despite him using proper avenues; his Security Level Reclassification Scale (“SRS”) scores not being updated and ETAs not being acknowledged for a Parole Board hearing; CSC’s reliance on unreliable information; and his program participation not being acknowledged.

[68] His lawyer, _____, noted that _____ had a strong team at _____ and there was a lack of consultation; he is not getting the supports he needs at _____. He suggested _____’s s. 7 and 12 Charter rights have been violated due to _____ having experienced prolonged isolation. _____ also provided documents showing concerns were raised on _____’s behalf in March and April _____. These documents refer to inadequate consultation with the _____ team, the importance of cultural and spiritual practices for mental health, and the lack of this type of intervention at _____.

9.2. Relevance for the current review

[69] I have not investigated all the incidents, issues, and claims _____ raised, which clearly impact his mental and emotional state. However, the link to the main question I must answer in this review – whether CSC took all reasonable steps to provide the required opportunities in the SIU – has not been clearly established.

[70] Even so, if I conclude CSC has not taken all reasonable steps, I have a broad power to make any recommendation to remedy the situation under s. 37.83(2) of the CCRA. I find the decision process for his prior security reclassification, which led to his present circumstances, relevant for the question of identifying remedies in this case. Moreover, as an IEDM, I am required to consider his unique circumstances as person.²⁶

9.3. _____’s comments

[71] The most recent Elder review I have been provided dates from _____, about two months before _____’s reclassification and transfer from _____ to _____. It mentions him _____, continuing to show emotional stability and progress, using his teachings and skills, maintaining a constant relationship with SIU _____ staff, and having had successful ETAs to _____. The review notes overreactions can be a symptom of trauma, and that it is crucial for survivors like _____ to be able to increase their cultural knowledge.²⁷

[72] When I spoke to _____ on Sept. 15, they commented that they had initially been shocked by the CSC description of the _____ incident (they had not seen video of the incident). They had since had time to reflect about the situation. They noted _____ had had many struggles _____
When they finally got _____ ETAs approved for him, the time CSC allocated – five hours – was too short. After the time spent for travel and getting a

²⁶ CCRR, s. 23.03, CCRA, s. 79.1(1).

²⁷ _____ review – progress, yyyy-mm-dd.

vehicle, the ceremony was rushed. It was beautiful to witness his cultural connection. They described him as engaged in getting to know his spirituality and culture.

[73] They recalled he was accused of having brought in contraband from his second ETA.²⁸ They think he was floored, became hopeless, and the “bottom fell out” because of that accusation.

[74] They felt he could absolutely be kept at medium security, and more frequent, intense interventions would be beneficial for him. They mentioned they are the only A transfer to an institution with more supports would be beneficial for him.

9.4. CSC documentation regarding s transfer from to

[75] An AFD dated [REDACTED], outlines the justification for s reclassification and emergency transfer to [REDACTED]. It seems the reclassification was recommended largely due to the [REDACTED] assault,²⁹ and s attitude after it. [REDACTED] allegedly [REDACTED] another individual, encouraged him to enter [REDACTED], and had a further altercation with him. As a result, [REDACTED] No weapons were involved. The AFD also relies on allegations against [REDACTED] described in protected C documents, notably of involvement in the institutional drug trade, and describes instances of [REDACTED] getting worked up in interactions with staff.

[76] Aspects of the AFD seem inconsistent with [REDACTED] s views. For example, it states [REDACTED] had disengaged from his team, in contrast to [REDACTED] s comments about his strong engagement with [REDACTED] staff.³⁰

[77] His transfer to maximum-security was through an override of his SRS score, which was in the medium-security range.

[78] The referral decision sheet refers to a case conference held before [REDACTED] s transfer, his case management team s views, and careful consideration of all available information, including “his unique [REDACTED]” Some traumas he has lived through are listed. The final decision refers to [REDACTED] s comments, as follows:

²⁸ See: AFD – institutional transfer and security level, yyyy-mm-dd, pp. 5, 6, and 9. The AFD states that [REDACTED] ETAs took place, but also states that there were allegations [REDACTED] obtained drug contraband while on an ETA and introduced it into the institution.

²⁹ See: AFD – institutional transfer and security level, yyyy-mm-dd, p. 7.

³⁰ See: referral decision sheet, final decision, yyyy-mm-dd, p. 2.

9.5. Discussion regarding [redacted] factors

- [79] In my view, at the time of [redacted] s security reclassification and transfer to CSC did not adequately consider the factors it must consider in decisions for [redacted] inmates, under s. 79.1 of the CCRA.
- [80] In the sentencing context, the Supreme Court of Canada has recognized an [redacted] person's unique circumstances can shed light on their level of "moral blameworthiness,"³² and has noted the importance of taking a restorative approach, focusing on repairing harms.³³
- [81] The final decision for [redacted] s security reclassification does not consider whether any mitigating factors mean [redacted] should be considered less responsible for the [redacted] incident and the punishment for his actions should thus be less harsh.
- [82] I observe that CSC has recorded very few incidents involving [redacted] during the last three years.
- [83] I take note of [redacted] s comments regarding the devastating emotional impact for [redacted] of being accused of bringing in contraband from a [redacted] ETA, and the effect that could have had on his subsequent behaviour. I lack full information about that accusation, but it is difficult to envision how he would have been able to obtain and transfer contraband, while under escort, for only a few hours. It also appears his engagement with his culture and spirituality was not fully supported while he was at [redacted], due to the short length of the ETAs.
- [84] In addition, despite repeating some of [redacted] s comments, the final decision does not consider whether the transfer to maximum security would help or hinder [redacted] s healing process. There is no discussion of alternatives to his transfer to maximum security, beyond a general reference to options having been explored. There is no consideration of whether a more restorative response to the incident or other issues could have been implemented.
- [85] More, the AFD contains some references to [redacted] s possible FASD. However, it does not confirm CSC made efforts to address this, such as by offering him a proper expert evaluation, or evaluating whether any accommodations or strategies could help him manage symptoms. [redacted] s possible FASD could be a consequence of colonial impacts. ¶

³¹ Referral decision sheet, final decision, yyyy-mm-dd, p. 3.

³² *R. v. Ipeelee*, 2012 SCC 13 (CanLII), [2012] 1 SCR 433, para. 73.

³³ See: *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 SCR 688, paras. 70 to 72

governments to better address the needs of offenders with FASD, in a culturally appropriate manner.³⁴

[86] Repeating a list of traumas a person has endured and giving little weight to s recommendations or potential mitigating factors will not fix the overrepresentation of persons in federal custody and in more restrictive environments within the correctional system. CSC has been called upon to do its part to address this urgent problem.

[87] Interventions are clearly meaningful and beneficial to but it appears that at he will realistically not receive an adequate level of interventions to help him address his needs, whether in the SIU or in the mainstream population.

V. CONCLUSION AND RECOMMENDATIONS

[88] Due mainly to the issues regarding mental health support and delay in the approval of a recreation group discussed above, I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide adequate time out of his cell and meaningful human contact in the SIU and to encourage him to take advantage of opportunities.

[89] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- Ensure can connect via video with
- Make efforts to ensure can meet with a mental health professional he feels comfortable with, in unrushed circumstances
- Re-evaluate s security classification, in light of CSC's particular obligations toward inmates, and transfer him to an institution in proximity to his community support
- Provide the opportunity to participate in an expert FASD assessment and implement any resulting accommodations or management strategies
- Ensure is able to access a high frequency and intensity of cultural support

[90] Because I have made these recommendations, a follow-up decision under s. 37.83(3) is triggered.

Janine Lespérance
Independent External Decision-Maker

Date: September 18, [REDACTED]



VI. ANNEX: SOURCES OF INFORMATION AND [REDACTED]'S OPPORTUNITY TO PROVIDE COMMENTS

[91] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of yyyy-mm-dd
- Threat risk assessments (“TRAs”), for the period as of yyyy-mm-dd
- Casework record (“CWR”) log, for the period from yyyy-mm-dd to yyyy-mm-dd
- Memorandums – SIU case conference (“SIUCC”), dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Incident history log, generated on yyyy-mm-dd
- Institutional charges report, generated on yyyy-mm-dd
- Referral decision sheets – institutional transfer, yyyy-mm-dd and yyyy-mm-dd
- Referral decision sheets – offender security level, yyyy-mm-dd and yyyy-mm-dd
- Health encounter notes, for yyyy-mm-dd and the period from yyyy-mm-dd to yyyy-mm-dd
- Mental health checklist, undated, received from CSC yyyy-mm-dd
- Regional review, dated yyyy-mm-dd
- Mental health forms, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Memorandums – recreation group, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Correctional plan updates – SIU (“CPU-SIU”), dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Institutional head “30-day” SIU transfer decision, dated yyyy-mm-dd
- Assessment for decision – institutional transfer, dated yyyy-mm-dd
- Psychological/psychiatric assessment reports, dated yyyy-mm-dd and yyyy-mm-dd
- Institutional head “5-day” SIU transfer decision, dated yyyy-mm-dd
- Memorandum – potential recreation group, dated yyyy-mm-dd
- Memorandum – integration options, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Incident report, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Assessment for decision – institutional transfer and security level, dated yyyy-mm-dd
- Correctional plan – updated (“CPU”), dated yyyy-mm-dd
- [REDACTED] reviews – progress, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Pre-sentence report, prepared for sentencing on yyyy-mm-dd
- Criminal profile report (“CPR”) – original, dated yyyy-mm-dd

[92] I sent [REDACTED], via CSC, a summary of the information I am considering for this review on Aug. 30. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[93] On Aug. 31, I learned I would share his views, wished to have participate in the meeting as a support, and wanted his lawyer to be involved in the process.

[94] As of Aug. 31, I made unsuccessful attempts, by email and phone, to contact the lawyer he had listed. On Sept. 6, I informed CSC that I had been unable to reach the lawyer and requested that staff follow-up with to determine his preferences. On Sept. 7, I was provided the name of another lawyer, I..., who I was able to reach without issue.

[95] provided the following documents:

- Letter re: deprived of | supports, dated yyyy-mm-dd
- CSC Memorandum: Response to fax regarding deprived of supports, from Warden █████, dated yyyy-mm-dd
- Letter re: Cultural supports – Mr. A, dated yyyy-mm-dd

[96] A meeting was scheduled, and took place, on Sept. 12. attended. The call was held by videoconference. It started late due to delays at and lasted approximately two hours and fifteen minutes. Technical issues caused the participants at to not be able to hear or see and I for a significant part of the call, but eventually resolved the issue.

[97] On Sept. 15, I spoke to about 's case.

Name:
FPS Number: [REDACTED]
Correctional Institution: [REDACTED]
Date of Notification: March 21, [REDACTED]
Date of Decision: April 16, [REDACTED]
Independent External Decision Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

[REDACTED] was listed as [REDACTED] CSC's error caused him to miss out on some cultural support and turn down certain activities. He was put in [REDACTED] program despite having agreed to [REDACTED] did not have a recreation group for most of the period reviewed due to security reasons. [REDACTED] consistently had the chance to spend more than four hours outside his cell, but interaction opportunities were sometimes minimal. Under s. 37.83(1) of the CCRA, CSC did not take all reasonable steps to provide Mr. D the required opportunities in the SIU and encourage him to participate.

I. INTRODUCTION

[1] On March 21, [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning [REDACTED] was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at [REDACTED] in [REDACTED]. s.19(1)

II. LEGAL FRAMEWORK

[2] CSC must provide inmates the daily opportunity to spend at least four hours out of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates' profile and needs.

[3] Under s. 37.83(1) of the CCRA, an IEDM determines whether CSC has taken all reasonable steps to provide an inmate the required opportunities in the SIU and encourage them to participate. The IEDM can decide the specific period of activities to consider.

[4] I have issued a previous decision under s. 37.83(1) of the CCRA concerning that set out the relevant legal provisions in more detail.

III. SOURCES OF INFORMATION

[5] For this review, the following items are my sources of information, from CSC:

- SIU activity log (“the log”), for the period as of yyyy-mm-dd in particular
- Casework record (“CWR”) log, from yyyy-mm-dd to yyyy-mm-dd
- Threat risk assessments (“TRAs”), for the period as of yyyy-mm-dd in particular
- Institutional Head “30-day” SIU transfer decision, dated yyyy-mm-dd
- Memorandums – recreation group, dated yyyy-mm-dd and yyyy-mm-dd
- Memorandum – integration options, dated yyyy-mm-dd
- Memorandums – epidemics exception, dated yyyy-mm-dd and yyyy-mm-dd
- Correctional plan – updated (“CPU”), dated yyyy-mm-dd
- Incident reports, dated yyyy-mm-dd and yyyy-mm-dd
- Institutional Head “5-day” SIU transfer decision, dated yyyy-mm-dd s.19(1)
- SIU transfer authorization, dated yyyy-mm-dd
- Health case management note, dated yyyy-mm-dd
- Assessment for decision – penitentiary placement and security level, dated yyyy-mm-dd
- initial, yyyy-mm-dd
- Criminal profile report – original, dated yyyy-mm-dd
- Gladue report for 2019/06/28 sentencing, received by RRC yyyy-mm-dd

[6] I had consulted additional documents in the context of previous reviews.

[7] I sent via CSC, a summary of the information I am considering for this review on Apr. 8. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[8] On Apr. 8, I learned wished to share his views by telephone. We spoke on Apr. 13, for just over five minutes. asked to end the call

[9] Since my discussion with was brief, I must rely in large part on CSC information.

[10] I briefly interviewed Acting Security Intelligence Officer (“SIO”) ██████████ by telephone on Apr. 14.

IV. CONTEXT

[11] is [REDACTED] years old. He is
i [REDACTED]

[12]

[13]
pk

[14] He has work experience, notably as a [REDACTED].

[15] He is serving a [REDACTED] sentence for crimes including [REDACTED], his [REDACTED] federal sentence. CSC classifies him at the maximum-security level. He is recommended for participation in the ICPM High Intensity program.

[16] His statutory release is scheduled for [REDACTED], although he has outstanding charges. He had a court date on [REDACTED] for one of these charges. s.19(1)

[17] His transfer to the SIU was authorized on Mar. 15, [REDACTED], under para. 34(1)(b) of the CCRA. This followed an incident in which he was assaulted [REDACTED] while residing on the unit [REDACTED] range. According to the transfer authorization, a weapon struck [REDACTED] in [REDACTED], and there is information to suggest his safety may be in jeopardy anywhere at MSI.⁶

[18] The MSI Warden approved the SIU transfer in the “5-day” decision of Mar. 21 and the “30-day” decision of Apr. 13.

[19] This is [REDACTED] s fourth SIU transfer. As an IEDM, I have issued previous decisions concerning him.

¹ Gladue report for yyyy-mm-dd sentencing, at p. 3.

² Gladue report for yyyy-mm-dd sentencing, at pp. 2 – 3.

³ Gladue report for yyyy-mm-dd sentencing, at p. 3.

⁴ Gladue report for yyyy-mm-dd sentencing, at p. 14.

⁵ Case management entry, SIU activity log, yyyy-mm-dd.

⁶ SIU transfer authorization, yyyy-mm-dd, at p. 3.

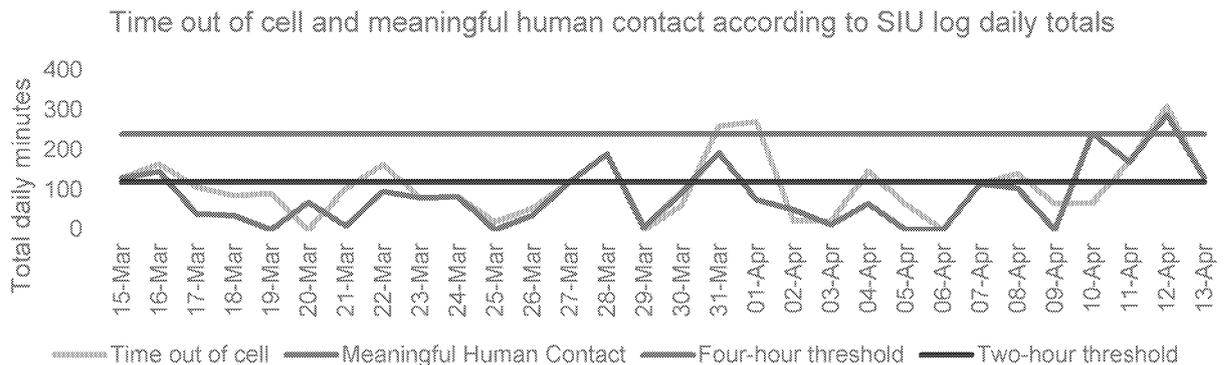
V. ANALYSIS

[20] The analysis below considers information from CSC's SIU activity log for the period from Mar. 15 to Apr. 13. This is a period of 30 days.

1. Daily time out of cell and meaningful human contact

[21] According to CSC's SIU activity log, _____ spent four hours or more out of his cell on three days during the period reviewed (about 10% of all days). He had two hours or more of meaningful human contact on nine days (about 30% of all days).

[22] He had an average of around 1 hour 47 minutes out of his cell and 1 hour 26 minutes of interaction daily.



[23] On Apr. 13, Mr. D confirmed that the log totals appeared roughly correct.⁷

2. Quantity and timing of daily offers

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[24] _____ usually had at least five opportunities to get out of his cell during the day, for an hour or two.

[25] His opportunities for social interaction were limited to programs, staff meetings, or interactions with other inmates through a fence in the yard for most of the period reviewed, because he did not have a recreation group.

[26] SIU program sessions at MSI rarely last longer than around an hour, so for any person without a group, like _____ the two-hour meaningful human contact standard will only be met if the person accepts outdoor yard at the same time as another person, and they talk through a physical barrier, fencing.

[27] There were no program offers to Mr. D on Mar. 17, 20, and 26. On those days, interaction opportunities were the minimum for two hours of interaction.

⁷ IEDM interview with Mr. D, yyyy-mm-dd.

[28] In his brief oral comments, [REDACTED] said all he had to say was that he was being offered time out of cell, but that he had been in a “super depressive state” due to the death of [REDACTED].⁸

3. Structural or contextual factors affecting activities

[29] There were COVID-19 cases discovered among SIU inmates, as well as outside the SIU, during the period reviewed, but not on [REDACTED]’s specific range, according to CSC’s memorandums invoking the legal exception for epidemics.

[30] CSC has not provided any specific information or explanation about how activities on [REDACTED]’s range, [REDACTED], were affected. Log entries do not suggest there was a significant direct impact in his case during the period reviewed.

[31] There is one reference in the log to infrastructure limitations: a staff member was unable to offer a program session because no secure room was available. This occurred during a period when a “Security Management Protocol” (“SMP”) was applied to [REDACTED]. On Mar. 24, the ICPO had to meet with him in a secure room even though the SMP was no longer being applied; “it was the only room available.”¹⁰

4. Types of opportunities for

[32] [REDACTED] had the following types of opportunities:

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- indoor common room and outdoor recreation
- staff interactions
- correctional programs (
- social programs
- [REDACTED] cultural support
- school
- phone-based [REDACTED] program (possibly)
- personal phone calls
- meeting with a community social worker via videoconference

[33] Apart from these activities, there were also two occasions when [REDACTED] was out of his cell in the evening for [REDACTED].¹¹

[34] Regarding the [REDACTED] program, there is a note indicating [REDACTED] asked about doing it on Mar. 17.¹² On Mar. 24, he was told that “he has a call scheduled next

⁸ IEDM interview with [REDACTED] yyyy-mm-dd.

⁹ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁰ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹¹ Religious or Spiritual Activities entries, SIU activity log, yyyy-mm-dd and yyyy-mm-dd.

¹² Case management entry, SIU activity log, yyyy-mm-dd.

week to start” the program.¹³ However, there is no log entry to show a session happened. This may be a data entry omission. There is no other reference in the log to the program.

[35] Overall, recreation offers were by far the most frequent type of offer, but interventions were offered consistently throughout the period reviewed. A Social Programs Officer (“SPO”) offered a session on fifteen different days, a Correctional Programs Officer (“CPO”) offered a session on twelve days (excluding the day on which no room was available), and the teacher offered school on seven days (there was an additional occasion when the teacher dropped off material). Outside of programs or discussions about his case, there was a staff member who twice checked in with him purely to talk or see if he needed anything.¹⁴

[36] used the phone for personal calls every couple of days.

status and support

[37] A significant issue during the period reviewed was that was listed as despite the Gladue report and review on file, and the fact that is known to MSI and certain SIU staff members as expressed his concern about this issue to CSC staff. At the time of issuing this decision s still listed as in CSC’s SIU database, but recent documents do refer to his identity.

[38] CSC has the legal obligation to ensure that the information it uses about is accurate.¹⁵ CSC must consider his identity and factors affecting in decisions affecting him.¹⁶ should not have to remind CSC to recognize his identity.

[39] The non-recognition of s identity was ¹⁷ in a period when The error –whose source is unknown to me– repeats an issue described in his Gladue Report:

[40] In my interview with he insisted , and said that he is in the process of getting it changed. He mentioned he was not provided

[41] CSC information shows brought up a few times with staff.

¹³ Administrative entry, SIU activity log, yyyy-mm-dd.

¹⁴ Peer support entries, SIU activity log, yyyy-mm-dd, yyyy-mm-dd.

¹⁵ CCRA, s. 24(1).

¹⁶ CCRA, s. 79.1.

¹⁷ See, e.g., Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁸ IEDM interview with Mr. D, yyyy-mm-dd.

[42] Apart from that, [redacted] was provided [redacted] instead of [redacted] met with him on Mar. 16, and [redacted] offered [redacted] either version of [redacted] knowing [redacted] had previously done the [redacted]

[43] [redacted] did not get to see [redacted] during the period reviewed. My understanding is that [redacted] CSC has not provided information about [redacted] presence or availability. I question whether [redacted] did not see [redacted] due to the incorrect file information about him.

[44] [redacted] did have some support from [redacted] staff: after the initial meeting, [redacted] offered to meet with him three more times (Mar. 21, Mar. 24, and Apr. 7). The [redacted] provided him [redacted] on Apr. 1.²⁰ It appears that was the first time the [redacted] saw him.

Mental Health support

[45] This seems to have been a difficult period for [redacted]

[46] A mental health clinician tried meeting with [redacted] soon after his SIU transfer, on Mar. 16, when he was already meeting with the [redacted].²¹ There was another attempt to meet with him on Apr. 1 when he was already busy.²² [redacted] There are no other log entries for meetings with him.

[47] [redacted] himself said he had met with the clinician a couple of times.²³ [redacted] but again, my interview with him was brief because of [redacted]

5. Participation and encouragement

[48] [redacted] occasionally took recreation time, participated in social programs once, participated in [redacted] sessions about half the time, went out with the teacher twice, and engaged with cultural supports when he had the chance.

[49] Log entries suggest he was not overly interested in social programs and mainly asked the SPO to provide him materials for in-cell activities. There were a couple of [redacted]

¹⁹ Case management entry, SIU activity log, yyyy-mm-dd.

²⁰ [redacted] activities entry, SIU activity log, yyyy-mm-dd.

²¹ Case management entry, SIU activity log, yyyy-mm-dd.

²² Case management entry, SIU activity log, yyyy-mm-dd.

²³ IEDM interview with Mr. D, yyyy-mm-dd.

times when he was waiting to meet with other staff members, and a couple of times when he turned down programs due to [REDACTED]. For school, one day he did not participate because

[50] There were three noted occasions when he turned down school sessions because [REDACTED]. He also told the CPO he was on “strike” for this reason on Apr. 7, as well as because of the [REDACTED] identity issue discussed above; he felt his cultural needs were not being met, and he had not yet heard back from his PO.²⁵

[51] Otherwise, noted reasons for which he turned down [REDACTED] sessions are: I [REDACTED]

[52] There are no log entries to show he saw the doctor during the period reviewed to address the medication issue (although he saw the dentist).

s.19(1)

[53] I consider both the identity issue and the doctor issue forms of discouragement.

[54] If CSC had offered [REDACTED] as originally agreed with him, it may have encouraged him to participate more consistently. Having said that, he did choose to stay in the mainstream version when the issue was discussed with him at the Apr. 1 SIU Review Committee meeting,²⁶ and it does seem that the sessions were useful for him.

[55] Forms of encouragement shown by the log include verbal encouragement, offering more than one type of program offer during the day, and the CPO or SPO returning later in the day. As noted, both a CPO and an [REDACTED] met with him.

Recreation group

[56] Having a recreation group would have provided more opportunities for meaningful human contact to [REDACTED] and likely would have encouraged him to get out of his cell more.

[57] In my call with [REDACTED] in Apr. 13, he said that he had preferred to be by himself before. On the other hand, he mentioned that he tried to “put in for groups three to four times,” and that he was not told why his requests were not approved.²⁷

[58] A SIO memorandum from Mar. 22 states he wanted to join an “ongoing rec group.” An Apr. 12 update describes further investigation and a meeting with [REDACTED] resulting in the approval of a group with another inmate. I obtained further information from SIO [REDACTED] in a call on Apr. 14. In summary, [REDACTED] was prevented from being on a group earlier due to :

²⁴ Educational program entries, SIU activity log, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd.

²⁵ Correctional programs entries, SIU activity log, yyyy-mm-dd.

²⁶ SIURC of 2022/04/01, in Institutional Head “30-day” SIU transfer decision, yyyy-mm-dd, at p. 3.

²⁷ IEDM interview with [REDACTED] yyyy-mm-dd.

SIU transfer, as well as serious acts the inmate he was requesting to be with had committed.²⁸

[59] I am not convinced that s requests were all for the same person as stated orally by the SIO. However, I do find that the decisions regarding his group were reasonable in the circumstances.

[60] confirmed he was placed on a group and he is content with it.²⁹

6. Other issues

[61] Another issue that seems to have
As described in the Apr. 1 SIU Review Committee memorandum,
expressed the trouble that he is
. SIU Manager, provided
with an update as she has consulted with A&D prior to his review.
She advised that
He
expressed how being in the SIU is
. A mental health
referral was submitted following the review in order to have his need
level assessed.”³⁰

s.19(1)

[62] |

[63] was an issue for most or all of the period reviewed. According to log notes, he first raised the issue with staff on Mar. 17. He became upset about it on Mar. 21, which led to him allegedly threatening staff. He was placed on the “security management protocol (“SMP”) until Mar. 23. There was a similar incident on Apr. 7.

[64] He got offered recreation and programs during the application of the SMP, which is an improvement compared to past reviews I have done as an IEDM.

[65] From log entries, it does appear that staff tried to assist with a TV and provide him some in-cell activities.

[66] I do not know whether a TV was finally found for him. A log note indicates he turned down recreation time on Apr. 8 because however, two earlier log notes, for Apr. 2 and 5, state that as well. That is not plausible because at the time, he did not have a TV. These erroneous notes call the reliability of recreation log entries into question.

²⁸ IEDM interview with SIO , yyyy-mm-dd.

²⁹ IEDM interview with yyyy-mm-dd.

³⁰ SIURC (2022/04/01), for Institutional Head “30-day” SIU transfer decision, yyyy-mm-dd, at p. 4.

³¹ Case management entry, SIU activity log, yyyy-mm-dd.

[67] Nonetheless, I accept the log information as mostly reliable. Log notes for interventions with [REDACTED] are detailed.

VI. CONCLUSION AND RECOMMENDATIONS

[68] I find that CSC's non-recognition of [REDACTED] identity was a factor in his non-participation in activities on some occasions, and caused him to miss out on at least some culturally-relevant support. For that reason mainly, I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to ensure [REDACTED] had adequate opportunities for time out of cell and meaningful human contact.

[69] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- Ensure that [REDACTED] is recognized as [REDACTED] in CSC databases, and that all staff are aware of it;
- Provide [REDACTED] the opportunity to meet with [REDACTED];
- Ensure that [REDACTED] can meet with a medical doctor to discuss [REDACTED] s.19(1)
; and
- Provide [REDACTED] ongoing mental health support.

[70] I also recommend CSC to ensure that [REDACTED] program sessions and mental health interventions are consistently documented in the SIU activity log, and ensure that all log entries for recreation offers and refusals are accurate.

Janine Lespérance
Independent External Decision-Maker

Date: April 16, [REDACTED]

Name:
FPS Number: [REDACTED]
Correctional Institution: Atlantic s.19(1)
Date of Notification: June 29, [REDACTED]
Date of Decision: July 25, [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

[REDACTED] had regular opportunities for recreation, programs, and interventions. [REDACTED] was [REDACTED] about the lack of access to social programs after he was placed in a recreation group. Prioritizing inmates without groups for social programs usually makes sense. However, CSC should examine the specific details of individual cases. CSC should also make efforts to offer programming to groups in AI's SIU.

[REDACTED] has been prevented from having indoor recreation with another inmate after an incident in which he allegedly threatened staff. He should be allowed to go to the common room with the other person despite the security protocol. This review showed issues around staffing and lack of meeting space.

The opportunities were sufficient to conclude that CSC took all reasonable steps, under s. 37.83(1) of the CCRA. I nonetheless make some recommendations.

I. INTRODUCTION

- [1] On June 29, [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning [REDACTED] was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at Atlantic Institution ("AI") in Renous, New Brunswick.
- [2] An IEDM must determine if CSC has taken all reasonable steps to ensure [REDACTED] spends time out of his cell and has social interaction.

II. LEGAL FRAMEWORK

1. CSC's legal obligations toward inmates in the SIU

[3] Section 36 of the CCRA describes CSC's obligations towards inmates in the SIU. It states:

"Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a [SIU]

(a) an opportunity to spend a minimum of four hours outside the inmate's cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a)."

[4] The CCRA also specifies that s. 36(1) does not apply "if the inmate refuses to avail themselves of the opportunity [...]."¹ The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 ("CCRR") set out other limited exceptions, including an inmate's refusal to comply with security-related instructions at the time of the offer,² and certain specific contextual circumstances, including epidemics.³

[5] The current decision focuses on SIU conditions of confinement. Ss. 37.83(1) and (2) of the CCRA state:

"Decision — reasonable steps

¹ CCRA, at para. 37(1)(a).

² CCRA, at para. 37(1)(b).

³ CCRR, at para. 19(1)(b).

37.83 (1) If, for five consecutive days or for a total of 15 days during any 30-day period, an inmate confined in a [SIU] has not spent a minimum of four hours a day outside the inmate's cell or has not interacted, for a minimum of two hours a day, with others, an [IEDM] shall, as soon as practicable, determine whether [CSC] has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1) and to encourage the inmate to avail themselves of those opportunities.

Recommendations

(2) If the [IEDM] determines that [CSC] has not taken all reasonable steps, he or she may make any recommendation to [CSC] that he or she considers appropriate to remedy the situation. [emphasis added]"

- [6] Considering s. 37.83, CSC must be proactive and seek alternatives to ensure that an inmate spends time out of their SIU cell and has meaningful social interaction. More, the SIU's purpose includes allowing an inmate to participate in programs and access services.⁴ CSC must make "every reasonable effort" to ensure physical barriers do not impede interactions.⁵
- [7] Many factors may explain why an inmate does not spend time out of their cell and the "4/2" thresholds are not met. The IEDM must analyze the facts and circumstances of each situation to determine whether CSC took enough steps.
- [8] The legal obligations, and IEDMs' conclusions, apply to CSC as a whole, not a specific institution or individual, such as a staff member.

2. The period to be taken into account for IEDM determinations under s. 37.83

- [9] The CCRA does not specify the period of SIU activities that the IEDM should consider for a decision under s. 37.83 of the CCRA.
- [10] Only looking at the five days that triggered the review would leave a period without oversight, especially when many days have passed before the IEDM can issue their decision.
- [11] In my view, it is appropriate to consider SIU activities beyond the five-day period that triggered the review. The IEDM will have a better understanding of what has happened. The IEDM's conclusion will have a more solid foundation. They will be able to make better recommendations, if needed.

⁴ CCRA, at s. 32(1).

⁵ CCRA, at s. 32(2).

III. SOURCES OF INFORMATION

[12] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of yyyy-mm-dd
- Threat risk assessments (“TRAs”), for the period as of yyyy-mm-dd
- Casework record (“CWR”) log, for the period from yyyy-mm-dd to yyyy-mm-dd
- Institutional head “30-day” SIU transfer decision, dated yyyy-mm-dd
- Email from █████, Parole Officer, in response to IEDM questions, received yyyy-mm-dd
- Institutional head “5-day” SIU transfer decision, dated yyyy-mm-dd
- Memorandum – integration options, dated yyyy-mm-dd
- Memorandum – recreation group, dated yyyy-mm-dd s.19(1)
- Health case management note, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Incident report, dated yyyy-mm-dd
- Correctional plan – updated, dated yyyy-mm-dd
- Assessment for decision – institutional transfer, dated yyyy-mm-dd
- review – initial, dated yyyy-mm-dd
- Assessment for decision – penitentiary placement and security level, dated yyyy-mm-dd
- Criminal profile report – original, dated yyyy-mm-dd
- Gladue report, dated yyyy-mm-dd

[13] I sent █████, via CSC, a summary of the information I am considering for this review on July 18. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[14] On July 19, I learned █████ would share his views. We spoke by videoconference on July 21, for approximately 23 minutes. He was accompanied by █████ for support.

[15] The interview began about half an hour late. I was informed that because █████ was on the “Security Management Protocol” (“SMP”), they needed enough officers present to move him to the room █████ was cuffed behind his back for the whole interview. He was distracted and agitated by an officer staring through the door window. Ideally IEDM interviews would take place in a setting free from distractions.

IV. CONTEXT

[16]

[17]

[18]

[19]

[20] He is serving a [REDACTED] sentence, for which the statutory release date is in [REDACTED]. CSC classifies him at the maximum-security level. He is referred for the [REDACTED] program.⁸

[21] His transfer to the SIU was authorized on June 23, [REDACTED], under para. 34(1)([REDACTED]) of the CCRA. He had arrived at AI on [REDACTED], having been transferred from the [maximum-security institution, "MAX2"] SIU. He is approved for the AI therapeutic range.

[22] The AI Warden did not approve the SIU transfer in the "5-day" decision of June 29 and the "30-day" decision of July 22.

[23] This is [REDACTED]'s eighth SIU transfer.

⁶ [REDACTED] review, yyyy-mm-dd, at p. 1.

⁷ CPU, yyyy-mm-dd, at p. 5.

⁸ CPU, yyyy-mm-dd, at p. 6.

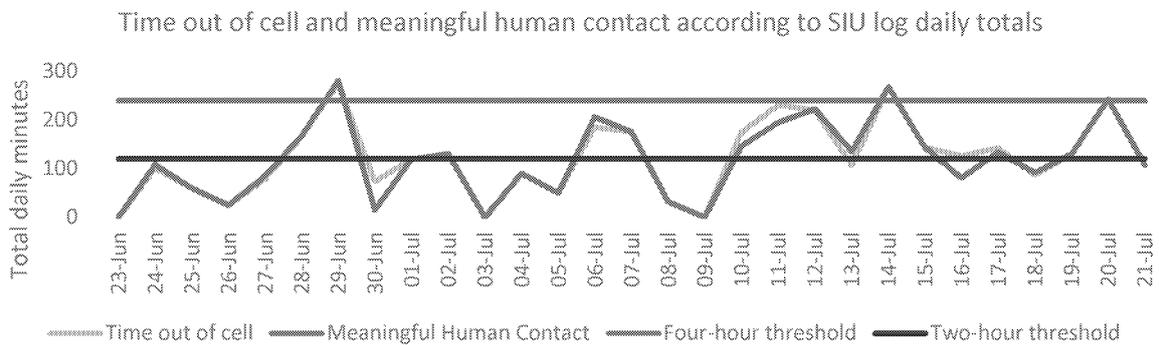
V. ANALYSIS

[24] The analysis below considers mainly information from CSC’s SIU activity log (“the log”), for the period from June 23 to July 21 (“the period reviewed”). This is a period of 29 days. I have also reviewed more recent log information.

1. Daily time out of cell and meaningful human contact

[25] According to CSC’s SIU activity log, [redacted] spent four hours or more out of his cell on three days during the period reviewed (about 10% of all days). He had two hours or more of social interaction on fifteen days (about 52% of all days).

[26] The daily average for both time out of cell was and interaction was around two hours. The daily totals varied from day to day, with a slight improvement between July 10 and 20.



[27] The totals are too high by about two hours on July 15, due to a data entry error.⁹

2. Quantity and timing of daily offers

[28] The quantity of offers varied from day to day. According to the SIU log, [redacted] usually had several opportunities to get out of his cell throughout the day. Even on the days on which there were fewer offers, it seems he could have spent more than four hours outside his cell if he had accepted all offers.

[29] On July 21, [redacted] said he got on a recreation group “just last week.”¹⁰ A CSC memorandum states he was approved for a recreation group on July 6, although threat risk assessments indicate he was put on a group on June 30.¹¹ There was one or some days (June 26, June 30, and July 3) when his only opportunity for in-

⁹ See Educational programs entry, SIU activity log, yyyy-mm-dd.

¹⁰ IEDM interview with [redacted] (with [redacted]), yyyy-mm-dd.

¹¹ Memorandum – recreation group, yyyy-mm-dd. There is a log entry suggesting he had a group by July 1; see: Social programs entry, SIU activity log, yyyy-mm-dd.

person interaction was at outdoor recreation, through fencing. The daily totals were very low these days; he did not go out at all on July 3.

[30] There were some instances when offers overlapped for the same timeframe, but this does not appear to have been a major issue.

3. Types of opportunities for

[31] had the following types of opportunities: s.19(1)

- indoor and outdoor recreation
- staff interactions
- correctional programs

- social programs
- support
- school
- periodic mental health evaluations and a clinician meeting
- personal phone calls

[32] Recreation offers were the most frequent type of offer. However, other types of opportunities were offered consistently. They began soon after his SIU transfer.

[33] He was offered a range representative position on July 20, but lost it soon after.

Access to social programs

[34] s main comment during the July 21 interview was that he had not been offered programs for two weeks. He also said the Social Programs Officer (“SPO”) was making more offers to others, including his group member, than him.

[35] The log, including the information for the person I believe is s recreation partner,¹² essentially confirms s comments. July 10 was the last time was offered social programs. Before that, the previous social program offer to him was eight days earlier, July 2. No type of program was offered to him on July 16 and 17.

[36] On the other hand, his Parole Officer (“PO”), Correctional Programs Officer (“CPO”), the teacher, mental health staff, and did continue to meet with him, despite the lack of social program opportunities. During a week when his regular CPO was absent, another CPO met with him.

[37] The log shows that the lack of social programs made agitated. He discussed it with staff. On July 14, the CPO noted,

‘ talked about being on a rec group but still not getting a great deal of social interaction as his rec partner only attends recreation

¹² I was not provided the specific name by CSC, but there is a log entry indicating the name.

sporadically. Additionally because he is considered to be part of a rec group, he is not a priority for social programs.”¹³ s.19(1)

[38] He had also mentioned being bored in the SIU to a staff member.¹⁴

[39] As a usual practice, it makes sense to prioritize inmates without groups for social programs.

[40] However, some higher needs inmates may require more interaction. In addition, simply having a group does not necessarily mean someone is getting more interaction, particularly if their group member does not accept opportunities. CSC staff should take these specific, individual factors into account.

[41] With that said, I recognize the difficulty of being fair to everyone in the SIU.

[42] CSC’s written response to my questions explains that when there are higher numbers of inmates in the SIU, it is very challenging for staff to have time to meet with people who are in groups, and even those on “rec alone.”¹⁵

[43] I believe SIU staff should do programs and interventions in group sessions when possible, to allow them to meet with more people.

[44] CSC should also ensure there is enough staff and meeting space to provide regular opportunities to everyone in SIUs.

[45] As shown above, in [redacted]’s case, CSC’s log shows that he rarely spent more than four hours out of his cell, and did not have two hours of interaction on about half of all days. He did not have the chance to go out to work. He turned down many recreation opportunities, but he accepted six out of eight social programs offers during the period reviewed. CSC’s response to my questions seems to overstate the amount of time [redacted] actually spends out of his cell.

[46] I asked CSC, “Has [redacted] ever been taken out for social programs with his group member?” The response did not directly answer the question, although it indicated, “Social program officers will typically offer activities to offenders who are in a group to complete together as a group, however will not stay with the group.”¹⁶

[47] Providing him social program opportunities would be a way of encouraging him to spend time out of his cell. In addition, it could be helpful for interventionists, likely from mental health services, to work with him to understand his own reaction to the reduction of social program opportunities and identify better coping strategies. I note that his PO did try to have this kind of discussion with him on July 22.¹⁷

¹³ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁴ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁵ Email to the IEDM from [redacted], yyyy-mm-dd.

¹⁶ Email to the IEDM from [redacted], yyyy-mm-dd.

¹⁷ See Case management entry, SIU activity log, yyyy-mm-dd.

Mental Health support

[48] Regarding mental health support, [REDACTED] said staff are trying to help him, and they meet with him once or twice per week.¹⁸ He did not express concerns regarding those services. However, the log shows that beyond the periodic assessments, there was only one individual mental health session with him, with a clinician on July 19.

4. Structural or contextual factors affecting activities

[49] In the interview, [REDACTED] described ongoing challenges with space for interventions. Maintenance work had prevented [REDACTED] from taking people out to [REDACTED] said the work is now complete, so they will be able to resume taking people there. However, an ongoing administrative barrier prevents [REDACTED] from taking people outside if there is an immediate need: they have to make a request the day before, for security approval. He said this issue has been raised with management and is under examination.¹⁹

[50] I encourage CSC to find a solution to remove this barrier. If someone is in a crisis situation, taking them out to [REDACTED] could be a good way to provide them support and de-escalate the situation. Waiting until the next day may not be as helpful.

[51] Otherwise, the log contains information on instances when the limited infrastructure or specific situations prevented staff from making offers:

- June 24: there were no rooms available for [REDACTED] to take him out of his cell (the regular SIU [REDACTED] has not been on site)
- June 28: the SPO had a session with [REDACTED] in the morning, but could not make offers during the afternoon due to incidents in the unit
- July 8: the [REDACTED] had intended to meet with [REDACTED] and had a room reserved, but the Assistant Warden, Interventions (“AWI”) required the room
- July 20 (1:30PM): the CPO could not offer a session to [REDACTED] because “security staff indicated that due to operational requirements, a movement could not be facilitated at this time.”²⁰

5. Threat risk assessments and the Security Management Protocol

[52] [REDACTED] was put on “SMP” status on July 20, for threatening comments towards staff. He allegedly threatened to punch a SPO on July 18, and made other threats on July 20; the incident report describes that he was demanding programming and

¹⁸ IEDM interview with [REDACTED], yyyy-mm-dd.

¹⁹ IEDM interview with [REDACTED], yyyy-mm-dd.

²⁰ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹ Based on the times in the log and report, this incident happened after the situation when the CPO could not take him out due to a contextual situation. He had been able to participate in a school session that morning, though.

[53] Only two threat risk assessments (“TRAs”) have been done since then, on July 21 and 25. There is no information on ongoing reassessment of the measures. The TRAs indicate he would be cuffed to the rear for movements, escorted by three officers, and seen in a secure room.

[54] However, [REDACTED] has also been prevented from going to indoor recreation with his recreational group.²² There is no information to show that [REDACTED] made any threats towards his fellow group member. Having reviewed the incident history log since [REDACTED],

[55] I do not find there was a basis to remove [REDACTED] from his group.

[56] “SMP” measures should always be tailored towards the actual risks in a specific case.

VI. CONCLUSION AND RECOMMENDATIONS

[57] Since the opportunities were adequate through the majority of the review period, I conclude under s. 37.83(1) of the CCRA that CSC took all reasonable steps to provide [REDACTED] the required opportunities in the SIU. Despite this conclusion, I recommend to CSC to:

- Allow [REDACTED] to continue having opportunities to have recreation in a group, even while on the SMP;
- Make additional attempts to offer programming in groups, including by offering social programs to [REDACTED] and his group member together;
- Shorten the approval times for accessing [REDACTED] and [REDACTED];
- Provide [REDACTED] access to regular counselling to support his mental health.

[58] Finally, as in many other reviews, this review shows the importance of CSC ensuring institutions have adequate meeting space and staffing levels to implement the SIU model.

Janine Lespérance
Independent External Decision-Maker

Date: July 25, [REDACTED]

²¹ Incident report for incident no. [REDACTED], yyyy-mm-dd.

²² IEDM interview with [REDACTED], yyyy-mm-dd.

Nom (détenu):
SED: ██████████
Pénitencier: Donnacona
Date de la notification: 6 mai ██████████ (aurait dû être le 29 mai ██████████
██████████)
Date de la décision: 13 juin ██████████
Décideuse externe indépendante: J. Lespérance

**DÉCISION EN VERTU DU PARAGRAPHE 37.83(1)
DE LA LOI SUR LE SYSTÈME CORRECTIONNEL ET LA MISE EN
LIBERTÉ SOUS CONDITION, L.C. 1992, CH. 20**

s.19(1)

RÉSUMÉ

██████████ a pu bénéficier de programmes et interventions à l'UIS. La variété était adéquate et il a accepté la grande majorité des offres. Les programmes correctionnels auraient pu être plus réguliers. Il y avait des conflits d'horaire quelques fois. ██████████ a eu de la difficulté à rester en contact avec sa famille. Le processus pour bénéficier des visites ne semble pas avoir été bien expliqué. L'installation de plus qu'un téléphone dans l'UIS prend beaucoup de temps. Plus d'offres ou plus de flexibilité auraient probablement fait que les seuils minimaux soient atteints encore plus régulièrement. En vertu du para. 37.83(1) de la LSCMLC, je conclus que le SCC n'a pas pris toutes les mesures utiles. ██████████ a des préoccupations par rapport à son transfèrement éventuel, sa cote de sécurité et des obstacles à son progrès.

1. INTRODUCTION

[1] Le 6 mai ██████████, les Décideurs et Décideuses externes indépendant.e.s (« DEI ») ont reçu une notification du Service correctionnel du Canada (« SCC ») indiquant que ██████████ détenu dans l'Unité d'intervention structurée (« UIS ») de l'Établissement Donnacona (« ÉD ») au Québec, n'avait pas, pendant cinq jours consécutifs, passé au moins quatre heures en dehors de sa cellule ou n'avait pas interagi avec autrui pour au moins deux heures au quotidien.

[2] En révisant les données du registre quotidien de l'UIS du SCC, j'ai remarqué que la notification du 6 mai semblait avoir été envoyée par le SCC par erreur. Selon les

données du SCC, un examen a été déclenché à la fin de la journée le 28 mai, parce que les seuils minimaux quotidiens n'avaient pas été atteints sur quinze jours pendant une période de trente jours. Ainsi, le SCC aurait normalement envoyé une notification le 29 mai.

- [3] En vertu du paragraphe 37.83(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition* (« LSCMLC »), S.C. 1992, ch. 20, je dois examiner si le SCC a pris toutes les mesures utiles pour accorder à les possibilités visées au paragraphe 36(1) de la LSCMLC et pour encourager celui-ci à s'en prévaloir.

2. LE DROIT APPLICABLE

2.1. Les obligations du SCC à l'égard des détenus à l'UIS

- [4] L'article 36 de la LSCMLC explique les obligations des SCC comme suit:

« Obligations du Service

36 (1) Le Service accorde quotidiennement à tout détenu incarcéré dans une unité d'intervention structurée la possibilité, entre 7 h et 22 h :

a) de passer au moins quatre heures en dehors de sa cellule;

b) d'avoir, pour au moins deux heures, la possibilité d'interagir avec autrui dans le cadre d'activités qui se rapportent, notamment :

(i) à des programmes, des interventions ou des services qui l'encouragent à atteindre les objectifs de son plan correctionnel ou le préparent à sa réintégration au sein de la population carcérale régulière,

(ii) à son temps de loisir.

Temps compté

(2) Le temps consacré à des activités visées à l'alinéa (1)b) est compté pour l'application de l'alinéa (1)a) si celles-ci ont lieu à l'extérieur de la cellule du détenu.

Temps non compté

(3) Lorsque le détenu prend sa douche en dehors de sa cellule, le temps qui y est consacré n'est pas compté pour l'application de l'alinéa (1)a) [soulignement ajouté] ».

- [5] Certaines exceptions sont prévues à la LSCMLC et le *Règlement sur le système correctionnel et la mise en liberté sous condition*, DORS/92-620 (« RSCMLC »). Notamment, les alinéas 36(1)(a) et (b) de la LSCMLC ne s'appliquent pas si « le

détenu refuse de se prévaloir de la possibilité »¹, si le détenu ne suit pas les instructions pour assurer la sécurité²; ou encore dans certaines circonstances spécifiques, y compris en contexte d'épidémie³.

[6] L'examen actuel se concentre sur les conditions de détention à l'UIS. Les paragraphes 37.83(1) et (2) de la LSCMLC précisent:

« Décision — mesures utiles

37.83 (1) Si, pendant cinq jours consécutifs ou un total de quinze jours au cours d'une période de trente jours, le détenu incarcéré dans l'unité d'intervention structurée n'a pas passé au moins quatre heures par jour en dehors de sa cellule ou n'a pas, au moins deux heures par jour, interagi avec autrui, le décideur externe indépendant doit, dès que possible, déterminer si le Service a pris toutes les mesures utiles pour accorder au détenu les possibilités visées au paragraphe 36(1) et pour encourager celui-ci à s'en prévaloir.

Recommandations

(2) S'il détermine que le Service n'a pas pris toutes les mesures utiles, le décideur externe indépendant peut lui faire les recommandations qu'il estime indiquées pour remédier à la situation [soulignement ajouté] ».

[7] Il s'ensuit que le SCC doit être proactif pour faire en sorte que les détenus à l'UIS sortent de leur cellule et aient des interactions humaines.

[8] De plus, la LSCMLC établit que l'un des objectifs des UIS est de permettre aux détenus de participer à des programmes et d'avoir accès à des services⁴. Le SCC doit déployer des efforts pour faire en sorte que les obstacles physiques n'entravent pas les interactions⁵.

[9] Plusieurs facteurs peuvent expliquer pourquoi les seuils « 4/2 » ne soient pas atteints régulièrement. Le ou la DEI se doit d'examiner la situation et tenir compte de l'ensemble de facteurs pertinents dans le cas du détenu concerné, y compris son profil et ses besoins spécifiques.

¹ LSCMLC, à l'alinéa 37(1)(a).

² LSCMLC, à l'alinéa 37(1)(b).

³ LSCMLC, à l'alinéa 37(1)(c) et RSCMLC, à l'alinéa 19(1)(b).

⁴ LSCMLC, au para. 32(1).

⁵ LSCMLC, au para. 32(2).

[10] Il convient de préciser que les obligations légales et les conclusions des DEI s'appliquent au SCC en tant qu'organisme gouvernemental, et non pas à un individu ou un établissement particuliers.

2.2. La période visée par une décision en vertu des paragraphes 37.83(1) et (2)

[11] Le paragraphe 37.83(1) ne limite pas un.e DEI à uniquement examiner les jours précis qui ont déclenché l'examen. Ne tenir compte que de ces jours laisserait une période sans surveillance. Ceci serait problématique, surtout lorsque plusieurs jours écoulent avant que le ou la DEI ne puisse rendre la décision.

[12] La prise en compte d'une période plus longue permet le ou la DEI de mieux comprendre une situation et toute évolution des circonstances. Ainsi, le ou la DEI est davantage en mesure de formuler des recommandations pertinentes, le cas échéant.

[13] Je considère que le ou la DEI a le pouvoir de déterminer la période appropriée à examiner afin de prendre une décision en vertu de l'article 37.83.

3. SOURCES D'INFORMATIONS

[14] Pour rendre la présente décision, j'ai pris en compte les sources d'informations suivantes:

- Registre quotidien des activités de l'UIS (« le registre »), pour la période à partir du aaaa-mm-jj
- Réponses de l'ÉD aux questions écrites de la DEI, reçues par courriel le aaaa-mm-jj
- Registre d'interventions (« RI »), pour la période du aaaa-mm-jj au aaaa-mm-jj
- Décision « 30-jours » du transfèrement à l'UIS, en date du aaaa-mm-jj
- Décision « 5-jours » du transfèrement à l'UIS, en date du aaaa-mm-jj
- Évaluation de la menace et du risque, en date du aaaa-mm-jj
- Annulation de l'autorisation du transfèrement à l'UIS, en date du aaaa-mm-jj
- Autorisations du transfèrement à l'UIS, en date du aaaa-mm-jj (X2)
- Rapport d'incident, en date du aaaa-mm-jj
- Plan correctionnel – mise à jour (« PC-MAJ »), en date du aaaa-mm-jj
- Évaluation en vue d'une décision – niveau de sécurité et placement pénitentiaire, en date du aaaa-mm-jj
- Profil criminel – original, en date du aaaa-mm-jj

[15] Le 3 juin [REDACTED], j'ai envoyé une lettre au SCC pour être partagée avec Celle-ci contenait un résumé de l'information pertinente et informait de son droit de présenter des observations par écrit. Je lui ai aussi proposé la possibilité d'un entretien et d'impliquer son avocat.e.

[16] La même journée, j'ai reçu l'accusé de réception, indiquant que [redacted] allait présenter des observations orales.

[17] J'ai mené un entretien avec lui par visioconférence le 6 juin. Il y avait des problèmes de son [redacted] pendant les premières minutes. [redacted] a été obligé de quitter la salle après environ une demi-heure pour des raisons opérationnelles. Par la suite, j'ai découvert que j'avais commencé la rencontre une heure en retard dû à des erreurs administratives en lien avec les fuseaux horaires (mon appui administratif par intérim et moi sommes dans des zones horaires distincts de celui de l'ÉD). J'ai poursuivi l'entretien avec [redacted] par téléphone le 8 juin. Je me suis excusée auprès de [redacted] en précisant que l'établissement n'était pas responsable de la situation. [redacted] était très compréhensif face à cette situation.

4. CONTEXTE

[18]

[19] Depuis [redacted], il purge une peine de [redacted] ans pour [redacted]. Il a une cote de sécurité maximale. Selon son plan correctionnel (« PC »), il a des affiliations à

[redacted]. Le PC mentionne, « Le sujet démontre une attitude d'ouverture face aux interventions. Il manifeste de l'intérêt à participer au programme [redacted]. Concernant la santé mentale, le PC mentionne : [redacted] ».

[20] Son transfèrement à l'UIS a été autorisé le 22 avril [redacted], en vertu de l'alinéa 34(1)(b) de la LSCMLC. L'autorisation décrit les circonstances comme suit:

«

[redacted]. Des vérifications sécuritaires

⁶ PC-MAJ, aaaa-mm-jj, à la p. 6.

⁷ PC-MAJ, aaaa-mm-jj, à la p. 6.

⁸ PC-MAJ, aaaa-mm-jj, à la p. 8.

⁹ PC-MAJ, aaaa-mm-jj, à la p. 7.

ont été faites et il appert que [redacted] ne peut intégrer le secteur [redacted] de l'établissement Donnacona de façon sécuritaire¹⁰ ».

[21] La directrice de l'établissement n'a pas approuvé le transfèrement à l'UIS dans sa décision « cinq jours » du 28 avril et sa décision « 30 jours » du 26 mai. Les préoccupations du SCC sont « en raison de ses liens avec un groupe menaçant la sécurité (GMS)¹¹ ». Le SCC poursuit un transfèrement institutionnel.

5. ANALYSE

[22] La discussion ci-dessous porte sur la période allant du 23 avril au 5 juin [redacted], une période de 44 jours. J'estime qu'il est pertinent de tenir compte des jours depuis le transfèrement de [redacted] à l'UIS, surtout étant donné qu'un examen « 15/30 jours » est déclenché.

[23] Puisque quelques jours sont passés avant que je ne puisse finaliser cette décision, j'ai également vérifié les données pour les jours plus récents.

5.1. Les heures passées en dehors de sa cellule et avec autrui

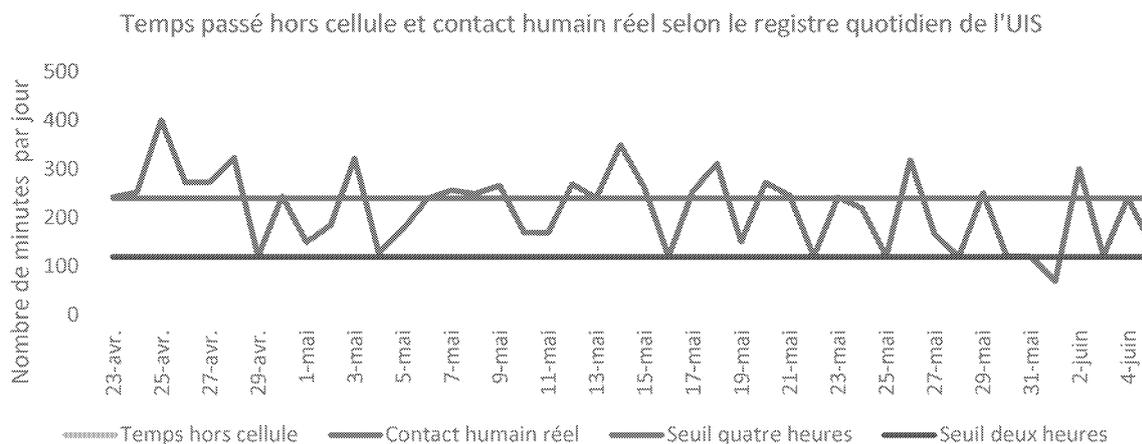
[24] Selon le registre quotidien de l'UIS du SCC, [redacted] sort régulièrement de sa cellule. Il a passé au moins quatre heures en dehors de sa cellule sur 24 jours (environ 55% de tous les jours). La moyenne quotidienne était environ trois heures et 38 minutes.

[25] Il a eu plus de deux heures de contact humain réel sur 43 jours pendant la période visée par la présente décision (environ 98% de tous les jours).

[26] Les totaux pour le temps hors cellule et le contact humain réel étaient égaux tous les jours. Le tableau ci-dessous illustre les totaux selon le registre:

¹⁰ Autorisation du transfèrement à l'UIS, aaaa-mm-jj, à la p. 3.

¹¹ Décision du 30 jours de l'UIS, aaaa-mm-jj, à la p. 4.



[27] J'ai certains doutes quant à la fiabilité de ces totaux. Il est possible que la durée de certaines activités ait été exagérée un peu.

[28] En revanche, ma rencontre avec le 6 juin n'apparaît pas dans le registre. Ainsi, les totaux du registre pour ce jour-là devraient probablement être plus élevés.

5.2. La quantité, la durée et la coordination des offres

[29] Selon le registre, a eu deux ou trois possibilités de sortir de sa cellule la plupart des jours, pour des périodes d'une durée environ une ou deux heures. Les heures des offres ont varié du jour au jour.

[30] Je considère qu'offrir deux possibilités au cours d'une journée représente le minimum pour atteindre les seuils « 4/2 » de la LSCMLC. Quand j'ai posé des questions à sur la durée des activités, il a affirmé que les périodes de récréation durent deux heures, les ateliers sont souvent environ une heure, et la durée des séances d'école varie. Parfois ils demandent de rester plus de temps dans la salle après un atelier et parfois ils sont permis. En revanche, le registre du SCC indique qu'environ la moitié des séances pour les programmes et l'école ont duré deux heures ou plus. Pour l'école, notamment, le registre indique que presque toutes les séances ont duré deux heures.

[31] Bien que le problème ne semble pas avoir été très fréquent, parfois, les offres se chevauchent; un conflit d'horaire des activités avec les appels personnels de prévus a fait que les seuils minimaux n'ont pas été atteints. Par exemple, le 5 mai, a participé à l'école le matin, mais il n'a pas participé à la récréation à 13h, parce qu'il utilisait le téléphone à 13h30. Il n'a pas eu l'occasion de sortir après son appel. Le 24 mai a accepté toutes les offres, mais n'a pas passé plus de quatre heures en dehors de sa cellule. Une note explique qu'il a quitté une séance de programme tôt, parce qu'il avait un appel à 13h30. L'appel lui-même n'a pas été

enregistré donc ce n'est pas clair s'il a eu lieu. Le 27 mai, a été offert l'école et la chance de voir l'aumônier à 9h, et a choisi d'aller à l'école.

5.3. La variété de possibilités

[32] a pu participer aux types d'activités suivants:

- La récréation à la salle commune et à la cour extérieure
- L'école
- Les programmes correctionnels
- Les entretiens avec l'aumônier
- Les programmes sociaux
- Les évaluations périodiques (14-jours, 28-jours) de la santé mentale
- Une rencontre avec une travailleuse sociale
- Les rencontres pour discuter de son cas avec le personnel

[33] La plupart des fins de semaine, la récréation était le seul type d'activité offert, mais de lundi à vendredi, au moins un type de programme était offert presque tous les jours. Le 20 mai, un programme n'a pas été offert pour des raisons opérationnelles. Le RI explique:

« Le sujet accepte de participer, mais en raison des transferts et mouvements, nous n'avons pas pu le voir. À 10h30 nous sommes retournées, mais la SC n'était pas disponible et le CX-II nous dit que pour 30 minutes, ça ne vaut pas la peine de les amener dans la biblio 119¹² ».

[34] a mentionné que les programmes aident un peu et ça fait du bien de s'entretenir avec l'aumônier.

3. Selon le registre de l'UIS, il a été offert de zéro à trois fois par semaine. Les séances ont normalement durée de 40 minutes à plus qu'une heure. La courte durée de quelques séances n'est pas toujours expliquée. Le 10 mai, la séance a fini après 40 minutes parce que « la période de sortie [était] terminée¹⁴ ».

[35] Je considère que la variété d'activités était adéquate et devrait permettre à de poursuivre les objectifs identifiés dans son plan correctionnel. J'observe toutefois

¹² Entrée APS, RI, aaaa-mm-ii.

¹³ Entretien de la DEI avec aaaa-mm-jj.

¹⁴ Entrée APC, registre de l'UIS, aaaa-mm-jj.

que le plan correctionnel identifie qu'il serait bénéfique pour lui d'avoir un emploi¹⁵, mais n'a pas eu l'occasion de travailler à l'UIS.

- [36] Lors mon entretien avec [redacted] il a parlé de [redacted]. Concernant la santé mentale, l'agent de programmes correctionnels (« APC ») a noté le 11 mai que [redacted] lors de la séance, mais [redacted] a dit [redacted] Le 26 avril, aurait dit à l'APC [redacted] En réponse à mes questions, [redacted] a affirmé [redacted]. J'ai l'impression qu'il serait important que le personnel crée un lien de confiance avec lui pour qu'il puisse bénéficier de :

5.4. Les facteurs structurels ou contextuels ayant eu un impact sur les possibilités

- [37] L'UIS de l'ÉD est situé dans un secteur de l'établissement dont l'infrastructure n'est pas propice à la mise en œuvre du modèle des UIS. Les installations ne facilitent pas le maintien de contact avec les sources de soutien externes et n'encouragent pas la participation aux activités.

- [38] Selon [redacted] la salle commune n'a qu'une télévision et est « presque comme une cellule¹⁹ ».

5.5. L'accès aux appels et aux visites

- [39] D'après mon entretien avec [redacted] il est évident que maintenir sa relation avec sa conjointe et ses enfants est très important pour lui. Selon le registre, il utilise le téléphone régulièrement, pour des appels d'une demi-heure. Cependant, faisant écho d'autres personnes, affirme que les appels ne durent que 20 minutes. Parfois, le téléphone ne marche pas (il faut raccrocher et rappeler) donc les appels peuvent être encore plus courts. Il n'y a pas de téléphone dans la salle commune²⁰.

- [40] L'accès aux téléphones a déjà été soulevé dans les examens des DEI. Selon les informations dont je dispose, l'établissement a pris des mesures pour l'installation de téléphones. Je n'ai pas tous les détails pertinents, mais je comprends que certains facteurs hors le contrôle de l'établissement ont entravé l'installation. Toutefois, j'observe que les UIS, qui devraient favoriser les mesures de réinsertion et l'accès

¹⁵ PC-MAJ, aaaa-mm-jj, à la p. 6.

¹⁶ Entrée APC, registre de l'UIS, aaaa-mm-jj.

¹⁷ Entrée APC, registre de l'UIS, aaaa-mm-jj.

¹⁸ Entretien de la DEI avec [redacted] aaaa-mm-jj.

¹⁹ Entretien de la DEI avec [redacted] aaaa-mm-jj.

²⁰ Entretiens de la DEI avec [redacted] aaaa-mm-jj et aaaa-mm-jj.

au contact humain réel, ont été lancées il y a plus de deux ans et demi. L'UIS de Donnacona est située dans le secteur UV depuis environ deux ans. L'installation d'un téléphone ne devrait pas prendre autant de temps, surtout si les UIS sont une priorité pour le SCC.

[41] J'ai posé des questions à [REDACTED] concernant son accès aux visites. [REDACTED] a affirmé qu'il avait envoyé des papiers pour des visites plus qu'une fois sans réponse. Il voudrait pouvoir avoir une visite familiale privée (« VFP ») avant qu'il soit transféré [REDACTED]; il a envoyé une application à cette fin la semaine précédente²¹.

[42] Je n'ai pas vu des copies des requêtes de

[43] J'ai demandé à l'établissement pour des précisions. Selon le SCC, la conjointe de [REDACTED] est approuvée pour des visites régulières, en personne ou par vidéo, depuis [REDACTED]. Il faudrait qu'elle prenne rendez-vous. Le SCC précise que le processus d'approbation pour les VFP est distinct. Le délai normal pour traiter une première demande de VFP est de 30 jours. J'ai demandé au SCC si le processus avait été expliqué à [REDACTED]. Le SCC a répondu,

« Le processus lui avait été expliqué alors qu'il était au CRR. Afin d'être certain qu'il comprenne bien les démarches à suivre, un gestionnaire de l'UIS l'a revu le 08 juin afin de lui réexpliquer le fonctionnement des visites régulières et des démarches à suivre concernant les VFP²² ».

[44] Je constate que le SCC a pris des mesures à la suite de la réception de mes questions, ce qui démontre une certaine réactivité.

[45] Étant donné les restrictions à l'UIS, il serait souhaitable que le SCC s'assure que tous les détenus transférés à l'UIS comprennent bien les démarches à suivre pour pouvoir bénéficier des visites. Cela pourrait se faire lors d'une rencontre initiale après l'autorisation de transfèrement à l'UIS. Le personnel pourrait continuer à offrir un appui si nécessaire.

5.6. La participation de [REDACTED] et les efforts d'encouragement

[46] Selon le registre de l'UIS, le taux de participation de [REDACTED] aux activités était très élevé. [REDACTED] a accepté 36 des 39 offres pour l'école, les programmes, et l'appui spirituel au cours de la période visée; un des « refus » était dû à un chevauchement (voir le para. 31 ci-dessus). Il a accepté environ 73% des offres pour la récréation. Au moins deux fois, il y avait des conflits d'horaire entre la période de récréation et

²¹ Entretiens de la DEI avec [REDACTED], aaaa-mm-jj et aaaa-mm-jj.

²² Réponse par courriel du SCC aux questions de la DEI, aaaa-mm-jj.

son temps pour l'utilisation du téléphone. La météo explique sa non-participation à quelques reprises. La plupart des refus de récréation étaient pour les périodes de sortie à 8h30 le matin.

[47] Je considère que la variété des activités est une forme d'encouragement, ainsi que l'offre d'activités en groupe, et le contenu même des ateliers. Cependant, il semble que simplement faire plus d'offres au cours de chaque jour ou avoir une plus grande flexibilité dans l'horaire auraient eu comme résultat que les seuils minimaux soient dépassés encore plus régulièrement.

5.7. Les autres enjeux

[48] n'a fait part de certaines de ses préoccupations, notamment la possibilité qu'il soit transféré █████, ce qui rendra les visites difficiles. De plus, il fait face à des obstacles qui l'empêchent de █████ Selon lui, on lui a dit qu'il devra attendre un an avant de pouvoir █████ . Il se sent prêt à transférer à un établissement de niveau de sécurité moyen.

[49] Étant donné que le transfèrement de █████ à l'UIS n'a pas été approuvé par le SCC, un.e DEI ne fera pas un examen en vertu de l'art. 37.8 de la LSCMLC sur les motifs du maintien de █████ en UIS, même s'il passe une période prolongée à l'UIS. Cela est une limitation de la législation. Je n'ai pas examiné le contexte de son séjour en UIS en profondeur étant donné que le présent examen se focalise sur les conditions à l'UIS. Toutefois, j'ai remarqué que █████ est au début de sa peine et qu'il a été classé au niveau de sécurité maximum en raison d'une dérogation. Un rapport récent de la vérificatrice générale du Canada constate qu'un nombre disproportionnellement élevé de détenus noirs sont placés dans des établissements à sécurité maximale au début de leur peine²³ et, plus généralement, que le SCC n'a pas traité ni éliminé les obstacles qui défavorisent certains groupes de détenus, dont les détenus noirs. Je rappelle au SCC de l'importance de prendre des mesures à cette fin.

[50] Enfin, il convient de mentionner que █████ a souligné qu'il ne voulait pas parler mal de personne. Il essaye de toujours être poli avec le personnel.

²³ Rapports de la vérificatrice générale du Canada au Parlement du Canada, *Rapport 4 : Les obstacles systémiques – Service correctionnel Canada*, Rapport de l'auditeur indépendant, 2022, à partir du par. 4.15.

6. CONCLUSION ET RECOMMANDATIONS

[51] En vertu de l'article 37.83(1) de la LSCMLC, je conclus que le SCC n'a pas pris toutes les mesures utiles pour fournir les possibilités prévues à [redacted] à l'UIS et pour l'encourager à se prévaloir de ces possibilités.

[52] Eu égard à cette conclusion, je recommande au SCC en vertu du paragraphe 37.83(2) de la LSCMLC, de:

- Tenir compte des heures prévues pour les appels personnels dans la coordination des activités;
- Prioriser l'installation de téléphones à l'UIS;
- S'assurer que les détenus transférés à l'UIS comprennent bien le processus pour recevoir des visites en personne ou par vidéo et les accompagner par la suite au besoin;
- Continuer à appuyer [redacted] pour qu'il puisse bénéficier de visites;
- Offrir les séances de [redacted] plus régulièrement;
- Évaluer la possibilité de donner un emploi à [redacted] et [redacted];
- Tenter d'augmenter la quantité d'offres.

Janine Lespérance
Décideuse externe indépendante
Le 13 juin [redacted]

Name:
FPS Number: ██████████
Correctional Institution: Atlantic Institution
Date of Notification: January 5, ██████████
Date of Decision: February 21, ██████████
Independent External Decision Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
 OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

had regular recreation and program opportunities in the SIU, even when extra security measures were applied. On the other hand, there were many days when program staff ran out of time, or there were no rooms available. As a result, did not get the chance to participate in a session sometimes, even though he wanted to. did not have a recreation group for most of the period reviewed. CSC did not show he was refusing to be in a group at first. CSC did not satisfactorily justify why his group requests were refused. Communication with him about reasons for refusing his group requests likely could have been better. A delay in providing his belongings seems to have had an impact on - The daily "time out of cell" totals fo were low. Mr. M has felt isolated in the SIU, and has ongoing mental health needs. Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps to provide opportunities to leave his cell and interact with others in the SIU.

I. INTRODUCTION

- [1] On Jan. 5, ██████████, Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at Atlantic Institution ("AI") in New Brunswick.

II. LEGAL FRAMEWORK

- [2] CSC must provide inmates the daily opportunity to spend at least four hours out of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates' needs.
- [3] Under s. 37.83(1) of the CCRA, an IEDM determines whether CSC has taken all reasonable steps to provide an inmate the required opportunities in the SIU and encourage them to participate. The IEDM can decide the specific period of activities to consider.
- [4] I have issued a previous decision under s. 37.83(1) of the CCRA concerning I that set out the relevant legal provisions in more detail.

III. SOURCES OF INFORMATION

- [5] I have considered the following sources of information, from CSC:
- SIU daily activity log, for the period as of yyyy-mm-dd
 - Threat risk assessments ("TRAs"), for the period as of yyyy-mm-dd
 - Statement/observation report ("SOR"), dated yyyy-mm-dd
 - Medical encounter notes, for the period from yyyy-mm-dd to yyyy-mm-dd
 - Casework record ("CWR") log, from the period from yyyy-mm-dd to yyyy-mm-dd
 - Mental health clinical notes, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
 - Mental health forms – SIU 14-day, dated yyyy-mm-dd, and yyyy-mm-dd
 - Memorandums – integration options, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
 - Memorandums – rec group, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
 - Incident reports, dated yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
 - Institutional head "30-day" SIU transfer decision, dated yyyy-mm-dd
 - Mental health form – SIU 28-day, dated yyyy-mm-dd
 - Correctional plan update - SIU ("CPU-SIU"), dated yyyy-mm-dd
 - Health case management notes, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
 - Correctional plan update ("CPU"), dated yyyy-mm-dd
 - Memorandum – offender management plan, dated yyyy-mm-dd
 - Institutional head "5-day" SIU transfer decision, dated yyyy-mm-dd
 - Memorandum – personal effects, dated yyyy-mm-dd
 - Mental health forms –SIU1st day, dated yyyy-mm-dd
 - SIU transfer authorization, dated yyyy-mm-dd
 - Assessment for decision – institutional transfer, dated yyyy-mm-dd
 - Criminal profile report, dated yyyy-mm-dd

- Assessment for decision – security level and penitentiary placement, dated yyyy-mm-dd

[6] I sent [redacted] via CSC, a summary of the information I am considering for this review on Feb. 1. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[7] On Feb. 2, I learned [redacted] would share his views. We spoke by videoconference on Feb. 6, for approximately one hour and 20 minutes.

IV. CONTEXT

[8] [redacted]

[9] [redacted]

[10] Since [redacted], he has been serving a sentence of [redacted]. His statutory release date is set for [redacted]. CSC has classified him at the maximum-security level.

[11] His transfer to the SIU was authorized on Dec. 29, [redacted], under para. 34(1)(b) of the CCRA. According to the transfer authorization, he was the victim of an assault on [redacted] "Range", [redacted] on [redacted]. Since [redacted], he had previous placements on the [redacted] range, and or [redacted].

[12] The AI Warden approved the SIU transfer in the "5-day" decision of Jan. 5, and in the "30-day" decision of Jan. 27.

[13] This is [redacted]'s second SIU stay.

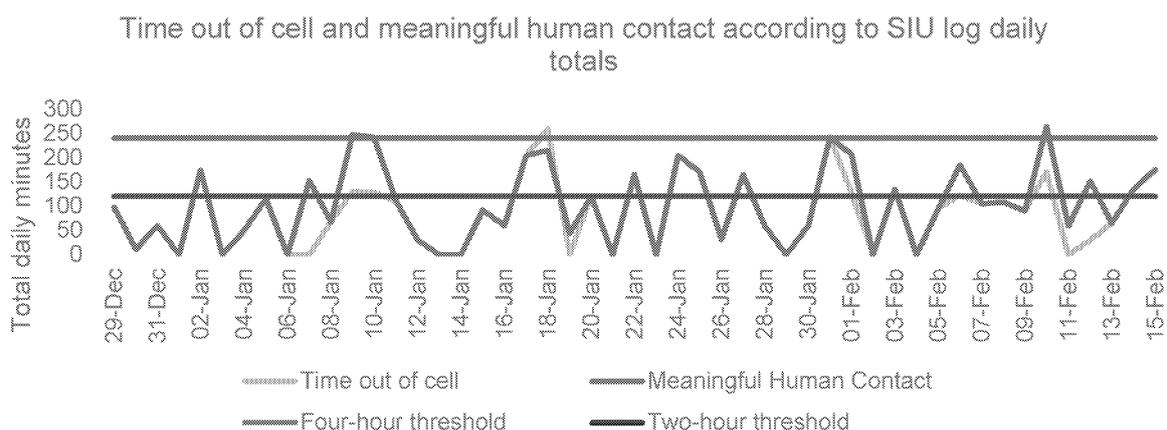
V. ANALYSIS

[14] The analysis below uses information from CSC's SIU activity log, for the period from Dec. 29 to Feb. 15 ("the period reviewed"). This is a period of 49 days.

1. Daily time out of cell and meaningful human contact

[15] According to CSC's SIU activity log, [redacted] spent four hours or more out of his cell on two days during the period reviewed (about 4% of all days). He had two hours or more of meaningful human contact on 19 days (about 39% of all days). The average for time out of cell was about one hour and 25 minutes. The average for meaningful human contact was about one hour and 41 minutes.

[16] The daily totals were the lowest during the first week [redacted] was in the SIU. Otherwise, there was no significant trend during the period reviewed, as shown in the graphic below.



[17] [redacted] said that he is often in his cell “pretty much 23 hours a day.” He said he “feels like [he’s] in segregation.”¹

2. Quantity and timing of daily offers

[18] The log shows [redacted] has usually had multiple (five or more) chances to get out of his cell during the day, often for an hour or two. These opportunities have been adequately spread throughout the day.

[19] Because he did not have a recreation group for most of the period reviewed, there were a few days when he did not have any barrier-free interaction opportunity; his only chance to talk to someone was at the outside yard through fencing.

[20] In addition, he had only one program opportunity on about a third of all days. Those program sessions usually only lasted around an hour. This was the only interaction he had some days.

[21] An issue related to the timing of offers is that [redacted] would often accept a social program offer in the morning, but social program officers (“SPOs”) would tell him they would get back to him later. They either would or were unable to.

¹ IEDM interview with Mr. M, yyyy-mm-dd.

3. Types of opportunities for

[22] had the following types of opportunities:

- recreation: indoor common room time and outdoor yard time
- staff interactions (especially with his Parole Officer (“PO”) and Correctional Managers (“CMs”))
- correctional programs
- social programs
- school in the library
- mental health interventions and assessments
- phone-based resiliency program (offered by volunteers)
- personal phone calls on the range phone

[23] Recreation offers were the most frequent type of offer, but programs were offered consistently: had at least one type of program opportunity on most days (42/49).

[24] The first (and only, during the period reviewed) opportunity for the program was Feb. 8.

[25] Although there is one log entry for religious support from the chaplain, on Jan. 4, it indicates I had to go to school. He did not have any other offers to meet with the Chaplain.

[26] accepted a job as a cell painter on Feb. 5,² but did not go out to work during the period reviewed.

[27] In my interview with he said he “can get more stuff done” in the SIU than on a regular unit. For example, before he was transferred to the SIU, he was waiting to see the teacher; but in the SIU, he has been going to school as much as he can and did . He said he sees the Correctional Programs Officer (“CPO”) once or twice per week. Connection with his via phone is important to him.

[28] I note has not been able to go to the gym,³ it took over two months for him to be able to have a job. While these are shortcomings, the variety of offers was generally adequate, and as noted, program offers were regular.

4. Structural or contextual factors affecting activities

[29] According to CSC information, operational issues affected opportunities a couple of times: on Feb. 14, an unexplained operational issue or incident meant a

² Case management entries, SIU activity log, yyyy-mm-dd and yyyy-mm-dd.

³ IEDM interview with yyyy-mm-dd; SIU log entries also do not indicate he has been able to go to the gym.

movement to the library for school was cancelled, so he could not go.⁴ On Jan. 21, he could not go to a social program session in the afternoon for similar reasons (he had wanted to go later in the day when asked in the morning).

- [30] Moreover, log entries show room unavailability and staffing levels had a significant impact on chances for [redacted] to get out of his cell.
- [31] For example, on Jan. 31, a barrier room was used for a program session even though it was not required for security reasons, because it “was the only program room available at [that] time.”⁵ On Feb. 3, the CPO could not meet with him in the morning due to a lack of available rooms, but they were able to meet in the afternoon that day.⁶
- [32] According to the log, there were many days on which [redacted] wanted to participate in social programs, but the SPOs ran out of time, specifically: Jan. 1, 4, 6 accepted in the morning, but the SPO ran out of time; he accepted in the afternoon, but rooms were not available; and he reportedly did not respond to an offer in the evening at 7PM), 10, 12 (he participated later in the day), 14 (he had turned down a morning offer but wanted to participate later), 18, 23 (in the morning; there was another offer that night), 25, 29, 30 (in the morning; there was another offer in the afternoon); and Feb. 2 (in the morning; there was another offer that night), 8, 11 (time ran out in the morning and afternoon), and 12.
- [33] [redacted] has noticed the SPOs are often really busy. In the Feb. 6 interview, he said he felt it is “like rolling dice” whether he’ll see SPOs or not. He had been asked by a lady (SPO) that morning, but he doubted they would be able to take him out (“they’ll miss me”).⁷
- [34] It appears SIU staff have been making their best efforts to provide program opportunities. However, it appears there are not enough staff and there is not enough space to consistently provide sufficient interaction opportunities to individuals without recreation groups like [redacted]. It is CSC’s responsibility to ensure staffing and infrastructure are adequate.

5. Recreation group

- [35] CSC information suggests [redacted] was feeling isolated during the period reviewed. For example, on Jan. 18, it seems he may have made threats of self-harm mainly so that he could talk to someone from mental health.⁸ At a social program session on Feb. 1, he told the SPO, “that if [they] had an opening again later in the day that he

⁴ Educational programs entry, SIU activity log, yyyy-mm-dd.

⁵ Correctional programs entry, SIU activity log, yyyy-mm-dd.

⁶ Correctional programs entries, SIU activity log, yyyy-mm-dd.

⁷ IEDM interview with [redacted], yyyy-mm-dd.

⁸ Mental health clinical notes, yyyy-mm-dd.

would come out again because he is not in a recreation group and does not get the interaction like other offenders.”⁹

[36] did not have a group for most of the period reviewed. Log entries show wanted a group, and the non-approval of a group for him was an issue during the period reviewed.

[37] Brief memorandum notes from Security Intelligence Officer (“SIO”) [REDACTED], dated Jan. 4, 10, and 18 respectively, indicate had “rec group options” he was aware of. However, no log entry or other source of information shows the SIO or any other staff member actually proposed a group to or spoke with him about this.

[38] A Jan. 12 SIO memorandum indicates made a group request that day, but it was denied due to unexplained “security reasons.”¹⁰

[39] On Jan. 12, made threats of self-injury to be approved for a group

[40] On Jan. 15, a CM spoke to him about a group and suggested “another name” of someone he wanted to have recreation with.¹²

[41] At the Jan. 17 SIURC, he raised the fact that he had put in a request to “rec” with three others but it was denied by the SIO.¹³

[42] On Jan. 24, he told his PO, “he wrote another request to speak with the SIO's to better understand why his request to join a rec group was denied.”¹⁴

[43] According to a PO log entry for Jan. 27,

“ also voiced frustration with the fact that he submitted a request to join a rec group, and when this was denied by the SIO's, he submitted a new request to join a different rec group. He stated that since then, both of these rec groups have merged together, which is making him furious. He believes the SIO's are purposely trying to cause him issues.”¹⁵

[44] A Jan. 31 SIO memorandum indicates the SIO and a CM identified a potential group for There are no details (e.g. names) regarding the potential group. It does not explain why that group was not immediately approved. There is no log record of staff speaking to about that potential group.

⁹ Social programs entry, SIU activity log, yyyy-mm-dd.

¹⁰ Memorandum – rec group, yyyy-mm-dd.

¹¹ Health entry, SIU activity log, yyyy-mm-dd.

¹² Case management entry, SIU activity log, yyyy-mm-dd.

¹³ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁴ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁵ Case management entry, SIU activity log, yyyy-mm-dd.

- [45] An SIO report dated Feb. 6 explains I [redacted] and another inmate (who could be the person referred to in the Jan. 31 memorandum, although it is not specified) did not want to make a group unless a third inmate could join as well. The SIO did not permit that due to concerns about the third inmate's safety.
- [46] Finally, the log shows on Feb. 10, the CM told [redacted] his group request was approved. According to the log, Feb. 12 was the first day he could have had indoor recreation with another person.
- [47] In my Feb. 6 interview with [redacted] he expressed unhappiness about having been prevented from being in a certain recreation group. He had heard CSC considered his safety would be in danger in that group, because the other inmate was there when [redacted] was [redacted] (on [redacted]); [redacted] pointed out that was not true. He was concerned he "offended" the SIO with what could be considered a threat, so they were "stonewalling" or "messing" with him, and not letting him in a group.
- [48] In addition, [redacted] said his main source of interaction was talking to the inmate next to him, through the air vents. He said they are listed as incompatibles, but they "want it dropped" and "nothing has been happening" for that, even though they brought it to staff's attention.¹⁶
- [49] Based on the information I have, I find not having a recreation group with other inmates contributed significantly to [redacted] s isolation in the SIU.
- [50] I find CSC has not satisfactorily shown that [redacted] did not take advantage of an opportunity to be on a group at first, or that the SIO's later refusal of [redacted] s group requests was justified.
- [51] Moreover, it appears SIO communication with [redacted] about this issue could have been better. [redacted] was left trying to get information from other staff members. CMs and his PO talked to him about it. The SIO's Feb 6 report does not match [redacted] s understanding of the reasons why he was not allowed to be in that group. This difference suggests the reasons were not properly explained.

6. Mental health and health support

- [52] Among other incidents, there were incidents of self-harm during the period reviewed, notably on Jan. 12. There were also times when [redacted] voiced threats of self-injury. These seem to have centred on situational stressors: his initial lack of access to his personal items, the non-approval of a group for him, and transfer/integration issues.
- [53] [redacted] had opportunities to participate in mental health assessments and there were a few additional clinician interventions or by health care. The only time he

¹⁶ IEDM interview with [redacted], yyyy-mm-dd.

turned down an opportunity to meet with mental health was Jan. 7, when he was on the “Security Management Protocol” (“SMP”).

[54] He has been referred to see the psychiatrist at the next clinic.

[55] In my Feb. 6 interview with [REDACTED] he commented he had been feeling [REDACTED]. Using the green/yellow/red light night analogy, he said he has often felt at [REDACTED].

[56] Regarding requests, he said later never comes and you have to cut just to get things.

[57] He also made a comment in relation to a history of isolation:

[58] [REDACTED] made a number of comments regarding access to mental health care. He said he has not seen Dr. [REDACTED], the psychiatrist] in three months, and every time he asks there is “some excuse.”

[REDACTED] He thought regular support from a clinician would be better. He said his clinician is hard working and has a big caseload.

[59] He also mentioned an issue with [REDACTED]. He has seen a nurse practitioner for it.¹⁷

7. Additional security measures

[60] In [REDACTED] case, barriers for meetings and additional security measures were imposed as of Dec. 29, due to [REDACTED].

[61] The measures were maintained until Jan. 14, because of more incidents. Threat risk assessments (“TRAs”) show there was some re-evaluation during this period. However, TRAs describe the reasons for continuing the measures extremely briefly, and TRAs were not re-issued daily. In fact, log entries suggest the security measures were removed on Jan. 10,¹⁸ but the TRA confirming it was not issued until Jan. 14. Incident reports and log entries provide additional information on the basis for the measures and ongoing issues

¹⁷ IEDM interview with [REDACTED], yyyy-mm-dd.

¹⁸ Case management entry, SIU activity log, yyyy-mm-dd; administrative entry, SIU activity log, yyyy-mm-dd.

- [62] In relation, [redacted] had issues with a guard who was “messaging with him on purpose” but the issue had since been addressed and stopped.¹⁹
- [63] The use of secured program rooms can affect the quality of an interaction and discourage participation. The additional SMP measures for [redacted] were applied for almost two weeks, which is a lengthy period.
- [64] However, [redacted] continued to have consistent opportunities for programs and recreation out of his cell during this period, as well as other staff interventions, which is important. It does not appear that the use of the SMP had a major impact on [redacted] participation in activities.

8. [redacted] s participation and efforts to encourage him

- [65] The log shows [redacted] rarely missed a chance to meet with CMs, his PO or other staff members for case management interventions. He participated in nine of 13 MM-SIU sessions, most social programs opportunities,²⁰ and half of school sessions. For school, almost all of his refusals were for evening offers, except for two times when he wanted to use the phone instead. As noted, [redacted] usually participated in mental health interventions. On the other hand, he turned down almost every opportunity for outdoor or indoor recreation.
- [66] Based on log entries [redacted] had positive interactions with program officers on many occasions. Social programs sessions involved conversation and games; he often liked to play a trivia game. There were many days on which program officers went back later in the day or [redacted] had more than one type of program opportunity during the day. I consider the following as forms of encouragement, from the log: the CPO offering support outside of planned program sessions;²¹ allowing [redacted] to participate in group program sessions once he had a group; and accommodating him for requests (e.g. an SPO bringing him a pen on Jan. 5 and asking him if he needed anything else).
- [67] [redacted] said he does enjoy getting out of his cell to talk to someone. He said his PO is a good support for him and has encouraged him to manage his behaviour. He usually goes out for programs unless he is “feeling antisocial.” He recognized it was “on him” that he had not gone outdoors since November. Regarding the timing of offers, [redacted] said he is the “most awake” in the morning.²²
- [68] I find there were adequate encouragement efforts. The fact that [redacted] turned down offers, especially for recreation, contributed significantly to the low daily totals during the period reviewed. However, I do not find this fully compensates for the

¹⁹ IEDM interview with I [redacted] yyyy-mm-dd.

²⁰ This is difficult to quantify because of how offers/acceptances are entered in the log, and the timing issues described.

²¹ Correctional programs entry, SIU activity log, yyyy-mm-dd.

²² IEDM interview with [redacted], yyyy-mm-dd.

recreation group issues described above; having a recreation group provides a person significantly more interaction opportunities and usually encourages participation.

9. Other issues

9.1. Missing personal items

[69] In my Feb. 6 interview with [REDACTED] he described an incident that, based on his comments, arose from not having access to his personal items after his SIU transfer. He said that in the [Jan. 1] incident when he shoved his tray out of the slots,²³ he was mad because he had not gotten his stuff; he just wanted his possessions; he only had his TV. He said guards were refusing to go get his stuff. They were saying all his cells smelled like feces. He acknowledged he had [REDACTED] people in the past, but said it was a lie to say there was “shit on the walls;” it did not make sense to say his things had feces on them.

[70] CSC information refers to this situation. On Jan. 2, [REDACTED] He complained of not having his personal hygiene items from his [REDACTED] cell, and then of having spent the night with a damp blanket. Staff decided to provide him replacement items from the “SIS department;” reportedly, there was a “foul smell” in his cell and staff would not enter it to get his personal items until SIS assessed it.²⁵ The log shows on Jan. 9 and 10, I [REDACTED] spoke to his PO and the CM about missing items he needed for health reasons, which had been in his [REDACTED] cell.²⁶

[71] Based on the partial information I have about this issue, I am concerned about the delay in providing [REDACTED] his things, and the impact it seems to have had on [REDACTED]

9.2. SIU placement

[72] In my interview with [REDACTED] he made several comments related to his SIU placement: he wants to do a conflict resolution and does not understand why he is not allowed to; his main goal is to integrate a unit at AI; he will not integrate anywhere else; his release date is in [REDACTED] so there is no point in shipping him out; his [REDACTED] will not be able to visit him if he is transferred. He expressed an STG-related security concern in relation to his potential transfer in the West.

²³ CSC alleges he threw liquid (coffee) at staff during meal delivery.

²⁴ IEDM interview with [REDACTED] yyyy-mm-dd.

²⁵ Mental health clinical notes, yyyy-mm-dd.

²⁶ Case management entries, SIU activity log, yyyy-mm-dd, yyyy-mm-dd.

[73] I will consider [redacted] s comments about his SIU placement in any future decision I have to issue on that subject.

VI. CONCLUSION AND RECOMMENDATIONS

[74] I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide [redacted] adequate opportunities for time out of cell and meaningful human contact. This conclusion is mainly due to the issues surrounding the delayed approval of a recreation group for him, as described above.

[75] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- Give [redacted] the chance to go to the gym;
- Make efforts to more frequently offer [redacted] program and school sessions in the morning or afternoon;
- Address staffing and space issues that prevent program officers from offering sufficient interaction opportunities to [redacted] and other inmates; and
- Take steps to improve communication with [redacted] and other inmates about reasons for any recreation group request denials; as well as improve documentation of reasons and SIO interactions with inmates about this subject.

Janine Lespérance
Independent External Decision-Maker

Date: February 21, [redacted]

Name: s.19(1)
FPS Number: [REDACTED]
Correctional Institution: Millhaven
Date of Notification: September 7, 2022
Date of Decision: October 3, 2022
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

Most of [REDACTED]'s time out of cell was indoor range time. He did not have a recreation group during his first week in the SIU. There was a day when he did not have an opportunity for meaningful human contact. CSC should plan staffing for times when there are many inmates in the SIU. CSC did not show there were any efforts to place him in a group soon after his transfer to the SIU. Program opportunities were infrequent for him. Allowing [REDACTED] to work on the [REDACTED] program would likely encourage him to spend time out of his cell, and would reflect his correctional plan. The SIU activity log for the period reviewed contains errors, inconsistencies, and questionable entries. These issues make the log information unreliable. Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps to provide opportunities to leave his cell and interact with others in the SIU.

I. INTRODUCTION

- [1] On Sept. 7, 2022, Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning [REDACTED] was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at Millhaven Institution ("MI") in Ontario.
- [2] An IEDM must determine if CSC has taken all reasonable steps to ensure [REDACTED] spends time out of his cell and has social interaction.

II. LEGAL FRAMEWORK

1. CSC's legal obligations toward inmates in the SIU

[3] Section 36 of the CCRA describes CSC's obligations towards inmates in the SIU. It states:

"Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a [SIU]

(a) an opportunity to spend a minimum of four hours outside the inmate's cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a)."

[4] The CCRA also specifies that s. 36(1) does not apply "if the inmate refuses to avail themselves of the opportunity [...]."¹ The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 ("CCRR") set out other limited exceptions, including an inmate's refusal to comply with security-related instructions at the time of the offer,² and certain specific contextual circumstances, including epidemics.³

[5] The current decision focuses on SIU conditions of confinement. Ss. 37.83(1) and (2) of the CCRA state:

"Decision — reasonable steps

¹ CCRA, at para. 37(1)(a).

² CCRA, at para. 37(1)(b).

³ CCRR, at para. 19(1)(b).

37.83 (1) If, for five consecutive days or for a total of 15 days during any 30-day period, an inmate confined in a [SIU] has not spent a minimum of four hours a day outside the inmate's cell or has not interacted, for a minimum of two hours a day, with others, an [IEDM] shall, as soon as practicable, determine whether [CSC] has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1) and to encourage the inmate to avail themselves of those opportunities.

Recommendations

(2) If the [IEDM] determines that [CSC] has not taken all reasonable steps, he or she may make any recommendation to [CSC] that he or she considers appropriate to remedy the situation. [emphasis added]"

- [6] Considering s. 37.83, CSC must be proactive and seek alternatives to ensure that an inmate spends time out of their SIU cell and has meaningful social interaction. More, the SIU's purpose includes allowing an inmate to participate in programs and access services.⁴ CSC must make "every reasonable effort" to ensure physical barriers do not impede interactions.⁵
- [7] Many factors may explain why an inmate does not spend time out of their cell and the "4/2" thresholds are not met. The IEDM must analyze the facts and circumstances of each situation to determine whether CSC took enough steps.
- [8] The legal obligations, and IEDMs' conclusions, apply to CSC as a whole, not a specific institution or individual, such as a staff member.

2. The period to be taken into account for IEDM determinations under s. 37.83

- [9] The CCRA does not specify the period of SIU activities that the IEDM should consider for a decision under s. 37.83 of the CCRA.
- [10] Only looking at the five days that triggered the review would leave a period without oversight, especially when many days have passed before the IEDM can issue their decision.
- [11] In my view, it is appropriate to consider SIU activities beyond the five-day period that triggered the review. The IEDM will have a better understanding of what has happened. The IEDM's conclusion will have a more solid foundation. They will be able to make better recommendations, if needed.

⁴ CCRA, at s. 32(1).

⁵ CCRA, at s. 32(2).

III. SOURCES OF INFORMATION

[12] I have consulted the following sources of information from CSC:

- SIU daily activity log (“the log”), for the period as of yyyy-mm-dd
- Threat risk assessments (“TRAs”), for the period as of yyyy-mm-dd
- Casework record log, for the period from yyyy-mm-dd to yyyy-mm-dd
- Institutional head “5-day” SIU transfer decision, dated yyyy-mm-dd
- Memorandum – correctional interventions board, dated yyyy-mm-dd
- Memorandums – interventions staffing shortages, dated yyyy-mm-dd and yyyy-mm-dd
- Memorandum – operational disruption, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Security reclassification scale, dated yyyy-mm-dd
- Assessment for decision – security level, dated yyyy-mm-dd
- Correctional plan – updated (“CPU”), dated yyyy-mm-dd
- Criminal profile report – original, dated yyyy-mm-dd

[13] I sent I [redacted] via CSC, a summary of the information I am considering for this review on Sept. 15. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[14] Later on Sept. 15, I learned [redacted] wished to share his views, although he had not signed the acknowledgment form himself. A videoconference interview was planned for Sept. 20. However, after the planned start time of the call, [redacted] s Parole Officer (“PO”) appeared and said that [redacted] had turned down the call.

[15] I consider that [redacted] was provided the chance to make comments but chose not to do so. I must therefore rely on the information provided by CSC.

IV. CONTEXT

[16] [redacted]

[17] Since [redacted], he has been serving a [redacted] sentence. He was [redacted] at the time of the offence for which he was convicted. CSC classifies him at the maximum-security level. The CPU describes his

[18] As of [redacted], he was working towards obtaining his high school diploma.⁶ He has maintained institutional employment for significant periods.⁷ He is referred to the [redacted] program, and has voiced his desire to do the program.

⁶ CPU, yyyy-mm-dd, at p. 6.

⁷ CPU, yyyy-mm-dd, at p. 7.

The █████ CPU suggests he had not had the chance to do it,⁸ but at the time of his SIU transfer, he had begun the program.⁹

[19] He has been at MI since █████. His transfer to the SIU was authorized on Sept. 1, 2022 (at 1:45PM), under para. 34(1)(b) of the CCRA. According to the transfer authorization, he had concerns for his safety on the █████ range, and refused other ranges at MI.

[20] The MI Warden approved the SIU transfer in the “5-day” decision of Sept. 8.

[21] This is █████'s second SIU transfer authorization.

V. ANALYSIS

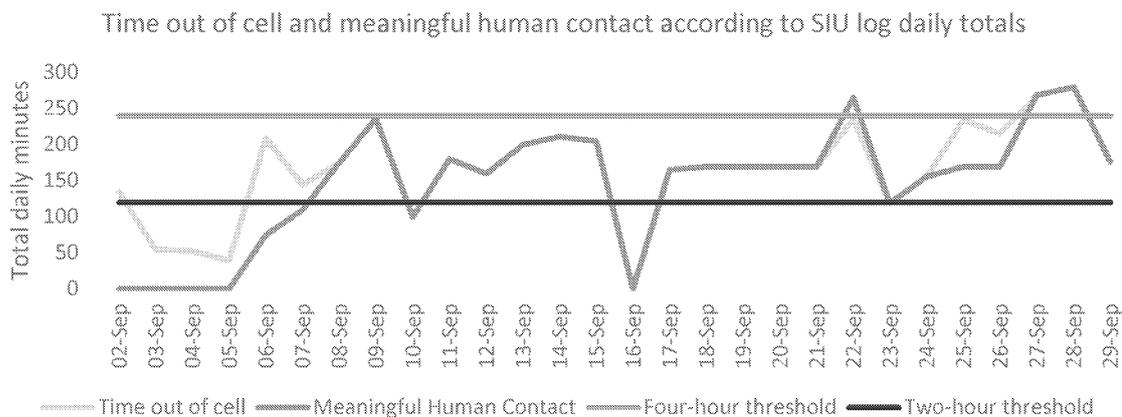
[22] My determination in this case is based mainly on CSC’s SIU activity log (“the log”), for the period from Sept. 2 to 29. This is a period of 28 full days in the SIU.

1. Daily time out of cell and meaningful human contact

[23] According to the log, █████ spent four hours or more out of his cell on two days during the period reviewed (about 7% of all days). He had two hours or more of social interaction on 19 days (about 68% of all days).

[24] The average for time out of cell was about two hours and 45 minutes daily, while the average for interaction was about two hours and 27 minutes.

[25] The daily totals generally increased during the period reviewed, as shown in the chart below.



⁸ CPU, yyyy-mm-dd, at p. 4.

⁹ See: Memorandum: Correctional Interventions Board, yyyy-mm-dd.

2. Quantity and timing of daily offers

[26] According to the log, I usually had three to six chances to get out of his cell per day, typically for one or two-hour time blocks.

[27] There were a couple of days when had more opportunities than that to get out of his cell.

[28] However, there were also a few days (e.g. Sept. 14, 22, 23, 24, and 29) on which he only had three chances to get out of his cell, mainly for recreation. Despite the low number of offers those days, it does appear that he could have spent more than four hours outside his cell on all days except Sept. 23.

[29] For Sept. 23, the log indicates could have had outdoor recreation at 7:31AM and 1PM, and he actually took range time at 7:10PM. However, a memorandum explains there was an operational disruption from 8AM to 3:30PM that day, during which “the entire unit was at cell level” and access to all out-of-cell activities was impeded. This contradiction suggests the log information for the afternoon opportunity on Sept. 23 is incorrect (or the memorandum is incorrect).

[30] There were a few instances when there was more than one type of offer for the same time slot entered in the log. This may suggest a need for better coordination. However, it does not appear these overlaps prevented from being able to spend four hours outside his cell.

[31] During s first week in the SIU, his opportunities for meaningful human contact were minimal. On Sept. 2, 3, and 4, he only would have had more than two hours of meaningful human contact if he participated in a social program session that lasted that long. They usually do not. On Sept. 5, he only had the opportunity for recreation alone. He may have been able to interact with other inmates through barriers (e.g. fences, cell doors).

[32] Log entries suggest could have had meaningful human contact during recreation periods as of the afternoon of Sept. 7. However, the first explicit log reference to him having a recreation group is from Sept. 12. There is no information to show any staff efforts to place him in a group, or motivate him to join a group, earlier.

3. Structural or contextual factors affecting activities

[33] Memorandums briefly describe situations that disrupted regular SIU activities on various days, often for a couple of hours. These issues were:

- Staff shortages affecting different types of staff: Sept. 6, Sept. 10, Sept. 23, Sept. 26
- Medications delivery impacting the routine: Sept. 12, 21
- Security incident impacting activities: Sept. 13, Sept. 27, Sept 28

- Loss of power to the barriers and doors impeding activities: Sept. 23

[34] Regarding Sept. 5, the day [redacted] did not have the opportunity for meaningful human contact, there is no memorandum to provide a justification. The log indicates there was a “situational context,” and explains: “Due to the high volume of inmates in SIU Millhaven, offers for meaningful interaction are not able to be availed to all inmate. A rotation will be implemented to assure equal distribution of offers made to inmates.” There is no legislative exception for this type of situation. It suggests a need for CSC to better plan staffing needs.

4. Types of opportunities for

[35] [redacted] had the following types of opportunities:

- indoor range time (including access to a phone)
- outdoor yard time
- staff interactions
- correctional programs

- social programs
- religious support from the Chaplain
- school (math and the Health for Life class)
- meeting with a mental health clinical social worker

[36] Recreation was the most frequent type of opportunity. Although [redacted] was offered different kinds of programs, the log shows CSC did not provide program opportunities consistently. [redacted] only had the opportunity to participate in a program session on 11 days (about 39% of all days).

[37] On some days, program offers were concentrated at the same time, suggesting a need for better coordination of activities. For example, on Sept. 13, yard and school offers were all made at 8:30AM. That was one of only four opportunities [redacted] had to meet with a Correctional Programs Officer (“CPO”) during the period reviewed. [redacted] chose to participate in school on that occasion.

[38] Log entries suggest the Chaplain’s support was limited to bringing [redacted] things he requested [redacted]. The most recent “Correctional Interventions Board” memorandum mentions, “looking into discussion [with the] Imam.”¹⁰

[39] For staff interactions outside of programs, there were only three recorded conversations with him. It appears his Parole Officer (“PO”) did not meet with him regularly.

¹⁰ Memorandum: Correctional Interventions Board, yyyy-mm-dd.

[40] The clinical social worker only went to see him once. reportedly said he wanted to see the psychiatrist. I do not have information to confirm this occurred.

[41] Regarding the type of correctional programming, only had one opportunity to participate in the | ' program, on Sept. 6. Although the CPO's log note indicates their intention to continue doing the remaining sessions of the program's Module 1 with him, did not have any other opportunity to continue it; the other three correctional program opportunities were for the program is recommended for in his CPU.

5. s participation and efforts to encourage him

[42] The vast majority of time spent out of cell was for on-range leisure time.

[43] had a low rate of participation in programs, but he did sometimes participate. Log entries do not suggest he was insistent about refusing to participate. For example, although turned down all seven or eight¹¹ offers for social programs, on Sept. 3 it was noted, "He said "I have already gotten a list of activities, I want to play board games and do art". The writer said "ok so do you want to come out for social programs now?" and said "Not really, its to early".¹²

[44] participated in the program session on Sept. 6; if a CPO had continued to offer him the chance to do that program, it likely would have encouraged Mr. P to spend time out of his cell. He did not participate in the |

[45] stated his preference to focus on school. He accepted three of five school opportunities, turning one down because he was still working on his math work.¹³ Still, more frequent opportunities likely would have encouraged him to spend more time out of cell.

[46] Most program sessions were offered in the morning. Offering more opportunities later in the day would like encourage 's participation.

[47] There were a few times when had more than one program offer during the day, which can be considered an encouragement effort. Otherwise, there is little in the log to suggest there were encouragement efforts, even verbally.¹⁴ As noted above, there is no information to show CSC staff made efforts to motivate him to be in a recreation group earlier. There is no information to show efforts to offer him a job or discuss this with him.

¹¹ Due to an incorrect name in the log entry for Sept. 6, the entry is unreliable and it is not clearly established that | actually had a social program opportunity that day.

¹² Social programs entry (part of note), SIU activity log, yyyy-mm-dd.

¹³ Educational programs entry, SIU activity log, yyyy-mm-dd.

¹⁴ For one example of verbal encouragement, see Correctional Programs entry, SIU activity log, yyyy-mm-dd. The teacher's check-in on Sept. 28 could also be considered encouragement (see: Educational programs entry, SIU activity log, yyyy-mm-dd).

6. Issues with the reliability of log information

- [48] The log contains several errors, inconsistencies, and questionable entries.
- [49] When the information is extracted from the log for the previous day, the entries are sometimes not yet complete. This shows that there is a delay before staff enter information in the log, so time entries may not be precise and accurate.
- [50] There are four days in a row (Sept. 18 to Sept. 21) that have the exact same overall daily log totals for time out of cell and interaction, which suggests staff have guessed or estimated the time spent out of cell.
- [51] There are at least two log entries in the log for [REDACTED] that refer to other inmates instead of him.¹⁵ One of these was for a program offer. This issue shows log entries are likely copy-pasted and not reviewed carefully.
- [52] For Sept. 15, there are two separate entries for the SIU Review Committee (“SIURC”) meeting, one for ten minutes and the other for fifteen minutes. This apparent “double entry” may mean [REDACTED]’s participation in the SIURC was double-counted in the daily totals, and again suggests staff do not properly verify log entries.
- [53] As noted above, log information for Sept. 23 conflicts with information in a memorandum. This contradiction makes it appear likely that the log contains false information about offers made for at least that day.
- [54] On Sept. 16, one of the log entries for a yard offer was entered at 1AM, which is clearly an error.
- [55] These problems make the log information unreliable as a whole. It is difficult to accept the log entries as true, even if [REDACTED] has not provided comments to challenge the log information. Almost three years after the adoption of the SIU model, MI’s failure to properly document opportunities is extremely problematic, especially in light of CSC’s legal obligations.

VI. CONCLUSION AND RECOMMENDATIONS

[56] I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide [REDACTED] adequate time out of his cell and meaningful human contact and to encourage him to avail himself of opportunities.

[57] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- Provide program and intervention opportunities more consistently, and at varied times of the day;

¹⁵ Unstructured leisure entry, SIU activity log, yyyy-mm-dd; Social programs entry, SIU activity log, yyyy-mm-dd;

- Ensure different types program opportunities are not concentrated at the same time or on the same day while leaving gaps on other days;
- Provide the opportunity to complete Module 1 of the Moderate Intensity program;
- Provide the opportunity to meet in-person or through telephone or videoconference with an Imam; and
- Ensure there has been a referral regarding s request to meet with a psychiatrist.

[58] I also urge MI to ensure the proper documentation of SIU opportunities and encouragement efforts, including with respect to recreation groups.

Janine Lespérance
Independent External Decision-Maker

Date: October 3, 2022

Name:
FPS Number: ██████████
Correctional Institution: Atlantic Institution
Date of Notification: September 27, ██████████
Date of Decision: November 3, ██████████
Independent External Decision Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
 OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

took recreation time and participated in various programs throughout the period reviewed. There was a gap in interventions. This was because of the Program Officer's absence from the institution, and because of staffing changes for the positions. There were several times when staff were forced to use rooms with barriers for meetings with because no other rooms were available. CSC should address this issue. seemed to benefit from interactions with various staff members. Some staff helped him calm down when he was feeling agitated. Staff made other efforts to respond to his requests. Additional security measures were imposed twice. The documentation of threat risk assessments could have been better. Overall, I conclude under s. 37.83(1) of the CCRA that CSC took all reasonable steps to provide opportunities to leave his cell and interact with others in the SIU. did not share his point of view for this review.

I. INTRODUCTION

- [1] On Sept. 27, ██████████, Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at Atlantic Institution ("AI") in New Brunswick.

II. LEGAL FRAMEWORK

- [2] CSC must provide inmates the daily opportunity to spend at least four hours out of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates' needs.
- [3] Under s. 37.83(1) of the CCRA, an IEDM determines whether CSC has taken all reasonable steps to provide an inmate the required opportunities in the SIU and encourage them to participate. The IEDM can decide the specific period of activities to consider.
- [4] I have issued a previous decision under s. 37.83(1) of the CCRA concerning that set out the relevant legal provisions in more detail.

III. SOURCES OF INFORMATION

- [5] For this review, I have considered the following sources of information from CSC:
- SIU activity log, for the period as of yyyy-mm-dd in particular
 - Casework record log, for the period as of yyyy-mm-dd in particular
 - Threat risk assessments ("TRAs"), for the period as of yyyy-mm-dd in particular
 - Institutional Head "5-day" SIU transfer decision, dated yyyy-mm-dd
 - Memorandum – day 2 interview with Acting SIU manager, dated yyyy-mm-dd
 - Incident reports, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
 - SIU transfer authorization, dated yyyy-mm-dd
 - Health case management note, dated yyyy-mm-dd
 - Correctional plan – updated ("CPU"), dated yyyy-mm-dd
 - Assessment for decision – institutional transfer, dated yyyy-mm-dd
 - review – initial, dated yyyy-mm-dd
 - Criminal profile report - initial, dated yyyy-mm-dd
 - Gladue report, dated yyyy-mm-dd
- [6] I sent | , via CSC, a summary of the information I am considering for this review on Oct. 12. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.
- [7] On Oct. 18, I received signed confirmation from CSC that did not wish to share his views through one of the means offered. I must therefore rely on the information provided by CSC.
- [8] I have spoken to in the context of previous reviews.

IV. CONTEXT

[9]

[10]

[11] He is serving a [REDACTED] sentence, for which the statutory release date is [REDACTED]. CSC classifies him at the maximum-security level.

[12] His transfer to the SIU was authorized on Sept. 21, [REDACTED], under para. 34(1)(a) of the CCRA. At the time of his transfer, he was assessed by CSC health services as having an intermediate level of mental health needs. Prior to his current SIU transfer, he had resided on the [REDACTED] range. His behaviour is reported as having deteriorated while there and he requested to go to the SIU.

[13] The AI Warden did not approve the SIU transfer in the “5-day” decision of Sept. 27, finding that his needs could be met on the [REDACTED] and also noting that his transfer to [REDACTED] was expected.

[14] This is [REDACTED] s tenth SIU transfer.

V. ANALYSIS

[15] My determination in this case is based in large part on CSC’s SIU activity log, for the period from Sept. 22 to Oct. 30. This is a period of 39 days.

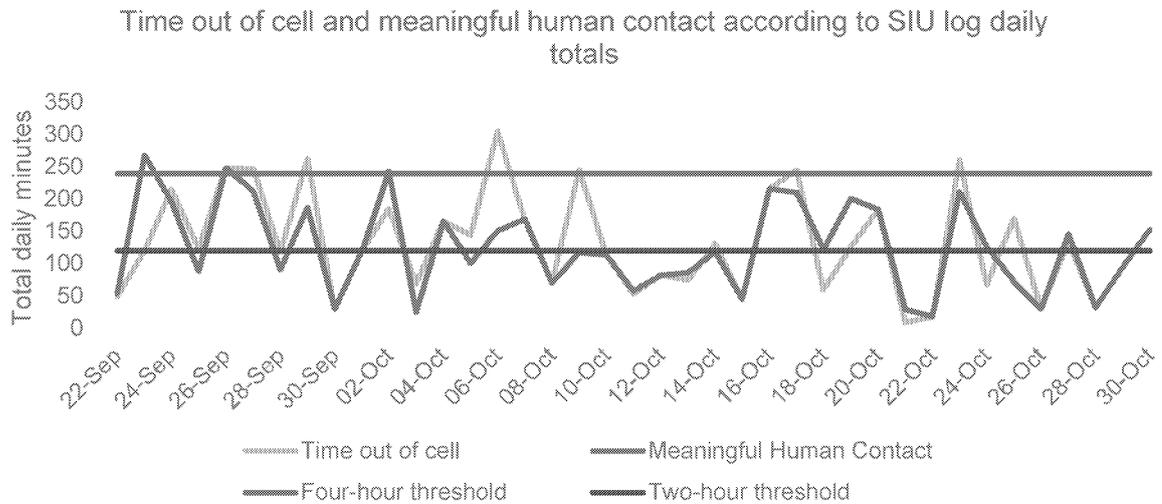
1. Daily time out of cell and meaningful human contact

[16] According to CSC’s SIU activity log, [REDACTED] spent four hours or more out of his cell on seven days during the period reviewed (about 18% of all days). He had two hours or more of meaningful human contact on 19 days (about 49% of all days). The average for time out of cell was about two hours and 13 minutes. The average for interaction was about two hours and five minutes.

¹ [REDACTED] review, yyyy-mm-dd.

² CPU, yyyy-mm-dd, at p. 5. See also: Gladue report, yyyy-mm-dd, at p. 20.

[17] The daily totals varied throughout the period reviewed; there was no significant trend.



2. Quantity and timing of daily offers

[18] usually had several (a minimum of five) chances to get out of his cell during the day, for one or two-hour time blocks. There was one day on which he only had three opportunities to get out of his cell, and two days on which he had only four opportunities to get out of his cell, according to the log.

[19] There is no explicit note indicating whether he had a recreation group or not. Some recreation entries indicate he would have been able to have meaningful human contact, whereas others do not. As he has previously been in the SIU, he would be familiar with his legal entitlements and the opportunities available, and there was a meeting with him on Sept. 27 to discuss SIU operations and opportunities.³

[20] There are some references in the log to timing conflicts between activities, but this does not appear to have been problematic.⁴

3. Types of opportunities for

[21] had the following types of opportunities:

- indoor and outdoor recreation
- staff interactions (including a of a couple of longer interactions with the Institutional Head)
- correctional programs

³ Memorandum: Day 2 interview with A/SIU Manager, yyyy-mm-dd.

⁴ See, e.g. Oct. 12.

- social programs
- support
- religious support from the Chaplain
- school in the library
- mental health interventions and periodic assessments
- personal phone calls

[22] Recreation offers were the most frequent type of offer, but other types of opportunities were provided throughout the period reviewed. had at least one type of program opportunity on all but two days. There were several days on which there was more than one type of program offer.

[23] seems to have a number of positive sessions with various interventions staff. The teacher's notes indicate there were a few sessions when mostly wanted to chat. Apart from programs, his Parole Officer ("PO") met with him regularly

[24] On the other hand, I do identify shortcomings in the support he had access to. has participated in cultural activities and benefited from the previous's support.

[25] began meeting with as of his first day back in the SIU. However, there was a gap between Sept. 29 and Oct. 12 (twelve days), when did not get to meet with This bothered I as reported in the log:

called for SIU PO while she was on the range. He stated he was being punked off by the CPO because she was absent for a week therefore he did not get program or coffee. SIU PO informed him it is out of his control and reminded him he only gets coffee when he comes out and participates in program. He stated she offered earlier but hasn't brought him out yet. SIU PO informed him it was now lunch time and that she will see him later."⁵

[26] He only saw once during the period reviewed, on Sept. 23. He did not get to meet with until Oct. 13. After that, he was seen four times by staff.

[27] Another issue was secured rooms were used for meetings with him a number of times, even when there was no security reason for it.

⁵ Case management entry, SIU activity log, yyyy-mm-dd.

[28] The log suggests [redacted] himself thought he did not get enough program sessions, but also that it was at least partly because he wanted the pay for participating.⁶ I have not had the chance to hear [redacted]’s views directly for this review.

[29] Regarding mental health support, outside of the periodic assessments, there were three brief interventions. For the most recent Oct. 19 “28-day” assessment, a referral was generated. There were discussions with him about going to SHC for assessment, which he seems to have hesitations about due to a lack of trust in the system.⁷ He was supposed to go on Oct. 13, but according to the log, he said he was comfortable in the SIU and did not want to go.⁸

4. Structural or contextual factors affecting activities

[30] Regarding the gap in [redacted] support, CSC has stated that

[31] CSC should examine and address reasons why staff leave. However, I acknowledge that staff changes are unavoidable, and new staff require training. There was no prolonged delay in filling the position in this case.

[32] Operational challenges and a lack of proper program space also had a significant impact on opportunities for [redacted] based on the log. For example, on Sept. 21, [redacted] offered a program session to [redacted] or the next day, which she reconfirmed with him in the morning of Sept. 22. However, [redacted] was unable to offer the session. She noted in the log:

“This writer waited from 14:00 - 14:40 for an open interview room, to start [redacted] programming with [redacted]. This writer inquired with CX staff if there were any open rooms, three times and was told every room is currently being used. At one point program D and C became available; however, this writer inquired with CX staff to have [redacted] brought to either program C or D. This writer was informed that CX staff in the SIU are currently on a shift change and for security purposes it was recommended by CX staff that this writer wait until a room on either A or B become available. This writer confirmed with [redacted], I would take him out of his cell for a correctional program session tomorrow morning [redacted].”⁹

[33] When they were finally able to meet the next day, with [redacted] as well, they used a secure room (with a barrier) “as this was the available interview room.”¹⁰

⁶ Correctional programs entry, SIU activity log, yyyy-mm-dd.

⁷ Correctional programs entry, SIU activity log, yyyy-mm-dd.

⁸ Case management entry, SIU activity log, yyyy-mm-dd.

⁹ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁰ Correctional programs entry, SIU activity log, yyyy-mm-dd.

[34] Several other log entries provide examples of challenges interventions staff faced, as well as raising issues involving staffing, scheduling, and coordination. As noted in the log:

- Oct. 6: there was no room available except for the secure room for the Chaplain to meet with him.
- Oct. 10: I accepted a social programs offer in the morning. However, they “were not able to meet because the guards were moving offenders and the others were not able to leave their cells. When that was completed the offender had already gone out for yard time.”¹¹ The Social Programs Officer (“SPO”) was able to return that afternoon.
- Oct. 14: used a secure room with a barrier “as this was the room available”¹²
- Oct. 16: “Offender was offered social programs at this time. I asked permission from the CX 2 on the unit to keep him beyond 4 o'clock to give him a half hour. I had 11 offenders that want to participate but time did not permit to get everyone out. This offender has on many occasions come out for a hour and leave after 1/2 hour but when the guards informed him I only had a half hour he refused.”¹³
- Oct. 19: a secure room was used for a program session, as it was the available room at the time of the session.¹⁴
- Oct. 22: had accepted an offer for programs, but the SPO did not have “enough time in the schedule to fulfill the number of inmates who accept the offers and the number of hours available to complete those programs.” The SPO noted that they were unable to do a session due to “scheduling issues.”¹⁵
- Oct. 27: a secure room was used because that was what was available.¹⁶
- Oct. 28 and Oct. 30: accepted offers in the morning but the SPO ran out of time to provide him a session. On Oct. 28, they were able to return in the afternoon, but on Oct. 30 they did not.
- Oct. 28: ' was in the SIU to make a correctional program offer to This writer was verbally informed was on a personal phone call and that at 1500hrs on every Friday, the SIU closes; this writer was then directed to leave the unit.
Please note this offer is not considered rejected and is an offer only, as was not provided with a verbal correctional program session offer; however the attempt was there.”¹⁷

¹¹ Social programs entry, SIU activity log, yyyy-mm-dd.

¹² Correctional programs entry, SIU activity log, yyyy-mm-dd

¹³ Social programs entry, SIU activity log, yyyy-mm-dd.

¹⁴ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁵ Social programs entry, SIU activity log, yyyy-mm-dd.

¹⁶ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁷ Correctional programs entry, SIU activity log, yyyy-mm-dd.

[35] Staff's efforts to provide activities are clearly documented. Almost [REDACTED] after the launch of SIUs, CSC as an organization should be addressing these ongoing challenges.

5. [REDACTED]'s participation and efforts to encourage him

[36] Overall, [REDACTED] fairly consistently participated in all different types of activities. He never turned down correctional programming or school. However, he did not take advantage of all recreation opportunities, and turned down roughly half of social programs offers. There were also a few sessions that he left early from for various reasons.

[37] I note that staff made efforts to accommodate him or contribute to his general well-being, such as when a CPO got a coffee for him after he asked for it (Oct. 6), or when staff allowed him to change ranges after his request (Sept. 26). He had been struggling being around other people being loud and acting out. On Oct. 17, there was a conversation with him about finding him a job. He was told it was difficult due to the high SIU inmate count, but he was told the next day he could be the co-range rep; he wanted the pay.¹⁸

[38] [REDACTED] has struggled with becoming easily agitated by staff (mainly officers), and with other inmates. Factors that stressed or triggered him during the period reviewed included a search of his cell, having to wait to get out of his cell after accepting a program offer, receiving institutional charges, and his potential transfer. Log notes suggest interventions staff were able to have positive interactions with him and help him calm down on various occasions.¹⁹ He has been self-aware and recognized times when he overreacted.²⁰ In one session, his PO proposed that if he "was feeling upset or frustrated that he can ask the officers to call her and she will come down and see him."²¹ There was one occasion when, after attempting to help him calm down at his cell, the PO did not take him out of his cell because him and another inmate were yelling at each other.²² This may have been a missed opportunity to help [REDACTED] calm down and get away from the situation. However, I also recognize that some moments may be inappropriate for meeting; in this case, there seems to have been a concern about encouraging bad behaviour.

[39] There were some periods during the review when CSC used additional security measures for [REDACTED]. He was placed on a security management protocol ("SMP") on Sept. 29 after allegedly making threats towards officers. A sharpened metal object was also found on his bed.²³ He still participated in social programs sessions in the

¹⁸ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁹ See e.g. Social Programs entry, SIU activity log, yyyy-mm-dd.

²⁰ See, e.g., Case management entry, SIU activity log, yyyy-mm-dd.

²¹ Case management entry, SIU activity log, yyyy-mm-dd.

²² Case management entry, SIU activity log, yyyy-mm-dd.

²³ Incident history log.

following days (Sept. 30, Oct. 1). There is no indication in the log of any problematic behaviour in between, and no written assessment of risk in the “Threat risk assessment” (“TRA”); the Oct. 1 TRA simply confirms the measures were maintained. He was taken off SMP around midday on Oct. 3. Additional security measures were again imposed on Oct. 29 due to threats to staff, and removed the next day.

[40] I find the measures were reasonable, and there is some evidence of reassessment. At the same time, the TRA documentation could have been better. Moreover, restrictive security measures are unlikely to diminish risks in the long run. A better approach would involve a dedicated intervention strategy to help understand why he reacts certain ways and manage his emotions, and taking actions that contribute to his stability rather than upsetting him. This might include efforts to improve consistency and communications with him.

VI. CONCLUSION AND RECOMMENDATIONS

[41] I conclude in this case, under s. 37.83(1) of the CCRA, that CSC took all reasonable steps to provide the required opportunities for time out of cell and meaningful human contact. Nonetheless, I encourage CSC to seek to reduce the number of meetings with in secured rooms. I also recommend CSC develop a strategy –building on efforts already made and involving Indigenous staff, interventions staff, and correctional officers– to help I stay stable.

Janine Lespérance
Independent External Decision-Maker

Date: November 3, [REDACTED]

Name:
FPS Number: ██████
Correctional Institution: Atlantic Institution
Date of Initial Decision (s. 37.83(1), CCRA): March 6, ██████
Date subsequent s. 37.83(1) decision triggered: March 11, ██████
Date of the Present Decision: June 9, ██████
Independent External Decision-Maker: J. Lespérance

**COMBINED DETERMINATION UNDER
SUBSECTION 23.06(1) OF THE *CORRECTIONS AND CONDITIONAL RELEASE
REGULATIONS, SOR/92-620*
AND
SUBSECTION 37.83(1) OF THE *CORRECTIONS AND CONDITIONAL RELEASE
ACT, S.C. 1992, c. 20***

SUMMARY

has been in the SIU for over five months despite CSC's non-approval of his SIU stay.

CSC should identify and coordinate engagement strategies, and take measures to alleviate his anxieties about his institutional transfer. Under s. 23.06(1) of the CRR, there are not grounds for him to remain in the SIU. Under s. 37.83(1) of the CCRA, I conclude that CSC took all reasonable steps during the period reviewed.

1. INTRODUCTION

[1] On January 1, ██████, the Independent External Decision-Makers ("IEDMs") were notified that for five consecutive days, ██████ had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at Atlantic Institution in Renous, New Brunswick. The *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") required an IEDM to determine if Correctional Service Canada ("CSC") had taken all reasonable steps to ensure ██████ has at least four hours of time out of his cell and

two hours of meaningful human contact per day, under s. 37.83(1) of the CCRA. In my decision of March 6, [REDACTED], I concluded CSC had taken all reasonable steps.

- [2] At the time of that decision [REDACTED] had not had at least four hours out of his cell or two hours of interaction per day, for ten consecutive days. Consequently, I must determine under subsection 23.06(1) of the *Corrections and Conditional Release Regulations* (“CCRR”), SOR/92-620, whether [REDACTED] should remain in the SIU.
- [3] While the decision under s. 23.06(1) of the CCRR was pending, the conditions for triggering another decision under s. 37.83(1) of the CCRA were met. This occurred five days after the initial decision, on March 11.
- [4] I will therefore make determinations under both provisions.

2. INFORMATION CONSIDERED

[5] For this review, the following items are my sources of information:

- SIU daily activity log in the SIU application database, for the period as of yyyy-mm-dd in particular
- Threat risk assessments, for the period as of yyyy-mm-dd
- Casework record log (“CWR”), for the period from yyyy-mm-dd to yyyy-mm-dd
- Incident history log
- CSC response to IEDM written follow-up questions, received yyyy-mm-dd
- Referral decision sheet – institutional transfer, dated yyyy-mm-dd
- Regional reviews, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- CSC response to IEDM written follow-up questions, received yyyy-mm-dd
- Assessment for decision – institutional transfer, dated yyyy-mm-dd
- Memorandum – mental health comments for institutional transfer, dated yyyy-mm-dd
- Correctional plan update – SIU, dated yyyy-mm-dd
- Institutional head 30-day SIU transfer decision, dated yyyy-mm-dd
- Institutional head 5-day SIU transfer decision, dated yyyy-mm-dd
- Cancellation of SIU transfer authorization, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Assessment for decision – institutional transfer and security level, dated yyyy-mm-dd
- Correctional plan – original, dated yyyy-mm-dd
- Criminal profile report – original, dated yyyy-mm-dd
- Overview of administrative segregation placements

[6] On May 31, I sent [REDACTED] via CSC, a summary of the information I am considering for this review. I offered him the opportunity to provide written representations, to speak to me in an interview, and to have his lawyer involved.

[7] On June 2, I received signed confirmation from CSC that [REDACTED] had refused to sign a copy of the acknowledgment of receipt and would not share his views through one of the means offered. I must therefore rely on the information provided by CSC.

3. CONTEXT

[8] [REDACTED] is [REDACTED] years old and is from [REDACTED]. He is serving a sentence of [REDACTED], for which the statutory release date is [REDACTED].

[9] [REDACTED] He has been classified at the maximum-security level since [REDACTED]. His current transfer to the SIU was authorized on Dec. 26, [REDACTED], under s. 34(1)(a) of the CCRA, but was “cancelled” three days later.

[10] See my March 6 decision for additional contextual information.

4. LEGAL FRAMEWORK

4.1. The obligations of CSC with respect to inmates in the SIU

[11] My previous decision under s. 37.83(1) of the CCRA concerning [REDACTED] set out and interpreted the relevant legal provisions in more detail. In summary, s. 36(1) of the CCRA establishes that CSC must provide inmates the opportunity to spend at least four hours outside of their cell and have two hours interacting with others, through a range of different activities, each day. There are limited exceptions in the legislation, including an inmate’s refusals and extreme circumstances that impede operations. CSC must be proactive and respond to inmates’ needs. Under s. 37.83(1) of the CCRA, an IEDM determines whether CSC has taken all reasonable steps to provide an inmate sufficient opportunities in the SIU and encourage them to take opportunities. The specific period of activities considered is flexible.

4.2. The framework for reviews under s. 23.06(1) of the CCRR

4.2.1. Focus of the analysis

[12] Subsection 23.06(1) of the CCRR states:

“If, in accordance with subsection 37.83(1) or (3) of the Act, the [IEDM] determines that the Service has taken all reasonable steps to provide an inmate with the opportunities referred to in subsection 36(1) of the Act but that, in the last 10 consecutive days, the inmate, while continuing to be confined in a [SIU], has not spent a minimum of four hours a day outside their cell or has not interacted with others for a minimum of two hours a day, the [IEDM] shall determine, as soon as practicable, whether the inmate should remain in the [SIU].”

[13] A decision under s. 23.06 of the CCRR does not require the IEDM to once again analyse whether CSC has taken appropriate steps to provide proper conditions in the SIU, this assessment having already been done in the prior decision under s. 37.83(1) or (3) of the CCRA. The s. 23.06 decision focuses on the question of whether or not the inmate should be in the SIU.

4.2.2. Standard to be applied

[14] For decisions under s. 23.06(1) of the CCRR, there is a presumption that the inmate should be released from the SIU. S. 37.82(1) of the CCRA applies to these determinations (s. 23.06(2), CCRR). It reads as follows:

“The [IEDM] may determine under sections 37.8 and 37.81 that an inmate should remain in a structured intervention unit only if the [IEDM] believes on reasonable grounds that allowing the inmate’s reintegration into the mainstream inmate population

(a) would jeopardize the safety of the inmate or any other person or the security of the penitentiary; or

(b) would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence [emphasis added].”

[15] This provision is consistent with s. 33 of the CCRA, which states that an inmate’s confinement in an SIU should “end as soon as possible.”

[16] The standard set out in para. 37.82(1)(a) of the CCRA of believing, on reasonable grounds, that reintegration into the mainstream inmate population “would” jeopardize safety or security, implies a standard higher than a mere possibility of incidents occurring if the inmate were to be released from the SIU. It implies a heightened probability of safety or security actually being jeopardized.

[17] If the standard applied were too low, there would be a basis for maintaining an inmate in the SIU in decisions under s. 23.06 of the CCRR in practically all cases of inmates initially transferred to the SIU for posing a security risk. This outcome would be at odds with the intent and provisions of the legislation.

[18] Therefore, I interpret s. 37.82(1) of the CCRA as requiring an IEDM to identify an objective, factual basis to justify a decision to maintain an inmate in an SIU.

[19] In a decision under s. 23.06 of the CCRR, the IEDM must consider the inmate’s correctional plan, the appropriateness of their confinement in the penitentiary they are in, the appropriateness of their security classification, and any other relevant factor, in accordance with s. 37.82(2) of the CCRA.

[20] The legislation does not contain contemplate situations when an inmate wants to stay in the SIU. Although s. 23.06(1) decisions are mainly to determine whether an

inmate should remain in the SIU, I consider it appropriate for an IEDM to make recommendations, particularly when the inmate has refused integration options that CSC considers viable.

5. ANALYSIS

5.1. Determination under s. 23.06(1) of the CCRR

[21] s situation can be considered a voluntary SIU placement: he has remained in the SIU for over six months despite the cancellation of the transfer authorization on Dec. 29 and the Institutional Head's non-approval of the SIU transfer in decisions on Jan. 5 and Jan. 22. A determination under s. 23.06(1) of the CCRR could be considered redundant as a result of the institutional head's decision. IEDM decisions under s. 37.8 of the CCRA, which involve considering the same factors as for decisions under s. 23.06(1) of the CCRR, are not required when CSC has not approved the transfer. I will nonetheless examine the situation to identify issues and make any relevant recommendations, considering the s. 37.82(2) factors. My ability to make effective recommendations in this case is limited by the fact that

5.2. SIU conditions of confinement and determination under s. 37.83(1) of the CCRA

[22] The analysis below is based on the period from March 6 to June 6.

5.2.1. Time out of cell and meaningful human contact according to SIU log totals

[23] Since the beginning of March, I has consistently spent very little time out of his cell. During this period, there were only five days on which had more than two hours of meaningful human contact. He never spent more than four hours out of his cell in a day. On most days, spent less than forty minutes outside of his cell.

5.2.2. Activities and services offered and participation

[24] Based on the daily log totals, it is clear that for an extended period of time, has been highly isolated and in solitary confinement conditions that have been shown to have a high potential for serious psychological harm.

[25] Further review of the log entries shows that high refusal rate of various types of activities offered has been the principal contributing factor in this situation, rather than a lack of opportunities. For the determination under s. 37.83(1) of the CCRA, I must take into account the legislative exception for refusals set out at para. 37(1)(a) of the CCRA.

[26] The only activity that consistently participated in, and which accounted for the minimal time that he has spent out of his cell most days, is methadone treatment.

[27] did not accept any of the regular recreation offers at different times of the day. He sometimes interacted with staff, but these seem to have mostly been brief conversations at his door when the Correctional Manager ("CM") went to see him to try to encourage him to participate in recreation. He turned down various staff interaction opportunities, including with his Parole Officer ("PO"). He turned down every social program opportunity, which he had almost every day. He did not come out of his cell to work with the teacher when given the chance a few times, although it seems that he did work on his studies in his cell. He turned down the vast majority of offers from the Correctional Program Officer ("CPO") with the exception of a few offers in April. He told the CPO he was not feeling well a couple of times, although there are also various other occasions when he said he was "good." He often told the CPO to come back the next day, but then would refuse the next day.

[28] His highest rate of participation was likely for meetings with the Chaplain: he agreed to meet with the Chaplain nine times, but turned down eight opportunities of this kind. I asked CSC whether there had been efforts to provide ongoing spiritual support when the Chaplain is unavailable. The May 19 response indicated:

"Chaplain [REDACTED] has offered several times to have phone calls set up with a local representative of a religious group, and while he indicates the desire to have a call, he does not rise to the occasion.

During times when he was non-communicative with Chaplain [REDACTED], [REDACTED] placed a note under his door to see if the inmate would like a call. There no verbal or written reply."

[29] 's patterns of low engagement are consistent with what I observed in my Mar. 6 decision, which assessed the period from December 26 to March 5, and perhaps even worse. 's rate of participation in the was about 32% in the former period, and about 17% during this more recent period. In the former period, he participated in social programs a few times, compared to no acceptances more recently.

[30] From the log entries, which are detailed and varied enough to make them credible, I am satisfied that staff made regular offers of different types and at different times of the day, and that various staff members were trying to encourage to participate and come out of his cell.

5.3. Mental health considerations

5.3.1. Participation in mental health interventions

[31] 's low participation has also extended to mental health support.

[32] He declined all seven mental health assessments offered during the period reviewed. The SIU log contains very brief notes for some of these refusals. On Apr. 29, he reportedly stated “everything’s cool man” and agreed to notify staff if he required mental health services. On May 13, there were reportedly “no voiced concerns” and “no distress noted”. He was noted to be polite that day and on May 31.

[33] did meet with the doctor on Apr. 1. In my written questions, I asked CSC why he had only seen the doctor once since the start of March. In the May 19 reply, CSC did not answer the question.

[34] There are eight entries for opportunities to meet with a mental health clinician recorded in the SIU log up until June 6, of which only accepted three. CSC’s May 19 response explains that he had been offered sessions with his regular clinician by videoconference or phone, and had opportunities to meet in person with a clinician that is not his assigned clinician.

[35] CSC’s response to my inquiry about why remote rather than in-person support was offered indicated:

“The clinician and client were agreeable to the plan to meet via telephone or video conference due to COVID-19 on a bi-weekly basis. The frequency of session is based off his level of mental health needs. continues to be in agreement with non-in person sessions and has not voiced any concerns with the type of service being offered.”

[36] I accept that the COVID-19 pandemic has created significant challenges and note CSC’s statement that agreed to remote service delivery. Nonetheless, I am concerned that this approach, as the primary approach to mental health support for , is not as conducive to building rapport as in-person meetings. It does not seem to be successfully motivating him. It also does not reflect the legislation, which emphasizes in-person meaningful human contact. S. 32(2) of the CCRA clearly establishes that CSC must take efforts to ensure physical barriers do not impede meaningful human contact opportunities.

5.3.2. Behavioural observations

[37] I am concerned that poor mental health was underlying s low participation in all types of offers.

[38] Again, I have not been able to meet with | myself. I am also not a medical practitioner and do not have independent medical expert evidence to rely on. Nonetheless, I observe that s avoidant patterns suggest that his mental health is poor. Moreover, various staff notes in the log make behavioural observations that suggest the same. They refer to

[39] According to an SIU log entry, his hygiene was raised with him on May 26 and he reportedly said that he showers once and week and that he “felt that that was sufficient.” However, the log shows that sometimes he went more than two weeks without taking a shower.

[40] When arrived at AI at the start of December, he was placed on “modified watch” due to having :

[41] There are two incidents recorded in the incident history log. According to entries in that log and the casework record log, on Feb. 11, made threats to harm someone or himself if he were to be forced to transfer to another region. On Apr. 16, he allegedly made profane and disrespectful comments toward his PO, which caused them to terminate the meeting. Subsequently, according to their note in the casework record log,

“While gathering my note pad, stated maybe I should kill a PO to prove my point while directly looking at this writer; I assume he was referencing to me, given the fact that he was looking at me while making the threat. He then stated let me out of here so I can kill one of these fucking guards continued to state that he will not integrate any institution and that the ERT will need to be assembled to get him out of his cell.”

They also noted, “[w]hile being escorted back to his cell, could be heard screaming †

[42] The fact that there are few recorded incidents is not necessarily indicative that is doing well.

5.3.3. Factors underlying behaviour

[43] s June 25, █████, correctional plan (“CP”) provides information on his psychological profile at pp. 9-10. In sum, information suggests he has an “underlying mental illness” but there has been disagreement about his diagnosis of █████ or █████, or █████. He has been diagnosed with █████.

[44] has spent a lot of time isolated. His SIU stay has now lasted more than five months. During his first stay at █████, which lasted about a month in █████, he was also very isolated.

[45] Moreover, according to an overview of his administrative segregation placements, he was in segregation twenty-one times in the context of prior sentences, spread over the period between █████. While some of the segregation stays were very brief, some lasted a few months. He spent around 643 days in segregation—which lacked the opportunities of the SIU— in total.

[46] The Ontario Court of Appeal has found that administrative segregation beyond 15 consecutive days exposed “inmates to a risk of serious and potentially permanent psychological harm” (*Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 (CanLII), at para. 99). The Court noted the evidence about the short and long-term psychological effects of administrative segregation, including, among others, risks of depression, anxiety, rage, cognitive-behavioural problems, difficulty solving interpersonal problems, apathy, and lethargy (see paras. 73 to 76).

[47] These effects reflect the observations made about █████ recently. It is reasonable to presume that his time in administrative segregation exacerbated his pre-existing issues, had a negative impact on his psychological health, and contributed to his current behaviour.

5.3.4. Possibility of transfer to a therapeutic environment

[48] In my written questions to CSC, I asked about █████ . The full answer provided was:

“In terms of therapeutic range suitability,

[49] I note █████ s refusal, but question whether strategies, including security strategies, to make him more comfortable about such a transition could have been proposed and put in place.

5.4. Security Classification

[50] s security level was last reviewed in July █████, when it was increased from medium to maximum.

(maximum security). His institutional adjustment rating was increased from moderate to high. As summarized in the Aug. 11, █████, referral decision sheet, this was due to “the accumulation of incidents, concerns with substance use which increases his risk, and unprovoked violent conduct on █████-07-23” (p. 2). The latter incident occurred at █████, and followed his request to leave the population. As described in CSC documents, it involved him walking up behind another inmate unprovoked and hitting him on the head with what was believed to be a █████. A fight ensued. There were no injuries.

[51] █████ resided at █████ between █████ and █████. The Aug. 11 referral decision sheet describes that

[52] As described, this pattern of non-engagement has continued in the SIU. In his Feb. 22, █████ Correctional Plan Update (“CPU”), he was assessed as having a high need for improvement for six out of seven dynamic factors, and a low level of motivation (p. 2).

[53] The main factors that could support a security declassification to medium security for █████ at this time are:

- The possibility that it might end his SIU stay and provide him an environment more conducive to his well-being;
- The very few incidents he has been responsible for since █████; and
- His rapidly approaching statutory release date.

[54] However, it appears unlikely that █████ would agree to integrate a medium-security population. The assessments of █████'s last security reclassification and the CPU are still relevant and justified.

5.5. Penitentiary placement and institutional transfer

[55] █████'s SIU placement does not appear to be due to factors specific to AI. As reported, he was feeling anxiety, depression and the need to isolate himself at the time of his transfer to the SIU. File information does not suggest that this was due to any particular issues or situations involving other inmates or staff at AI. There is a note from his PO from Dec. 29 conveying that █████ said “there were no issues on █████ and that his issues were all in his own thoughts and feelings” (see CWR). There are other similar notes. He has also said he wanted to take advantage of the

interventions in the SIU (see CWR, Feb. 4) or get in a better mindset (see, e.g., CWR, Apr. 21).

- [56] Giver's refusal to integrate at AI, CSC has explored an institutional transfer. It does not appear likely he will integrate.
- [57] When asked on Mar. 31 if he would participate in a case conference with █████, he reportedly declined because it would be "just a 'change of infrastructure' for him" (see PO CWR entry). On the same occasion, he reportedly said he "believes it is in his best interest to remain isolated."
- [58] █████ has an upcoming statutory release, set for █████, and this is a major factor in his potential transfer. In its response of May 19, CSC provided the following update with regard to the transfer process for
- "The final decision for a transfer to █████ was approved on █████-04-12. However, █████ has no support from the █████ region on his Statutory Release and we are no longer exploring this option. The team redirected the release plan to the █████ region (i.e. his home region) and support will be provided by a Community Correctional Centre (CCC) in their region upon release. At this time, we are also finalizing a transfer to █████ for public safety in preparation for his release to the █████ region on his Statutory Release in order to avoid a commercial release."
- [59] Based on intervention notes, both █████'s upcoming release and his transfer to another institution █████ . Both involve starting over somewhere new.

6. CONCLUSION AND RECOMMENDATIONS

- [60] I recommend to CSC to explore new strategies for enhancing █████'s participation in interventions, particularly mental health treatment, but also linked with substance use treatment. Staff should seek to identify the reasons underlying his disengagement and adapt engagement strategies to his specific needs and profile, with a coordinated approach among interveners. The current approach appears to rely too heavily on him being proactive, and on services provided remotely rather than in-person. Given his interest in religious interventions, he should also continue to be provided opportunities to meet with the Chaplain, in-person as much as possible.
- [61] His institutional transfer to █████ appears necessary in light of his upcoming statutory release. However, it does not appear this change is likely to alleviate his isolation. CSC should take measures to ease any anxieties he has about the

transfer. A significant change in environment to a more therapeutic environment might have more potential to change his current patterns of behaviour.

[62] Notwithstanding these recommendations, for the purposes of s. 37.83(1) of the CCRA, I conclude that CSC took all reasonable steps. Under s. 23.06(1) of the CCRR, the information does not provide a sufficient basis to justify his continued placement in the SIU. At any rate, his SIU authorization has already been cancelled by the Institutional Head.

[63] In s case,

In light of that, CSC should take remedial steps.

Janine Lespérance
Independent External Decision-Maker

Date: June 9, [REDACTED]

Name:
FPS Number: [REDACTED]
Correctional Institution: Atlantic Institution
Date of Notification: October 30, [REDACTED]
Date of Decision: December 21, [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

[REDACTED] is a [REDACTED] person.
He was out of the SIU a few times due to placement on modified watch. He was very isolated. He did not have a recreation group for most of the period reviewed, which Mental Health recommended and was his preference. There was an unsuccessful attempt to place him on a group.
[REDACTED] Program offers were regular. He was most engaged in [REDACTED] activities. [REDACTED] was unable to do [REDACTED] with him due to staff [REDACTED]. A job would have motivated [REDACTED] to come out of his cell more. A job as [REDACTED] would be particularly relevant for him. There were several mental health interventions with him, especially by the clinician, and he saw a psychiatrist. Under s. 37.83(1) of the CCRA, CSC did not take all reasonable steps to provide [REDACTED] adequate opportunities to leave his cell and interact with others in the SIU.

I. INTRODUCTION

- [1] On Oct. 30, [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning [REDACTED] was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at Atlantic Institution ("AI") in Renou, New Brunswick.
- [2] An IEDM must determine if CSC has taken all reasonable steps to ensure [REDACTED] spends time out of his cell and has social interaction. If CSC has not done so, the IEDM may make recommendations to remedy the situation.

II. LEGAL FRAMEWORK

1. Inmates' entitlements in the SIU

[3] CSC's obligations towards inmates held in the SIU are set out at s. 36 of the CCRA:

"Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a structured intervention unit

(a) an opportunity to spend a minimum of four hours outside the inmate's cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a)."

[4] The CCRA also specifies, at para. 37(1)(a), that para. 36(1)(a) or (b) does not apply "if the inmate refuses to avail themselves of the opportunity [...]." The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 ("CCRR") set out other limited exceptions, including an inmate's refusal to comply with security-related instructions (para. 37(1)(b), CCRA), and extreme circumstances including epidemics (para. 19(1)(b), CCRR).

[5] The present review is conducted in accordance with ss. 37.83(1) and (2) of the CCRA:

"Decision — reasonable steps

37.83 (1) If, for five consecutive days or for a total of 15 days during any 30-day period, an inmate confined in a structured intervention

unit has not spent a minimum of four hours a day outside the inmate's cell or has not interacted, for a minimum of two hours a day, with others, an independent external decision-maker shall, as soon as practicable, determine whether the Service has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1) and to encourage the inmate to avail themselves of those opportunities.

Recommendations

(2) If the independent external decision-maker determines that the Service has not taken all reasonable steps, he or she may make any recommendation to the Service that he or she considers appropriate to remedy the situation. [emphasis added]"

[6] Section 37.83 sheds light on CSC's obligations as set out in subsection 36(1). CSC must be proactive to ensure that inmates in the SIU spend time outside of their cell and have meaningful interactions with other people. This interpretation is consistent with the purpose of SIUs, as set out in s. 32 of the CCRA. Subsection 32(1) establishes that the purpose of a SIU includes allowing an inmate to participate in programs and have access to services, and subsection 32(2) requires CSC to make "every reasonable effort" to ensure physical barriers do not impede interactions. What meets the "all reasonable steps" standard will depend on the facts and circumstances of the specific situation.

[7] The legal obligations and IEDMs' determinations on "all reasonable steps" apply to CSC as a governmental agency, not a specific individual, such as a staff member, or a specific institution.

2. The period to be taken into account in s. 37.83 IEDM determinations

[8] The five consecutive days referred to in s. 37.83(1) of the CCRA are the factual situation that "triggers" an IEDM review. If an inmate does not spend much time out of their cell, it could be due to many factors. The IEDM must analyze the situation to determine whether CSC provided adequate opportunities.

[9] The CCRA does not specify the period of SIU activities that an IEDM should consider in a decision under s. 37.83 of the CCRA.

[10] Only considering the five days that triggered the review would have the result of leaving a period without oversight. It is preferable to take into account SIU activities beyond the initial period that triggered the review, particularly when several days have passed since the notification date. Assessing a longer period of activities provides the IEDM a better understanding of what has been happening. It allows the IEDM to make a more well-founded conclusion and –potentially– recommendations.

III. SOURCES OF INFORMATION

[11] I have considered the following sources of information from CSC:

- SIU daily activity log, for the period as of yyyy-mm-dd
- Casework record log, for the period from yyyy-mm-dd to yyyy-mm-dd
- Threat risk assessments, for the period as of yyyy-mm-dd
- Institutional Head "30-day" SIU transfer decision, dated yyyy-mm-dd
- Incident reports, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Correctional plan update – SIU, dated yyyy-mm-dd
- Memorandum – recreation group, dated yyyy-mm-dd
- Correctional plan – updated, dated yyyy-mm-dd
- Institutional Head "5-day" SIU transfer decision, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Assessment for decision – penitentiary placement and security level, dated yyyy-mm-dd
- review – initial, dated yyyy-mm-dd
- Criminal profile report – amendment, dated yyyy-mm-dd

[12] I sent _____, via CSC, a summary of the information I am considering for this review on Dec. 2. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[13] On Dec. 6, I learned _____ wished to share his views by phone. A call was planned for Dec. 7. On Dec. 7, I learned from CSC that _____ had turned down the call that day. I proposed that a meeting could be planned for Dec. 13, during my planned site visit. On Dec. 13, I was unable to meet with _____ because I ran out of time after other meetings. I spoke with him briefly at his cell door and proposed to re-schedule again, which he was interested in.

[14] We spoke by videoconference on Dec. 14, for approximately 50 minutes. During the video meeting, _____ was accompanied by _____ were also there as a support for him.

IV. BACKGROUND

[15]

¹ Elder review – initial, yyyy-mm-dd, p. 1.

[16] Since [REDACTED], he has been serving a [REDACTED] sentence for crimes including [REDACTED]. He was recently incarcerated at [REDACTED] after the suspension of his statutory release on [REDACTED]. He is classified at the maximum-security level. His warrant expiry date is in [REDACTED].

[17]

[18] His transfer to the SIU was authorized on Oct. 25, [REDACTED], under para. 34(1)(b) of the CCRA, for his own safety. He had self-harmed and requested to move to the SIU.

[19] The AI Warden approved the SIU transfer in the Oct. 29 “5-day” decision and the Nov. 23 “30-day” decision.

[20] This is his eighth SIU transfer.

V. ANALYSIS

[21] I will consider the period from Oct. 25 to Dec. 20. This is a period of 57 days.

[22] I apologize for the delay in issuing this decision. I was unable to complete the review sooner. The rescheduling of the interview with [REDACTED] also contributed to delay.

1. How much time out of cell and interaction did [REDACTED] have?

² review – initial, yyyy-mm-dd, p. 3.

³ review – initial, yyyy-mm-dd, pp. 1, 3.

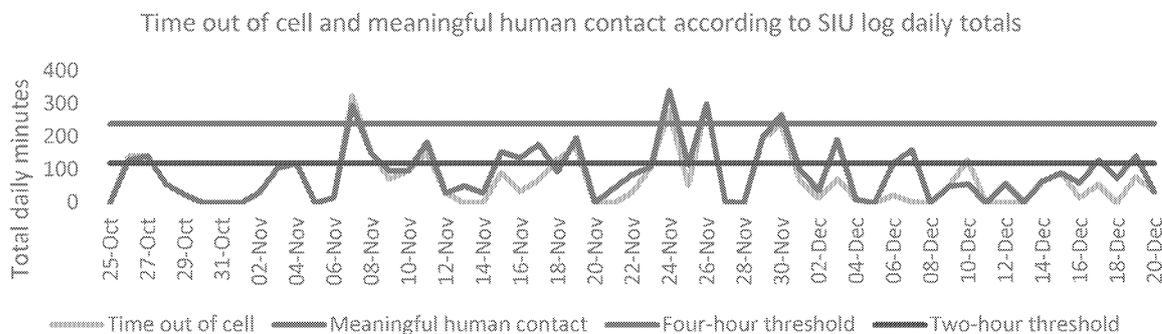
⁴ review – initial, yyyy-mm-dd, pp. 3 - 4.

⁵ review – initial, yyyy-mm-dd, p. 3.

⁶ CPU-SIU, yyyy-mm-dd, p. 2.

[23] According to SIU activity log totals, [redacted] had more than four hours out of his cell on only four days during the period reviewed (about 7% of all days), and more than two hours of meaningful human contact on nineteen days (about 33% of all days).

[24] The daily totals varied a lot throughout the period reviewed, as shown in the graphic below [redacted] has been very isolated overall.



2. Was the quantity of daily offers sufficient?

[25] On the majority of days, there were enough offers to surpass the minimum legal requirements.

Days when [redacted] was out of the SIU f

[26] For most of the days on which the quantity of offers was insufficient, or there were no activity log entries, it was because

Notably:

- Oct. 28: he was in modified watch part of the day, in the morning and late afternoon
- Oct. 30 to Nov. 1: [redacted] returning to the SIU around lunch on Nov. 1
- Nov. 4 to 6: in the early afternoon of Nov. 4, [redacted] he returned to the SIU around lunch time on Nov. 6
- Nov. 9: he was away in the morning [redacted]
- Nov. 19 to 21: [redacted]

[27] I do not have any information confirming that he had meaningful human contact opportunities during these periods.

[28] Otherwise, the only day that seems to have been potentially problematic in terms of the basic quantity of offers was Nov. 28. That day, there were only three recreation offers, in the morning and afternoon. The “4/2” minimums were just met, according to log entries. [redacted] did not leave his cell that day.

Recreation group placement

[29] One factor that limited the amount of opportunities for meaningful human contact for [REDACTED] was that he did not have a recreational group during much of the period reviewed. A Nov. 3 Security Intelligence Officer (“SIO”) memorandum describes that in light of [REDACTED]

[REDACTED], I understand that the decision made also reflected [REDACTED]’s preferences. He confirmed that he requested to not have a group soon after he arrived in the SIU.⁸

[30] He was placed on a group Nov. 18, but this ended after an incident on [REDACTED] in which [REDACTED] his recreation partner; the incident is described in the records before me as a “[REDACTED]”⁹ or him [REDACTED].¹⁰

[31] [REDACTED] told me he has nothing against his former group member, and in response to my question about mediation, he said he would “for sure” be open to it. However, it is still (as of the time of the interview) his preference to have recreation alone, for his own reasons.¹¹

[32] Having a group would provide [REDACTED] more interaction opportunities, but it would be inappropriate to force him to join a group. CSC staff could potentially explore ways to gradually provide him more opportunities for interaction with other inmates, if he becomes open to it and is consistently in a more stable state.

3. Was there a variety of opportunities for [REDACTED] reasonably adapted to his needs?

[33] [REDACTED] had the following types of opportunities in the SIU:

- recreation (common room and outdoor yard)
- staff interactions
- correctional programs ([REDACTED])
- social programs
- mental health services
- [REDACTED] support (meeting with [REDACTED])
- personal phone calls, mainly on the range phone.

[34] Recreation was the most frequent type of opportunity he had. However, there was a variety of opportunities provided through the period reviewed.

⁷ Memorandum – recreation group, yyyy-mm-dd, p. 1.

⁸ IEDM interview with [REDACTED], yyyy-mm-dd.

⁹ Incident history log entry.

¹⁰ [REDACTED] activities log entry, SIU activity log, yyyy-mm-dd.

¹¹ IEDM interview with [REDACTED], yyyy-mm-dd.

[35] I do not find any significant issue with the frequency of program offers. Programs were offered consistently.

[36] According to log entries, he did not accept recreation time very often. He accepted a bit more often between Nov. 18 and Dec. 1, which is roughly when he had a recreation group. He occasionally accepted the Indigenous Correctional Programs Officer (“ICPO”)’s program offers.

[37] He never accepted social programs despite frequent offers and efforts to encourage him.¹²

[38] The lack of cultural aspect was one reason he did not go out for social programs.¹³

Indigenous cultural activities and support

[39] My impression is that Indigenous culturally-relevant support is the most meaningful type of interaction opportunity for [redacted]. SIU activity log entries describe that the [redacted] regularly checked in with him throughout the period reviewed.

[40] In the Dec. 14 interview, [redacted] said that an issue that has prevented them from doing [redacted] with [redacted] is that [redacted] CSC maintenance staff need to bring in firewood that is stored at AI but is in a separate building outside the penitentiary. [redacted] estimated that they first made an email request about this about a month before and had since followed up, with no response to their most recent inquiry. [redacted] said that getting out [redacted] would help him a lot.

[41] In my view, the “all reasonable steps” standard requires CSC to ensure that [redacted] have the resources they need to provide culturally-relevant support. In this case, it seems the resources are there and CSC staff simply need to bring it inside.

[42] [redacted] has been isolated [redacted]. In this context, it is particularly important for CSC to seek alternatives and respond to his specific needs. It seems clear that a sweat would contribute positively to [redacted].

Work possibilities

[43] There is one “vocational program” log entry, for Dec. 20. There is no descriptive note, so it is unclear whether this is an error or an actual work outing. The log for today, Dec. 21, indicates he was given a landing cleaner job.

¹² See Social Programs entries, SIU activity log.

¹³ IEDM interview with [redacted] yyyy-mm-dd.

[44] In my Dec. 14 meeting with [redacted] and [redacted] support team, work opportunities were discussed. According to him, having a job would help him get out of his cell more. While he had expressed interest in a cleaning job, an even better job for him would be helping out as a grounds keeper for [redacted] is very interested in this; it would get him out of his cell and outdoors. It would have cultural and meaningful interaction aspects, as he would be accompanied by a member [redacted] team. The pay would also be helpful. [redacted] mentioned that a referral had been put in and would hopefully be approved by the Security Intelligence Officer ("SIO") shortly.

Mental health support

[45] CSC information conveys that [redacted] dealt with [redacted]

[46] In the Dec. 14 interview, [redacted] confirmed that [redacted]

[47] [redacted] s comments somewhat suggested [redacted]

[48] However, there are various SIU activity log entries, as of Oct. 26, indicating that [redacted]

[49] Other SIU activity log entries suggest other SIU staff were aware of and responsive to his mental health concerns.

¹⁴ See e.g. Indigenous Activities, SIU activity log, yyyy-mm-dd.

¹⁵ While it is unclear, the SIU activity log suggests Nov. 8 may have been when he met with the doctor by video.

¹⁶ Health entry, SIU activity log, yyyy-mm-dd.

[50] did not participate in the interview for the 28-day mental health evaluation on Nov. 15. The assessment was thus done on the basis of file information. It concluded he had “some: moderate” mental health needs, and “[b]ased on the file information, [he was] receiving appropriate level of evaluation and interventions at [that] time.”¹⁷

4. Did any structural or contextual factors affect s participation in activities?

[51] In my Dec. 14 interview with , he mentioned that

[52] I find this was a contributing factor to turning down yard opportunities during which he may sometimes have been able to interact with other inmates through fencing.

[53] In my view, it is unreasonable to expect someone to go to the outdoors yard in late autumn weather (for example, a Dec. 1 log note for yard indicates it was cold that morning at “-10/-14”), without having proper winter attire. Taking “all reasonable steps” requires CSC to identify and address barriers to participation. This includes ensuring an inmate has weather-appropriate clothing.

5. Did raise other issues?

[54] In my interview with him, mentioned that he cannot integrate at and he hoped to transfer on the next flight despite an upcoming video court date.

[55] These issues are not the focus of IEDM reviews under s. 37.83(1) of the CCRA.

VI. CONCLUSION AND RECOMMENDATIONS

[56] Due to the issues identified above, I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide adequate opportunities for time out of his cell and meaningful human contact.

¹⁷ Health entry, SIU activity log, yyyy-mm-dd.

¹⁸ Indigenous Activities entry, SIU activity log, yyyy-mm-dd.

[57] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- Provide the opportunity to work as s helper/groundskeeper;
- Ensure that staff have the resources needed to support SIU inmates, including, in this case,
- Continue to provide regular mental health interventions to ; and
- Take measures to ensure that SIU inmates have weather-appropriate clothing.

Janine Lespérance
Independent External Decision-Maker

Date: December 21, [REDACTED]

Inmate Name:
FPS Number: [REDACTED]
Correctional Institution(s): [REDACTED]
Date of s. 37.83(1) notification: May 9, [REDACTED]
Date of CSC Senior Deputy Commissioner Decision: June 28, [REDACTED]
Date of the Present Decisions: August 30, [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DECISIONS UNDER SUBSECTION 37.83(1) AND SECTION 37.8
OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, c. 20**

SUMMARY

was transferred out of the SIU, to Institution, before the pending IEDM decisions on SIU conditions and his SIU placement were issued. I am issuing the decision on his SIU placement despite his transfer. was involved in many incidents in 's open population, but he showed a lot of progress in the SIU. CSC did not show he could not return to the population. CSC did not show his institutional transfer would help his progress or overall safety and security. As an ([REDACTED]) inmate, CSC should make significant efforts to keep him close to his home territory, culture, and family supports. The s. 37.83(1) decision is moot. Under s. 37.8 of the CCRA, I find should not be in the SIU and should have been transferred to the population.

1. INTRODUCTION

- [1] On June 28, [REDACTED], the Correctional Service Canada ("CSC") Senior Deputy Commissioner ("SDC") decided, under section 37.4 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") that should remain in the Structured Intervention Unit ("SIU") at
- [2] In addition, on May 9, [REDACTED], CSC notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the CCRA concerning is necessary.
- [3] As an IEDM, if I have jurisdiction, I must answer the following questions:

- Did CSC take all reasonable steps to provide [redacted] at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?¹
- Should [redacted] remain in the SIU?²

2. SOURCES OF INFORMATION

[4] I have considered CSC documentary information, oral comments from [redacted] X, oral comments from Correctional Manager (“CM”) Y, and [redacted] s July 23 oral comments (see annex for details).

3. CONTEXT

[5] [redacted] is a [redacted]-year-old [redacted] man. [redacted]

[6] Since [redacted], he has been serving a sentence of [redacted]. His statutory release date is in [redacted].

[7] His SIU transfer has been authorized four times.

4. ANALYSIS UNDER S. 37.83(1) OF THE CCRA

4.1. Do I have a legal basis to review [redacted] s time-out-of-cell opportunities?

[8] Yes. However, I will not issue a decision under s. 37.83(1) of the CCRA.

4.1.1. Legal framework

[9] IEDMs only have jurisdiction in certain situations. If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for 15 days during a 30-day period, an IEDM must review their conditions of confinement.³

4.1.2. Application

[10] CSC’s log shows [redacted] was isolated from May 4 to 8, [redacted], triggering a review.

[11] However, I was unable to issue a decision promptly. CSC transferred [redacted] out of the SIU on July 25, moving him to [redacted] CSC’s SIU-LTE database indicates he is incarcerated on the [redacted] range.

¹ CCRA, s. 37.83(1).

² CCRA, s. 37.8.

³ CCRA, s. 37.83(1).

[12] s July 23 interview comments focused on his SIU and institutional placement. At this point, a decision on SIU opportunities under s. 37.83(1) of the CCRA, which could result in recommendations on SIU conditions, has become moot. I do not find reasons to issue the decision despite his transfer out of the SIU.

5. ANALYSIS UNDER S. 37.8 OF THE CCRA

5.1. Do I have a legal basis to review s SIU placement?

[13] Yes. I am issuing a decision although it is moot.

5.1.1. Legal framework

[14] An IEDM decision under s. 37.8 of the CCRA follows CSC decisions concluding that the inmate should stay in the SIU, specifically: the institutional head's "5-day"⁴ and "30-day"⁵ decisions, and the SDC decision.⁶ If the SDC decides a person should remain in the SIU, an IEDM decision is triggered. It is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.

5.1.2. Application

[15] In this case, the June 28 SDC decision triggered an IEDM review under s. 37.8.

[16] Analysis on whether s should remain in the SIU can be considered moot now, since he is in a mainstream population at s.

[17] I can issue a decision even if it is moot.⁷ s remains incarcerated and could be institutionally transferred or returned to the SIU, so IEDM observations could be useful. This case also involves a systemic issue, the consideration of what CSC calls s factors. More, I had already considered the information in s file before he was transferred. I believe the IEDM's broad oversight role in relation to SIUs supports an IEDM's choice to do a decision even if an inmate is out of the SIU.

[18] It is also worth noting s SIU stay authorized May 4 was essentially a continuation of a previous SIU stay. He was in the SIU from March 15 to May 2; he was in the s population for less than two days before returning to the SIU. If these transfers were treated as a continuous SIU stay for oversight purposes, an IEDM decision examining his SIU placement would have been triggered more than a month earlier, and the decision likely issued before his transfer out.

5.2. What is the context of s SIU transfer?

⁴ Under CCRA, s. 29.02(2).

⁵ Under CCRA, para. 37.3(1)(b).

⁶ Under CCRA, s. 37.4.

⁷ *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353, 359 to 363.

[19] was transferred from a medium-security institution to on Aug. 22, . After placement on the reception range () and an SIU stay, essentially due to his refusal to integrate, he integrated 's unit on Nov. 15, .

[20] On Mar. 14, , he was involved in an inmate assault. He was moved to the SIU, then integrated unit on May 2. CSC transferred him back to the SIU on May 4, after he allegedly blocked officers from doing a range walk and threatened officers.

[21] In addition, numerous other incidents, including disruptive behaviours, threats, drug use, and involvement in assaults, were reported for his time in 's population.

5.3. Can integrate a population at ?

[22] Yes, with proper supports in place. There were reasons to keep at I rather than transfer him to

5.3.1. Legal framework

[23] SIU stays are meant to “end as soon as possible.”⁸ I can only decide an inmate should stay in the SIU if I have information that makes me believe their release “would jeopardize” safety, including their personal safety; or “would interfere” with a serious investigation.⁹ The risk must be higher than just a possibility of incidents. There is always some danger in the penitentiary context.

[24] In addition, in my decision on 's SIU placement, I must consider the appropriateness of his penitentiary placement.¹⁰ The legal criteria for penitentiary placement include safety, proximity to home, language, culture, and program and service availability.¹¹

[25] I also must consider 's specific identity as ; person, and the systemic factors that have resulted in his and other persons' incarceration.¹²

5.3.2. 's July 23 interview comments

[26] said he had been offered to integrate the range, and had a friend on . He was willing to go, but then was told staff had received information he would be stabbed or was planning to stab someone else in retaliation, in unit . did not know what this would be for. He claimed a Security Intelligence Officer

⁸ CCRA, s. 33.

⁹ CCRA, s. 37.82(1); CCRR, s. 23.06(2).

¹⁰ CCRA, s. 37.82(2); CCRR, s. 23.06(2).

¹¹ CCRA, s. 28.

¹² CCRA, s. 79.1(1); CCRR, s. 23.03.

(“SIO”) asked him to provide a name regarding the information received, and if he did not give a name, he would not be permitted to go to either unit A or B.

[27] said he did not have a problem with anyone, and had no incompatibles. He said he spoke with the unit CM, who was willing to take him, although staff had initially been resistant to his return. Unit inmates, via the representative, had submitted a petition for his return. preferred to go to unit

[28] He recognized

[29] He noted in the SIU, he had not done anything violent, was walking around staff when doing his job, and had been in recreation groups the whole time.

[30] He only had months left in a sentence. He worried his institutional transfer would mean he would be waitlisted for programming again. He did not want his release plan to be flushed down the toilet. He had just started a program with , involving in-person, once-a-month meetings.

[31] Support from and trust in s | team contributed to him improving his behaviour in the SIU. He found his “case management team” supportive, noting he had a good Parole Officer (“PO”). He “finally [had] help.” He said, “I’m ” and “this is my home.” There is a “dramatic difference” in teachings between different cultures.

5.3.3. CSC information regarding integration possibilities at

[32] Regarding the possibility of going back to CSC indicated the SIO department “received information” that ’s “safety was in danger” if he were to return to No details about the received information were provided to the IEDM, despite a request specifically asking for supporting information, and CSC’s legal disclosure obligations.¹³

[33] For the May 4 conflict with officers, CSC provided “statement/observation” reports (“SORs”). They indicate the issue started because wanted a phone call in the office, as the range phone was broken. One SOR suggests he may have been in an “altered level of consciousness.” The SORs allege he made threatening and antagonizing remarks, including to stab someone and end someone’s life. He reportedly said he is local and can “get to them”. The SIO alleges “threatened

¹³ CCRA, s. 37.7.

to go to the officer's house".¹⁴ That could be inferred from the comments, as recorded in SORs. However, based on the SORs, [REDACTED] never directly referred to anyone's house.

[34] Regarding unit B, CSC's records indicate I [REDACTED] had a positive meeting with a CM regarding mediation in the first week of July.¹⁵ The SIO department was not aware of this meeting.¹⁶

[35] The unit B CM confirmed he had spoken with [REDACTED]. He recalled telling [REDACTED] he was not blocking him from returning to unit [REDACTED], and had no issue with him returning. He also confirmed there had been a petition for [REDACTED]'s return; inmates had asked several times. The issue between [REDACTED] and the victim of the Mar. 14 incident had been resolved; they had been together after the incident. He was not aware of specific staff concerns. He mentioned [REDACTED] had done better previously when he had been on a behavioural contract;

[36] Similarly, the SIO department believes [REDACTED] "struggles when he is in a large group atmosphere and is unable to navigate his behaviours." During his [REDACTED] months on unit [REDACTED] incidents were recorded for him.¹⁸ He reportedly gets involved in what is taking place around him.

[37] [REDACTED] accompanying [REDACTED] in the July 23 interview said [REDACTED] had made truly great progress in the past few months, noticed by everyone. [REDACTED] They were confused to see I [REDACTED]'s name on the flight list, and hoped to keep him at I [REDACTED]. [REDACTED] had recently been hired at [REDACTED] meaning there would be additional support resources.

5.3.4. Analysis

5.3.4.1. Potential reintegration at

[38] CSC did not provide adequate information to show there were truly irresolvable issues blocking [REDACTED] from being able to go back to [REDACTED]'s open population.

[39] While I accept he made threats, I do not find CSC demonstrated there are ongoing, specific risks for staff safety.

[40] Regarding the information received about risks for his own safety, CSC did not provide the information nor share details, so I am unable to evaluate the information,

¹⁴ CSC's response to the IEDM's request for information – response from [REDACTED], received yyyy-mm-dd

¹⁵ SIU activity log, yyyy-mm-dd (referring to the meeting having occurred the week before).

¹⁶ CSC's response to the IEDM's written request for information – response from SIO [REDACTED], yyyy-mm-dd.

¹⁷ IEDM interview with CM [REDACTED], yyyy-mm-dd.

¹⁸ CSC's response to the IEDM's written request for information – response from SIO [REDACTED], yyyy-mm-dd.

¹⁹ SOR (SIO), yyyy-mm-dd.

how much weight it should be given, and risks. shared more than CSC; I note that CSC only referred to risks for him, whereas according to his comments, he was told he was a risk for another inmate. At any rate, the risk appears to only have applied to unit , not unit 's comments suggested

which would be questionable as a practice. I do not have the SIO's account of what he was told, though.

[41] I am not convinced the Mar. 14 incident should block from returning to unit . There is reason to believe he would be able to reside on a range with the victim of the incident, who is on a unit range. CSC could confirm this through additional conflict resolution efforts. It seems the population wanted him to return.

[42] I am unable to fully investigate the numerous incidents reported for . Still, I find there is reason to believe he showed significant and varied behavioural issues while in 's open population.

[43] I note past efforts to address his behaviour through modified routines and behavioural contracts. However, CSC has not shown that the efforts to manage 's behaviour when he was in the population involved significant consultation with or involvement of Indigenous staff, or programming. It appears the last time he was offered core correctional programming was in spring 2019.²⁰

5.3.4.2. and CSC's transfer decision

[44] In a written request dated July 23, I asked CSC the following:

“Considering there are signs of his positive behavioural stabilization in the SIU, I , he has been able to have visits with his wife and children at (which he has said are important for his mental health), and he would not be able to receive visits at | why does CSC consider it would be beneficial for his progress to transfer to ?”

CSC did not answer the question.

[45] As the question implies, I had serious doubts about 's then-planned transfer, including its safety and security consequences. His CPU notes that family visits were a “critical source of support and connection for him” and there was a “dramatic” positive change in his behaviour before and after visits.²¹

[46] It is unclear why CSC considered his transfer to would help his behavioural issues.

²⁰ See: CPU, yyyy-mm-dd, p. 5.

²¹ CPU, yyyy-mm-dd, p. 10.

[47] Based on CSC's incident log, [REDACTED] has already been involved in four inmate assaults or fights since his transfer to [REDACTED] which suggests a significant behavioural decline compared to how he was doing in the [REDACTED] SIU.

[48] Section 33 of the CCRA requires SIU placements to end "as soon as possible." As mentioned in many reviews as an IEDM, I am concerned CSC's interpretation of this section of the law causes CSC to carry out inter-regional institutional transfers even in situations where analysis of all relevant factors shows it is more likely to cause harm than help. I believe this does not reflect the legislative intent for the SIU system.

[49] I also question CSC's approach to consideration of ISH factors in decision-making, which seems to focus on recounting the traumas Indigenous individuals have faced, while downplaying government responsibility for them, in copy-pasted paragraphs. A better approach could involve CSC seeking to identify ways to repair harms and to not repeat them, within the limitations of the correctional system.

[50] Apart from individual decisions, CSC needs adequate resources and structures to support [REDACTED] inmates. It appears in [REDACTED]'s case, being able to reside in a smaller prisoner population could be helpful for him.

[51] [REDACTED]'s personal history includes [REDACTED]

[52] Considering his background, I believe CSC should have made significant efforts to keep him in [REDACTED], in the [REDACTED] region, where he had received family visits, and had built trust and developed positive relationships with [REDACTED] interventions staff. CSC could have worked with him to develop a plan to support his reintegration.

6. CONCLUSIONS

[53] Under s. 37.83(1) of the CCRA, I am not issuing a decision as it is moot.

[54] Under s. 37.8 of the CCRA, I find [REDACTED] should not be in the SIU; he should have been transferred to a population at [REDACTED] with an appropriate behavioural and intervention plan in place.

Janine Lespérance
Independent External Decision-Maker

Date: August 30, [REDACTED]

ANNEX: SOURCES OF INFORMATION AND MR. E' OPPORTUNITY TO COMMENT

[55] I have considered the following sources of information from CSC:

- SIU activity log, for the period from yyyy-mm-dd
- Threat risk assessments ("TRAs"), for the period as of yyyy-mm-dd
- Interview with CM Y, yyyy-mm-dd
- Casework record log, for the period from yyyy-mm-dd to yyyy-mm-dd
- CSC's response to the IEDM's request for information (email from [REDACTED], SIO), received yyyy-mm-dd
- SIU Review Committee ("SIURC") recommendation, dated yyyy-mm-dd
- Memorandums – integration options/recreation group, dated yyyy-mm-dd and yyyy-mm-dd
- Institutional charges report, generated on yyyy-mm-dd
- Incident history log report, generated on yyyy-mm-dd
- Regional reviews, dated yyyy-mm-dd and yyyy-mm-dd
- Referral decision sheet – institutional transfer, dated yyyy-mm-dd
- Senior Deputy Commissioner ("SDC") decision, dated yyyy-mm-dd
- Correctional plan update – SIU ("CPU-SIU"), dated yyyy-mm-dd
- Assessment for decision ("A4D") – institutional transfer, dated yyyy-mm-dd
- Institutional head "30-day" SIU transfer decision, dated yyyy-mm-dd
- Statement/observation reports ("SORs"), unnumbered: (for yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd); numbered: ---, ---, ---, --- (for yyyy-mm-dd); --- (for yyyy-mm-dd); ---, ---, ---, --- (for yyyy-mm-dd); ---, ---, --- (for yyyy-mm-dd); ---, ---, ---, --- (for yyyy-mm-dd); --- (for yyyy-mm-dd); --- (for yyyy-mm-dd); --- (for yyyy-mm-dd)
- Correctional plan – updated ("CPU"), dated yyyy-mm-dd
- Institutional head "5-day" SIU transfer decision, dated yyyy-mm-dd
- Program performance report – final, dated yyyy-mm-dd
- SIU transfer confirmation, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Incident reports, dated yyyy-mm-dd and yyyy-mm-dd
- Referral decision sheet – offender security level, dated yyyy-mm-dd
- Security reclassification scale, dated yyyy-mm-dd
- A4D – institutional transfer - offender security level, dated yyyy-mm-dd
- Gladue report, dated yyyy-mm-dd
- Criminal profile report – amendment #4, dated yyyy-mm-dd
 - review – progress, dated yyyy-mm-dd
 - review – initial, dated yyyy-mm-dd

[56] I sent [REDACTED], via CSC, a summary of the information I am considering for this review on July 18. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[57] On July 22, I learned [redacted] would share his views. Video was not available at [redacted]. We spoke by telephone on July 23, for approximately one hour and 11 minutes. The call began on time. [redacted] had asked to be accompanied by staff during the interview. [redacted] participated in the call.

Inmate Name:
FPS Number: [REDACTED]
Correctional Institution: Maximum-security Institution
Date of CSC Senior Deputy Commissioner Decision: August 24, [REDACTED]
Date of the Present Decision: October 19, [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DETERMINATION UNDER SECTION 37.8 OF THE *CORRECTIONS AND
 CONDITIONAL RELEASE ACT*, S.C. 1992, c. 20**

1. INTRODUCTION

- [1] On August 24, [REDACTED], the Senior Deputy Commissioner (“SDC”) of Correctional Service Canada (“CSC”) determined, pursuant to section 37.4 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) that [REDACTED] should remain in the Structured Intervention Unit (“SIU”) at [maximum-security institution ([REDACTED]) in [REDACTED]].
- [2] As an Independent External Decision-Maker (“IEDM”), I must determine under s. 37.8 of the CCRA whether [REDACTED] should remain in the SIU. Section 37.8 determinations are to be completed 30 days after the SDC decision, which in this case is September 23, [REDACTED]. This decision is thus more than three weeks overdue. This delay will be addressed below.

2. SUMMARY

- [3] [REDACTED] does not wish to integrate a “PC” population, nor to be transferred to [maximum-security institution ([REDACTED])]. He wishes to get a medium security level and go to [medium-security institution, “ [REDACTED] ”]. There is a basis for him to remain in the SIU. A transfer to [REDACTED] appears unlikely to put an end to his SIU status. His [REDACTED] contains problematic elements, and CSC’s behavioural management plan for him was not sufficiently based on relevant cultural knowledge. He needs more opportunities to speak his language and have the support of [REDACTED].

3. INFORMATION CONSIDERED

[4] For this review, the following items are my sources of information:

- Referral decision sheet for involuntary institutional transfer, dated yyyy-mm-dd
- Memorandum: Update To A4D dated yyyy-mm-dd and addendum dated [REDACTED] dated yyyy-mm-dd
- Memorandum: SIU Review Committee (“SIURC”) recommendation, dated yyyy-mm-dd
- Email regarding [REDACTED]’s potential transfer to [REDACTED] from [REDACTED], Manager Assessment and intervention, to [REDACTED], Acting Regional Transfer Coordinator, [REDACTED], dated yyyy-mm-dd
- SIU activity log in the SIU-LTE application database, for the period as of yyyy-mm-dd
- Casework record log, for the period from yyyy-mm-dd to yyyy-mm-dd, and yyyy-mm-dd to yyyy-mm-dd
- Incident history log
- Incident reports for the period from yyyy-mm-dd to yyyy-mm-dd
- Transfer rebuttal letter by Mr. H to the warden, date unknown
- Threat risk assessments for the period from yyyy-mm-dd to yyyy-mm-dd
- Memorandum – Update To A4D dated yyyy-mm-dd and addendum dated yyyy-mm-dd, dated yyyy-mm-dd
- Memorandum – comments for transfer, dated yyyy-mm-dd
- Regionals Reviews, dated yyyy-mm-dd and yyyy-mm-dd
- Senior Deputy Commissioner Decision (“SDC decision”), dated yyyy-mm-dd
- Institutional head SIU ad hoc transfer out decision, yyyy-mm-dd
- Memorandum – interdisciplinary team meeting, yyyy-mm-dd
- Correctional plan update – SIU, dated yyyy-mm-dd
- Memorandum – response to decision under subsection 37.8 and 37.83(1) of the CCRA on inmate [REDACTED] dated yyyy-mm-dd
- Memorandum – self injury, dated yyyy-mm-dd
- Addendum to assessment for decision – involuntary institutional transfer, dated yyyy-mm-dd
- Assessment for decision – involuntary transfer, dated yyyy-mm-dd and updated yyyy-mm-dd to replace [REDACTED] with [REDACTED]
- Response to a request of consultation, dated yyyy-mm-dd
- Institutional head 30-day transfer decision, dated yyyy-mm-dd
- Institutional head 5-day transfer decision, dated yyyy-mm-dd
- SIU transfer authorization, yyyy-mm-dd
- Criminal profile report, dated yyyy-mm-dd
- Program performance report, dated yyyy-mm-dd
- Correctional plan – updated, dated yyyy-mm-dd
- [REDACTED] review – initial, dated yyyy-mm-dd

[5] I sent [redacted] via CSC, a summary of the information I am considering for this review on September 21, [redacted]. I also offered him the opportunity to provide written representations, or to speak to me in a call or meeting.

[6] On September 23, I received confirmation (signed September 22) that [redacted] wished to request a meeting and involve his lawyer, [redacted], in the process. We spoke on October 16. I took notes of the conversation and did not record the call.

4. CONTEXT

4.1. Case background

[7] [redacted] is a [redacted]-year-old [redacted] from [redacted] ([redacted]). His first language is [redacted].

[8] Since [redacted], he has been serving a [redacted] sentence for [redacted]. His criminal profile report says that he was [redacted]. He was also convicted for assault for participating in a [redacted] at [maximum-security institution [redacted]] that occurred in [redacted].

[9] The following is a basic timeline of his past penitentiary placements:

- [redacted]: penitentiary placement to [redacted] “general population” range
- [redacted]: transfer to [redacted]
- [redacted]: transfer to [redacted]
- [redacted]: transfer to [redacted] to alleviate segregation status (maximum security)
- [redacted]: transfer to [medium-security institution ([redacted])]
- [redacted]: transfer to [treatment centre, “RTC”]
- [redacted]: transfer to [redacted] (with periods in RTC)

[10] He has had three SIU placements since their implementation:

- [redacted] (24 days), after which he was transferred to RTC under Form 1 of the Mental Health Act;
- [redacted] (38 days), after which he returned to RTC; and
- [redacted] (173 days – as of Oct. 19).

[11] He has thus spent 235 days in the SIU in [redacted].

[12] [redacted] s current transfer was authorized under s. 34(1)(a) of the CCRA. The authorization cited disruptive and threatening behaviours towards staff and an altercation with another inmate. Regarding the consideration of alternatives, the transfer authorization states:

“As alternatives to the SIU several options were offered including [redacted]. He stated he is not that “type” of inmate and would not live with them. He would harm them if forced to live there. He clarified that he

was referring to sex offenders. I/M [redacted] was then offered [redacted]. He stated that these are the same type of inmates as unit [redacted] and the same result would occur if he lived there. He was also offered the reception range and it was explained to him that his CMT could discuss the options in the morning and work towards the goals of his correctional plan. He was adamant and clearly stated he was going to the SIU tonight and would get there one way or another.”

[13] The situation has not evolved significantly since then.

[14] IEDMs were sent a notification for a s. 37.83(1) decision on March 19. I terminated this review process on April 21 due to [redacted] s transfer out of the SIU, to IEDM [redacted] issued two decisions concerning him, dated May 20 (under s. 37.83(1) of the CCRA), and August 3 (under ss. 37.83(1) and 37.8 of the CCRA).

[15] He has a court date set for [redacted], for an outstanding charge for [redacted].

4.2. Lack of notification for a review of the SIU conditions of confinement

[16] I have checked IEDM notification lists, and it appears that the IEDMs did not receive any notifications from CSC for s. 37.83(1) conditions of confinement reviews after the August 3 decision, until October 16. I was assigned this notification on October 17. Based on the information in the SIU activity log, between August 3 and October 16, there were only a total of ten days on which [redacted] spent more than four hours outside of his cell. It seems that CSC should have sent the IEDMs a notification for a decision under s. 37.83(1) of the CCRA on August 8. I ask that CSC verify this situation and take measures to ensure it does not occur again.

[17] The offers and acceptances of time out of cell will be reviewed in a later decision. This issue was not fully discussed with [redacted] in the interview held on October 16 and he must be given the chance to make representations before I issue a s. 37.83(1) decision. The analysis below will, however, contain some information on activities in the SIU in the recent period.

4.3. Delay issuing this decision

[18] I was unable to complete this decision in compliance with the legislative deadline. I received the bulk of documents relevant for this decision from CSC between September 17 and 19, with further information received between September 21 to 23 and on October 16. The delay in receiving information from CSC itself arose from issues relating to the current administrative support structure for IEDMs as well as the way that IEDMs receive information from CSC. Within CSC, there is no mechanism involving a person with legal expertise (that is, with an appropriate understanding of the different types of decisions that IEDMs issue and the

information relevant to those decisions) that proactively ensures that IEDMs receive all relevant and up-to-date information for their decisions, in a timely manner.

[19] After I received [redacted]'s response to the 'request for representations' letter in the afternoon of September 23, challenges coordinating with [redacted]'s lawyer further delayed this decision. I wished to respect [redacted]'s wish to have his lawyer involved in the process.

5. LEGAL FRAMEWORK

5.1. Inmates' entitlements in the SIU

[20] CSC's obligations toward inmates held in the SIU are set out in s. 36 of the CCRA. CSC must let inmates spend at least four hours outside of their cell and two hours meaningfully interacting with others daily, through a range of different activities. There are limited exceptions. CSC must be proactive and encourage inmates to spend time out of their cell and interacting with others. The amounts of time set out in s. 36(1) are minimums.

5.2. Framework for reviews under s. 37.8 of the CCRA

[21] An IEDM review under s. 37.8 of the CCRA is to be issued 30 days after a CSC Commissioner decision under s. 37.4 of the CCRA, which itself follows by 30 days an institutional head decision under s. 37.3(1)(b) of the CCRA concluding that an inmate should remain in an SIU. Thus, s. 37.8 decisions target situations of inmates that have been in the SIU for a considerable amount of time: 90 days.

[22] For s. 37.8 decisions, there is a presumption that an inmate should be released from the SIU. S. 37.82 of the CCRA applies to such decisions. S. 37.82(1) reads as follows:

“The [IEDM] may determine under sections 37.8 and 37.81 that an inmate should remain in a structured intervention unit only if the [IEDM] believes on reasonable grounds that allowing the inmate's reintegration into the mainstream inmate population

(a) would jeopardize the safety of the inmate or any other person or the security of the penitentiary; or

(b) would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence [emphasis added].”

[23] This is consistent with s. 33 of the CCRA, which states that an inmate's confinement in an SIU should “end as soon as possible.”

[24] The standard set out in para. 37.82(1)(a) of the CCRA of believing, on reasonable grounds, that reintegration into the mainstream inmate population

“would” jeopardize safety or security, implies a standard higher than a mere possibility of incidents occurring if the inmate were to be released from the SIU. It implies a heightened probability of safety or security actually being jeopardized.

- [25] If, conversely, the standard applied were too low, there would be a basis for maintaining an inmate in the SIU in decisions under s. 37.8 of the CCRA in practically all cases of inmates initially transferred to the SIU for posing a security risk. This outcome would be at odds with the intent and provisions of the legislative scheme.
- [26] Therefore, I interpret s. 37.82(1) of the CCRA as requiring an IEDM to identify an objective, factual basis to justify that an inmate remain in an SIU.
- [27] A decision under s. 37.8 of the CCRA is a decision for which the IEDM can take into account a range of relevant factors. Among the information considered, the IEDM must take into account the inmate’s correctional plan, the appropriateness of their confinement in the penitentiary in which they are incarcerated, and the appropriateness of their security classification, in accordance with s. 37.82(2) of the CCRA. Para. 37.82(2)(d) establishes that the IEDM will take into account “any other consideration that he or she considers relevant.”
- [28] Although s. 37.8 decisions are primarily to determine whether an inmate should remain in the SIU, I consider that it is also appropriate for an IEDM to make constructive recommendations, particularly in situations when the inmate turns down integration options that CSC considers to be viable.

6. ANALYSIS

6.1. Presentation and impact of

- [29] For the present case, I am required by s. 23.03 of the *Corrections and Conditional Release Regulations*, SOR/92-620 (“CCRR”) to consider factors affecting _____, including those leading to over-representation in the criminal justice system; systemic and background factors that have led to an inmate’s involvement in the criminal justice system; and the inmate’s culture and identity, in making any decision that affects them. CSC is also required to consider these factors, as set out in s. 79.1(1) of the CCRA.
- [30] I find that the presentation of _____ in various CSC documents is flawed. CSC should ensure the proper and purposive consideration of these factors going forward.

6.1.1. Supreme Court of Canada jurisprudence

- [31] The practice of using “Gladue” reports for criminal sentencing arose from a recognition of the historical violence and ongoing systemic discrimination of

[32] ...

[33]

[34]

[35] CSC must have and present accurate information regarding . It is also important that | actually impacts recommendations and decisions.

6.1.2. CSC's consideration of

[36] CSC does not have a Gladue report for [REDACTED] confirmed that there was no Gladue report produced for his sentencing. He also mentioned that the judge in his case came from [REDACTED] and did not know him or his community.

[37] The initial and only [REDACTED] report, from [REDACTED], consists of brief, mostly “yes/no” responses to questions, and does not provide much insight, although other documents contain more detailed biographic information. It is evident [REDACTED] has experienced [REDACTED]

[38] I have concerns about the way that [REDACTED] is presented in CSC’s documents. Some statements subtly reinforce [REDACTED]

[39] [REDACTED] Amendment #2 of the criminal profile report is better, containing a paragraph on the pain caused by [REDACTED] and the experiences that contributed to his involvement in the Canadian criminal justice system.

[40] In subsequent documents, the [REDACTED] is copied, reproduced in part, or summarized in various ways, sometimes including some of the problematic excerpts reproduced above.

[41] When asked about CSC’s [REDACTED] for him on October 16, [REDACTED]. H mentioned that he had discussed it with his [REDACTED] and [REDACTED] laughed.

[42] CSC has provided me a copy of a one-page letter he wrote to the warden (date unknown, but he communicated his reasons orally to the institutional head on June 11 and on July 2), rebutting the decision to transfer him to [REDACTED]. He writes, “[...] next time if CSC wants to writ [REDACTED] at least bring interpreter.

[43] Taking note of para. 79.1(1)(c) of the CCRA in particular, I believe that CSC should give greater attention to cultural strengths, resilience, world views, and ways of communicating and resolving conflicts, in decision-making and written accounts of [REDACTED]. To do otherwise risks being counterproductive to the goals of reducing discrimination [REDACTED]. In addition, as much as possible, the [REDACTED] used for any decision-making should reflect the inmate’s perspective and the perspective of their people.

6.2. The interdisciplinary management plan

6.2.1. Development and acceptance of the plan

[44] CSC staff completed an interdisciplinary management plan (“the plan”) to:

“integrate clinical, case management and security interventions to create a clear and consistent plan to effectively manage and respond to [REDACTED] s complex needs as they relate to [REDACTED].”

One of the aspects of the plan is, “When I [REDACTED] t is best to tell him that [REDACTED].”

The plan also recognizes that providing written information to explain things to him would be beneficial.

[45] Completed by psychology resident [REDACTED], the plan was also signed by [REDACTED], Parole Officer; [REDACTED], SIU Correctional Managers; [REDACTED], Chief of Health Care; and [REDACTED], Chief of Mental Health. This initiative involving various types of CSC staff members seems highly appropriate in the circumstances. File information indicates that [REDACTED].

[46] However, in his comments on October 16, [REDACTED] was [REDACTED].

[47] I do not have expert medical information before me to assess the plan from a medical standpoint. However, it seems that, at a minimum, additional and sustained efforts need to be devoted to ensuring [REDACTED] understands the plan.

6.2.2. Lack of [REDACTED] knowledge in the plan

[48] I am concerned that the plan lacks a firm grounding in an understanding of [REDACTED]. In response to a question on whether there was any consultation with an individual with a significant understanding of [REDACTED] history and culture in the development of the plan, CSC answered “no,” specifying, however, that the [REDACTED] Program Officer who currently works with him was present.

[49] It has been recognized in the Canadian psychology community that psychological treatment is potentially harmful to [REDACTED] if not properly grounded in cultural understandings.⁴ In [REDACTED]’s case, it would have been appropriate to closely involve [REDACTED] or other person with an in-depth knowledge of his particular background, and [REDACTED]-specific approaches to [REDACTED]. This would avoid a [REDACTED] approach that lumps all [REDACTED] cultures together.

[50] I believe it would also be helpful for the plan to include expertise on language and relationships, so that staff members could have some information or a framework to assist them with inter-cultural communication and understanding.

[51] The plan should be modified accordingly. This would hopefully contribute to [REDACTED] acceptance of the plan, and in turn, to positive results.

6.3. Security level

[52] As noted above, [REDACTED] has been classified at the medium security level in the past. [REDACTED] was in medium security for almost a year when he was at [REDACTED]. He has been at the maximum-security level for just over one year now.

[53] With regard to [REDACTED]’s behaviour while in the SIU, a memorandum from September 17 (“Update To A4d dated yyyy-mm-dd and addendum dated yyyy-mm-dd”) summarizes the situation as follows, at p. 1:

“In the approximate three months since the completion of the addendum, has been involved in incidents consisting of :

[54]

[55] SIU log notes for educational program sessions state that he was working well, cooperatively and respectfully. He obtained a job as a range cleaner. He participated in social programs and the sessions on many occasions. A note in the SIU log for a discussion with him on October 2 states, “I did stress how much

[56] After August 22, the next recorded incident in CSC’s incident log was for on September 21. A note in the SIU log for that day states,

[57] There are notes indicating that there have been issues when his expectations are not met (see e.g. September 21, October 7, and October 8 in the SIU log). A log note for Oct. 8 states,

[58] There were recorded incidents on October 7, for

[59] In the hearing on October 16, I said that

[60] He mentioned that in the past, when he was in [redacted] and going to be transferred to [redacted] he was told that if he “stayed quiet” for six months, he could go back to medium security, then once there he was told something different, and in the [redacted] region, he got medium security in four months. The Sept. 17 memorandum cited above that commends him on positive improvements states that he “still has a long road a head of him in order to be considered for a medium security classification.” This statement is rather vague. His latest correctional plan update, from August 11, is more precise in that it specifies,

“He has been advised that consideration for a medium security would require at the very minimum, 6 months of stable behaviour, no incidents/charges, working collaboratively with his CMT, and demonstrating the ability to express his concerns and frustrations in an appropriate manner.”

[61] [redacted] s lawyer submitted that it would be of benefit to him to have a more specific plan, established in writing, on the expectations for him to obtain a medium security classification, so that he is not told different things depending on who is talking to him.

[62] I agree that having a more specific plan, regarding behaviour and review timelines, set out for [redacted] to obtain medium security would be helpful. I also find

that his current security level of maximum seems valid at this time based on the recent incidents. On the other hand, taking into account all factors and circumstances, a wait period of six months seems too long.

[63] In relation to security level, the Sept. 11 SIURC states that it is difficult to assess whether an inmate is ready for medium security when they are in a structured environment like the SIU. However, I have seen other cases in which the inmate's security level was decreased from maximum to medium while they were in the SIU, allowing them to integrate a population at a medium security institution.

6.4. Penitentiary placement

6.4.1. General population versus integrated population

[64] A major issue in relation to integration options for [REDACTED] is the fact that he considers himself a general population ("GP") inmate, but he is now labelled a "protective custody" ("PC") inmate due to having resided in populations considered to have this status. Regarding that situation, the SDC decision states (addressing [REDACTED]),

"You state that you are not a "PC" offender and that CSC "tricked" you when you integrated into a "PC" population as you did not know it was that type of population. As such, you state that you are a general population type offender and will not integrate any "PC" type population at any maximum security institution. Your belief is that "PC", also know as an integrated offender, is automatically a sex offender, "a rat" or someone who has something to hide. This belief is challenged on a weekly basis by your CMT however; you have not been open to alternatives."

[65] He was first transferred to a "PC" population in [REDACTED]. CSC information shows that sending him to the [REDACTED] population at [REDACTED] had been contemplated as an option. However, [REDACTED] was opposed to this at the time because he did not want to be in a "PC" unit. The March 31 assessment for decision explains:

"Failing to understand why he was not directed to the [REDACTED] population (in his mind the [REDACTED] is a protection population) and wanting to take a distance from his old crowd at [REDACTED] he opted to transfer to [REDACTED] on his lawyer's advice (environment more conducive to change). [REDACTED] is not a PC inmate per say and is now labelled based on his stay at [REDACTED] and to this day, has remained afraid of the stigmatisation associated with it. Prior to being directed at [REDACTED] he was never housed in a PC institution."

[66] I consider that transfer to have been ill advised. Given inmates' strong adherence to these categories in maximum security, it was reasonably foreseeable that transferring [REDACTED] as a "GP" inmate, to a "PC" population, would lead to integration difficulties. The assessment for decision reports that it did add to his institutional

adjustment challenges. Part of the SIO comments in the March 31 document are: “[h]is prior stay at [redacted] resulted in violent incidents almost to prove that he was not a protective status inmate [...]” Looking at CSC’s incident history log, the number of incidents went up after his transfer to [redacted].

[67] Regardless of the circumstances at that time, due to having resided at [redacted] and in Unit [redacted] and [redacted] at [redacted] it would likely be unsafe for him to transfer to a “GP” population at this time. In his comments on October 16, [redacted] largely seemed to accept that he could no longer go to a “GP” range such as [redacted] at [redacted], although he did make some comments suggesting some inmates who know who he is might accept him.

6.4.2. Potential inter-regional transfer from [redacted]

[68] CSC information indicates that at [redacted] could integrate Unit [redacted] or the [redacted] as an alternative to the SIU. CSC does not consider Unit [redacted] to be a possibility, due to past issues there, namely [redacted].

This is described in more detail in a memorandum dated March 13.

[69] [redacted] is the penitentiary that CSC intends to transfer [redacted] to, involuntarily. The September 17 memorandum explains that [redacted] accepted the case on May 29, but withdrew their support July 8, given [redacted]’s refusal to integrate, then [redacted] sent revised positive comments on August 17. They requested that a case conference occur between mental health departments before a transfer taking place. The memorandum also states, “the SIU is not intended for long term placements therefore the involuntary inter-regional transfer to [redacted] continues to be the next logical step to effectively manage his case.”

[70] Various documents state that [redacted] has said he will not integrate at any maximum-security institution. He has been very consistent in expressing his views on this issue. In fact, there are numerous notes in CSC’s casework record log since March stating that he has said that he does not want to go to [redacted], and that his potential transfer there has upset him and caused him to react problematically, including threatening to self harm. In other words, the potential transfer seems to have been an additional stressor.

[71] In his comments to the IEDM on October 16, he emphasized that he does not want to go to [redacted] that he does not want to do time with “rats” and sex offenders, he would get into trouble, and that he will sit in the SIU. He was insistent, as reiterated in a follow-up email from his lawyer, that he wishes to stay at [redacted] until he obtains a medium security classification and can go to [redacted]. He mentioned that in the past when he was in [redacted] and wanted to go back to [redacted], he was trying to [redacted].

do a conflict resolution process (in relation to a staff member there was an incident with at the) but never got a response.

[72] In light of this, I consider that it is very likely that if he is transferred to , he will end up in the SIU again. Therefore, it seems disingenuous for CSC to pursue a transfer to I as a way to end his SIU placement. If he is transferred against his wishes, this will likely cause him : 's lawyer submitted that a transfer would not change anything.

[73] The question remains as to whether a placement at would be better for him even if it leads to him returning directly to the SIU.

[74] No file information explains whether there is a difference in the mental health services at compared to . I am concerned that a transfer could have a destabilizing effect on and imply new staff having to determine his needs and understand his behavioural challenges (although some may already know him from his last stay there). A memorandum on "Mental Health Comments for Transfer," dated September 14, by Resident in Psychology states:

"Based on the last Mental Health Needs Scale completed, which is dated yyyy-mm-dd, he presents with Considerable-Moderate needs. In terms of self-injury/suicide risk, electronic file review reveals that

This note does not address whether a transfer to would be harmful or beneficial for from a mental health standpoint. It does not seem that CSC implemented IEDM 's recommendation from August 3 to "revisit 's access to mental health treatment and request a current mental health assessment." I believe there should be an assessment on the mental health implications of a transfer.

[75] At is in an institution where the primary language is English, which is the Canadian official language he prefers. At the primary language is French. In a "response to a request of consultation" note completed by , Manager Assessment Intervention at dated May 26, she warns that "may encounter problems with communication and job availability if he is unable to communicate enough in French, due to the fact that few staff members are bilingual." She adds that the English population at is "too numerous for the human resources available at our institution" and that he could be put on a waiting list. I do not have more recent information on this issue. I consider it doubtful that the linguistic capabilities of staff would have evolved significantly in the past few months.

On this language issue, I consider that [redacted] is likely more appropriate for than [redacted]

[76] CSC considers that a transfer to [redacted] would bring [redacted] closer to his home community (e.g. see the SDC decision at p. 8, CSC's written answers to IEDM follow-up questions, received Sept. 23). This is true, but there is nonetheless over [redacted] km between [redacted] and [redacted]. An essential question is whether a transfer to [redacted] would in fact make a difference for his family to be able to come to visit him. In his Oct. 16 comments to the IEDM, [redacted] said that between various CSC institutions, it would not make a difference for travel.

[77] Finally, CSC considers that a transfer to [redacted] would be better for recognizing that there is a gap in the services they can provide to him as an [redacted] at [redacted] (see addendum #1 dated yyyy-mm-dd at p. 2). In my follow-up questions, I asked about the difference in services at the two institutions. The answer provided was:

" [redacted] would be able to speak his language as the [redacted] offenders housed at [redacted]. This institution was closer to his home community and he may have been able to have visits with family. Additionally, he would have access to culturally appropriate support and services as the [redacted] Region has a contract with [redacted], an [redacted] organization in [redacted]."

[78] This response is imprecise and thus unconvincing as to the concrete difference in services between [redacted] and [redacted]

[79] In his comments on October 16, [redacted] was very critical of the level of services he has received as an [redacted] inmate at the maximum-security level, in general. He said there are [redacted] offenders at [redacted] but not staff. He said that the [redacted] at [redacted] He mentioned that [redacted] was [redacted] by someone at [redacted] -he said there were no resources for [redacted] at [redacted] and that there is more at [redacted] He said there are supports for [redacted] at [redacted]; they need [redacted] from [redacted]. Given that the proposed transfer to [redacted] is supposedly for his own good, I believe greater weight should be given to his views of the situation in the decision on whether to transfer him.

6.5. Efforts to accommodate [redacted] s needs as an [redacted]

[80] It bears emphasizing that [redacted] is incarcerated over [redacted] kilometres from his community, in a foreign culture, where no one speaks his language. There are apparently no other [redacted] at [redacted]. From [redacted]'s comments on October 16, it was clear that family and cultural connection, and the chance to speak his language are important to him. I

He expressed his desire for interactions with [REDACTED] from [REDACTED] and spoke of the importance of his [REDACTED] to him.

[81] There is indication that CSC is making efforts to respond to his particular needs as an [REDACTED]. For example, a note in the SIU log for June 29 states that he was provided a book called [REDACTED] and was very interested in it. A note for September 23 states that staff met with him and “asked him to draft up a list of cultural items that he would be interested in having access to.” It also notes:

“We touched base on culture items that he requested. We will make arrangements to procure what is available. He is interested in magazine subscription from back home, books, sewing items to complete [REDACTED]. We also asked him if having access to a [REDACTED] would be good. He would very much like to have access to [REDACTED]. I updated on status of [REDACTED] food and [REDACTED]. Currently there is some difficulty with [REDACTED] food. I asked if he would like [REDACTED] and he said yes. We will look at ordering this also.”

[82] In the August 24 decision, the SDC mentions [REDACTED] being delivered to him by [REDACTED] project officer and [REDACTED]. It appears he receives [REDACTED] foods once a month and there are efforts to provide it more often.

[83] The SDC also states, [REDACTED] report they are exploring options for you to connect with an [REDACTED] Elder to help guide and support you.” The SIURC memorandum preceding that SDC decision says, “we are working closely with our regional partners in order to provide the offender with contacts to participate via phone or video conference if the need be”; and “[...] we are making every effort to have the offender talk with [REDACTED]’s from his specific culture whether by telephone or video conference as well as finding materials in his language to offer him.”

[84] The earlier Institutional Head “30-day” decision of May 20, as part of a list of strategies employed by [REDACTED]’s case management team, states,

“We are continuing to explore contact for [REDACTED] with [REDACTED] who speak his language. It is believed that this would facilitate [REDACTED]’s understanding of his current situation in regard to security status, etc. We are also exploring the possibility of peer support from another [REDACTED] offender.”

[85] In fact, this text reproduces earlier comments from the March 31 assessment for [REDACTED] decision. The same document also notes, “There may be some difficulty for [REDACTED] in fully understanding what he’s being told verbally due to English not being his first language and being provided with too much information too fast.”

[86] In my written questions sent to CSC on September 21, I asked for “more detailed information” about the efforts to engage [REDACTED]. The complete response to this question was:

“In August ██████ contacted ██████ and ██████ counterparts in ██████ and ██████ Regions to discuss this case including the possibility of ██████ in Quebec providing support via telephone or videoconference. Transfer to [medium-security institution, “ ██████ was pursued.”

[87] This answer is unsatisfactory. There is a minimal level of detail provided, with no supporting documentation. It suggests that there have not been efforts in over a year. Other answers explained that ██████ had the opportunity to meet with the two ██████ that CSC has contracts with the ██████ region, when he was at ██████ (I assume this refers to when he was at ██████), and ██████. Neither of these speaks his dialect and communication was reportedly “challenging.” Apparently, he refused to meet with one of ██████ while in ██████. I do not know how many times he had the opportunity to speak with these ██████ nor whether his refusal of such an opportunity occurred more than once. Apparently, both have been dealing with health challenges that have affected their availability.

[88] It would be beneficial to connect ██████ with ██████ from ██████ who he could communicate with fluidly. Ideally, he would have regular access to culturally-grounded counselling.

[89] In addition, it could also be appropriate to employ the services of a translator on some occasions, particular in sensitive discussions regarding his placement and mental health. CSC official documents refer to efforts with respect to ██████, but do not mention translators. In a written response to my question on the issue, CSC’s answer was simply “Attempts to engage a translator who spoke the same dialect as ██████ were not successful.” The extent of the efforts is unknown to me. CSC did not provide any evidence as to the attempts made or why efforts were not successful.

[90] In his comments on October 16, ██████ alleged that he has no ██████ programs. He has participated in the ██████. In the September 2019 program manual, ██████ of 410 pages are specifically targeted towards ██████ inmates. The program has a ██████ approach and a general applicability. One recent note on a program session from the SIU log that I find relevant to the issue at hand is for Sept. 29. It states,

In relation, it is positive that ██████ s ██████ was approved as a visitor.

[91] While many of the ██████ modules could be useful for ██████, they are not particularly grounded in ██████ teachings.

7. CONCLUSION

[92] There is a factual basis, in accordance with the criteria set out in the CCRA, for maintaining ██████████ in the SIU at this time.

██████████. A forced transfer out of the SIU into a “PC” population or institution would likely

██████████. It seems premature for him to be transferred to a medium-security institution.

[93] I consider that his transfer to ██████████, an institution considered “PC,” about three years ago, despite him having a “GP” profile, has exacerbated his institutional adjustment challenges since then and contributed to the prolongation of his current stay in the SIU. Likewise, I find that the insufficiency of language and cultural supports for him have probably prolonged his time in the SIU. With respect to the latter, several CSC documents refer to “efforts” made since at least March. CSC has not shared specific explanations to show what the efforts have been and why these apparent efforts have not yielded results. With regard to the potential transfer to ██████████, CSC has not clearly established why this would have positive consequences for ██████████. This possibility seems to have

[94] In addition to the above observations, I make the following recommendations for CSC’s consideration, some of which echo those made in the last IEDM decision of August 3:

- Ensure that CSC documents, including those for decisions, do not reproduce discriminatory stereotypes about ██████████ in ██████████ sections;
- Ensure that cultural knowledge and expertise is integrated into mental health treatment and the behavioural management plan for ██████████;
- Work with ██████████ to identify an appropriate ██████████ from his culture that could support him while incarcerated, even if through telephone or videoconference; this may be a family member;
- Take steps to remove any practical barriers that impede communication, in his dialect, between ██████████ and his community supports, including relating to cost, poor Internet connection, difficulties with CSC forms, etc.;
- Develop, with ██████████, a specific plan of expectations for him to obtain a medium security classification;
- Consider the impact of a transfer to ██████████ or any other institution, on ██████████ from a mental health perspective, and factor this into the decision-making

rationale, rather than simply asking whether there is an acute condition that prevents a transfer.

Janine Lespérance
Independent External Decision-Maker

Date: October 19, [REDACTED]

Name:
FPS Number: [REDACTED]
Correctional Institution: [REDACTED] Institution
Date of Notification: April 10, [REDACTED]
Date of Decision: June 2, [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1) OF THE
 CORRECTIONS AND CONDITIONAL RELEASE ACT,
 S.C. 1992, C.20**

SUMMARY

[REDACTED] was initially in the [REDACTED] unit, then was transferred to the [REDACTED] Institution SIU. The quantity of time-out-of-cell opportunities was low on several days without explanation. A public service strike affected opportunities some days. CSC's SIU activity log likely exaggerates time-out-of-cell, and the number of offers and refusals for yard. Inmates have to ask to go to yard. There was a delay to approve [REDACTED] for a recreation group. He spent more than four hours out of his cell several days, mostly for recreation. He also worked as a server and participated in MM-SIU and behavioural counselling sessions.

He received medical attention but did not receive [REDACTED]. CSC should address that issue and SIU activity coordination. Under s. 37.83(1) of the CCRA, I cannot conclude CSC took all reasonable steps to provide [REDACTED] opportunities to leave his cell and interact with others in the SIU.

I. INTRODUCTION

[1] On Apr. 10, [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning [REDACTED] was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at Millhaven Institution ("MI") in Ontario. He had previously been in the [REDACTED] at [REDACTED].

[2] An IEDM must determine if CSC has taken all reasonable steps to ensure I spends time out of his cell and has social interaction.

II. LEGAL FRAMEWORK

1. CSC's legal obligations toward inmates in the SIU

[3] Section 36 of the CCRA describes CSC's obligations towards inmates in the SIU. It states:

"Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a [SIU]

(a) an opportunity to spend a minimum of four hours outside the inmate's cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a)."

[4] The CCRA also specifies that s. 36(1) does not apply "if the inmate refuses to avail themselves of the opportunity [...]."¹ The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 ("CCRR") set out other limited exceptions, including an inmate's refusal to comply with security-related instructions at the time of the offer,² and certain specific contextual circumstances, including epidemics.³

¹ CCRA, at para. 37(1)(a).

² CCRA, at para. 37(1)(b).

³ CCRR, at para. 19(1)(b).

[5] The current decision focuses on SIU conditions of confinement. Ss. 37.83(1) and (2) of the CCRA state:

“Decision — reasonable steps

37.83 (1) If, for five consecutive days or for a total of 15 days during any 30-day period, an inmate confined in a [SIU] has not spent a minimum of four hours a day outside the inmate’s cell or has not interacted, for a minimum of two hours a day, with others, an [IEDM] shall, as soon as practicable, determine whether [CSC] has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1) and to encourage the inmate to avail themselves of those opportunities.

Recommendations

(2) If the [IEDM] determines that [CSC] has not taken all reasonable steps, he or she may make any recommendation to [CSC] that he or she considers appropriate to remedy the situation. [emphasis added]”

[6] Considering s. 37.83, CSC must be proactive and seek alternatives to ensure that an inmate spends time out of their SIU cell and has meaningful social interaction. More, the SIU’s purpose includes allowing an inmate to participate in programs and access services.⁴ CSC must make “every reasonable effort” to ensure physical barriers do not impede interactions.⁵

[7] Many factors may explain why an inmate does not spend time out of their cell and the “4/2” thresholds are not met. The IEDM must analyze the facts and circumstances of each situation to determine whether CSC took enough steps.

[8] The legal obligations, and IEDMs’ conclusions, apply to CSC as a whole, not a specific institution or individual staff member.

2. The period to be taken into account for IEDM determinations under s. 37.83

[9] The CCRA does not specify the period of SIU activities the IEDM should consider for a decision under s. 37.83 of the CCRA.

[10] Only looking at the five days that triggered the review would leave a period without oversight, especially when many days have passed before the IEDM can issue their decision.

[11] It is appropriate to consider SIU activities beyond the five-day period that triggered the review. The IEDM will have a better understanding of what has

⁴ CCRA, at s. 32(1).

⁵ CCRA, at s. 32(2).

happened. The IEDM's conclusion will have a more solid foundation. They will be able to make more appropriate recommendations.

III. SOURCES OF INFORMATION

[12] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of yyyy-mm-dd
- Threat risk assessment ("TRA"), dated yyyy-mm-dd
- Casework record log, from the period from yyyy-mm-dd to yyyy-mm-dd
- OHIS-EMR medical information, including encounter notes, for the period from yyyy-mm-dd to yyyy-mm-dd
- Mental health checklist, dated yyyy-mm-dd
- Referrals for health services, dated yyyy-mm-dd and yyyy-mm-dd, and yyyy-mm-dd
- Incident reports, dated yyyy-mm-dd (X2), yyyy-mm-dd (X2), yyyy-mm-dd, and yyyy-mm-dd
- Mental health forms – SIU "28-day", dated yyyy-mm-dd and yyyy-mm-dd
- Mental health forms – SIU "14-day", dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Treatment agreement for medications with high potential for misuse, dated yyyy-mm-dd
- Correctional plan – updated ("CPU"), dated yyyy-mm-dd
- Health status at discharge: gist report, dated yyyy-mm-dd
- Regional review, dated yyyy-mm-dd
- Mental health clinical notes, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Assessment for decision – institutional transfer, dated yyyy-mm-dd
- SIU correctional plans updates ("CPU-SIU"), dated yyyy-mm-dd and yyyy-mm-dd
- Memorandum – correctional interventions board ("CIB"), dated yyyy-mm-dd 01
- Institutional head "30-day" SIU transfer decision, dated yyyy-mm-dd
- Memorandum – upcoming 28 day assessment, dated yyyy-mm-dd
- Inmate requests, dated yyyy-mm-dd and yyyy-mm-dd
- Mental health form – SIU "1st-day", dated yyyy-mm-dd
- Institutional head "5-day" SIU transfer decision, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Assessment for decision – security level and institutional transfer, dated yyyy-mm-dd
- Criminal profile report – original, dated yyyy-mm-dd

[13] I sent _____ via CSC, a summary of the information I am considering for this review on May 26. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[14] On May 29, I learned _____ would share his views. The interview was planned for May 30 at 2PM.

[15] On May 30, I was told around 1PM that a security situation was delaying movement. I was next told [REDACTED] refused the interview. However, I was later told there was a miscommunication, and [REDACTED] still wanted to provide comments. CSC's SIU activity log shows [REDACTED] was at a program session from 1:30 to 2:45PM; and that he went to it prepared for the IEDM interview.⁶ Another overlapping log entry, for 2PM states, "Correctional Officer advised staff that [REDACTED] did not want to attend scheduled IEDM meeting."⁷ Based on the information I have, it appears an officer incorrectly said I [REDACTED] refused the interview.

[16] We spoke by videoconference on May 31, for approximately one hour and fifteen minutes. [REDACTED] confirmed he had been waiting for the interview the day before.

[17] I urge MI to address coordination and communication issues that affect IEDM interviews.

IV. CONTEXT

[18] [REDACTED] is a [REDACTED]-year old [REDACTED] man. He grew up in the [REDACTED] area and his family lives in [REDACTED]. File information suggests I [REDACTED]

[19] Since Jan. [REDACTED], he has been serving a [REDACTED] sentence for which his statutory release date is [REDACTED]. It is his [REDACTED] time being incarcerated. He has a maximum security classification.

[20] He is waitlisted for [REDACTED] program and was enrolled in the [REDACTED] before his transfer to the I [REDACTED]

[21] His transfer to the SIU was authorized Mar. 30, [REDACTED], under para. 34(1)(b) of the CCRA, at CBI. According to the authorization, there had been "unrest" and it was felt that [REDACTED]'s continued presence in the population would interfere with an investigation into [REDACTED]. The SIU transfer was approved in the "5-day" Warden decision of Apr. 5, and the "30-day" decision of Apr. 28.

[22] This is [REDACTED]'s third SIU transfer.

⁶ Correctional programs entry, SIU activity log, yyyy-mm-dd.

⁷ Professional visit entry, SIU activity log, vvvv-mm-dd.

⁸ |

I

⁹ See: CPU, yyyy-mm-dd, at pp. 8, 15.

V. ANALYSIS

1. Period reviewed

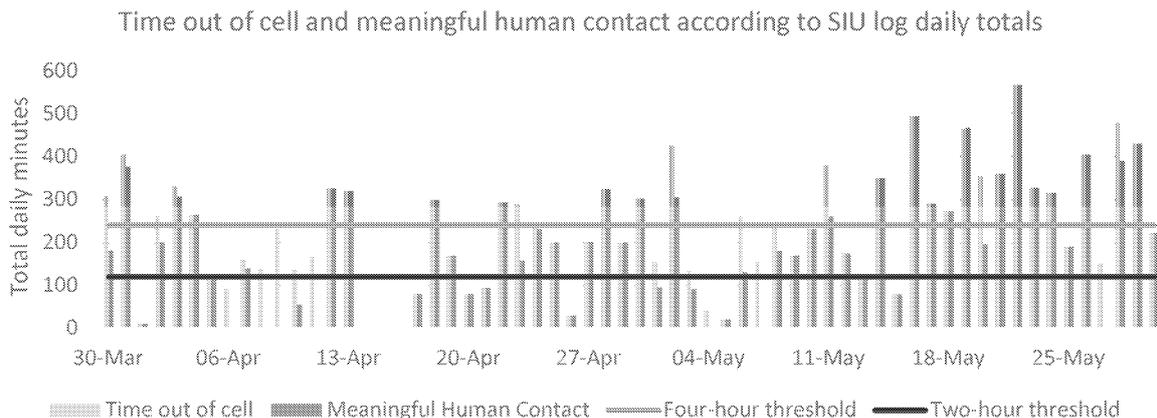
[23] The analysis below relies on information from CSC’s SIU activity log (“the log”), for the period from Mar. 30, the date of [redacted]’s transfer to the SIU, to May 30. This is a period of 62 days. This includes both days when he was in the [redacted] at [redacted] (Mar. 30 to Apr. 5) and in the SIU at MI (Apr. 6 to May 30). I consider it appropriate to review the period as of [redacted]’s transfer to the [redacted], rather than only the five days that triggered the review.

2. Daily time out of cell and meaningful human contact

[24] According to the log, [redacted] spent four hours or more out of his cell on 28 days during the period reviewed (about 45% of all days). He had two hours or more of social interaction on 42 days (about 68% of all days).

[25] The average for time out of cell was about four hours and 39 minutes daily. The average for interaction was about four hours and 3 minutes.

[26] As shown by the graphic below, there was a notable increase in the daily totals in the second part of the period reviewed.



[27] [redacted] said there are days when he spends over five hours outside his cell, and there are other days when he does not spend that much time out. [redacted] said he was “shocked” when he received a copy of the SIU activity log for this review; as it is “filled with lies.”¹⁰ Generally, he said the time out of cell seems exaggerated. Referring to May 22 in particular, he said inmates are never out from 6-7PM, so the entries for that day are incorrect. He said he probably did go to all of the activities listed for that day, but the log exaggerates the times. On other hand, he said the

¹⁰ IEDM interview with [redacted] yyyy-mm-dd.

entries for May 29 seem fairly accurate. He also mentioned he had a family visit one day, which was not recorded in the log.¹¹

[28] I find it likely that [redacted] has spent more than four hours outside his cell and interacting with others on several days lately. However, I also find it likely that the daily totals in the log are exaggerated on many days; the actual totals are likely lower than they appear in the graphic above, although there is the one day when the visit was not included. In several past reviews, I have raised concerns about the accuracy of the log for MI's SIU.

3. Quantity and timing of daily offers

[29] The log shows the number of offers has varied from day to day. It shows that on many days, [redacted] had five or more opportunities to get out of his cell. However, opportunities were low some days.

[30] [redacted] said while he was at [redacted] in the [redacted] he got range time daily, but he did not get to go to the yard every day.

[31] The log shows that while at [redacted] he did not have any opportunity for in-person meaningful human contact; the recorded interaction time shown in the graphic above was for his use of the telephone. It seems unlikely he used the phone as long as the log indicates. While there are two entries for social programs for his time in the [redacted] it appears these were simply occasions when the Social Programs Officer ("SPO") provided him things to pass the time in his cell [redacted].

[32] On Apr. 1, the visit of the SPO was the only recorded opportunity for time out of cell. On Apr. 5, [redacted] only had the chance to use the phone in the morning. He was transferred to MI that day. [redacted] I do not have information showing [redacted] had the chance to get out of his cell once at MI on Apr. 5.

[33] After [redacted] s transfer to MI, there were days on which the quantity of opportunities was low, according to the log. I consider the opportunities were the bare minimum to meet the "4+2" thresholds on the following days:

- Apr. 8 (an 8:30AM behavioural counselling session and a brief staff interaction were the only interaction opportunities),
- Apr. 10 (a behavioural counselling session, conflicting with range time, was his only interaction opportunity),
- Apr. 11 (an 8:30AM social programs session was the only interaction opportunity, apart from a visit from the Chaplain to give him a pamphlet),
- Apr. 15 (only two yard opportunities),
- Apr. 16 (only two yard opportunities), and

¹¹ IEDM interview with [redacted] yyyy-mm-dd.

- May 27 (yard at 7:15AM; and overlapping opportunities for recreation, on his own, at 7PM and 7:30PM).

In addition, the opportunities were below the minimum thresholds on Apr. 21 (overlapping recreation offers at 7PM and 7:10PM only).

- [34] It is difficult to determine what the opportunities actually were on several days. Log notes indicate that staff are actually “offering” recreation time, and that and other inmates, “refused”, “was not interested”, or “preferred to stay inside”. Explanatory notes are generic and often copy-pasted multiple times.
- [35] said yard time is never actually offered. disputed a log note referring to all inmates being offered yard during breakfast, and all of them refusing. He said inmates have never been asked to go out in the morning. “It’s me asking.” said sometimes when he asks, he is not able to go out to yard.
- [36] Many inmates have said the same thing as about this issue, over a long period of time. I have reason to believe the log is unreliable and dishonest in the way it reports access to recreation, and thus opportunities for time out of cell.

4. Structural or contextual factors affecting activities

- [37] I presume a public service strike affected opportunities for from Apr. 19 to May 1. CSC’s records indicate the strike affected activities on Apr. 21, 25, 26, and 27 in particular.¹² It was noted that there were staff absences due to the strike, particularly for interventions staff. Medical records also show daily medical checks were done with the door closed due to a lack of staff during that time. Beyond that, I did not receive detailed information from CSC about the strike and its impacts on operations.
- [38] The CCRA establishes an exception for work refusals due to danger, under s. 128 of the *Canada Labour Code*, but there is no exception for strikes. Consequently, CSC should still meet its obligation to provide four hours out of cell and two hours of meaningful human contact to SIU inmates.
- [39] Otherwise, various incidents affected offers on Apr. 16,¹³ and on May 7, operations were affected for the afternoon by routine searches and an incident.

5. Types of opportunities for

- [40] had the following types of opportunities:
- Recreation: range time, common room, and outdoor yard

¹² End of day notes, SIU activity log.

¹³ End of day note, SIU activity log, yyyy-mm-dd.

- staff interactions (a couple of meetings with his Parole Officer (“PO”) in particular)
- correctional programs
- social programs
- behavioural counselling sessions
- religious support from the Chaplain (two “check-ins”)
- work as a server
- periodic mental health evaluations and other medical appointments (including with a psychiatrist)
- a visit from family member
- personal phone calls

[41] Recreation offers were the most frequent type of opportunity.

5.1. Programs and interventions

[42] Program opportunities were somewhat regular, except for during the strike, but were not very frequent. had the opportunity to participate in a program on 25 days (40% of all days), sometimes more than once per day.

[43] did not raise concerns about the accuracy of log entries for programs.

[44] Outside of programs, staff have rarely met with , according to records. He said he has likely had two or three meetings with his PO.

5.2. Work

[45] has had a job since Apr. 28, according to the log. The log also shows he did not go out to serve from May 4 to May 15.

[46] said there are some mornings they are not let out to work. Sometimes he is out fifteen minutes, sometimes it is 30 to 45 minutes.

[47] The reason why there was a gap when did not work is unknown to me.

5.3. Access to outside supports

[48] said he was able to have an in-person visit with his mother. He could not remember what day. There is no log entry for this visit.

[49] He said there was only one phone to be shared between inmates on the range. also mentioned

According to him, at the time of the interview, CSC had replaced

[50] It is a positive factor that had in-person interaction with a family member during his SIU stay.

[51] CSC should ensure phone replacement is prioritized, if this has not already been done. Phone access does not replace in-person interaction. However, phone calls are often very important for inmates in the SIU to reduce feelings of isolation.

6. Interactions with other inmates

[52] In the [REDACTED] did not have the chance to interact with other inmates during his time out of cell. It seems this is because he was alone there.

[53] After his transfer to MI, a log note indicates [REDACTED] specifically requested a recreation group on April 8 but was told to wait until the Security Intelligence Officer (“SIO”) returned on Tuesday (Apr. 11) for it to be approved. It appears the group was approved around Apr. 12, which is seven days after [REDACTED] arrived at MI.

[54] [REDACTED] said he is “lucky” to be in a group, as those without groups spend very little time out of their cell.¹⁴ [REDACTED] expressed his concerns about other SIU inmates who do not have groups.

[55] Having a recreation group in the SIU is often the key factor that makes the difference between a person being in solitary confinement conditions or not. If the staff member who usually approves groups is away, which can be expected sometimes, the role of approving groups should be delegated to someone else. This is especially important in a period like the one reviewed, when there was already a strain on interventions staff due to the strike.

7. [REDACTED] s participation and efforts to encourage him

[56] Most of the time [REDACTED] spent out of his cell was for recreation time; he took recreation time almost every day. His server job also contributed to his time out of cell.

[57] In light of the issues discussed above, I believe the log exaggerates the hours of time out of cell [REDACTED] refused (“not availed”) for recreation daily. If staff are not actively offering yard time, it is difficult to conclude they are encouraging inmates to participate in recreation. In addition, [REDACTED] recalled an occasion when he asked to go out and an officer tried to dissuade him, saying it was not really that nice outside. While I am unable to verify this claim, it suggests staff attempted to discourage, not encourage, him on that occasion.

[58] [REDACTED] s participation in programs was inconsistent: according to the log, he accepted 5/10 offers for the [REDACTED], 4/8 for behavioural counselling, and 1/18 for social programs. Log notes suggest [REDACTED] participated well and respectfully when he did go out. His participation for the [REDACTED] and behavioural counselling improved more recently.

¹⁴ IEDM interview with [REDACTED] yyyy-mm-dd.

[59] The log shows program staff made efforts to encourage him verbally or otherwise provide support to him. [REDACTED] has confirmed programs officers made offers directly. This approach likely encourages participation. On the other hand, it does not appear other SIU staff made efforts to discuss issues with him.

[60]

[REDACTED] He turned down only two afternoon offers for these types of programs;

[61] There were also a few times when he wanted to go to recreation rather than spend time in programs.

[62] When asked about his participation in my interview with him, [REDACTED] said he did not participate at first because he was not familiar with SIU operations and thought he would only be there for a short time. He also said he turns down social programs because they are often offered on the same day as sessions with the Correctional Programs Officer (“CPO”) or Behavioural Counsellor. The latter are more important to him due to their relevance to his correctional plan, so he chooses to participate in those types of sessions.¹⁹

[63] The log shows that there were a number of days when [REDACTED] had more than one program session. There were social programs on the same day as another type of program on five different days. On Apr. 12, social programs and correctional programs were both offered at 8:30AM, and he had another social programs opportunity in the afternoon. On May 2, he told an SPO that he would rather work with the behavioural counsellor.²⁰ Offering more than one type of program in a day can be a positive factor, but not if they are for an overlapping time slot, or program offers are concentrated on some days only. Improving activity coordination would likely encourage his participation.

8. Mental health needs and support

[64]

¹⁵ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁶ Skills development entry, SIU activity log, yyyy-mm-dd.

¹⁷ Skills development entry, SIU activity log, yyyy-mm-dd.

¹⁸ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁹ IEDM interview with [REDACTED] yyyy-mm-dd.

²⁰ Social programs entry, SIU activity log, yyyy-mm-dd.

[65] Regarding support for his needs in the SIU, he said he has not been given :

[66] CSC records show he put in requests for _____ on Apr. 14 and 17. He also requested _____ on Apr. 17. It was recognized he would benefit from _____ on Apr. 5; _____ was approved on Apr. 19. CSC's response (staff member name not clear) to his Apr. 17 request states, "You received _____ today, May 9, as per SIS. If you did not receive one, please follow up with SIS as you are approved. A referral was submitted to occupational Therapy regarding _____ assessment."

[67] The May 9 response seems inadequate; it appears there was no verification as to whether _____ actually did receive _____ or not.

[68] Otherwise, records show _____ saw the psychiatrist for the 28-day assessment on Apr. 18, and in a follow-up appointment May 16; _____ ; medications were discussed. A planned appointment May 9 did not happen due to unspecified "operational issues."²² Another follow-up appointment is planned.

[69] _____ did not receive regular mental health counselling. A nurse asked him on May 18 if he wanted a referral to mental health services for psychotherapy for _____ and _____, and he reportedly responded that he would "think about it."²³ It appears there was no further discussion about that kind of support after that, including when he participated in the "14-day" assessment on May 25.

[70] While it is difficult for IEDMs to make determinations about health treatment without the benefit of an independent expert opinion, it appears the mental health treatment for _____ was adequate and there were regular follow-ups regarding his health needs. However, the delay for providing _____, which seems to have had a significant impact on _____'s well-being in the SIU, does not seem reasonable.

9. May 27 incident and security measures

[71] Apart from inaccurate log entries, _____ is concerned about the "fabrication" of incident reports. He spoke in particular about May 27. He said he was speaking to a

²¹ IEDM interview with _____ yyyy-mm-dd.

²² Medical encounter notes, yyyy-mm-dd.

²³ Medical encounter notes, yyyy-mm-dd.

nurse when a guard asked him to go back to his cell. He said he told the guard he could not block him from health care. He said he “never threatened staff” and that normally if there are staff threats, an inmate is put on cuff status immediately, and he was not put on cuff status. He was removed from his group one night only, for which a staff member apologized to him the next day, saying they were not supposed to do so.

[72] CSC’s incident report alleges

[73] The incident report is detailed, and is largely consistent with medical records, although the latter do not mention [redacted]. I find [redacted] likely did yell angrily on that occasion. While removing [redacted] from his group does not appear to be an appropriate response to this situation, I note he was allowed back in his group quickly.

[74] It does not seem there was a use of additional security measures during the period reviewed; secure rooms with barriers were not used for meetings with [redacted] according to the log.

[75] After the May 27 encounter, the nurse noted [redacted] was requesting

[redacted] According to the encounter note, she followed up regarding the noted medical issues and requests.

10. Other issues: in-cell activities and amenities in the SIU

[76] In my interview with [redacted] he said he has not been given any of his property, has asked multiple times, and has been “sloughed off.” He did acknowledge he has been loaned a TV and has a couple of books in his cell. He mentioned that grievance and request forms often go missing, or staff don’t bring needed forms.

[77] I do not have information from CSC about [redacted]’s personal effects. CSC should seek to avoid delays for access to personal property following transfers, which can contribute to well-being in the SIU.

VI. CONCLUSION AND RECOMMENDATIONS

[78] For the reasons above, I am unable to conclude under s. 37.83(1) of the CCRA that CSC took all reasonable steps to provide [redacted] adequate time out of his cell and meaningful human contact, and to encourage him to take advantage of opportunities.

²⁴ Incident report, yyyy-mm-dd.

²⁵ Medical encounter note, yyyy-mm-dd.

[79] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- Provide more opportunities for in-person interaction in the (
- Ensure there is no delay for access to activities following an inmate's transfer to the SIU;
- Ensure staff regularly offer access to outdoor recreation in the and the MI SIU;
- Ensure has been provided the medical mattress he is approved for;
- Focus program offers to on MM-SIU and behavioural counselling sessions, especially in the afternoon;
- Coordinate activities so that program offers are spread out on different days rather than concentrated on the same day; and
- Take measures to avoid any delay in the approval of recreation groups, including by appointing someone who can do so when the SIO is unavailable.

[80] In addition, I believe CSC should take significant steps to ensure the log consistently and accurately reports all MI SIU activities.

Janine Lespérance
Independent External Decision-Maker

Date: June 2, [REDACTED]

Name:
FPS Number: ██████████
Correctional Institution: Millhaven
Date of Notification: January 21, ██████████
Date of Decision: March 26, ██████████
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1) OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, C.20**

SUMMARY

██████████ has been very isolated in the SIU. He had an inmate group for part of the period reviewed. CSC did not show efforts to place him in a group earlier or encourage him to join a group. He did not have the chance to interact with anyone on some days. He took almost all opportunities for range time. He did not have the chance to have range time some days. He turned down behavioural counselling and the SIU motivational module. He showed some interest in school, but he only had four chances to participate, in over two months. He participated in ' ' cultural support and activities, but these types of offers were not regular. Several incidents and contextual factors, including the number of inmates in the SIU, affected opportunities for ██████████. However, they do not justify the shortcomings in this case. Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps to provide ██████████ opportunities to leave his cell and interact with others in the SIU and encourage his participation.

I. INTRODUCTION

- [1] On Jan. 21, ██████████, Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning ██████████ was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at Millhaven Institution ("MI") in Ontario.
- [2] An IEDM must determine if CSC has taken all reasonable steps to ensure I ██████████ spends time out of his cell and has social interaction.

II. LEGAL FRAMEWORK

1. CSC's legal obligations toward inmates in the SIU

[3] Section 36 of the CCRA describes CSC's obligations towards inmates in the SIU. It states:

"Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a [SIU]

(a) an opportunity to spend a minimum of four hours outside the inmate's cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a)."

[4] The CCRA also specifies that s. 36(1) does not apply "if the inmate refuses to avail themselves of the opportunity [...]."¹ The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 ("CCRR") set out other limited exceptions, including an inmate's refusal to comply with security-related instructions at the time of the offer,² and certain specific contextual circumstances, including epidemics.³

[5] The current decision focuses on SIU conditions of confinement. Ss. 37.83(1) and (2) of the CCRA state:

"Decision — reasonable steps

¹ CCRA, at para. 37(1)(a).

² CCRA, at para. 37(1)(b).

³ CCRR, at para. 19(1)(b).

37.83 (1) If, for five consecutive days or for a total of 15 days during any 30-day period, an inmate confined in a [SIU] has not spent a minimum of four hours a day outside the inmate's cell or has not interacted, for a minimum of two hours a day, with others, an [IEDM] shall, as soon as practicable, determine whether [CSC] has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1) and to encourage the inmate to avail themselves of those opportunities.

Recommendations

(2) If the [IEDM] determines that [CSC] has not taken all reasonable steps, he or she may make any recommendation to [CSC] that he or she considers appropriate to remedy the situation. [emphasis added]"

[6] Considering s. 37.83, CSC must be proactive and seek alternatives to ensure that an inmate spends time out of their SIU cell and has meaningful social interaction. More, the SIU's purpose includes allowing an inmate to participate in programs and access services.⁴ CSC must make "every reasonable effort" to ensure physical barriers do not impede interactions.⁵

[7] Many factors may explain why an inmate does not spend time out of their cell and the "4/2" thresholds are not met. The IEDM must analyze the facts and circumstances of each situation to determine whether CSC took enough steps.

[8] The legal obligations, and IEDMs' conclusions, apply to CSC as a whole, not a specific institution or individual staff member.

2. The period to be taken into account for IEDM determinations under s. 37.83

[9] The CCRA does not specify the period of SIU activities the IEDM should consider for a decision under s. 37.83 of the CCRA.

[10] Only looking at the five days that triggered the review would leave a period without oversight, especially when many days have passed before the IEDM can issue their decision.

[11] It is appropriate to consider SIU activities beyond the five-day period that triggered the review. The IEDM will have a better understanding of what has happened. The IEDM's conclusion will have a more solid foundation. They will be able to make more appropriate recommendations.

⁴ CCRA, at s. 32(1).

⁵ CCRA, at s. 32(2).

III. SOURCES OF INFORMATION

[12] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of yyyy-mm-dd
- Casework record log, for the period as of yyyy-mm-dd to yyyy-mm-dd
- Threat risk assessments (“TRAs”), for the period as of yyyy-mm-dd
- OHIS-EMR Medical information (including encounter notes), generated yyyy-mm-dd
- Health status at discharge: GIST report, dated yyyy-mm-dd
- Mental health forms – SIU 14-day, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Modified watch observation form, dated yyyy-mm-dd
- Mental health triage and assessment reports, dated yyyy-mm-dd
- Mental health clinical notes, dated yyyy-mm-dd, yyyy-mm-dd
- Referral for health services, entered/received yyyy-mm-dd
- Incident report, dated yyyy-mm-dd
- Regional review, dated yyyy-mm-dd
- Correctional plan – SIU, dated yyyy-mm-dd and yyyy-mm-dd
- Institutional head “30-day” SIU transfer decision, dated yyyy-mm-dd
- Mental health form – SIU 28-day, dated yyyy-mm-dd
- Memorandum – correctional interventions board(CIB), dated yyyy-mm-dd
- Memorandums – operational disruptions, dated yyyy-mm-dd (X2)
- Assessment for decision – institutional transfer, dated yyyy-mm-dd
- Institutional head “5-day” SIU transfer decision, dated yyyy-mm-dd
- Correctional plan – updated (“CPU”), dated yyyy-mm-dd
- Mental health form – SIU first day, dated yyyy-mm-dd SIU transfer authorization, dated yyyy-mm-dd
- Assessment for decision – penitentiary placement and security level, dated yyyy-mm-dd
- Criminal profile report – original, dated yyyy-mm-dd
- review – initial, dated yyyy-mm-dd

[13] I sent _____ via CSC, a summary of the information I am considering for this review on March 23. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[14] Later on March 23, I received signed confirmation from CSC that _____ did not wish to share his views through one of the means offered. I must therefore rely on the information provided by CSC.

IV. CONTEXT

[15] _____ is _____ years old.

[16] Since █████, he has been serving a █████ sentence. His warrant expiry date is in █████. It is his █████ federal sentence. He has a medium security classification.

[17] Ac

[18] His transfer to the SIU was authorized Jan. 16, █████, under para. 34(1)(b) of the CCRA. According to the transfer authorization, █████ had been █████ and told staff of safety concerns due to debt.

[19] The SIU transfer was approved in the “5-day” █████ Acting Warden decision of Jan. 20, the “30-day” MI Warden decision of Feb. 14, and the Senior Deputy Commissioner decision of Mar. 15.

[20] This is █████’s first SIU transfer.

V. ANALYSIS

1. Period reviewed and delay

[21] My determination in this case is based mainly on CSC’s SIU activity log (“the log”), for the period from Jan. 17 to Mar. 22. This is a period of 65 days. █████ was out of his cell, █████ for some days during the period reviewed.

[22] The length of the period reviewed in this case is due to delay. The delay is not ideal, and is not due to factors related to this case. I apologize to █████ for it.

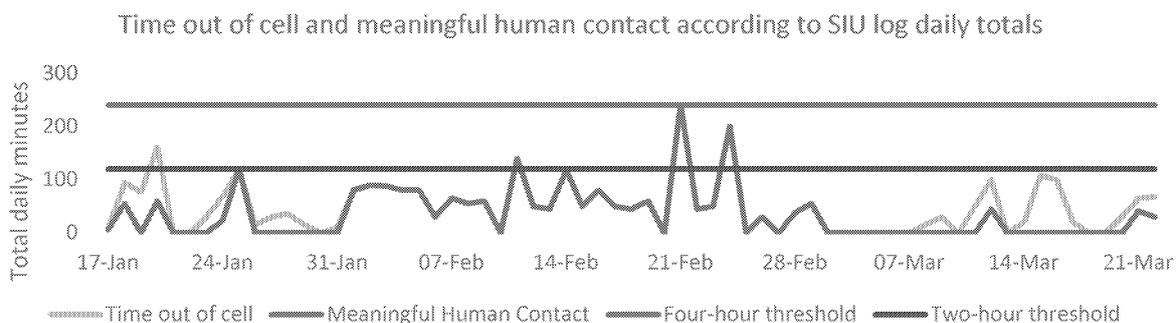
2. Daily time out of cell and meaningful human contact

[23] According to the log, █████ spent four hours or more out of his cell on one day during the period reviewed (about 1.5% of all days). He had two hours or more of social interaction on four days (about 6% of all days).

[24] The average for time out of cell was about 50 minutes daily. The average for interaction was about 35 minutes (including the days when █████ was on mental health watch, for which there is no information on his time spent out of cell).

⁶ CPU, yyyy-mm-dd, at p. 5.

⁷ CPU, yyyy-mm-dd, at p. 10.



[25] has been highly isolated. He seems to have spent the most time out of his cell between Feb. 11 and 24.

3. Quantity and timing of daily offers

[26] According to the log, often had three or four opportunities to get out of his cell during the day, including a 7AM yard offer.

[27] Days on which the quantities of offers were especially low were:

- Jan. 21: yard offer at 7AM; behavioural skills session offer at 8:30AM; yard offer at 12:30PM (no indoor recreation)
- Jan. 22: yard offer at 7AM; social programs offer at 8:30AM; yard offer at 1PM (no indoor recreation)
- Jan. 23: yard offer at 7AM; overlapping yard and range offers at 1PM and 1:10PM
- Jan. 25: yard offer at 7AM; range offer at 9:20AM; overlapping yard and social programs offers both at 1PM, went to social programs; log notes do not acknowledge that both offers were at exactly the same time nor explain the overlap)
- Jan. 30: yard offer at 7AM; overlapping yard and correctional programs offers at 1PM (log notes do not acknowledge that both offers were at exactly the same time nor explain the overlap; in addition, did not have indoor recreation time)
- Feb. 3: range time at 7:06PM
- Feb. 9: yard offer at 7:15AM; psychiatry appointment offer at 9:30AM; yard and school offers both at 1PM (the log does not explain the overlap)
- Feb. 10: yard offer at 7AM; yard and correctional programs offers both at 1PM (the log does not explain the overlap; a note explains all inmates got range time,⁸ but there is no entry for range time for l)
- Feb. 20: yard offer at 7:10AM; yard and correctional programs offers both at 1PM (the log does not explain the overlap)
- Feb. 27: yard offer at 7AM; yard and correctional programs offers both at 1PM (the log does not explain the overlap)

⁸ Shower entry, SIU activity log, yyyy-mm-dd.

- Mar. 2: yard offer at 7:20AM; yard offer at 1PM (mini yard only; no indoor recreation)
- Mar. 3 to Mar. 7: [redacted] was not in the SIU during this time, as he was on mental health watch; CSC has not provided information on his time out of cell during this period
- Mar. 10: yard offer at 7:10AM (no indoor recreation)
- Mar. 16: yard offer at 7AM; overlapping yard, [redacted] activities, and range time offers at 12:55PM, 1PM, and 1:10PM respectively
- Mar. 18: yard offer at 7AM; social programs offer at 8:30AM; yard offer at 1PM (no indoor recreation)

[28] As noted, there are examples where there were offers put in the log at exactly at the same time, or within a short span of time. In most instances, it was a yard offer at the same time as a program offer. This could suggest coordination of activities could be improved. Staff should seek to avoid overlaps of activities, although it is appropriate to seek alternatives if an inmate is not interested in one type of activity.

[29] In addition, I have concerns that recreation opportunities were put in the log regardless of whether staff actually made offers to [redacted] has not provided comments so I could not confirm his views. However, other MI SIU inmates have claimed the log shows refusals of recreation when there was no actual offer. I take notice of that for this review.

[30] CSC has not provided clear information on when [redacted] did or did not have a recreation group. Log entries indicate he could interact with others for recreation time between Feb. 1 and Mar. 1. Because of his lack of recreation group, his only potential source of human interaction before and after that period was interaction with staff.

[31] On the couple of occasions when he participated, these types of interactions did not last two hours. The only session that did was the social programs session on Jan. 25, which was recorded as lasting for exactly two hours, from 1PM to 3PM. Due to the round numbers, I presume this log entry is an estimate.

[32] In sum, [redacted] s opportunities for meaningful human contact were often very low. Based on log entries, he did not have the opportunity for meaningful human contact on Jan. 16, 19, and 23. On some other days, he only would have had two hours of interaction if he had participated in a program session that lasted at least two hours.

4. Types of opportunities for

[33] [redacted] had the following types of opportunities:

- social programs
- staff interactions
- indoor and outdoor recreation

- program,
- school
- meetings with 1
- behavioural skills coaching
- Chaplain support
- personal phone calls

[34] The log shows outdoor recreation was the most frequent type of offer.

[35] There were several days on which did not have the opportunity for indoor recreation, whether in the common room or on the range. The range provides access to a phone and showers. According to the log, did not have the chance for indoor recreation time on twelve days (about 19% of all days).

[36] There are some days for which the log shows had the chance to take a shower despite not having range time. I have not been able to ask to confirm whether he has consistently had access to the shower despite limited access to range time.

[37] Programs and other interventions were offered on most days (40 out of 65, or about 62% of all days). Several of the days when there was no program intervention were during the period when had no recreation group.

[38] Social and correctional programs were the type of intervention offered the most frequently.

[39] School and behavioural skills sessions were not offered frequently: staff offered these types of sessions four times each for the entire period reviewed.

[40] Indigenous cultural support involved opportunities to meet with ; to do arts and crafts, and on Mar. 22, to participate in a ceremony. These types of opportunities were offered somewhat sporadically. There was a gap between Feb. 7 and Mar. 13 when had no opportunity of this kind.

[41] There is no indication in the log had a job or that there was any effort to discuss this with him. In contrast, his Feb. 21 CPU states he refused a range cleaner position.⁹ If there actually was a discussion with him about a job, as the CPU indicates, this should have been documented in the log.

[42] Regarding mental health support, had the opportunity to participate in periodic assessments and meet with the psychiatrist.

[43] For chaplaincy, it does not appear was offered actual opportunities to come out of his cell, but the Chaplain offered to bring him things from his faith.¹⁰

⁹ CPU, yyyy-mm-dd.

¹⁰ Religious or spiritual activities entry, SIU activity log, yyyy-mm-dd.

5. Structural or contextual factors affecting activities

[44] Various issues and incidents affected opportunities for [redacted] during the period reviewed, as well as other inmates in the MI SIU. As described in “situational context” and “end of day” notes in the log, and in supplementary memorandums:

- Jan. 18: “Due to the high number of alone status offender and several admission to SIU in the past couple of days offenders were not seen as they rely on SPO, and volunteers to receive 2 hours of meaningful interaction. They are encourage to formulate a group with others”
- Jan. 19: “It is recognized that this offender is on recreation alone status; as a result, he is reliant on volunteers, visitors and staff to achieve meaningful interaction time. This places a significant strain on resources and can explain why the total daily offers for meaningful interaction fell below the threshold. Much of the reliance on meeting the 2-hours of meaningful contact for offenders on alone status falls to the Social Program Officers, Correctional Program Officers and Indigenous Interventions staff.”
- Jan. 22: “Due to the amount of inmates that are not in groups, there was not enough time to fulfill time for shower. He will be a priority the following day”
- Jan. 23 and 24: there was a modified routine on all SIU ranges on Monday, Jan. 23 and in the morning of Tuesday, Jan. 24 (8AM to 12PM), due to [redacted] on the weekend. “In response to this occurrence, there were in-person mental health professionals on-site for staff and the institution ran on a modified routine throughout the morning, where range level services/activities (range time, health services, mental health services, visits & correspondence) continued to be offered but off-range services/activities were not.”¹¹
- Feb. 3: “The SIU was authorized for a Section 53 Search [...] due to Offenders on Range gaining access to broken glass after one Offender broke his cell window out. Several weapons found in multiple cells. On several occasions during search, Offenders were uncooperative and refused to be searched. Once negotiations took place, the search began. One Offender on multiple occasions refused to allow staff to close his food slot after feeding, throwing liquids at staff, which resulted in the search halting and the IERT to be activated to secure food slot for staff safety. Due to these security incidents Offenders were unable to have their 2hrs of meaning interaction and 4hrs out of cell time during this day. Staff will try their best to accommodate this on yyyy-mm-dd, but as per offender behaviours during the search, searching was not completed on yyyy-mm-dd and will commence on yyyy-mm-dd.”
- Feb. 10: the arrival of a newcomer with the Emergency Response Team (“ERT”), an assault in the gym, an attempted suicide in the SIU, three newcomers to the SIU, and a call for staff to the gym due to fires being set affected the quality of log entries
- Feb. 17: MI’s Personal Portable Alarm (PPA) system was down between 9AM and 10:05AM. Morning movement was cancelled and resumed in the afternoon.

¹¹ Supplementary information memorandum: operation disruption, dated yyyy-mm-dd.

- Mar. 1: a security incident involving an uncooperative inmate meant the ERT was used to remove the inmate from the unit. This affected operations from 10:30AM to 11:30AM on the [REDACTED] range. The same day, the whole unit was affected due to the presence of the ERT from 1PM to 2:30PM to escort an inmate back from suicide watch; and from 2:30PM to 3:30PM due to an inmate threatening self-harm.
- Mar. 10: there was a s. 53 search for weapons between 9AM and 7PM on all ranges, for weapons made of glass and plastic.

[45] CSC has stated the high number of inmates in the SIU, including those without a recreation group, has contributed to limited offers (notably for programs and indoor recreation). CSC's information shows that in the MI SIU, the total population was around 30 to 40 inmates for most of January, February, and the start of March. Between March 8 and 24, the population was lower, fluctuating between 20 and 26.

[46] CSC should plan for fluctuations in the SIU population and plan for having around 40 inmates in the SIU, as this has not been unusual. CSC should identify sustainable solutions to lower the number of inmates in the SIU and ensure there is adequate space and an appropriate number of staff, which would ease the pressure on staff.

[47] The incidents and issues summarized above show the very significant challenges staff face in trying to consistently offer time out of cell to SIU inmates. While I recognize these challenges, I do not find they fully justify the issues with the quantity and variety of opportunities. For the purpose of this review, I need to consider whether CSC as a whole organization is taking all reasonable steps.

6. I [REDACTED] s participation and efforts to encourage him

[48] Since [REDACTED] has been quite isolated for a long time, I consider CSC should take considerable efforts to ensure he has meaningful human contact out of his cell.

[49] [REDACTED] rarely (only on five days, according to the SIU log) refused indoor recreation time. When he did get to go, the amount of time he was able to spend on the range varied a lot from day to day. It appears it was often around 45 to 50 minutes. As noted above, there were several days when he did not have the opportunity for indoor recreation. Consistent opportunities, for longer periods, likely would result in him spending more time out of his cell.

[50] [REDACTED] rarely went outside. While I find it likely he was rarely interested in the outside yard, I do have concerns the log exaggerates the number of offers staff actually made. As noted above, there are numerous instances when correctional programs and yard offers were put in the log at exactly the same time, without any explanation or acknowledgment.

- [51] Having a recreation group often results in a person in the SIU having more interaction opportunities and spending more time out of their cell. CSC has not shown there were efforts to place [redacted] on a group earlier, or to find him a new group more recently, after he requested to leave his last group.
- [52] For programs, some staff made notable verbal encouragement efforts, based on the log. In particular, the behavioural counsellor appears to have made efforts to engage [redacted]. These efforts were ultimately unsuccessful, as [redacted] declined the four offers. [redacted] reportedly said he felt the sessions were “pointless” and would not help. For social programs, there were also efforts to engage him in conversation and encourage him to come out. [redacted] only participated on Jan. 20 and 25, however (2/19 offers accepted).
- [53] On the other hand, for other types of offers, the information does not show there were encouragement efforts.
- [54] For correctional programs, most log notes are brief and copy-pasted (for example, “[redacted] refused correctional programming, stating that he is not interested. He will continue to be offered”). They do not confirm a Correctional Programs Officer (“CPO”) spoke to him directly.
- [55] However, for the MM-SIU-I, it does not seem additional verbal encouragement would have made a difference. The note for an initial explanatory conversation on Jan. 20 states (in part), “[redacted] noted he is out in two months. He was informed he could still participate, and could still benefit from the program, however he maintained that he was not interested.”¹² Moreover, [redacted]’s refusals of the MM-SIU were extremely consistent; the log shows twenty offers were made and he never accepted.
- [56] For school, there is no explanatory log note for one of the four offers. [redacted] participated once. On Mar. 20, he did not participate, but reportedly “wanted to be offered again later this week.”¹³ The teacher requested a tool (fidget spinner) from health services to help him concentrate, which I consider an encouragement measure. Although [redacted]’s participation rate was low, more frequent opportunities would likely have encouraged him to spend more time out of cell, since he did show some interest. He has a high need for improvement in education, according to his CPU.
- [57] For Indigenous activities, he also showed interest (5/10 offers accepted): he met with [redacted] four times, and participated in a Change of Seasons ceremony.

¹² Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹³ Educational programs entry, SIU activity log, yyyy-mm-dd.

[58] Considering his low interest for the MM-SIU and for behavioural skills programs, CSC should concentrate on providing regular opportunities for school, cultural support, and social programs to encourage his participation.

[59] A money issue seems to have affected his participation recently. He told [redacted] on Mar. 16 he did not want to participate because he was having issues with his pay and canteen “and would be blocking up until the issue is resolved.” On Mar. 21, it was noted for school,

“Offender agreed to come out for School but then when it came time for movement, he refused because he said he isn't being paid correctly. I spoke to him about this issue yesterday and advised that I would look into it. I sent a request to the pay assistant for clarification, which I am still waiting for.”¹⁴

He also raised “an issue with finances” with his PO Mar. 21. I do not have enough information to determine whether CSC actually made an error or not. However, I encourage CSC to look into the situation promptly, if it has not already been done.

[60] Finally, the fact that [redacted] spent a few days [redacted] may have contributed to his refusals of activities. [redacted] did not participate in the periodic mental health evaluations offered during the period reviewed, and turned down two opportunities for psychiatry appointments (Feb. 9 and Mar. 9). The log does not explain why he turned these down. There is no indication of encouragement to participate in these appointments. The log notes for the offers state “as per CX staff,” which indicates correctional officers made the offer, rather than someone from health services.

[61] In sum, [redacted]’s non-participation contributed significantly to his isolation, but I consider additional steps would likely have contributed positively to his time out of cell.

7. Other issues

[62] [redacted] likely did not have a TV to help him pass time in his cell in the SIU for a significant part of his time in the SIU: on Feb. 13, he reportedly said, “his biggest concern is getting his 30 day box before transferring as he wants a TV. He has no money on his phone to call his support [...] and cannot make collect calls as the support will not accept them.”¹⁵

[63] This note also suggests it was also difficult to have long-distance meaningful interaction with his community support during the period reviewed. His CPU indicates he should foster relationships with his community supports.¹⁶

¹⁴ Educational programs entry, SIU activity log, yyyy-mm-dd.

¹⁵ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁶ CPU- SIU, yyyy-mm-dd, at p. 6.

[64] By Mar. 14, he had a TV.¹⁷

VI. CONCLUSION AND RECOMMENDATIONS

[65] For the reasons above, I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide adequate time out of his cell and meaningful human contact and to encourage him to take advantage of opportunities. There were issues with the quantity of activities, the consistency of certain types of interventions, and encouragement.

[66] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- Take measures to ensure indoor recreation is offered to consistently;
- Focus offers on opportunities for school and cultural support primarily, and secondarily for social programs;
- Enquire into the issue with pay and canteen that raised;
- Discuss recreation group possibilities with and identify measures to make him feel more comfortable about joining a group; and
- Consult with about types of opportunities or approaches that could be beneficial to

[67] As stated in numerous previous reviews, there is a need for staff to improve documentation, including with respect to efforts to place SIU inmates in groups and encourage them to join groups.

Janine Lespérance
Independent External Decision-Maker

Date: March 26, [REDACTED]

¹⁷ Case management entry, SIU activity log, yyyy-mm-dd.

Name:
Correctional Institution: Donnacona Institution
FPS Number: [REDACTED]
Date of Notification: May 30, 2020
Date of Decision: July 13, 2020
Independent External Decision Maker: J. LESPÉRANCE

**DECISION UNDER SUBSECTIONS 37.83(1)-(2)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

I. INTRODUCTION

- [1] On July 1, 2020, the Independent External Decision-Makers (“IEDMs”) were notified that for five consecutive days, [REDACTED] had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit (“SIU”) at Donnacona Institution. The notification should have been sent on May 30.
- [2] The *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) requires an IEDM to determine if Correctional Services Canada (“CSC”) has taken all reasonable steps to provide [REDACTED] opportunities for at least four hours out of his cell and two hours of meaningful human contact per day, and to encourage [REDACTED] to take advantage of the opportunities offered. If CSC has not done so, the IEDM may make recommendations to remedy the situation.

II. SUMMARY

- [3] This review is to determine whether CSC took all reasonable steps to provide opportunities to leave his cell and interact with others while in the SIU. I conclude that CSC did not take all reasonable steps. The offers made to him were largely for leisure time, with a few social program opportunities. He had a high rate of acceptance of offers. On three days prior to June 23, he only had one chance to leave his cell. Since June 23, major infrastructure challenges (with the SIU door operating system) have meant that offers to [REDACTED] and other inmates have fallen far short. I do not have sufficient information to satisfy me that CSC took all reasonable steps to prevent or redress this problem, giving due regard to the significant harms associated with prolonged solitary confinement.

III. SOURCES OF INFORMATION

[4] For this review, the following items are my sources of information, from CSC:

- Daily log information visible in the SIU-LTE application database
- Memoranda (exception according to paragraph 19(1) of CCRR), dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Threat risk assessments dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Assessment for decision - involuntary institutional transfer, dated yyyy-mm-dd
- SIU correctional plan, dated yyyy-mm-dd
- Institutional head 5-day SIU transfer decision, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Institutional history log and incident report dated yyyy-mm-dd
- Program performance report (final), dated yyyy-mm-dd
- Psychological/psychiatric assessment report, dated yyyy-mm-dd
- Assessment for decision - security level and penitentiary placement, dated yyyy-mm-dd
- Correctional plan (initial), dated yyyy-mm-dd
- Criminal profile report (original), dated yyyy-mm-dd

[5] In conformity with s. 37.71(1) of the CCRA [redacted] was provided a summary of the information I am considering for this review. I also gave him the opportunity to submit written representations, in accordance with s. 37.72 of the CCRA. Alternatively, I proposed that he could speak to me in an interview or have his lawyer represent him.

[6] On July 7, 2020, I received signed confirmation from CSC that [redacted] did not wish to share his views with me through one of the means offered. Not having the benefit of hearing his perspective, I am reliant on the information provided by CSC.

IV. BACKGROUND

[7] [redacted] is [redacted] years old and is from [redacted]. He is serving [redacted] sentence for [redacted] with [redacted]. He has been at Donnacona Institution since [redacted].

[8] According to his correctional plan from [redacted]:

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[9] This correctional plan assesses him as needing a high level of intervention based on static factors, notably the nature of the crime he committed, and a medium level of intervention based on dynamic factors, identifying associates and attitude as having a moderate need for improvement.

[10] His transfer to the SIU was authorized under s. 34(1)(b) of the CCRA. The circumstances of the transfer are described as follows:

[11] In the 5-day decision, the Warden did not approve the transfer. While accepting that he could not █████ unit at Donnacona, CSC believes he could integrate █████ since they do not believe his security is compromised there. According to the Warden's decision, █████ He wishes to return to █████, his home █████.

V. LEGAL FRAMEWORK

1. The obligations of CSC

[12] CSC's obligations with respect to inmates held in the SIU are set out in s. 36 of the CCRA, which reads as follows:

"Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a structured intervention unit

(a) an opportunity to spend a minimum of four hours outside the inmate's cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a)."

[13] The CCRA also specifies, at para. 37(1)(a), that para. 36(1)(a) or (b) does not apply "if the inmate refuses to avail themselves of the opportunity [...]". The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 (CCRR) set out other limited exceptions, including an inmate's refusal to comply with security-related instructions (para. 37(1)(b), CCRA), and extreme circumstances including epidemics (para. 19(1)(b), CCRR).

[14] The present review is conducted in accordance with ss. 37.83(1) and (2) of the CCRA, which state:

"Decision — reasonable steps

37.83 (1) If, for five consecutive days or for a total of 15 days during any 30-day period, an inmate confined in a structured intervention unit has not spent a minimum of four hours a day outside the inmate's cell or has not interacted, for a minimum of two hours a day, with others, an independent external decision-maker shall, as soon as practicable, determine whether the Service has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1) and to encourage the inmate to avail themselves of those opportunities.

Recommendations

(2) If the independent external decision-maker determines that the Service has not taken all reasonable steps, he or she may make any recommendation to the Service that he or she considers appropriate to remedy the situation. [emphasis added]"

[15] Section 37.83 sheds light on CSC's obligations as set out in subsection 36(1). In particular, it clarifies that CSC must be proactive to ensure that inmates in the SIU spend time outside of their cell and have meaningful interactions with other people. This interpretation is also consistent with the purpose of SIUs, as set out in s. 32 of the CCRA: subsection 32(1) establishes that the purpose of a SIU includes allowing an inmate to participate in programs and have access to services; and, subsection 32(2) requires CSC to make "every reasonable effort" to ensure human contact is not impacted by physical barriers, which again emphasizes the proactive approach CSC must take for inmates in SIUs.

[16] As such, s. 36(1) should not be interpreted to mean that CSC is only obligated to go to the inmate's cell once each day to give them the chance to get out of their cell. What meets the "all reasonable steps" standard will depend on the facts and circumstances of the inmate's situation at the time of their detention in the SIU.

[17] In other legal contexts, "all reasonable steps" has been interpreted in terms of the steps a reasonable person would take in the circumstances. With respect to SIUs, however, the legal obligations are those of CSC as a governmental agency, rather than a specific individual, such as a staff member.

2. The period to be taken into account in "5-day" IEDM decisions

[18] On a plain reading, the five consecutive days referred to in s. 37.83(1) of the CCRA are the factual situation that acts as a "trigger" for an IEDM review. In carrying out the review, the IEDM must consider the facts and circumstances for the period of the review to determine whether CSC took all reasonable steps in the context.

[19] The CCRA does not explicitly specify the period of SIU activities that is to be considered in an IEDM review under s. 37.83(1). It is preferable, particularly in cases in which there has been a significant lapse of time since the review was triggered, to take into account SIU activities beyond the initial 5-day period that triggered the review. This is consistent with a purposive approach to statutory interpretation, given that the potential end of a decision under s. 37.83(1) is to make recommendations under s. 37.83(2) to remedy "the situation." In order for remedies to be relevant and useful, they should address the current situation of the inmate in the SIU.

[20] Assessing a longer period of activities also has the benefit of providing the IEDM with a greater understanding of circumstances in the SIU, thus allowing the IEDM to make a more well-founded decision as to whether CSC has been taking all reasonable steps with respect to an inmate.

[21] Overall, the legislative scheme allows for a flexible approach with regard to the end of the period of SIU activities considered for IEDM decisions under s. 37.83.

VI. ANALYSIS

[22] My determination in the present case is based mainly on the daily log information of _____'s activities, available in the SIU-LTE application database. I am considering the period from May 26 to July 12.

[23] For May 25, the only log entry is a shower at night, since he was transferred to the SIU that evening. It was thus not a full day in the SIU.

1. Time spent out of cell and interacting with others

[24] According to the SIU activity log, [REDACTED] has usually accepted opportunities for leisure time and as a result has been spending time out of his cell regularly.

[25] Up until June 22, [REDACTED] regularly had more than two hours of meaningful human contact. In fact, this was the case on 23/28 days. The amount of time he spent out of his cell was equivalent. He spent more than four hours out of his cell on 9/28 days.

[26] The situation changed significantly on June 23. Between June 23 and July 12, there were four days on which he did not have any contact or leave his cell at all. He spent approximately just over one hour outside of his cell and interacting with others on average during this more recent period.

2. Offers and acceptances

2.1. Generally

[27] Up until June 22, [REDACTED] usually had two opportunities of leisure time each day. Although he sometimes left early or turned down offers, he accepted most of the time. When he turned down offers, it was usually for offers in the morning. Reasons for refusals noted by CSC staff include wanting to sleep and the weather.

[28] There were three days on which [REDACTED] only had one opportunity to go to the yard: May 27, on which he spent just over two hours of leisure time, alone; June 5, on which he accepted and had just over two hours of leisure time; and June 10, on which he had just under two hours of leisure time. On these days, the offers made to him were insufficient to meet the CCRA's requirements.

[29] [REDACTED] only occasionally had other types of opportunities, namely social programs. The log shows that he had five opportunities total to participate in a social program between May 20 and July 12, of which he accepted the majority (4/5).

[30] Otherwise, there are a few phone calls listed in the log under legal counsel calls. For a couple of these, "personnel" is in the notes section. It is unclear whether this means the calls were personal or lawyer calls.

2.2. As of June 23

[31] On June 23, there is no offer recorded in the activity log. Since that date, CSC has generally only given [REDACTED] one chance per day to go to the yard. He also had the chance to take part in a social program on three different days, of which he accepted twice. However, on July 10, the only chance he had to leave his cell was to take a shower, which does not count toward the daily totals, according to s. 36(3) of the CCRA.

3. Infrastructure challenges and prolonged solitary confinement

[32] CSC has acknowledged that it is falling short of its normal obligations. CSC has in fact invoked the exception set out at s. 19(1) of the CCRR, referring to the legislative exceptions for power failures, epidemics, and events affecting the physical infrastructure of the penitentiary. The situation is explained in memoranda dated June 26, July 2, and July 9 respectively.

[33] To briefly summarize the information provided by CSC, a brief power outage at Donnacona caused problems with the system for the cell doors in the SIU. Consequently, CSC transferred inmates to the [REDACTED] sector, which is a former segregation range. The limitations of this range mean that only one walk (outside yard) can happen at the same time, and there are only two interview rooms. Inmates can have only one hour out of their cell daily.

[34] The July 2 update added:

“The technical incident that occurred on yyyy-mm-dd has not been resolved despite efforts. Technical equipment had to be ordered to correct the malfunction of the electronic module for the door system in the SIU sector. However, a delay is expected in the delivery of the required parts, its installation and subsequent verifications to ensure proper operation of the system.”

And on July 9:

“The technical incident that occurred on yyyy-mm-dd in unit [REDACTED] of our institution has not been resolved yet. However, the steps to resolve the incident are progressing positively. In fact, a full reprogramming of the sector [REDACTED] door opening system is planned by its manufacturer this week. Moreover, the installation of technical equipment parts to remedy the defect in the electronic system is scheduled for yyyy-mm-dd. Tests will then be conducted to ensure the proper functioning of the system. If the above mentioned steps are successful, it will be possible to reintegrate SIU offenders in the sector I as soon as possible.”

[35] At the time of writing this decision, July 13, it has been almost 21 days that and others held in the SIU have been in these conditions, which clearly fall short of the SIU model set out in the CCRA. Their situation amounts to prolonged solitary confinement. There is no indication that the situation has been resolved in the couple of days since the last memorandum. I have no additional information before me confirming the date that the situation will return to normal or whether the resolution of the situation has been pushed back further. With each passing day, the situation becomes more serious, given the possibility for psychological harm to inmates.

[36] It is relevant to consider recent decisions on the previous administrative segregation regime of the British Columbia Court of Appeal (*British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228) and the

Ontario Court of Appeal (*Canadian Civil Liberties Association v. Canada (Attorney General)*, 2019 ONCA 243).

[37] In the latter decision, Benotto J.A., writing for the Court, summarized the relevant international standards as follows:

“[The United Nations has recently adopted rules governing the treatment of prisoners: the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UNGAOR, 70th Sess, UN Doc A/Res/70/175 (17 December 2015) (the “Mandela Rules”). The Mandela Rules are an authoritative interpretation of international rules including the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, UNTS 1465 (entered into force 26 June 1987, ratified by Canada 24 June 1987). The Mandela Rules define solitary confinement as confinement of a prisoner “for 22 hours or more a day without meaningful human contact.” They prohibit the use of prolonged solitary confinement, which is confinement for a period in excess of 15 days, and provide that solitary confinement should “be used only in exceptional cases as a last resort, for as short a time as possible [...]” (para. 23)

[38] She also accepted findings of the trial court based on extensive expert evidence on the harms of segregation, noting that solitary confinement for more than 15 days: “[...] causes foreseeable and expected harm [...]” (para. 71), and puts inmates at risk of “[...] severe and often enduring negative health consequences” (para. 97) or “[...] serious and potentially permanent psychological harm” (para. 99). She stated: “[p]rolonged administrative segregation subjects inmates to grossly disproportionate treatment” (para. 119).

[39] Accepting these findings, the risk of psychological harm is relevant to consider in determining what constitutes “all reasonable steps” in this case. The greater the risk of harm to inmates due to the prolongation of an infrastructure problem, the greater the obligation on CSC to take substantial steps to find safe alternatives for inmates that would allow them sufficient meaningful human contact. I also take note of the inequality created by the present situation: not only are the people incarcerated in the Donnacona SIU in more restrictive conditions than those in the mainstream population, but they are also in more restrictive conditions than those incarcerated in SIUs in other institutions.

[40] The question of whether CSC is taking “all reasonable steps” under s. 37.83 of the CCRA involves a contextual analysis. CSC’s invocation of a legislative exception does not act as a categorical blanket exception or a shield from IEDM review.

[41] I am satisfied from the information before me that SIU staff are trying within their significant constraints to provide opportunities to SIU inmates including [redacted] and that CSC is taking steps to rectify the underlying infrastructure problem.

[42] However, I remain concerned that the operational control system used is such that a brief power outage could make it dysfunctional and thus lead to inmates being held in solitary confinement for over twenty days. The delay of equipment delivery and its installation is difficult to accept. I am left with questions as to whether having a better program, having better equipment back-up, or doing proper equipment testing, could have prevented the current situation. I lack full information on these underlying factors. I do not have much information before me to satisfy me that the situation is truly being treated with the urgency it deserves. To propose a hypothetical example for the sake of comparison, if the problem had been with the outside perimeters of the penitentiary, it is difficult to believe it would have taken at almost three weeks at least to resolve, as for the actual problem with the SIU doors.

[43] Given the uncertainty of the situation, it seems it would be warranted to expedite inmates' transfers to other institutions where they could be held in safe conditions, whether within an SIU or in a mainstream population, although I recognize this would raise a number of operational challenges. I do not know whether CSC gave any consideration to this option or took any steps in this respect.

[44] [redacted]'s particular situation is somewhat unique in that CSC has identified an option for him in a mainstream population, but he has refused to integrate. However, even if he is in the SIU because he does not want to integrate the population at Donnacona that CSC proposes, CSC's obligations toward him apply. Moreover, even prior to the recent infrastructure challenges, there were three days on which staff only made or recorded in the log one offer during the day, as noted above.

VII. CONCLUSION AND RECOMMENDATIONS

[45] I am not satisfied that CSC took all reasonable steps to ensure [redacted] had an appropriate living environment in the SIU involving sufficient opportunities to leave his cell and interact with other people.

[46] Based on the reasons above, I recommend to CSC to:

- Improve the documentation of all offers made, to [redacted] and other inmates, in the SIU activity log;
- Ensure that on every day, all inmates in the SIU including [redacted] have more than one opportunity to leave their cell;
- Provide more frequent program opportunities to [redacted] including programs that would encourage him to integrate a mainstream population;

- Recognize the urgency of the current infrastructure situation in terms of its potential impacts on inmates' health, and take commensurate steps to ensure that the SIU system problem is fixed without further delay or that alternative options for inmates are explored, including transfers; and
- Take proactive steps to prevent further infrastructure challenges that limit or could limit the opportunities provided to inmates in the SIU.

Janine Lespérance
Independent External Decision-Maker

Date: July 13, 2020

Name:

FPS Number:

Correctional Institution:

Date of initial decision under s. 37.83(1), CCRA:

Date of CSC Senior Deputy Commissioner Decision:

Date of the Present Decision:

Independent External Decision-Maker:

██████████
██████████
April 6, ██████████
March 21, ██████████
April 20, ██████████
J. Lespérance

**DETERMINATIONS UNDER SECTION 37.8 AND SUBSECTION 37.83(3)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, c. 20**

SUMMARY

The situation has not evolved much since my last decision under s. 37.8 of the CCRA concerning ██████████. There are grounds for him to remain in the SIU. There have been recent incidents. He continues to not want to integrate a mainstream population at [maximum-security institution, ██████████].

In response to my recommendations, CSC has provided ██████████ the chance to meet weekly with a psychologist from outside the institution. This has been a positive change. However, during the period reviewed, ██████████ was moved temporarily out of the SIU for six days ██████████. He was in solitary confinement conditions. Thus, under s. 37.83(3) of the CCRA, I find CSC did not take all reasonable steps. Nonetheless, I do not order Mr. T's removal from the SIU. That would be an incoherent outcome and incompatible with legislative objectives.

1. INTRODUCTION

- [1] On Feb. 17, ██████████, the Independent External Decision-Makers ("IEDMs") were notified that for five consecutive days, ██████████ had not spent at least four hours out of his cell or had not interacted with others for at least two hours per day, in the Structured Intervention Unit ("SIU") at ██████████. As an IEDM, I issued a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") on Apr. 6, ██████████. I concluded that Correctional Service Canada ("CSC") had not taken all reasonable steps to provide ██████████ time out of cell and meaningful human contact. I made recommendations under subsection 37.83(2) of the CCRA.
- [2] I must now assess, under subsection 37.83(3) of the CCRA, whether CSC has taken all reasonable steps since my initial decision.

- [3] Another type of decision is also required. I must determine whether [redacted] should remain in the SIU under s. 37.8 of the CCRA. On Mar. 21, [redacted], CSC's Senior Deputy Commissioner ("SDC") determined, under section 37.4 of the CCRA, that he should remain in the SIU.
- [4] I have combined both types of decisions in this text, but my analysis under each provision is separate, as each type of decision looks at different issues.

2. LEGAL FRAMEWORK

2.1. CSC's legal obligations toward inmates in the SIU

- [5] CSC must provide inmates the daily opportunity to spend at least four hours outside of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates' needs.
- [6] The previous decision under s. 37.83(1) of the CCRA explained CSC's legal obligations in more detail.

2.2. Determinations under s. 37.83(3) of the CCRA

- [7] Decisions under s. 37.83(3) of the CCRA are second-stage decisions. S. 37.83(3) of the CCRA states:
- "If [CSC], within the period of seven days commencing on the day on which it receives recommendations, fails to satisfy the [IEDM] that it has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1), the [IEDM] shall direct [CSC] to remove the inmate from the [SIU] [...]."
- [8] Unlike s. 37.83(1) of the CCRA, s. 37.83(3) does not explicitly state that the IEDM must assess whether CSC encouraged an inmate. However, "all reasonable steps" is a high standard that implies CSC must be proactive and try new approaches.
- [9] The determination under s. 37.83(3) is not based only on whether CSC has implemented recommendations. CSC could demonstrate that it would not be reasonable to do so. CSC could also take steps other than those proposed by the IEDM. More, CSC's written response to the s. 37.83(1) decision is not the only relevant source of information.
- [10] Decisions under s. 37.83(3) focus on activities and services in the SIU, not the safety and security basis for the SIU placement.
- [11] If an IEDM finds under s. 37.83(3) that CSC has not taken all reasonable steps, the IEDM must order CSC to remove the inmate from the SIU. The plain language of the CCRA does not seem to leave the IEDM discretion as to whether to issue this

order. Overall, if the conditions of confinement are inadequate, the remedy set out in the CCRA is the inmate's removal from the SIU.

2.3. Period considered for s. 37.83(3) determinations

[12] IEDM oversight should be timely and address an inmate's current situation in the SIU. When more than seven days have passed since an initial decision under s. 37.83(1) of the CCRA, the IEDM may consider information on a period longer than the 7-day period.

2.4. Framework for determinations under s. 37.8 of the CCRA

[13] An inmate should be released from the SIU unless doing so would jeopardize anyone's safety and security. The IEDM must look at penitentiary placement, security classification, the inmate's correctional plan, and other relevant factors. The IEDM may make informal recommendations.

[14] My previous decision under s. 37.8 of the CCRA concerning _____ set out the legislative framework in more detail.

3. INFORMATION CONSIDERED

[15] For this review, the following items are my sources of information:

- SIU daily activity log ("the log"), for the period as of yyyy-mm-dd
- Threat risk assessments ("TRAs"), for the period as of yyyy-mm-dd
- Email to the IEDM from _____, Assistant Warden Interventions, yyyy-mm-dd
- Email to the IEDM from _____, Atlantic Region Senior Project Officer – SIU oversight, yyyy-mm-dd.
- Response to IEDM review/decision, dated yyyy-mm-dd
- Mental health forms – 14 day SIU, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Mental health clinical notes, dated yyyy-mm-dd and yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Memorandum – behaviour, yyyy-mm-dd
- Casework record ("CWR") log, for the period from yyyy-mm-dd to yyyy-mm-dd
- Videoconference interview with _____, Chief, Mental Health Services, yyyy-mm-dd
- Regional reviews, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- CSC's written response to the IEDM's questions, received yyyy-mm-dd
- Memorandums – epidemics exception, dated yyyy-mm-dd and yyyy-mm-dd
- Memorandums – recreation group, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd

- Correctional plan updates – SIU (“CPU-SIU”), dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Senior Deputy Commissioner (“SDC”) decisions, dated yyyy-mm-dd and yyyy-mm-dd
- Program report – education, dated yyyy-mm-dd
- Referral decision sheet – institutional transfer, dated yyyy-mm-dd
- Incident reports, dated yyyy-mm-dd, yyyy-mm-dd (X3), yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X4), and yyyy-mm-dd
- Memorandums – psychology referral, dated yyyy-mm-dd and yyyy-mm-dd
- Mental health monitoring notes, dated yyyy-mm-dd
- Assessment for decision – institutional transfer, dated yyyy-mm-dd
- SIU Review Committee (“SIURC”) recommendation re: IEDM 37.8, yyyy-mm-dd
- Mental health forms, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Nurse Practitioner notes, dated yyyy-mm-dd
- Statement/observation reports, for yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Memorandum – statutory release, dated yyyy-mm-dd
- Mental health form – SIU 28 day, dated yyyy-mm-dd
- Institutional head “30-day” SIU transfer decision, dated yyyy-mm-dd
- Memorandum – SIU review, dated yyyy-mm-dd
- Correctional plan – updated, dated yyyy-mm-dd
- Institutional head “5-day” SIU transfer decision, dated yyyy-mm-dd
- Use of force report, dated yyyy-mm-dd
- Mental health form – SIU 1st day, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Assessment for decision – penitentiary placement and security level, dated yyyy-mm-dd
- Criminal profile report (“CPR”) – amendment #1, dated yyyy-mm-dd

[16] I sent [redacted] via CSC, a summary of the information on Apr. 11. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[17] On Apr. 12, I learned [redacted] would share his views. We spoke by telephone on Apr. 18, for roughly an hour.

[18] For previous reviews, I had interviewed [redacted] on Feb. 8 and Mar. 21, and received the following documents from him:

- Letter on mental health considerations, dated yyyy-mm-dd
- Letter with daily entries for the period from yyyy-mm-dd to yyyy-mm-dd, dated yyyy-mm-dd
- Letter, dated yyyy-mm-dd

- Inmate complaint form (reference number [REDACTED]), dated yyyy-mm-dd, and offender complaint response, dated yyyy-mm-dd

4. CONTEXT

[19] [REDACTED] is [REDACTED] years old and is originally from [REDACTED].

disorders.

[20] He is serving a [REDACTED] sentence for crimes including uttering threats, assault, and fraud. His Warrant Expiry Date is [REDACTED], but he is waiting sentencing for [REDACTED] charges.

[21] He is classified at the maximum-security level. He was referred to [REDACTED] Program.²

[22] His transfer to the SIU was authorized on Nov. 25, [REDACTED], under para. 34(1)(a) of the CCRA. The AI Warden approved the SIU transfer in the “5-day” decision of Dec. 1, and in the “30-day” decision of Dec. 24. CSC’s SDC found he should remain in the SIU on Jan. 21 and Mar. 21. This is [REDACTED]’s second SIU stay.

[23] Previous decisions I have issued concerning [REDACTED] are:

- Decision under s. 37.83(1) of the CCRA, dated yyyy-mm-dd
- Decision under s. 37.8 of the CCRA, dated yyyy-mm-dd
- Decision under s. 37.83(1) of the CCRA, dated yyyy-mm-dd

[24] This decision should be read alongside those decisions. I will aim to minimize repetition in the analysis below.

5. ANALYSIS UNDER S. 37.8 OF THE CCRA

[25] My Feb. 20 decision included analysis on the context of [REDACTED]’s SIU placement. I do not have a basis to change my conclusion.

[26] CSC has significant concerns about [REDACTED]’s behaviour in the SIU. The SIURC describes recent incidents as follows:

“On [REDACTED] [REDACTED] while in the common room, broke the cell door window of a fellow inmate. The following day, the fellow inmate retaliated and broke [REDACTED]’s cell door window. On [REDACTED] [REDACTED] broke [REDACTED]’s cell door window.”

¹ CPU, yyyy-mm-dd, at p. 6, 10. The last attempt was reportedly in August [REDACTED].

² CPU, yyyy-mm-dd, at p. 5.

³ CPU, yyyy-mm-dd, at p. 8.

his own cell door window. On [REDACTED] attended the [REDACTED] Court
Upon his return,
a Correctional Officer striking him on

While in the SIU, [REDACTED] has continued to be a behavioural concern.

[27] With respect to the incident on [REDACTED], the incident report states that

[28] In a general way, I asked [REDACTED] what led to the incidents. He acknowledged that staff had not done anything to provoke him. He mentioned that

[REDACTED] He did not provide details about the ongoing situation. He did not think staff could do anything about it.⁷

[29] I did not investigate the incidents of [REDACTED] further, as any findings would not change the outcome of this decision. There is sufficient information to find that his maximum security classification remains appropriate. As stated by the SIURC⁸ and confirmed to me directly by [REDACTED] still does not wish to integrate a population at [REDACTED]. I find it would be inappropriate to force him to integrate a population, and this would likely have safety and security consequences for him or others.

[30] With regard to options at [REDACTED]'s earlier written submissions questioned why he could not go to the unit [REDACTED] range, since he was waiting for court and it is the court range.⁹ However, my understanding is that [REDACTED] is not a mainstream

⁴ SIURC, yyyy-mm-dd, at p. 1 – 2.

⁵ Incident report for incident number [REDACTED], yyyy-mm-dd, at p. 1.

⁶ IEDM interview with [REDACTED] yyyy-mm-dd.

⁷ IEDM interview with [REDACTED] yyyy-mm-dd.

⁸ SIURC, yyyy-mm-dd, at p. 2.

⁹ Letter with daily entries for the period from yyyy-mm-dd to yyyy-mm-dd, dated yyyy-mm-dd.

population and my concern is that [REDACTED] would be more isolated there than in the SIU. Moreover, on Apr. 18, [REDACTED] said he did not want to go there now anyway.¹⁰

[31] With regard to options outside of [REDACTED] is approved for an involuntary interregional transfer to [REDACTED]. I understand CSC's plan to be to transfer [REDACTED] there if additional time is added to his sentence.¹¹ However, at this time,

[32] When I asked [REDACTED] whether the transfer to [REDACTED] could be a positive change for him, he responded that he thought it could be, but it depended how long it was until his release. He thinks he would be most successful if released in his home of [REDACTED], or in [REDACTED].

[33] Finally, in his letters and past comments, [REDACTED] raised a number of times that he wished to be transferred to [REDACTED] where he had previously been, so that his mental health needs could be addressed. Having the support of a new psychologist at [REDACTED], as discussed below, should fill this gap and provide a clearer picture of his needs.

[34] Overall, under s. 37.8 of the CCRA, I find he should remain in the SIU.

6. ANALYSIS UNDER S. 37.83(3) OF THE CCRA

6.1. Daily time out of cell and meaningful human contact

[35] For the period since Apr. 6, there has not been any day on which [REDACTED] spent four hours or more out of his cell, according to the SIU log. Apr. 6 was the day on which he spent the most time out of his cell: he was away at outside court for three hours and fifteen minutes that day.¹³

[36] He had exactly two hours of interaction on Apr. 19. The two-hour threshold for meaningful human contact was not met on any other day, although he did participate in a social program session on Apr. 17 and took some recreation time alone on three days.

[37] There are no SIU log entries for Apr. 8 to Apr. 12, when he was in [mental health unit]. CSC has not provided daily totals for those days.

6.2. Quantity and types of offers

¹⁰ IEDM interview with [REDACTED] yyyy-mm-dd.

¹¹ See: SIURC, yyyy-mm-dd, at p. 2.

¹² Email from [REDACTED], Atlantic Region Senior Project Officer – SIU oversight, yyyy-mm-dd.

¹³ End of day notes, SIU activity log, yyyy-mm-dd.

[38] Since Apr. 6, almost all of [redacted] s opportunities for time out of cell were for recreation. There was one social program offer on Apr. 17. He had two brief interactions with a Correctional Manager (“CM”). Thus, on most days, the two-hour threshold could only have been met if he was out in the yard at the same time as another inmate and that he considered this meaningful interaction.

[39] In the period considered in my last review, [redacted] had a very low rate of participation in programs. Encouragingly, [redacted] told me on Apr. 18 that he would now actually be willing to participate in programs.

6.3. Transfer to Unit 4

[40] For Apr. 7, there is only one log entry, for which it is indicated: [redacted] did [redacted] therefore rec will not be offered at this time due his actions and [redacted] towards officers.”¹⁴ He was moved to [redacted] by the ERT, who used OC spray on him.

[41] Based on log entries [redacted] returned to the SIU in the late morning of Apr. 13.

[42] Despite the clear relevance of [redacted] s transfer to [redacted] and the conditions there for this review, CSC’s Apr. 13 memorandum for this decision did not address those issues. It only responded to the recommendations from my Apr. 6 decision.

[43] In a review under s. 37.83(3) of the CCRA, new issues may arise that were not considered in the previous decision under s. 37.83(1). An IEDM should not simply look narrowly at CSC’s implementation of recommendations, because this is not what the law asks. The key question is again whether CSC took all reasonable steps to provide the required opportunities. CSC should consider this in the provision of information to IEDMs.

[44] On Apr. 18, I requested: “[...] all available information about the reasons for which [redacted] was transferred to [redacted] his conditions of confinement and interactions while there, and the length of his stay there before returning to unit 3.”

[45] CSC’s response to that inquiry indicated [redacted] was transferred to I [redacted] because

(
;

¹⁴ Yard entry, SIU activity log, yyyy-mm-dd.

[46] I was not provided details as to what there were any other inmates on the range at that time that he could interact with, whether there was any dedicated record-keeping to ensure was offered time out of cell, and whether he did actually come out of his cell.

[47] Based on the information provided, it seems that the meaningful interaction opportunities had during his time on were as follows:

- Apr. 7: none
- Apr. 8: attempted SIURC meeting (if this is considered “meaningful” contact), which I presume, based on other cases, would have lasted perhaps thirty to forty minutes, if I had participated; attempted telephone conversation by the Chief of Mental Health Services to advise him of an upcoming psychologist meeting with someone from outside AI; brief in-person follow-up by the psychology intern to provide the same information
- Apr. 9: none
- Apr. 10: none
- met with a psychologist for roughly 50 minutes¹⁶
- Apr. 12: meetings with his PO and a CM

[48] was unsure why he had been in but he had the perception it was for a “time out.” He said he was in a “barebones” camera cell, with no outlet.

He did not have any time out of cell. His description of staff visits was consistent with CSC information, as described in the list above. He thought that he was supposed to go back to the SIU in unit on the 12th, but they only came back on the morning of the 13th. He described his lack of community support, saying his phone records speak for themselves.¹⁷

[49] Access to a phone does not provide him much additional interaction, and in any case, the CCRA focuses on in-person interaction opportunities.

[50] s actions have clearly been problematic and challenging for staff to deal with. However, the SIU model was created to end the use of solitary confinement to deal with difficult behaviours. While the law has an exception for situations when an inmate does not comply with safety or security instructions “at the time” of an

¹⁵ Email to the IEDM from [REDACTED], Assistant Warden Interventions, yyyy-mm-dd.

¹⁶ Mental health clinical notes, yyyy-mm-dd, at p. 1.

¹⁷ IEDM interview with [REDACTED] yyyy-mm-dd.

opportunity,¹⁸ that exception does not justify several days of solitary confinement in response to incidents. CSC should not be allowing solitary confinement to occur on other units outside the SIU, nor use other units to avoid the CCRA's clear obligations for SIUs. The incident report for Apr. 7 even suggests that a less restrictive measure could have been used in the SIU to prevent assaults

[51] After [redacted] returned to the SIU, additional security measures ([redacted]) were imposed until Apr. 16. Regular opportunities for recreation did continue, although, as noted above, there was no intervention offered daily.

6.4. Mental Health and CSC's response to recommendations

[52] My Apr. 6 decision expressed concerns about [redacted]'s mental health, and my recommendations focused on this issue. CSC's Apr. 13 memorandum response to the decision describes the efforts of [redacted] Mental Health staff to work with him, and [redacted]'s ongoing refusal to consent to their offers.

[53] In my Apr. 18 interview with [redacted] he tried to explain more about his distrust of AI services, adding to what he had said in the past. He feels there has been inconsistency and copy-pasting in his paperwork, and his mental health is only taken seriously for the purpose of imposing parole conditions. He described confusion about what he needs to do to be successful, and getting mixed signals.

[54] The most significant development since my Apr. 6 decision is that CSC has provided [redacted] the opportunity to meet with a psychologist from outside the institution, which I understand is an exceptional measure. As described in CSC's Apr. 13 response:

¹⁸ CCRA, at para. 37(1)(b).

¹⁹ Incident report for incident number [redacted], yyyy-mm-dd, at p. 1.

[55] I am hopeful this will be a positive development for [redacted] I encouraged him to continue to meet with the psychologist.

[56] He did have the opportunity to meet with her in person again on Apr. 19.²¹

6.5. Ordering [redacted] 's removal from the SIU

[57] In sum, I am satisfied with CSC's response to the recommendations.

[58] However, I am not convinced that CSC met its obligations when [redacted] was transferred to [redacted]. For this reason, I cannot conclude that CSC took all reasonable steps.

[59] The plain language of s. 37.83(3) of the CCRA requires me to direct [redacted] s removal from the SIU. As noted above, if an IEDM finds that CSC has not taken all reasonable steps, s. 37.83(3) of the CCRA does not seem to give an IEDM the discretion to decide whether to order an inmate out of the SIU or not. However, the Supreme Court of Canada has stated, in a frequently cited decision, that "[I]t is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences."²²

[60] In this case, I find that ordering [redacted] out of the SIU would lead to absurd consequences. Such an order would be incoherent with my analysis under s. 37.8, and incompatible with the purpose of legislative enactments on SIUs, which are supposed to be protective of rights. It would also be somewhat futile, in that it would be unlikely to result in [redacted] s successful integration of a population. I am concerned that it could potentially cause

A better remedy in [redacted] s case would be to ensure that he continues to regularly be offered programs and mental health services in the SIU, and ensure that he is not left in solitary confinement conditions.

7. CONCLUSION

²⁰ CSC response to IEDM decision, yyyy-mm-dd.

²¹ Health entry, SIU activity log, yyyy-mm-dd.

²² *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, at para. 27.

[61] Under s. 37.8 of the CCRA, I find there are grounds to justify that remain in the SIU.

[62] Under s. 37.83(3) of the CCRA, I am not satisfied that CSC took all reasonable steps. However, I am not ordering 's removal from the SIU.

Janine Lespérance
Independent External Decision-Maker

Date: April 20, [REDACTED]

Inmate Name:
FPS Number: [REDACTED]
Correctional Institution: Medium-security Institution, Millhaven Institution
Date of s. 37.83(1) notification: December 25, [REDACTED]
Date of CSC Senior Deputy Commissioner Decision: January 4, [REDACTED]
Date of the Present Decisions: February 3, [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DETERMINATIONS UNDER SUBSECTION 37.83(1)
AND SECTION 37.8
OF THE *CORRECTIONS AND CONDITIONAL RELEASE ACT*,
S.C. 1992, c. 20**

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SUMMARY

The log shows CSC met its minimum quantitative obligations for opportunities in the SIU, but the log likely exaggerates the number of offers and time [redacted] spent out of his cell. A variety of programs were offered, but they were offered infrequently. Efforts were taken to facilitate [redacted] s interaction with other inmates. He had beneficial mental health support, but there were incidents of [redacted] during the period reviewed. Correctional staff seem to have acted inappropriately during [redacted] ' is concerned about "double-dooring" in the SIU. A recent change to create a medium-security range had a positive impact on his situation; he is getting out of his cell much more. Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps.

[redacted] It appears to be the best option to provide him a fresh start, but he no longer wants to go. He wants to go home to the [redacted] region, where he can receive visits and thinks he will be safer. Significant security concerns, related to his prior involvement in a serious assault, prevent him from safely integrating an [redacted] medium-security institution. Under s. 37.8 of the CCRA, I find there are grounds to keep [redacted] in the SIU. However, CSC should revisit the options and pursue additional interventions to encourage him to leave the SIU.

1. INTRODUCTION

[1] On Jan. 4, [redacted], the Senior Deputy Commissioner ("SDC") of Correctional Service Canada ("CSC") determined, under section 37.4 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") that [redacted] should remain in the Structured

Intervention Unit (“SIU”) at Millhaven Institution (“MI”) in Ontario.¹ He was previously in [medium-security institution,

[2] In addition, on Dec. 25, [REDACTED], CSC notified the Independent External Decision-Makers (“IEDMs”) that a decision under s. 37.83(1) of the CCRA concerning is necessary.

[3] As an IEDM, if I do have jurisdiction, I must answer the following questions:

- Did CSC take all reasonable steps to provide [REDACTED] at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?²
- Should [REDACTED] remain in the SIU?³

2. SOURCES OF INFORMATION

[4] I have considered CSC documentary information, CSC psychologist [REDACTED]'s oral comments of Feb. 2, and [REDACTED]'s Feb.1 and 2 oral comments (see annex for details). I find [REDACTED] credible in his comments.

3. CONTEXT

[5] [REDACTED] is [REDACTED] years old and is from [REDACTED].

[6] Since [REDACTED], he has been serving a [REDACTED] sentence for which his statutory release date is [REDACTED]. CSC has classified him at the medium-security level.

[7] His transfer to the SIU was authorized Sept. 9, [REDACTED], under para. 34(1)(b) of the CCRA, after he told staff at [REDACTED] he needed to leave his range. He was transferred to the MI SIU after that. [REDACTED]'s SIU transfer has been authorized ten times.

[8] In addition to decisions in [REDACTED], I issued decisions under s. 37.83(1) of the CCRA concerning [REDACTED]'s current SIU stay on Nov. 15 and Dec. 6, as well as a decision under s. 37.8 of the CCRA on Dec. 6. The analysis below should be read alongside those recent decisions, as I will minimize repetition.

4. ANALYSIS UNDER S. 37.83(1) OF THE CCRA

4.1. Do I have a legal basis to review [REDACTED]'s time-out-of-cell opportunities?

[9] Yes, I do.

¹ CSC notified the IEDMs of this decision on Jan. 5, [REDACTED].

² CCRA, s. 37.83(1).

³ CCRA, s. 37.8.

[10] If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.⁴

[11] CSC's log shows [REDACTED] was isolated from Dec. 20 to 24, [REDACTED], triggering a review.

4.2. What is the relevant period of review?

[12] This review focuses on Dec. 6 to Feb. 2 ("the period reviewed"), a period of 59 days, or 51 days if the days when [REDACTED] was temporarily out of the SIU are excluded.

[13] An IEDM decides the period to review, based on legal and practical factors. It is appropriate for an IEDM to examine more than just the days that triggered the review.

[14] In this case, I am reviewing the period since my last decision concerning [REDACTED]

4.3. How much time did [REDACTED] spend out of his cell and interacting with others each day?

[15] According to CSC's log, [REDACTED] spent four hours or more out of his cell on 10 days during the period reviewed (about 20% of all days). He had two hours or more of social interaction on 35 days (about 69% of all days). The average for time out of cell and interaction, for the days when [REDACTED] was in the SIU, was about two hours and 48 minutes daily. The daily totals increased significantly as of Jan. 30.

[16] [REDACTED] said they "added time on" in the log, but after a change on Monday creating a medium-security range, he is "out all day."

4.4. Were the quantity and timing of offers adequate?

[17] I find it likely the minimum required opportunities were not offered to [REDACTED] on at least some days.

[18] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates daily.⁵

[19] CSC's log indicates CSC met its minimum obligations each day except when [REDACTED] was temporarily out of the SIU.

⁴ CCRA, s. 37.83(1).

⁵ CCRA, s. 36(1) – (2).

[20] ' said yard is rarely offered. "Once in a while" they ask in the mornings. However, they do not ask later, and do not offer the common room. The weight room is always booked up.

[21] Numerous inmates have made similar comments to

4.5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[22] Yes, but it does not appear a legal exception applied.

[23] Contextual situations or circumstances can affect activities in the SIU. There are legal exceptions for some specific situations.⁶

[24] Log "end of day" notes mention situations having affected activities on certain days: a security incident (Dec. 7), preparation for the inter-regional transfer flight (Dec. 12, 14), an exceptional search (Dec. 18), staffing levels and an enhanced search (Dec. 19), social programs staffing (Dec. 21), a [REDACTED] and short staffing (Dec. 22), a search due to suspicion of weapon possession (Jan. 8), late lunch food carts (Jan. 15), and an incident that delayed medication delivery (Feb. 1).

[25] CSC did not invoke a legal exception.

4.6. What type of opportunities did [REDACTED] have?

[26] SIUs are meant to provide inmates access to opportunities for time out of cell that reflect their needs and interests.⁷ During the period reviewed, [REDACTED] had the following types of opportunities:

- recreation: indoor range and outdoor yard
- case management meetings
- correctional programs ([REDACTED] program)
- education ([REDACTED] program)
- social programs
- religious support from the Chaplain
- work as a food server and possibly as a cleaner
- behavioural counselling sessions
- periodic mental health evaluations and mental health clinician meetings

[27] There was a variety of opportunities, but program offers were somewhat infrequent. Some type of program was offered on 19 days (about 37% of all days he was in the SIU).

⁶ CCRA, para. 37(1)(c); CCRR, s. 19(1).

⁷ CCRA, para. 32(1)(b).

[28] has received consistent mental health support from a psychologist he has a good rapport with. He said she is the “best”, comes when he has urgent requests, and has advocated for him numerous times.⁸

4.7. Did CSC make efforts to facilitate 's interaction with other inmates?

[29] Yes, I find efforts were adequate had a lot of interaction with other inmates.

[30] had a recreation group throughout the period reviewed. His group has changed, as detailed in threat risk assessments (“TRAs”). It appears CSC staff were responsive to his group requests. Creating a medium-security range gave him more opportunities for interactions with other inmates.

4.8. Did CSC encourage to participate in out-of-cell and interaction opportunities?

[31] I must assess whether CSC encouraged to participate in activities.⁹ I find there were some encouragement measures, but there was also significant discouragement.

4.8.1. Participation

[32] The log shows he went out for indoor range time on almost all days. He did not go to the yard. He went out regularly to serve between Dec. 7 and Dec. 23. As of the end of January, there were some log entries for him going out to clean, but it is not clear whether these are correct (one entry for Jan. 20 has a correction indicating he is not a range cleaner, but subsequent entries do not state that).

[33] For interventions, he accepted: 2 of 8 social programs opportunities; 5 of 7 behavioural counselling opportunities; 0 of 3 MM-SIU opportunities; 0 of 2 religious support opportunities; and 0 of 1 education opportunity left early a couple of times and seems to have preferred afternoon opportunities.

4.8.2. Encouragement

[34] There is minimal indication of encouragement in the log. Measures that can be considered encouragement were: offering to bring him writing materials, returning in the afternoon to offer a behavioural counselling session (Jan. 8), and providing an opportunity for correctional programs in the afternoon (Feb. 1) as agreed upon the day before. A positive change during the period reviewed was the creation of a medium-security range, which can be considered a form of encouragement. This

⁸ IEDM interview with yyyy-mm-dd.

⁹ CCRA, s. 37.83(1).

seems to have reduced [redacted]'s security concerns and resulted in him spending much more time out of cell. I [redacted] said it was "going good."¹⁰

4.8.3. Mental health

[35] I also find the regular mental health support for him was a form of encouragement.

[36] [redacted]'s mental health seems to have

4.8.4. Discouragement factors

[37] I find there were forms of discouragement during the period reviewed.

[38] There was a timing conflict between two kinds of program offers on Jan. 3.

[39] A rule to wear institutional clothing discouraged his participation in a program session on Jan. 31.

[40] Most significantly, some correctional staff showed problematic behaviour.

[41] He also alleged officers were listening to a medical appointment that should have been confidential on [redacted] just before our interview.

[42] He made credible allegations of highly inappropriate staff comments and behaviour during [redacted]. He alleged a unit manager

[redacted] I understand there is already an ongoing investigation about this incident.

¹⁰ IEDM interview with [redacted] yyyy-mm-dd.

¹¹ IEDM interview with [redacted] yyyy-mm-dd.

5. ANALYSIS UNDER S. 37.8 OF THE CCRA

5.1. Do I have a legal basis to review [redacted] s SIU placement?

[43] Yes, my jurisdiction is uncontroversial.

[44] If CSC decides an inmate must remain in the SIU in subsequent decisions, an IEDM decision under s. 37.8 of the CCRA is required. If an inmate remains in the SIU, the SDC and IEDM will have to issue subsequent decisions.

[45] In this case, the SDC has issued two decisions on [redacted] s continued SIU stay. The Jan. 4 decision concluded he should remain in the SIU.

[46] This is the second decision under s. 37.8 of the CCRA during [redacted] s current SIU stay. I [redacted] has now been in the SIU for about 147 days.

5.2. Is [redacted] s security classification appropriate?

[47] Yes, I find his medium-security classification appropriate.

[48] Since my last decisions concerning him, the only additional reported incidents were incidents of self-harm, on Dec. 12, 24, and 25. I do not find this provides a basis to increase his security classification.

[49] Considering his medium-security classification, he requires a transfer to a medium-security population; MI is inappropriate for him.

5.3. Are there viable integration options?

[50] [Medium-security institution, 'redacted] likely still presents the best possibility for a fresh start and safe integration for [redacted] but it appears additional interventions are needed to ensure I [redacted] fully accepts this option.

5.3.1.

[51] In my Dec. 6 decision, I found Mr. W's transfer back to [redacted], where he was transferred to the SIU from, was no longer appropriate.¹²

[52] [redacted] still feels it is unjust he was moved to MI after he was victimized, and still feels he can return if the perpetrator is not there.¹³

[53] CSC has not provided any information about possible changes at [redacted]. Given the prolongation of [redacted] s SIU stay, it may be worth revisiting whether there is any possibility of him safely returning there and doing some mediation if appropriate. However, the risk of security issues appears higher there than at a new institution.

¹² See: decision under s. 37.8 of the CCRA concerning Mr. W, yyyy-mm-dd, at paras. 52 to 65.

¹³ IEDM interview with [redacted] yyyy-mm-dd.

5.3.2. Medium-security institution

[54] has expressed that he is willing to go . He was previously refused there. He feels they have refused him based on an untrue allegation, namely, [REDACTED]

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f

5.3.3.

[55] has been accepted to in [REDACTED]. His views on this transfer have varied.

[56] had been open to going. However, in my Dec. 4 interview with he spoke of the timing of the transfer, indicating he would refuse to go before Christmas.¹⁵ Moreover, on Dec. 11, he spoke of security concerns about the transfer, regarding his fear of being assaulted, with his mental health clinician.

[57] Documentation does not show a consideration of whether the timing of the transfer was a good idea, or reconsideration of the transfer decision. However, there were efforts to make changes to make him more secure during the transfer, and communicate this to him. Despite those efforts.

[58] At this time, does not seem to have the same security concerns about an incident during the transfer travel. However, in my Feb. 2 interview with him, he expressed general fears about the transfer to He said he will not integrate. did not identify specific concerns to me; his changed perspective seems to be mainly for personal reasons.

[59] It appears additional interventions are necessary for him to again accept this option and understand that integrating a population at would likely be better for him than the SIU. It would be inadvisable to force him to transfer. Given the recent traumatic event he experienced, which may cause him to over-estimate risk, and his mental health being somewhat volatile – there has been more than one incident of self-harm during his SIU stay – there is reason for caution in his case. Interventions could include efforts to connect him with inmates and staff at the institution, including mental health staff.

5.3.4. [REDACTED] region medium-security institutions

[60] wants to return to his home region, the [REDACTED] region.

[61] was not accepted to go to [medium-security institution, or [medium-security institution, . I requested CSC provide more information as

¹⁴ See: AFD, yyyy-mm-dd, p. 6.

¹⁵ Decision under s. 37.8 of the CCRA concerning yyyy-mm-dd, at para. 69.

to the possibility of him transferring to either of these institutions. [REDACTED]'s role as one of [REDACTED] perpetrators in a serious assault that occurred at [REDACTED] on [REDACTED], has had a negative impact on his ability to safely integrate a medium-security institution in the [REDACTED]. A [REDACTED] SIO provided a detailed response regarding case dynamics in relation to STGs, inmate perceptions, [REDACTED] connections, and past incidents.¹⁶ The information provided seems to clearly establish [REDACTED]'s transfer there would not be a safe and appropriate way to end his SIU stay.

[62] In my Feb. 2 interview with [REDACTED] he did briefly acknowledge the prior incident at [REDACTED] could affect his integration options, as he should not be in the same place as [REDACTED]. However, he was adamant the [REDACTED] would be better for him: he said people don't get [REDACTED] in the [REDACTED] region; he'll feel safer there.

[63] Moreover, he would be able to receive visits and potential temporary absences. He has not gotten visits in [REDACTED], and [REDACTED] would be [REDACTED] from his family. His thoughts about going to [REDACTED] changed because of his [REDACTED]'s health, [REDACTED]. He is close with [REDACTED]. She [REDACTED]. He expressed that having in-person visits has a big impact on his mental health. Video visits are not even close to having the same impact; they are "garbage," according to him.¹⁷

[64] I am sympathetic to [REDACTED]'s desire to go home and his concerns about [REDACTED].

[65] However, inmates are not guaranteed a placement close to home; this factor has to be balanced with other factors, including safety and security. In [REDACTED]'s case, it appears significant population changes and interventions would be necessary before he would be able to safely integrate an [REDACTED] medium-security population, especially [REDACTED]. I believe CSC should make further efforts to communicate this to [REDACTED], so he will be more open to transferring out of the SIU elsewhere.

5.3.5. Incorrect file information

[66] [REDACTED] has identified some statements in his file information that he states are incorrect. This has frustrated him and seems to have contributed to security fears, which makes him less willing to integrate a mainstream population. He brought this to CSC's attention recently.¹⁸ I urge CSC to address his concerns to facilitate his safe transfer out of the SIU, including by making him feel more comfortable about it.

¹⁶ Email from SIO [REDACTED], yyyy-mm-dd.

¹⁷ IEDM interviews with [REDACTED] yyyy-mm-dd, yyyy-mm-dd.

¹⁸ See: case management entry, SIU activity log, yyyy-mm-dd; mental health clinical notes, yyyy-mm-dd.

6. CONCLUSIONS

[67] Under s. 37.83(1) of the CCRA, I conclude CSC did not take all reasonable steps. Due to the recent positive change and steps underway, I will not make recommendations under s. 37.83(2) of the CCRA.

[68] Under s. 37.8 of the CCRA, I conclude there are grounds for [REDACTED] to remain in the SIU. I encourage CSC to pursue interventions with him so that he will accept a transfer to [REDACTED] as well as reassess whether there is any possibility of him returning to [REDACTED]

Janine Lespérance
Independent External Decision-Maker

Date: February 3, [REDACTED]

ANNEX: SOURCES OF INFORMATION AND 'S OPPORTUNITY TO PROVIDE COMMENTS

[69] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of yyyy-mm-dd
- Threat risk assessments (“TRAs”), for the period as of yyyy-mm-dd
- Telephone interview with psychologist [REDACTED], yyyy-mm-dd
- Casework record (“CWR”) log, for the period from yyyy-mm-dd to yyyy-mm-dd
- Mental health checklists, dated yyyy-mm-dd and yyyy-mm-dd
- Email from MED5 ([REDACTED]) in response to IEDM request for information, received on yyyy-mm-dd
- Email from SIO [REDACTED] in response to IEDM request for information, received on yyyy-mm-dd
- Medical correspondences, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X2), and yyyy-mm-dd
- Mental health clinical notes, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd (X2)
- Referrals for health services, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X3), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Refusals to attend community escort, dated yyyy-mm-dd and yyyy-mm-dd
- Mental health forms, dated yyyy-mm-dd, and yyyy-mm-dd
- SIU Review Committee (“SIURC”) recommendations, dated yyyy-mm-dd and yyyy-mm-dd
- Regional reviews, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Laboratory results, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Inmate’s requests, dated yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, and yyyy-mm-dd
- Correctional plan updates – SIU (“CPU-SIU”), dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd and yyyy-mm-dd
- Incident history log report, generated on yyyy-mm-dd
- Institutional charges report, generated on yyyy-mm-dd
- Senior Deputy Commissioner (“SDC”) decisions, dated yyyy-mm-dd and yyyy-mm-dd
- Out-of-facility information, for the periods of yyyy-mm-dd to yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd to yyyy-mm-dd, and yyyy-mm-dd to yyyy-mm-dd

- Mental health triage and assessment reports, dated yyyy-mm-dd and yyyy-mm-dd (X2)
- Modified watch observation form, dated yyyy-mm-dd and yyyy-mm-dd
- OHIS-EMR Medical information, generated on yyyy-mm-dd and yyyy-mm-dd
- Statement/observation reports, numbered: ---, ---, ---, ---, ---, --- (for yyyy-mm-dd); --- (for yyyy-mm-dd); ---, ---, ---, ---, ---, ---, ---, ---, ---, ---, --- (for yyyy-mm-dd); --- (for yyyy-mm-dd); ---, ---, ---, ---, ---, --- (for yyyy-mm-dd); ---, ---, ---, ---, --- (for yyyy-mm-dd), --- (for yyyy-mm-dd)
- Incident reports, dated yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd (X2), yyyy-mm-dd (X3), and yyyy-mm-dd
- Classifications of inmate's injuries, dated yyyy-mm-dd and yyyy-mm-dd
- Emergency progress note, dated yyyy-mm-dd
- Operative report, yyyy-mm-dd
- Discharge plan, dated yyyy-mm-dd
- Discharge summary, dated yyyy-mm-dd
- Memorandum - deputy warden meeting, dated yyyy-mm-dd
- Emergency department reports, yyyy-mm-dd and yyyy-mm-dd
- Referral decision sheets – institutional transfer, dated yyyy-mm-dd and yyyy-mm-dd
- CSC's response to IEDM request for information, received on yyyy-mm-dd
- Medication administration records, for the period of yyyy-mm-dd to yyyy-mm-dd
- Triage of referral for patient, dated yyyy-mm-dd
- Immediate needs and identification referral - security, dated yyyy-mm-dd
- Tuberculosis assessment, dated yyyy-mm-dd
- Memorandum - EOD supplemental information, dated yyyy-mm-dd
- Medical appointment information, dated yyyy-mm-dd
- Optometric assessment, dated yyyy-mm-dd
- Memorandum – EOD Addendum, dated yyyy-mm-dd
- Institutional head "30-day" SIU transfer decision, dated yyyy-mm-dd
- Medical report, dated yyyy-mm-dd
- Correctional plan – updated ("CPU"), dated yyyy-mm-dd
- Memorandum – Correctional Interventions Board ("CIB"), dated yyyy-mm-dd
- Assessment for decision – institutional transfer, dated yyyy-mm-dd and yyyy-mm-dd
- Institutional head "5-day" SIU transfer decision, dated yyyy-mm-dd
- Medical directive, dated yyyy-mm-dd and yyyy-mm-dd
- Criminal profile report ("CPR") – amendment #4, dated yyyy-mm-dd
- Emergency documentation, dated yyyy-mm-dd
- SIU transfer confirmation, dated yyyy-mm-dd
- Consultation report, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Referral decision sheet – offender security level, dated yyyy-mm-dd
- Assessment for decision – security level, dated yyyy-mm-dd

- Security reclassification scale, dated yyyy-mm-dd

[70] I sent [redacted] via CSC, a summary of the information I am considering for this review on Jan. 29. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[71] I learned [redacted] would share his views. We spoke by videoconference on Feb. 1, for approximately 15 minutes. [redacted] left early [redacted]. I requested another time to finish the interview. A call was planned for that afternoon. After waiting for almost an hour after the planned time, the call did not take place. I was informed the delay had been due to an incident at MI. Another call was scheduled for Feb. 2. It began on time and lasted about 35 minutes.

Name:
FPS Number: ██████████
Correctional Institution: Atlantic Institution
Date of initial decision (s. 37.83(1), CCRA): February 18, ██████████
Date subsequent s. 37.83(1) decision triggered: February 22, ██████████¹
Date of the present decisions: April 1, ██████████
Independent External Decision-Maker: J. Lespérance

**DETERMINATIONS UNDER
SUBSECTION 23.06(1) OF THE CORRECTIONS AND CONDITIONAL RELEASE
REGULATIONS, SOR/92-620 AND
SUBSECTION 37.83(1) OF THE CORRECTIONS AND CONDITIONAL RELEASE
ACT, S.C. 1992, c. 20**

SUMMARY

CSC has already determined that ██████████ should not remain in the SIU. He feels he was tricked into integrating previously. CSC should identify an environment where ██████████ ensure he can receive programs and ██████████ support on a non-SIU range, and explore starting core programming with him in the SIU. ██████████ was placed ██████████ during the period reviewed. In the SIU, opportunities for time out of cell were mostly adequate. However, there was an issue with his access to phone interventions. The MM-SIU program was his most consistent source of positive interaction. Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps.

1. INTRODUCTION

[1] On Dec. 27, ██████████, the Independent External Decision-Makers (“IEDMs”) were notified that for five consecutive days, ██████████ had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit (“SIU”) at Atlantic Institution (“AI”) in Renous, New Brunswick. S. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) required an IEDM to determine if Correctional Service Canada (“CSC”) had taken all reasonable steps to ensure ██████████ had at least four hours of time out of

¹ Note that CSC did not send a notification for this subsequent review under s. 37.83(1) of the CCRA.

his cell and two hours of meaningful human contact per day. In my decision of Feb. 18, [REDACTED], I concluded CSC had taken all reasonable steps.

- [2] At the time of that decision, [REDACTED] had not had at least four hours out of his cell or two hours of interaction per day, for ten consecutive days. Consequently, I must determine, under subsection 23.06(1) of the *Corrections and Conditional Release Regulations* (“CCRR”), SOR/92-620, whether Mr. C should remain in the SIU.
- [3] While the decision under s. 23.06(1) of the CCRR was pending, another “5-day” decision under s. 37.83(1) of the CCRA was triggered, on Feb. 22.
- [4] This review includes analysis on the reasons for the SIU placement and the conditions of confinement.

2. LEGAL FRAMEWORK

2.1. CSC’s legal obligations toward inmates in the SIU

- [5] CSC must provide inmates the daily opportunity to spend at least four hours outside their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates’ needs. Under s. 37.83(1) of the CCRA, an IEDM determines whether CSC has taken all reasonable steps to provide an inmate the required opportunities and encourage them to participate. The IEDM decides the specific period of activities to consider.

2.2. Framework for reviews under s. 23.06(1) of the CCRR

- [6] Subsection 23.06(1) of the CCRR states:

“If, in accordance with subsection 37.83(1) or (3) of the Act, the [IEDM] determines that the Service has taken all reasonable steps to provide an inmate with the opportunities referred to in subsection 36(1) of the Act but that, in the last 10 consecutive days, the inmate, while continuing to be confined in a [SIU], has not spent a minimum of four hours a day outside their cell or has not interacted with others for a minimum of two hours a day, the [IEDM] shall determine, as soon as practicable, whether the inmate should remain in the [SIU].”

- [7] A decision under s. 23.06(1) of the CCRR focuses on the reasons for the inmate’s placement in the SIU, rather than conditions in the SIU.
- [8] The CCRA states that an inmate’s SIU placement should “end as soon as possible.”² For an IEDM decision under s. 23.06(1) of the CCRR, there is a presumption that an inmate should be released from the SIU. The law states,

² CCRA, s. 33.

“The [IEDM] may determine [...] that an inmate should remain in a [SIU] only if the [IEDM] believes on reasonable grounds that allowing the inmate’s reintegration into the mainstream inmate population

(a) would jeopardize the safety of the inmate or any other person or the security of the penitentiary; or

(b) would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence [emphasis added].”³

[9] There is always some risk in the penitentiary context. Belief on reasonable grounds that an inmate’s reintegration “would” jeopardize safety or security means there is more than just a possibility of incidents. There must be facts showing an undue probability of safety or security consequences. If the standard used were too low, there would always be a reason for keeping an inmate in the SIU. This outcome would be at odds with the legislation.

[10] The IEDM must consider the inmate’s correctional plan, the appropriateness of their confinement in the penitentiary they are in, the appropriateness of their security classification, and any other relevant factors.⁴

[11] The CCRA does not address situations when an inmate wants to stay in the SIU. An IEDM may make recommendations, particularly when the inmate has refused integration options that CSC has proposed.

3. INFORMATION CONSIDERED

[12] For this review, the following items are my sources of information from CSC:

- SIU daily activity log (“the log”), for the period as of yyyy-mm-dd in particular
- Threat risk assessments (“TRAs”), for the period as of yyyy-mm-dd in particular
- Casework record (“CWR”) log, for the period from yyyy-mm-dd to yyyy-mm-dd
- Memorandums – epidemics exception, dated yyyy-mm-dd and yyyy-mm-dd
- Mental Health clinical notes dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Mental Health forms dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Regional reviews, dated yyyy-mm-dd and yyyy-mm-dd
- Memorandums – recreation group, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Health case management note, dated yyyy-mm-dd
- Email from ██████, “RE: Exception COVID-19 – Atlantique,” dated yyyy-mm-dd

³ CCRA, s. 37.82(1); CCRR, s. 23.06(2).

⁴ CCRA, s. 37.82(2); CCRR, s. 23.06(2).

- Incident reports, dated yyyy-mm-dd, and yyyy-mm-dd
- Memorandum – inmate employment, dated yyyy-mm-dd
- Institutional head “30-day” SIU transfer decision, dated yyyy-mm-dd
- Email from ██████ “Active Exception - Epidemic/Covid 19 Outbreak - yyyy-mm-dd - Atlantic Institution – SIU,” dated yyyy-mm-dd
- Memorandum – integration options, dated yyyy-mm-dd
- Institutional head “5-day” SIU transfer decision, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Correctional plan – updated (“CPU”), dated yyyy-mm-dd
- review – initial, dated yyyy-mm-dd
- Criminal profile report – original, dated yyyy-mm-dd

[13] On Mar. 16, I sent ██████ via CSC, a summary of the information I am considering for this review. I offered him the opportunity to provide written representations, to speak to me in an interview, and to have his lawyer involved.

[14] On Mar. 17, I learned ██████ would share his views. I intended to interview him in person on Mar. 21, but I cancelled the visit

[15] I interviewed him by telephone on Mar. 22 and Mar. 24, for a total of about an hour and a half. ██████ attended as a support for

[16] I have interviewed ██████ previously and consulted additional CSC information for previous reviews.

4. CONTEXT

[17] ██████ is ██████ years old and is from ██████. He is of ██████ and ██████. He speaks some ██████ and has been culturally engaged.

[18] He has been approved to receive services from the ██████ (██████████) unit. CSC classifies him at the maximum-security level. According to his Sept. 28, ██████, CPU, he was referred to ██████ Program but has not completed it; he “has yet to reside within a population for a significant amount of time, which has affected his ability to participate in programming.”⁵

⁵ CPU, yyyy-mm-dd, at p. 6.

[19] He is serving a sentence of [REDACTED]. His statutory release date is set for [REDACTED],⁶ but he has outstanding charges.

[20] He returned to [REDACTED] from [REDACTED] on Sept. 27, [REDACTED].

[21] This is his seventh SIU stay.

[22] Another IEDM, [REDACTED], and I have issued several previous reviews concerning him. Notably, I issued a detailed review under para. 23.07(1)(a) of the CCRR on May 8, [REDACTED].

5. ANALYSIS UNDER S. 23.06(1) OF THE CCRR

5.1. CSC's decisions regarding [REDACTED]'s SIU placement

[23] According to CSC, after [REDACTED]'s return to [REDACTED] in Sept. [REDACTED], he had the option to integrate the open population, but "refused all options that were given to him ([REDACTED])".

[24] He was placed on the [REDACTED] range as a "short term alternative."⁸

[25] According to CSC, "a number of conversations occurred with PO, [REDACTED] clinician, CM and even the negotiator to successfully transition him to unit [REDACTED]."⁹ He integrated the [REDACTED] range on [REDACTED].

[26] He requested to leave on [REDACTED]. His transfer to the SIU was authorized that day, under para. 34(1)(b) of the CCRA.

[27] The acting institutional head did not approve [REDACTED]'s SIU placement in the "5-day" decision of Dec. 29 and the "30-day" decision of Jan. 19. Because of that, there have not been CSC Commissioner decisions under s. 37.4 of the CCRA or IEDM decisions under s. 37.8 of the CCRA, despite the length of his SIU stay.

[28] In light of CSC's decisions, I consider that the primary purpose of the review under s. 23.06(1) of the CCRR is to make recommendations in relation to [REDACTED]'s reintegration of a mainstream population.

5.2. [REDACTED]'s views as expressed on [REDACTED]

[29] [REDACTED] feels he was "tricked" to integrate unit [REDACTED] in [REDACTED], especially by the negotiator [REDACTED] had been promised it was quiet, a small number of inmates resided

⁶ CPU, yyyy-mm-dd, at p. 1.

⁷ SIURC in Institutional head "30-day" SIU transfer decision, yyyy-mm-dd, at p. 3.

⁸ SIU transfer authorization, yyyy-mm-dd, at p. 3.

⁹ SIU transfer authorization, yyyy-mm-dd, at p. 3.

there, and there were no sex offenders. Upon arrival, he quickly learned this was not the case.

[30] emphasized that he did not say his safety was in danger on unit and he never said that he felt he was not welcome. He wants CSC paperwork to be corrected.

[31] said that he did not want to look at going to the until after his , but he also said that he would be open to go after his quarantine. When I asked to compare with the SIU, and which one is more restrictive, he said he was not sure about routine right now. When he was last there, the routine changed a few times.

[32] Regarding program access, he thought he probably would not be able to continue the MM-SIU program on . He expressed discontent with having to stay in the SIU to be able to do programming.

[33] He said that he has asked to participate in “conflict resolution” with the incompatibles he is told he has on unit but CSC will not tell him who they are. CSC is only providing as an option for him.

5.3. IEDM comments

[34] Considering file information, 's maximum-security classification appears appropriate at this time. Given that he is in the only maximum-security penitentiary in , his penitentiary placement also appears appropriate. However, has had recurring mental health challenges and raised issues about the adequacy of support. A more therapeutic or culturally appropriate environment may be better for him. It is notable that the majority of recent incidents on file are

[35] To encourage to integrate a population and allow him to make positive progress, CSC should try to provide him an environment where he does not have to live alongside sex offenders. This can be considered a way to respond to systemic and background factors that affect people,¹⁰ considering Canada's history of removing

[36] 's experience of being convinced into going to unit in appears to have contributed to his distrust of authorities, and may hinder future integration efforts.

[37] has been participating consistently in correctional programming in the SIU. However, he has not had the chance to do the core program recommended for him.

¹⁰ See CCRA, at para. 79.1(1)(a).

CSC could examine whether starting the ICPM program for him in the SIU would help him to progress more, especially considering Indigenous Social History (“ISH”) factors have likely contributed to his repeated SIU stays.

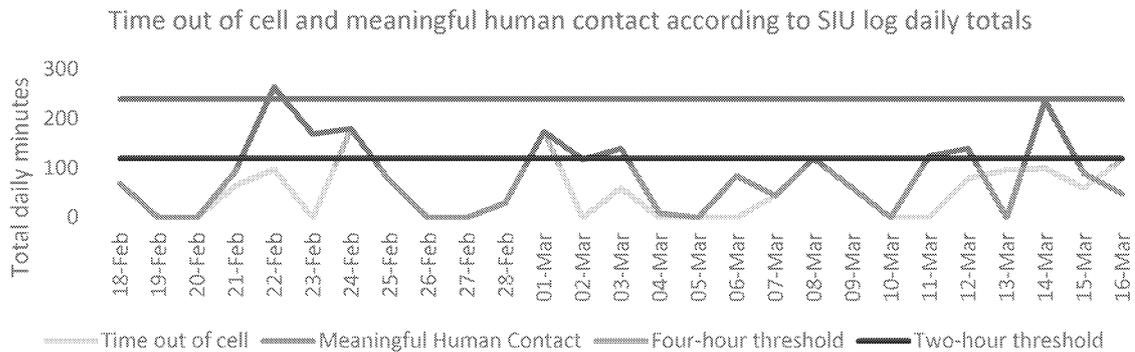
[38] Finally, CSC should ensure that “mainstream” population ranges at / and other maximum-security institutions are, in fact, less restrictive than the SIU. Inmates should be able to participate in programming. I should have the opportunity to receive support from staff. has recognized the support of , saying that they talk to him “like a person.” has been a positive support for him, recognizing his abilities in art and poetry.

6. ANALYSIS UNDER S. 37.83(1) OF THE CCRA

6.1. Daily totals for time out of cell and meaningful interaction

[39] was in the SIU, in unit 3, until the afternoon of Mar. 17. He returned from medical isolation in the evening of Mar. 28.

[40] For the period from Feb. 18 to Mar. 16, a period of 28 days, never spent more than four hours outside his cell, according to the SIU log. There were 9 days (around 32%) when he had more than two hours of meaningful human contact. He spent an average of 53 minutes outside his cell daily.



[41] This is a high level of isolation.

6.2. Opportunities and participation

[42] The quantity and timing of offers for time out of cell was adequate, as there were usually several opportunities during the day. turning down recreation and social programs contributed significantly to the low daily totals.

[43] On the other hand, opportunities for meaningful human contact were low as of around Feb. 20. Indoor recreation offers were for “rec alone.”

6.2.1. Recreation group and interaction

[44] said that his recreation partner left to go to ¹ He said that he had been trying to get in a group with another guy, and is open to a conflict resolution, but CSC has not allowed this.

[45] According to CSC, The Correctional Managers (“CMs”) and Security Intelligence Officer (“SIO”) did not support the group.¹²

[46] In such situations, CSC should explore conflict resolution if both sides are willing, or other strategies to reduce risk, rather than simply preventing inmates from associating.

[47] Without a recreation group, ’s chances for interaction were during outside yard (through a fence), social programs, and correctional programs (the SIU Motivational Module (“MM-SIU”) program). Staff offered program sessions most days. He had no program opportunity on Feb. 26 and 27; and Mar. 6, 10, 17, and 28.¹³ Other forms of interaction were staff meetings and personal phone calls. He used the phone fairly often.

6.2.2. Programs

[48] The log shows he had social program opportunities most days, but he only participated once. alleged that only one Social Programs Officers (“SPO”) comes to see him, and said that people without a group should be asked first. However, he admitted he tends to turn down these sessions.

[49] did not miss a MM-SIU opportunity, whether in-person or by phone. Thirteen sessions took place between Feb. 18 and Mar. 29. Notes for these sessions report his positive engagement and that the program tools were helpful for him.

[50] There was an issue on Feb. 28. The Correctional Programs Officer (“CPO”) had planned a phone MM-SIU session. According to , he was marked down as having declined (at 9:15AM), even though no one asked him.

¹¹ IEDM interview with , yyyy-mm-dd.

¹² Memorandum – recreation group, yyyy-mm-dd.

¹³ SIU activity log.

¹⁴ See Correctional programs entries, SIU activity log, yyyy-mm-dd and yyyy-mm-dd; Case management entry, SIU activity log, yyyy-mm-dd.

[51] [redacted] alleged that with the “same crew” of unit staff, there was another day when he was told that the program was “cancelled” for security reasons, in the morning and afternoon.¹⁵ He thought he could have had the session later.

[52] Apart from program sessions, there was a conversation about giving [redacted] a job as an occasional “bio hazard” cleaner on Mar. 12.¹⁶ He went out once to work, on Mar. 13.

[53] [redacted] received support from [redacted] on a few occasions.

[redacted] I was informed that [redacted] can be called on request. [redacted] did not recall making any requests.¹⁷ However, a log note indicates he requested to talk to [redacted], [redacted]. The call with [redacted] was scheduled for [redacted], but it appears it did not happen.¹⁹ The reasons are unknown to me.

6.2.3. Mental health and incidents

[54] Outside stressors for [redacted] during the period reviewed included

[55] According to the log, he turned down mental health evaluations or individual sessions during the period reviewed, participating once.²² A couple of Mental Health offers were not recorded in the SIU log.

[56] The possibility of sessions with a Behavioural Counsellor from [a women’s institution] was presented to him. He was open to it²³ and it was approved.²⁴

[57] After no recorded incidents since Feb. 4, there was an incident on Mar. 7 when [redacted] broke another inmate’s cell window. There had been a dispute about noise in the SIU.²⁵ TRAs state that additional security measures (handcuffs, two-officer escort, secure rooms) were used for [redacted] until Mar. 10. The use of rooms with barriers was not recorded in the SIU log.

[58] It does not seem that secure rooms were truly necessary for program meetings. Log information does not suggest [redacted] was agitated toward staff in that particular situation. Security measures should be adapted to the risks in each specific

¹⁵ IEDM interview with [redacted] yyyy-mm-dd.

¹⁶ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁷ IEDM interview with [redacted] yyyy-mm-dd.

¹⁸ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁹ Case management note, SIU activity log, yyyy-mm-dd.

²⁰ See Correctional programs entries, SIU activity log, yyyy-mm-dd and yyyy-mm-dd.

²¹ IEDM interview with [redacted] yyyy-mm-dd.

²² SIU activity log entries.

²³ Correctional programs entry, SIU activity log, yyyy-mm-dd.

²⁴ Case management note, SIU activity log, yyyy-mm-dd.

²⁵ Correctional programs entry, SIU activity log, yyyy-mm-dd.

situation. More positively, offers to [redacted] did continue, and MM-SIU sessions provided an opportunity to talk through what happened.

[59] There were four recorded incidents between Mar. 17 and 21,

6.3. Medical isolation

[60] [redacted]. CSC did not administratively cancel his SIU authorization, which I consider appropriate. Medical isolation is not a mainstream population, the conditions are more restrictive than the SIU, and it was known he would return to the SIU.

[61] IEDM oversight focuses on SIUs. However, the legislation does not provide clear guidance for how IEDMs should assess periods when a SIU inmate is temporarily outside the SIU, in a more restrictive environment.

[62] Given the intent of the legislation and the goal of reducing isolation, I find it appropriate to look at [redacted]. CSC has invoked the legislative exception for epidemics, at para. 19(1)(b) of the CCRR. I consider that it applies to [redacted]'s situation, but it does not provide a "blank cheque" to CSC to avoid taking any effort to provide time out of cell and human interaction.

[63] I do not have data from CSC on the steps taken to provide at least some time out of cell or interaction to [redacted].

[64] On Mar. 22,

[65] He said that he had not been offered programs over the phone.²⁷ There was a scheduled session toward the end of his isolation period, but it may not have happened as planned.²⁸

²⁶ IEDM interview with [redacted] yyyy-mm-dd.

²⁷ IEDM interview with [redacted] yyyy-mm-dd.

²⁸ My written interview notes suggest he said on Mar. 24 that he had had a phone program session that day, but this may be an error in my notes. There is a SIU log entry from Mar. 29 describing a "mix-up in

7. CONCLUSION

[66] Under s. 23.06(1) of the CCRR, I do not have a basis to disagree with CSC's prior decisions, so I find [redacted] should not remain in the SIU. At the same time, he should not be forced to leave it, which would likely create security issues.

[67] Under s. 37.83(1) of the CCRA, I conclude that CSC did not take all reasonable steps. For most of the period reviewed, the opportunities and efforts were sufficient. However, I find the shortcomings in providing telephone programs or support on a couple of occasions significant, considering

[68] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- Ensure that staff take the time to clearly determine an inmate's intention to participate in a program session or other opportunity, before marking them as having refused,
- Improve the coordination of telephone interventions;
- Ensure the consistent on-site presence of health care staff with mental health training and de-escalation skills;
- Examine whether it would be beneficial to start the core program with [redacted] in the SIU; and
- Take efforts to provide all inmates in medical isolation some opportunity for time out of cell and interaction.

Janine Lespérance
Independent External Decision-Maker

Date: April 1, [redacted]

communication" that resulted in a scheduled telephone session with the CPO not taking place the Friday before, Mar. 25. See: Correctional programs entry, SIU activity log, yyyy-mm-dd.

Name:
FPS Number: [REDACTED]
Correctional Institution:
Date of Notification: July 24, [REDACTED]
Date of Decision: August 25, [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps to provide [REDACTED] opportunities to leave his cell and interact with others in the SIU. There were earlier efforts to place him in a recreation group, but I am not satisfied there has been adequate follow-up to a more recent request of his. Not all types of activities were offered to [REDACTED] consistently throughout the period reviewed, including education and correctional programs. [REDACTED] wants to be provided [REDACTED] diet. CSC should not treat his request as less important than other religious diet accommodation requests. Various stressors have affected [REDACTED] during the period reviewed, including his potential transfer to [REDACTED]

I. INTRODUCTION

- [1] On July 24, [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning [REDACTED] was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at [maximum-security institution, [REDACTED]]
- [2] An IEDM must determine if CSC has taken all reasonable steps to ensure [REDACTED] spends time out of his cell and has social interaction.

II. LEGAL FRAMEWORK

1. CSC's legal obligations toward inmates in the SIU

[3] Section 36 of the CCRA describes CSC’s obligations towards inmates in the SIU. It states:

“Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a [SIU]

(a) an opportunity to spend a minimum of four hours outside the inmate’s cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate’s reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate’s cell counts as time spent outside the inmate’s cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate’s cell under paragraph (1)(a).”

[4] The CCRA also specifies that s. 36(1) does not apply “if the inmate refuses to avail themselves of the opportunity [...]”¹ The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 (“CCRR”) set out other limited exceptions, including an inmate’s refusal to comply with security-related instructions at the time of the offer,² and certain specific contextual circumstances, including epidemics.³

[5] The current decision focuses on SIU conditions of confinement. Ss. 37.83(1) and (2) of the CCRA state:

“Decision — reasonable steps

37.83 (1) If, for five consecutive days or for a total of 15 days during any 30-day period, an inmate confined in a [SIU] has not spent a minimum of four hours a day outside the inmate’s cell or has not interacted, for a minimum of two hours a day, with others, an [EDM]

¹ CCRA, at para. 37(1)(a).

² CCRA, at para. 37(1)(b).

³ CCRR, at para. 19(1)(b).

shall, as soon as practicable, determine whether [CSC] has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1) and to encourage the inmate to avail themselves of those opportunities.

Recommendations

(2) If the [IEDM] determines that [CSC] has not taken all reasonable steps, he or she may make any recommendation to [CSC] that he or she considers appropriate to remedy the situation. [emphasis added]"

- [6] Considering s. 37.83, CSC must be proactive and seek alternatives to ensure that an inmate spends time out of their SIU cell and has meaningful social interaction. More, the SIU's purpose includes allowing an inmate to participate in programs and access services.⁴ CSC must make "every reasonable effort" to ensure physical barriers do not impede interactions.⁵
- [7] Many factors may explain why an inmate does not spend time out of their cell and the "4/2" thresholds are not met. The IEDM must analyze the facts and circumstances of each situation to determine whether CSC took enough steps.
- [8] The legal obligations, and IEDMs' conclusions, apply to CSC as a whole, not a specific institution or individual, such as a staff member.

2. The period to be taken into account for IEDM determinations under s. 37.83

- [9] The CCRA does not specify the period of SIU activities that the IEDM should consider for a decision under s. 37.83 of the CCRA.
- [10] Only looking at the five days that triggered the review would leave a period without oversight, especially when many days have passed before the IEDM can issue their decision.
- [11] In my view, it is appropriate to consider SIU activities beyond the five-day period that triggered the review. The IEDM will have a better understanding of what has happened. The IEDM's conclusion will have a more solid foundation. They will be able to make better recommendations, if needed.

III. SOURCES OF INFORMATION

- [12] I have consulted the following sources of information from CSC:
- SIU daily activity log, for the period as of yyyy-mm-dd
 - Threat risk assessments ("TRAs"), for the period as of yyyy-mm-dd
 - Casework record ("CWR") log, for the period from yyyy-mm-dd to yyyy-mm-dd

⁴ CCRA, at s. 32(1).

⁵ CCRA, at s. 32(2).

- Memorandum – exception, dated yyyy-mm-dd
- Incident reports, dated yyyy-mm-dd and yyyy-mm-dd
- Observation reports with the following tracking numbers: ---, dated yyyy-mm-dd; and ----, dated yyyy-mm-dd
- Memorandum – Indigenous group, dated yyyy-mm-dd
- Memorandums – recreation group, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Institutional head “30-day” SIU transfer decision, dated yyyy-mm-dd
- Correctional plan update - SIU, dated yyyy-mm-dd
- Health case management notes, dated yyyy-mm-dd and yyyy-mm-dd
- Assessment for decision – security level and institutional transfer, dated yyyy-mm-dd
- Institutional head “5-day” SIU transfer decision, dated yyyy-mm-dd
- Inmate’s request form, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- --- reviews – progress, dated yyyy-mm-dd, yyyy-mm-dd and yyyy-mm-dd
- Correctional plan – updated (“CPU”), dated yyyy-mm-dd
- Elder review – initial, dated yyyy-mm-dd
- Criminal profile report – original, dated yyyy-mm-dd
- Pre-sentence report, dated yyyy-mm-dd

[13] I sent [redacted] via CSC, a summary of the information on Aug. 17. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[14] On Aug. 18, I learned [redacted] would share his views. We spoke by videoconference on Aug. 22, for approximately one hour and 13 minutes. [redacted] was accompanied by his legal assistant, [redacted], who joined online; as well as [redacted], who joined in-person part way through the interview.

[15] [redacted] mentioned that he did not learn about the meeting time until lunch that day. CSC should make efforts to inform inmates of the times of IEDM interviews as soon as possible.

[16] I made a follow-up request for various types of information from CSC in the morning of Aug. 24, requesting a response by Aug. 25 if possible. I received some additional information, but some aspects of the request were not acknowledged by [redacted] staff at all. I recognize that my request did not give much time to CSC. To avoid further delay, have decided to issue this review despite not having all potentially relevant information from CSC.

IV. CONTEXT

[17] is [REDACTED] years old and is a [REDACTED] man from [REDACTED]. [REDACTED]

[REDACTED]
[REDACTED]

[18] File information describes [REDACTED].

[19] He has been involved in [REDACTED] cultural activities before and during his incarceration. [REDACTED] review describes active involvement with [REDACTED] programs, and education, his desire to get transferred to a drug-free range while at [medium-security institution], and [REDACTED]'s support for him to get an Escorted Temporary Absence for [REDACTED] ceremony at [REDACTED].⁶

[20] Since [REDACTED], he has been serving a [REDACTED] sentence, notably for [REDACTED].

[21]

[22] He has been diagnosed with [REDACTED] and [REDACTED].⁷

[23] His transfer to the SIU was authorized on July 14, [REDACTED], under para. 34(1)(b) of the CCRA. According to the transfer authorization, CSC transferred him from [REDACTED] to [REDACTED] on June 28, and increased his security classification from medium to maximum security. Upon arrival, he refused to integrate at [REDACTED].
[REDACTED]

[24] The Acting [REDACTED] Warden approved the SIU transfer in the "5-day" decision of July 20, and in the "30-day" decision of Aug. 12.

[25] This is [REDACTED] s third SIU transfer.

[26] CSC had informed me that [REDACTED]'s institutional transfer was planned for [REDACTED]. I had postponed this review due to the assumption that he would soon be out of the SIU. I later learned that he remains in the SIU due to [REDACTED] which keeps him at [REDACTED] currently.

⁶ See [REDACTED] review – progress, yyyy-mm-dd, at p. 5.

⁷ Pre-sentence report, at p. 5.

V. ANALYSIS

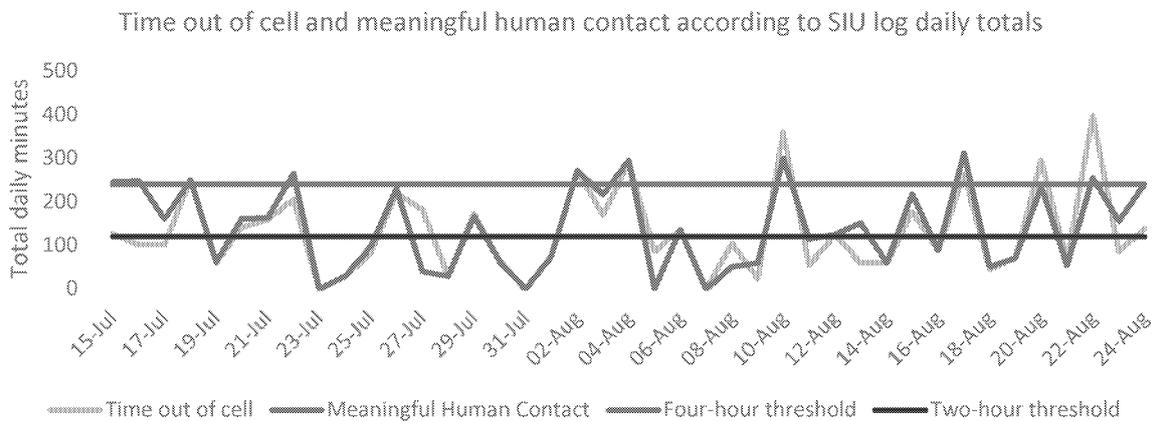
[27] The analysis below considers information from CSC's SIU activity log, for the period from July 15 to Aug. 24. This is a period of 41 days.

[28] was transferred to the SIU on July 14, but later in the day.

1. Daily time out of cell and meaningful human contact

[29] According to CSC's SIU activity log, spent four hours or more out of his cell on seven days during the period reviewed (about 17% of all days). He had two hours or more of social interaction on 22 days (about 54% of all days).

[30] The average for time out of cell and meaningful human contact was about two hours and 20 minutes daily. The amounts fluctuated from day to day with a slight recent improvement, as shown in the graphic below.



[31] The actual time spent interacting with others may be slightly exaggerated (see para. 41 below).

2. Quantity and timing of daily offers

[32] According to the SIU activity log, has usually had four or a few more opportunities to get out of his cell during the day for one- or two-hour time periods, throughout the day. I find the basic quantity of opportunities for time out of cell was sufficient.

[33] On some days, opportunities for in-person interaction were limited to outdoor recreation (through a fence) because did not have a recreation group for most of the period reviewed (as of July 19). He was not offered any program session or

significant staff meeting on July 15, 16, 20, 23, 27, 30, and 31; and Aug. 7, 12,⁸ 20, and 21. This amounts to 11 days (about 27% of all days).

[34] Having a recreation group would have significantly increased [redacted]'s opportunities for meaningful human contact. While he did not want a group during much of the first part of the period reviewed, he has requested a group more recently (see paras. 50 to 53 below).

3. Types of opportunities for

[35] [redacted] had the following types of opportunities:

- indoor and outdoor recreation (including three chances to go to the “big gym”)
- staff interactions (particularly with the Correctional Manager (“CM”) and his Parole Officer (“PO”))
- correctional programs ([redacted] program)
- social programs
- [redacted] cultural support (including once chance to spend about three hours at [redacted] for a ceremony)
- religious support from the Chaplain
- work as a cleaner
- education sessions in the library to work on his correspondence coursework
- periodic mental health evaluations
- personal phone calls

[36] Recreation was the most frequent type of opportunity. Support from [redacted] staff was regular throughout the period reviewed; sometimes they simply checked in briefly.

[37] Not every type of activity was offered to [redacted] consistently throughout the period reviewed. [redacted] said that programs are one-hour sessions every couple of days. The teacher’s first meeting with him was on Aug. 4, once [redacted] had been in the SIU for about three weeks. By Aug. 10, a plan was worked out for [redacted] to be able to work [redacted] about 45 minutes on Wednesdays and Thursdays.⁹ He got the cleaning job on Aug. 17. He had two chances to see the Chaplain. He only had six chances to participate in I-MM-SIU sessions throughout the period reviewed; on three other occasions, there were timing conflicts with other activities. Apart from the evaluations, he only saw someone from mental health once briefly.

⁸ On this day, there was the 28-day mental health assessment and a brief meeting with his PO at his cell door.

⁹ Educational programs entry, SIU activity log, yyyy-mm-dd.

[38] The cleaning job seems to have been the main contributor to the slight increase in time out of cell daily totals for him.

[39] Regarding the types of opportunities, [redacted] said exercise is important for his physical and mental health. Getting to go to the gym once a week is not enough for him. He understood that he was supposed to get to go to the gym three times per week.¹⁰ As I explained to [redacted] orally, I am not aware of any SIU inmate who has been able to go to the gym that frequently, but as I have recommended in the past, more gym access would be beneficial.

[40] I asked [redacted] whether the outdoor yard was an adequate alternative for exercise. He mentioned the presence of other inmates deters him from going. For the most part, he wishes to avoid maximum-security inmates. He also mentioned a lack of flexibility with respect to the yard: if he refused earlier, staff will not let him go if he asks later.¹¹

[41] [redacted]'s education sessions are mainly for him to type up his assignments. However, these sessions are counted in the log as meaningful human contact, as well as his work as a cleaner. When I asked [redacted] whether he interacts with others while at the library and in his cleaner job, he confirmed that he is "talking a little bit" during both of these types of activities.¹² These activities clearly count for time out of cell, but it seems the actual interaction time during them is much lower than CSC's log totals suggest.

4. Structural or contextual factors affecting activities

[42] Certain contextual factors affected the opportunities [redacted] had for time out of cell, including:

- July 24: the Social Programs Officer ("SPO") and him ended the session early (after half an hour) because "the program room was too hot"¹³
- July 25: the Chaplain, met with [redacted] for fifteen minutes at his cell door "as there were no rooms available due to COVID in [redacted]"
- Aug. 9: an unexplained "operational situation" prevented [redacted] from doing a phone I-MM-SIU program session with him¹⁴
- The program room usually used by [redacted] was closed for a week, for unknown reasons;¹⁵ as a consequence, they had difficulty taking anyone out of their cell, except to the barrier room, other rooms already being taken.¹⁶ This was

¹⁰ [redacted] comments in IEDM interview, yyyy-mm-dd.

¹¹ [redacted] comments in IEDM interview, yyyy-mm-dd.

¹² [redacted] comments in IEDM interview, yyyy-mm-dd.

¹³ Social programs entry, SIU activity log, yyyy-mm-dd.

¹⁴ Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁵ This was an unacknowledged part of my request for additional information from CSC.

¹⁶ [redacted] comments in IEDM interview, yyyy-mm-dd. See also: [redacted] Activities entry, SIU activity log, yyyy-mm-dd.

noted for an I-MM-SIU session with I on Aug. 17; it was done in a secured room despite there not being security reasons to use barriers;¹⁷ and

- According to mental health services are offered as a formality and are not actually available; he has been told they are understaffed,¹⁸ which is consistent with other information I have received.

[43] There were also some issues staff attempting to make offers for the same time slot. This can be considered positive, because various types of offers are made, but could also indicate a need for a better system to coordinate staff offers.

[44] These issues show the need for CSC to ensure adequate staffing, infrastructure, and operational systems are in place for the SIU to be able to function as intended.

5. Efforts to encourage to participate in activities and services

[45] In a review under s. 37.83(1) of the CCRA, an IEDM must consider whether CSC encouraged an inmate to participate in activities. Encouragement includes structural changes that facilitate participation in activities and addressing factors that may discourage participation.

[46] I note various staff encouragement efforts such as following up with regarding his preferred program times,¹⁹ offering to let him change ranges to a quieter range,²⁰ encouraging him, initially to join a recreation group,²¹ accommodating him so that he can pursue his post-secondary studies, providing him a job opportunity, and verbal support in program sessions and meetings.

[47] On the other hand, a log entry suggests had some confusion about opportunities: on July 18, he reportedly told his PO, “he was not aware he could go to the common room with the other offender in his group.”²²

[48] In addition, log entries suggest that s level of stress and frustration may have increased during his time in the SIU due to various factors, and this has had an impact on his participation.

[49] mentioned to me feeling disrespected by staff. Some CSC information suggests he feels poorly treated as an Indigenous person.

5.1. Recreation group placement

[50] Early during the period reviewed, said he no longer wanted to be in a group because he wanted to get social program offers and “do his own thing,”²³ according

¹⁷ See Correctional programs entry, SIU activity log, yyyy-mm-dd.

¹⁸ comments in IEDM interview, yyyy-mm-dd.

¹⁹ Correctional programs entry, SIU activity log, yyyy-mm-dd.

²⁰ Case management entry, SIU activity log, yyyy-mm-dd.

²¹ Case management entry, SIU activity log, yyyy-mm-dd.

²² Case management entry, SIU activity log, yyyy-mm-dd.

²³ Case management entry, SIU activity log, yyyy-mm-dd.

to CSC information.²⁴ Another memorandum from Aug. 5 states [redacted] had “plenty of options” for recreation groups.

[51] However, when I met with [redacted] on Aug. 22, he said he put in a signed group request form along with two other inmates a few weeks ago. According to him, there was never an approval or even any concrete answer from CSC. He has asked officers about it and they have told him it is the Security Intelligence Officer (“SIO”)’s responsibility.

[52] I accept [redacted]’s oral comments regarding the request and his efforts to follow up with SIU staff. However, after following up with CSC, I have been informed by email that the SIO office does not have any documentation regarding a more recent request.

[53] I am satisfied there were sufficient efforts to place him on a group and encourage him to associate with others in the first part of the period reviewed. However, I am not convinced staff adequately followed-up with him in recent weeks.

5.2. Participation in social programs

[54] A decision was taken to prevent [redacted] from meeting with a certain SPO, due to

[redacted] No explanation was provided to him about the issue. I understand this to have caused him frustration and also to have discouraged him from participating in social programs on some occasions recently.

[55] The first threat risk assessment (“TRA”) that refers to this issue is dated Aug. 16, which is nine days ago. It indicates that more information would need to be collected. The most recent TRA, of Aug. 21, repeats that statement. Thus, it appears there has been delay in staff’s follow-up on this issue.

[56] No log entry or incident report describes inappropriate behaviour from [redacted]. However, I do not have complete information about this situation; I am issuing this decision despite this gap in the information.²⁷

[57] Generally, CSC should allow inmates to continue to work with staff members who they have developed positive rapport with. This may be particularly important for individuals who have difficulty trusting other people and institutional staff in

²⁴ See: Memorandum: recreation group, yyyy-mm-dd; Case management entry, SIU activity log, yyyy-mm-dd.

²⁵ See: TRAs dated yyyy-mm-dd and yyyy-mm-dd.

²⁶ [redacted] comments in IEDM interview, yyyy-mm-dd.

²⁷ I was told it would not be possible to provide information to me by the end of the day Aug. 25. A request I made for an interview was not acknowledged.

particular. If someone's behaviour is problematic, they should be told how. Of course, I recognize the need to ensure staff safety.

[58] I also note that other SPOs continued to make offers in this case.

5.3. Recording of incident

[59] Another issue that seems to have contributed to feelings of frustration for [redacted] was an "incident" recorded in the incident log. He is alleged to [redacted]. The officer's observation report on the incident, the only source of information CSC provided me following my request, states "dic [redacted]

[60] This incident does not seem to have affected opportunities for time out of cell for [redacted]

[61] Nonetheless, given the potential negative repercussions of a recorded incident for [redacted], I encourage CSC to review the range video footage.

5.4. Health, spirituality, and diet

[62] [redacted] explained that he has requested to be provided [redacted] diet, citing CD-702. For [redacted] it is a [redacted] issue. He has advocated for this at [redacted] and at [redacted]. He was denied his request while at [redacted]. According to him, CSC responded saying it is not a religious diet. The [redacted] support him in his efforts to have a traditional diet. Log entries show that he has been working for this during his SIU stay.

[63] I do not have documentation from either [redacted] or CSC on his request.²⁹

[64] This issue engages the right to religious freedom, protected by the *Canadian Charter of Rights and Freedoms* ("the Charter"). As an administrative decision-maker, I must consider *Charter* values,³⁰ including equality. The adoption of SIUs was intended to protect inmates' health and well-being, and reflect human rights standards. In addition, as an IEDM, I must consider systemic and background factors affecting I [redacted] as well as [redacted] and identity of the inmate concerned by my review.³¹

²⁸ SOR [redacted], dated yyyy-mm-dd.

²⁹ I requested information from CSC; that part of my request was not acknowledged by the end of the day Aug. 25.

³⁰ *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395, at paras. 35, 48, and 55; and *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 (CanLII), [2018] 2 SCR 293, at para. 57.

³¹ CCRA, at s. 79.1(1); CCRR, at s. 23.03.

[65] I take note that

[66] CSC has guidelines for the accommodation of requests for religious diets and diets of conscience.³² Approving other religious diet requests while denying an Indigenous person's diet request implicitly suggests Indigenous spirituality is less meaningful than other belief systems. It also repeats past harms. In addition, it would be inappropriate for CSC to determine what is or not required by [redacted]'s spirituality. In freedom of religion cases, the Supreme Court of Canada has held that it is inappropriate for state institutions to try to define religious requirements or understandings.³³ The Court has stated that the *Charter* "protects all sincere religious beliefs and practices, old or new."³⁴

[67] While this issue is not directly about time out of cell or meaningful human contact, I understand it to be a stressor that affects

[68] Apart from food, [redacted] also raised an issue about his medication. He said that unlike at [redacted], staff do not open the medications in front of him. He is concerned that he is getting someone else's medication since he is experiencing new side effects.³⁵

[69] Finally, as noted above, [redacted] is dissatisfied with the mental health services available at [redacted]. According to him, meeting with [redacted] is the main thing that helps his mental health.³⁶ As noted, they have faced some challenges in supporting him during the period reviewed, including due to infrastructure issues.

5.5. [redacted]'s potential transfer

[70] [redacted] said that CSC has not allowed him to remove listed "incompatibles" at [redacted]. He explained that his potential transfer to [maximum-security institution, [redacted]]

[71] I remind CSC of the legal requirement to consider [redacted] identity in decisions affecting him,³⁸ and to consider his ability to access his community, family, and appropriate cultural supports.³⁹ His transfer to [redacted] would continue harms of

³² See: Guideline 880-3 "Religious Diets," and Guideline 880-4 "Diets of Conscience."

³³ See: *Amselem*, at paras. 49 – 50; *Ktunaxa*, at para. 72.

³⁴ *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 S.C.R. 386, at para. 69.

³⁵ See also Indigenous Activities entry, SIU activity log, yyyy-mm-dd.

³⁶ [redacted] comments in IEDM interview, yyyy-mm-dd.

³⁷ [redacted] comments in IEDM interview, yyyy-mm-dd.

³⁸ CCRA, at s. 79.1.

³⁹ CCRA, at s. 28.

VI. CONCLUSION AND RECOMMENDATIONS

[72] I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide [redacted] adequate time out of his cell and meaningful human contact and to encourage him to avail himself of opportunities.

[73] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- follow-up with [redacted] regarding his request to be placed on a recreation group with other inmates;
- ensure [redacted] has regular access to the gym and follow-up with him regarding this;
- increase the flexibility of access to the outdoor yard;
- follow-up regarding the SPO issue;
- conduct verifications with regard to the incident listed for Aug. 14;
- approve [redacted]'s request for dietary accommodation;
- take measures to reduce infrastructure or operational issues that impede [redacted] staff from being able to consistently offer support to inmates, including [redacted] F; and
- address staffing issues affecting mental health services.

Janine Lespérance
Independent External Decision-Maker

Date: August 25, [redacted]

Inmate Name:
FPS Number: [REDACTED]
Correctional Institution: Atlantic Institution
Date of Notification: December 9, [REDACTED]
Date of Decision: March 21, [REDACTED]
Independent External Decision-Maker: Janine Lespérance

**DECISION UNDER SUBSECTION 37.83(1) OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, C.20**

SUMMARY

is from [REDACTED] and his statutory release is soon. He was extremely isolated in the SIU initially. The quantity and variety of opportunities for him were adequate. He turned down most recreation, social programs, and MM-SIU opportunities. He did not have a recreation group and did not want one. He started coming out of his cell more in late January, after he got a cleaner job and was offered the Community Integration Program. He participated consistently in that program and behavioural counselling. He has wanted to do the Maintenance program. He did not get to, due to staff caseload and timing in relation to planned transfers. There were various encouragement efforts. CSC should consider offering him gym opportunities, the Maintenance program, and parenting programming. Under s. 37.83(1) of the CCRA, I conclude CSC took all reasonable steps to provide [REDACTED] the required opportunities to leave his cell and have social interaction in the SIU.

I. INTRODUCTION

- [1] On December 9, [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act* ("CCRA") concerning [REDACTED] is necessary. He is incarcerated in the Structured Intervention Unit ("SIU") at Atlantic Institution ("AI") in New Brunswick.
- [2] If I have a legal basis to review [REDACTED]'s situation, I must answer this question: did CSC take all reasonable steps to provide [REDACTED] at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?¹

¹ CCRA, s. 37.83(1).

II. BACKGROUND

- [3] s [REDACTED] years old. Information suggests he is from [REDACTED].
- [4] Since [REDACTED], he has been serving a [REDACTED] sentence for which his statutory release date is set for [REDACTED]. CSC has classified him as maximum-security.
- [5] His transfer to the SIU was authorized Dec. 4, [REDACTED], under para. 34(1)(b) of the CCRA. According to the transfer authorization, he was incarcerated in A1's unit [REDACTED] until he was assaulted and moved to unit [REDACTED]. On [REDACTED], he was assaulted [REDACTED]. He did not want to integrate the [REDACTED] Range”
- [6] The SIU transfer was not approved in the “5-day” Warden decision of Dec. 8. CSC did not issue any other decisions on his SIU placement.
- [7] [REDACTED] made [REDACTED]
- [8] This is the first time [REDACTED]’s SIU placement has been authorized.

III. SOURCES OF INFORMATION

- [9] I have considered CSC documentary information, notably the SIU daily activity log (“the log”). Since [REDACTED] did not provide comments, I must rely on CSC information.

IV. ANALYSIS

1. Do I have a legal basis to review [REDACTED]’s time-out-of-cell opportunities?

- [10] Yes, I do. My jurisdiction is uncontroversial.
- [11] IEDMs only do reviews in specific situations. If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.²
- [12] CSC’s log shows [REDACTED] was isolated from Dec. 4 to 8, triggering a review.

2. What is the relevant period of review?

- [13] This review focuses on Dec. 4 to Mar. 20 (“the period reviewed”), a period of 108 days.

² CCRA, s. 37.83(1).

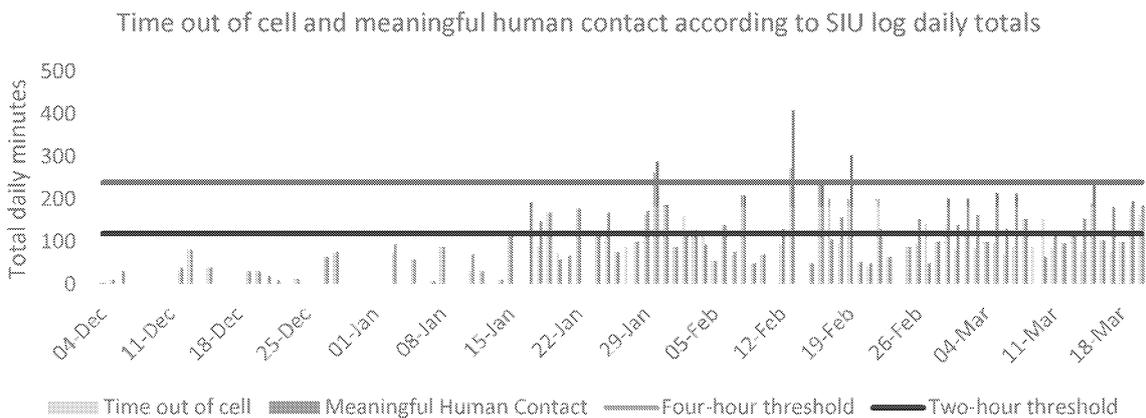
[14] An IEDM is not limited to only examining the days that triggered the review. The IEDM decides the appropriate period to review, based on legal and practical factors. Considering the human rights at stake, the need to avoid gaps in oversight, and the importance of fully understanding a situation to make recommendations, it is appropriate for an IEDM to examine a longer period, especially if many days have passed since the review was triggered.

[15] The period reviewed in this case is extremely lengthy. This review has unfortunately been delayed. The delay is due to factors unrelated to especially IEDM caseload due to prolonged understaffing.

3. How much time did spend out of his cell and interacting with others each day?

[16] According to CSC’s log, spent four hours or more out of his cell on three days during the period reviewed (about 3% of all days). He had two hours or more of social interaction on 33 days (about 31% of all days). The average for time out of cell was about one hour and 13 minutes daily. The average for interaction was about one hour and 24 minutes.

[17] As shown by the graphic below, became much less isolated as of late January.



[18] Despite the improvement, he has remained quite isolated.

[19] Various factors may explain why an inmate is isolated. Total daily hours for time out of cell and social interaction show whether CSC’s efforts to reduce isolation were successful. If a person has been very isolated for a long time, CSC should be making great efforts to improve the situation.

4. Were the quantity and timing of offers adequate?

[20] Yes, I find there were sufficient opportunities to meet requirements.

[21] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates daily, between 7AM and 10PM.³ Showers do not count towards time out of cell.⁴ Offers should generally be adequately spread throughout the day.

[22] According to the log, CSC met its minimum quantitative obligations on each day during the period reviewed. usually had at least four or five chances to get out of his cell each day, throughout the day.

[23] The log appears generally reliable, although recreation notes are frequently copy-pasted, and there is one erroneous program note referring to another inmate.⁵ has not challenged the log information.

5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[24] Yes, but no legal exception applied.

[25] Contextual situations or circumstances can affect activities in the SIU. There are legal exceptions for some specific situations, including epidemics and staff work refusals.⁶ However, if those specific situations do not exist, CSC must provide the regular opportunities. Moreover, even if an exception applies, CSC must continue efforts.

[26] There are a couple of log references to a lack of rooms preventing staff from meeting with This has been an ongoing issue. It also appears there were some staffing-related limitations: the Correctional Program Officer (“CPO”)’s caseload was a factor impeding them from offering the Maintenance program to which he is interested in doing.⁷

6. What type of opportunities did have?

[27] had access to a variety of opportunities, although recreation was offered most frequently.

[28] Apart from leisure time, SIUs are meant to provide inmates access to programs, interventions, and services that reflect their needs and interests.⁸ Activities may aim

³ CCRA, s. 36(1) – (2).

⁴ CCRA, s. 36(3).

⁵ See: correctional programs entry, SIU activity log, yyyy-mm-dd. CSC should remove the part of the note that refers to another inmate.

⁶ CCRA, para. 37(1)(c); CCRR, s. 19(1).

⁷ Correctional programs entry, SIU activity log, yyyy-mm-dd.

⁸ CCRA, para. 32(1)(b).

to help them achieve their correctional plan goals or reintegrate a mainstream population.⁹ I must consider whether there was a reasonable variety of activities for in light of his profile.

6.1. Basic profile information

[29] Mr. 's combination is described as "unmotivated" and involved three. He was in

6.2. Types of opportunities during the period reviewed

[30] had the chance to participate in:

- recreation: indoor common room and outdoor yard
- staff interactions (especially with his Parole Officer ("PO") and Correctional Managers)
- correctional programs program and
- social programs
- behavioural counselling
- religious support from the Chaplain
- work as a cleaner (as of Jan. 27)
- periodic mental health evaluations
- inmate committee meetings
- personal and legal phone calls
- an "in-reach" call regarding his community release

[31] He had some type of program opportunity (including religious support interventions) on 71 days (about 66% of all days). There were several days on which there was more than one type of program offer. Social programs offers were the most frequent, but other types of programs were offered fairly regularly. Program sessions were often around 1 to 1.5 hours when they occurred.

⁹ CCRA, para. 36(1)(b).

¹⁰ CPU, yyyy-mm-dd, p. 9.

¹¹ Psychological-psychiatric assessment report, yyyy-mm-dd.

¹² A log note indicates the CIP was offered by a Social Programs Officer. Program sessions appear in the log under the correctional programs category.

[32] Offering him the CIP responded to his specific needs, considering his upcoming statutory release. However, he was not offered the Maintenance program, even though he expressed interest in it.

[33] In addition, a ' program has been offered in SIU in the past. The Behavioural Counsellor discussed this program with on Dec. 15. He agreed it would be beneficial for him.¹³ There is no record to show there was any follow-up with him about this programming, or any program offers of this kind.

7. Did CSC make efforts to facilitate 's interaction with other inmates?

[34] Yes, there were some documented efforts.

[35] Having a recreation group provides a person with more chances for interaction and often encourages their participation in activities. It is often a key factor for reducing isolation.

[36] appears to have had no recreation group throughout the period reviewed. He has had chances to interact with other inmates through barriers, including at the outdoor yard.

[37] He was encouraged to join a group Dec. 12. The recreation group process was explained to him on Jan. 4. On Jan. 5, he was explained the process again and reportedly said he did not know anyone for a group.¹⁴ On Jan. 26, he said he wasn't interested in a recreation group when asked.¹⁵ Memorandums completed during the period reviewed indicate that from a security intelligence perspective, he had group options.

[38] It seems clear chose not to be in a group. At the same time, I question whether additional encouragement strategies could have been useful. It is not obvious what underlying issues cause him to not want to be in a group.

[39] Otherwise, had six inmate committee meetings, with the unit 1 committee. These were quite brief (the longest was 35 minutes, according to the log), but did provide him some interaction.

8. Did CSC encourage to participate in time-out-of-cell and interaction opportunities?

[40] Yes, I find there were encouragement efforts.

¹³ Behavioural counsellor entry, CWR, yyyy-mm-dd.

¹⁴ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁵ Case management entry, SIU activity log, yyyy-mm-dd.

[41] An inmate may turn down opportunities in the SIU; there is a legal exception for “refusals.”¹⁶ Even so, IEDMs must assess whether CSC encouraged them to participate in activities.¹⁷ Encouragement can take various forms. An IEDM may also assess whether CSC discouraged a person’s participation in activities.

8.1. ’s participation

[42] CSC’s log shows rarely took recreation time. He usually had four opportunities for recreation per day, which he usually did not take advantage of. He only took recreation time on eight days in total.¹⁸

[43] For programs, accepted: five of 54 social programs opportunities, five of 12 religious support opportunities, 12 of 14 CIP opportunities,¹⁹ five of 18 MM-SIU opportunities, and 17 of 19 behavioural counselling opportunities. s participation in MM-SIU sessions decreased during the period reviewed. His participation rate for social programs was much lower than for other types of interventions.

[44] The noted reasons for non-participation in program sessions include:

[45] He participated in 27 of 30 case management meetings.

[46] started going out to work as a cleaner on Jan. 27, and went out to clean most days after that. On a few days during the first weeks of February, he did not go out to clean at his scheduled time. His participation was consistent as of Feb. 18.

[47] He participated in two of the seven mental health evaluations offered. Although s level of isolation is concerning, information does not show or suggest he was experiencing significant mental health challenges that affected his participation. CSC did not provide, and I did not request, detailed mental health records in this case.

[48] There are no reported incidents for since Dec. 4, so extra security measures have not been imposed; this is not a factor affecting his participation.

¹⁶ CCRA, para. 37(1)(a).

¹⁷ CCRA, s. 37.83(1).

¹⁸ There were a few additional entries put under the “yard” or “unstructured leisure” log categories, but the explanatory notes indicate he was out cleaning, which suggests it was actually time out of cell for his job.

¹⁹ I note, however, that the CIP program performance report indicates he missed the program on four days (at p. 1), which suggests there may have been two additional offers.

²⁰ Program report, yyyy-mm-dd, p. 4.

8.2. Encouragement efforts

- [49] The log shows CSC staff encouragement efforts included: providing him information he requested regarding post-release employment; offering and providing him materials (e.g. writing materials); asking him about his preferred time for programming (afternoons); indicating the time of a program session the day before, and returning to offer the program at that time; continuing a program session after a break for him to have a legal call (Feb. 16); offering to talk rather than doing program modules (Feb. 27), following up with his PO for him after he requested it, offering for him to participate in a reading program (Mar. 15), giving him positive feedback, and other verbal encouragement. Log notes describe several meetings with [redacted] to prepare him for his release
- [50] Log notes suggest program sessions with him went well and were meaningful interactions. It appears both the CIP program and behavioural counselling were useful for him, and he expressed appreciation for them. [redacted] reportedly has said things were good for him in the SIU; he enjoyed his cleaning job and was preparing for his release.²¹
- [51] Him coming out of his cell more as of late January appears to mainly be because he was given a job and offered the CIP program. His phone use also became more frequent around then.
- [52] On the other hand, he turned down all MM-SIU offers after Jan. 19.
- [53] On Jan. 29, [redacted] was told that he would stay at AI until his statutory release date, which was what he wanted and was a relief for him.²² It is unclear whether this news affected his participation, though.

8.3. Discouragement

- [54] A couple of log entries refer to timing overlaps for activities. Timing issues can be a discouragement factor. However, that does not appear to have been a major issue in the present case.

8.4. Potential encouragement measures

- [55] The CIP final program report recommends [redacted] incorporate physical fitness into his lifestyle, considering his employment goals. It does not appear CSC gave him the chance to go to the gym during the period reviewed. Staff could consider offering that opportunity and reminding him of his goals to encourage him to go out for that.
- [56] The same report encourages him to participate in the Maintenance program; it is not specified whether this refers to the institutional or the community program. The log shows he made it clear during the period reviewed that he wants to do the Maintenance program instead of the MM-SIU. A CPO discussed doing that program with him on Jan. 5. At the time, it appears his potential institutional transfer was a

²¹ Case management entry, SIU activity log, yyyy-mm-dd.

²² Behavioural counsellor entry, CWR, yyyy-mm-dd.

factor in the decision on whether to offer it, due to concerns about not being able to complete it.²³

[57] It is unclear to me whether it would be feasible for him to complete the Maintenance programme at this point, but it seems that program may be more relevant for him right now than the MM-SIU. His attendance in the CIP and behavioural counselling was fairly consistent. Given his motivation for the Maintenance program, it appears it would be likely he would participate consistently.

[58] Finally, CSC could offer I programming focusing on parenting skills, such as program, given that he has shown openness to it.

V. CONCLUSION AND RECOMMENDATIONS

[59] I have identified areas for improvement in the variety of offers. Even so, under s. 37.83(1) of the CCRA, I conclude CSC took all reasonable steps to provide the required opportunities in the SIU.

[60] I encourage CSC to consider offering the chance to go to the gym; do the Dad Hero program; and do the Maintenance program in the SIU, if it would be possible for him to complete it before his release.

Janine Lespérance
Independent External Decision-Maker

Date: March 21, [REDACTED]

²³ See: correctional programs entry, SIU activity log, yyyy-mm-dd.

VI. ANNEX: SOURCES OF INFORMATION AND [REDACTED]'S OPPORTUNITY TO PROVIDE COMMENTS

[61] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of yyyy-mm-dd
- Threat risk assessments (“TRAs”), for the period as of yyyy-mm-dd
- Casework record (“CWR”) log, for the period from yyyy-mm-dd to yyyy-mm-dd
- Out-of-facility information, for yyyy-mm-dd
- Regional reviews, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Memorandums – recreation group, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Community assessment, dated yyyy-mm-dd
- Correctional plan updates – SIU (“CPU-SIU”), dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Memorandums – SIU case conference (“SIUCC”), dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Program performance report – final, dated yyyy-mm-dd
- Memorandum – updated SIUCC information, dated yyyy-mm-dd
- Memorandums – integration options, dated yyyy-mm-dd and yyyy-mm-dd
- Assessment for decision – statutory release, dated yyyy-mm-dd
- Correctional plan – updated (“CPU”), dated yyyy-mm-dd
- Psychological/psychiatric assessment report, dated yyyy-mm-dd
- Institutional head “5-day” SIU transfer decision, dated yyyy-mm-dd
- Incident reports, dated 2023/11/30 and yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Criminal profile report (“CPR”) – original, dated yyyy-mm-dd

[62] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on Feb. 12. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[63] On Feb. 13, I received signed confirmation from CSC that [REDACTED] did not wish to share his views through one of the means offered.

Name:
FPS Number: ██████████
Correctional Institution: Atlantic
Date of Initial Decision s. 37.83(1), CCRA: September 23, ██████████
Date of the Present Decision: November 10, ██████████
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(3) OF THE *CORRECTIONS AND
CONDITIONAL RELEASE ACT*, S.C. 1992, C.20**

SUMMARY

had various daily opportunities for time out of cell, including consistent program opportunities. CSC allowed him to do an extended interview ██████████, implementing a recommendation. He may get to do ██████████ by video in the SIU, but has not had the chance so far. There was a gap in ██████████ interventions due to staffing changes and issues, which are difficult to resolve quickly. CSC only partially responded to an IEDM request for information. CSC omitted information on urinalysis refusal and job suspension. CSC shortened a job suspension period for ██████████. He ultimately got to work on a regular basis. ██████████ CSC's response regarding an issue with sharing the phone was not satisfactory. ██████████ himself is generally satisfied with CSC's response to the initial decision. He raised issues relating to fairness of pay and loss of his possessions. Overall, under s. 37.83(3) of the CCRA, I conclude CSC took all reasonable steps to provide the required opportunities for time out of cell.

1. INTRODUCTION

[1] On Sept. 1, ██████████, the Independent External Decision-Makers ("IEDMs") were notified that for five consecutive days, ██████████ had not spent at least four hours out of his cell or had not interacted with others for at least two hours per day, in the Structured Intervention Unit ("SIU") at Atlantic Institution ("AI") in Renous, New Brunswick. As an IEDM, I issued a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") on Sept. 23. I concluded that Correctional Service Canada ("CSC") had not taken all reasonable steps to provide

sufficient daily time out of cell and meaningful human contact. I made recommendations under subsection 37.83(2) of the CCRA.

- [2] I must determine, under subsection 37.83(3) of the CCRA, whether CSC has taken all reasonable steps since my initial decision.

2. LEGAL FRAMEWORK

2.1. CSC's legal obligations toward inmates in the SIU

- [3] CSC must provide inmates the daily opportunity to spend at least four hours outside of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates' needs.
- [4] The previous decision under s. 37.83(1) of the CCRA explained CSC's legal obligations in more detail.

2.2. Determinations under s. 37.83(3) of the CCRA

- [5] Decisions under s. 37.83(3) of the CCRA are second-stage decisions. S. 37.83(3) of the CCRA states:

“If [CSC], within the period of seven days commencing on the day on which it receives recommendations, fails to satisfy the [IEDM] that it has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1), the [IEDM] shall direct [CSC] to remove the inmate from the [SIU] [...].”

- [6] Unlike s. 37.83(1) of the CCRA, s. 37.83(3) does not explicitly state that the IEDM must assess whether CSC encouraged an inmate. However, “all reasonable steps” is a high standard that implies CSC must be proactive and try new approaches.
- [7] The determination under s. 37.83(3) is not based only on whether CSC has implemented recommendations. CSC could demonstrate that it would not be reasonable to do so. CSC could also take steps other than those proposed by the IEDM. More, CSC's written response to the s. 37.83(1) decision is not the only relevant source of information.
- [8] Decisions under s. 37.83(3) focus on activities and services in the SIU, not the reasons for the SIU placement.
- [9] If an IEDM finds under s. 37.83(3) that CSC has not taken all reasonable steps, the IEDM must order CSC to remove the inmate from the SIU. In other words, if the conditions of confinement are inadequate, the remedy set out in the CCRA is the inmate's removal from the SIU.

2.3. Period considered in reviews under s. 37.83(3) of the CCRA

- [10] IEDM oversight should be timely and address an inmate's current situation. When more than seven days have passed since an initial decision under s. 37.83(1) of the CCRA, the IEDM may consider a period longer than seven days.

3. INFORMATION CONSIDERED

- [11] I have considered the following sources of information from CSC:

- SIU daily activity log ("the log"), for the period as of yyyy-mm-dd
- Casework record ("CWR") log, for the period as of yyyy-mm-dd
- Threat risk assessments ("TRAs"), for the period as of yyyy-mm-dd
- CSC's response to the IEDM's request for information of yyyy-mm-dd, received yyyy-mm-dd
- Memorandums – recreation group, dated yyyy-mm-dd and yyyy-mm-dd
- CSC's response to the IEDM decision, dated yyyy-mm-dd (dated yyyy-mm-dd in SIU-LTE database)
- Incident reports, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Institutional Head "30-day" SIU transfer decision, dated yyyy-mm-dd
- Emails to the IEDM from [REDACTED], AI Psychology Testing Assistant, dated yyyy-mm-dd and yyyy-mm-dd
- Mental health checklist, undated
- Mental health encounter notes, for: yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, the period from yyyy-mm-dd to yyyy-mm-dd and yyyy-mm-dd
- Mental health form – SIU 14-day evaluation, dated yyyy-mm-dd
- Institutional head "5-day" SIU transfer decision, dated yyyy-mm-dd
- Mental health clinical notes, dated yyyy-mm-dd and yyyy-mm-dd
- Referrals for health services, dated yyyy-mm-dd (X2)
- Mental health form – SIU first day, dated yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Security reclassification scale, dated yyyy-mm-dd
- Assessment for decision – security level and institutional transfer, dated yyyy-mm-dd
- Correctional plan ("CP") – initial, dated yyyy-mm-dd
- Criminal profile report ("CPR") – original, dated yyyy-mm-dd
- review – initial, dated yyyy-mm-dd

- [12] Not receiving a timely and complete response to a request for information was an issue in this case. I sent clarification questions to CSC on Oct. 18. I received a response on Oct. 20. However, CSC's response omitted an entire section of questions, with no explanation as to when I would be provided answers to those. No additional information was provided after that. On Oct. 26, I asked by email whether there was any intention to respond. I did not receive an answer to that question.

[13] I sent [redacted] via CSC, a summary of the information I am considering on Oct. 17. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[14] On Oct. 20, I learned [redacted] would share his views. I interviewed him in-person at AI on Oct. 21, for roughly forty minutes. He mentioned some CSC documents he had received at his cell, which he then provided to me. The documents were:

- Memorandum re: urinalysis refusal, dated yyyy-mm-dd
- Memorandum re: urinalysis program (memo from the warden to the inmate population), dated yyyy-mm-dd

[15] Finally, I spoke to AI Program Manager [redacted] by telephone on Nov. 1. This interview partially answered some of my written questions that CSC had ignored.

4. CONTEXT

[16] [redacted] is [redacted] years old and has lived in [redacted] and [redacted]

[17] Since [redacted], he has been serving a sentence of [redacted]. He has been at AI since [redacted]. His transfer to the SIU was authorized on Aug. 26, [redacted], under para. 34(1)(a) of the CCRA. The AI Warden did not approve the SIU transfer in the “5-day” decision of Sept. 1. This is [redacted]’s third SIU stay.

5. ANALYSIS

5.1. Daily totals for time out of cell and meaningful human contact

[18] Because of the delay in this case, I will consider information from the SIU daily activity log for the period from Sept. 23 to Nov. 8, a 47-day period (“the period reviewed”).

[19] There were 21 days on which [redacted] spent more than four hours outside his cell (about 45% of all days). There were 36 days on which he had more than two hours of meaningful human contact (about 77% of all days). There was a slight increasing trend throughout the period reviewed. The average for both time out of cell and meaningful human contact was just under three hours and 40 minutes.

[20] The daily totals have improved compared to the period analysed in my Sept. 23 decision.

5.2. Opportunities and participation

5.2.1. Activities overall

[21] The log shows that [REDACTED] has had above the minimum “4/2” entitlements for time out of cell and interaction fairly consistently throughout the period reviewed. Almost all opportunities for recreation time have provided the opportunity for meaningful human contact.

[22] [REDACTED] has said that he can get out anytime during the day.¹

[23] The log shows he has had the opportunity for recreation, correctional programs, social programs, school, religious support, [REDACTED] cultural support, and other staff interventions. He met with the Reverend, who he already knew, a couple of times during the period reviewed.

[24] Interventions were consistent throughout the period reviewed, with no major gaps.

[25] [REDACTED] participated in all types of programs, although inconsistently. His participation in school appears to have been the most consistent.

[26] In my previous decision, I had recommended that [REDACTED] be provided access to the gym. The log shows he was given three chances to go to the gym since my initial decision, fulfilling the recommendation (even if these opportunities were not frequent). [REDACTED] did not take advantage of these opportunities.

5.2.2. Correctional programming

[27] In my previous decision, I recommended to CSC: “provide [REDACTED] the opportunity to complete

[28] CSC’s response to the decision describes a plan to allow him to complete “an extended interview” for [REDACTED] program stream, so that “his identified target areas can be transferred to his main program with the additional information required for his understanding of the Indigenous program content.”² The response also mentioned, “the next [REDACTED] program is slated for [REDACTED]. We will look at him participating via video in the SIU if he has not yet integrated.” He could not do [REDACTED] in the SIU because the [REDACTED] is not trained in [REDACTED] at this time, and the population [REDACTED] s already facilitating 6 sessions a week.”³ My interview with the Program Manager [REDACTED] clarified that the extended interview is an alternative that is almost equivalent to the regular primer; it is done one-on-one rather than in a group setting.⁴

[29] Regarding the background of this issue, [REDACTED] stated their view that [REDACTED] should have been provided the opportunity to complete the primer after his transfer to AI;

¹ IEDM interview with [REDACTED], yyyy-mm-dd.

² CSC’s response to the IEDM decision, yyyy-mm-dd.

³ CSC’s response to the IEDM’s request for information of yyyy-mm-dd, received yyyy-mm-dd.

⁴ IEDM interview with [REDACTED], yyyy-mm-dd.

issues in his unit may have affected his participation. The decision to mark his program participation as “incomplete” was made within [REDACTED].⁵

[30] She mentioned [REDACTED] was receptive to programs and thankful for the opportunity.

[31] The log confirms CSC implemented its plan. On [REDACTED] [REDACTED] met with [REDACTED] to discuss doing a transitional interview for the rest of the [REDACTED] program.⁶ He agreed. In my own interview with [REDACTED] after that day, he was aware that he would get to do the session the week after. He also mentioned he went from moderate to high intensity, and from mainstream to [REDACTED] programming.

[32] He completed the interview in sessions on Oct. 27, including the participation of [REDACTED].

[33] The log does not indicate [REDACTED] got to start the main core program by video during the period reviewed. In my interview with [REDACTED], they mentioned a structural limitation: there are only two portable videoconference machines. CSC gives priority to inmates close to their statutory release.⁸

[34] Apart from the extended interview, [REDACTED] had a number of opportunities to participate in the Indigenous SIU Motivational Module program (“I-SIU-MM”).

[35] I am satisfied with the response to the recommendation regarding programming.

5.2.3. [REDACTED] interventions

[36] During the period since my initial decision, there was a gap with respect to [REDACTED] interventions: [REDACTED] first attempted to meet with [REDACTED] on [REDACTED].

[37] I had recommended to CSC to “address staffing issues that prevent all [REDACTED] incarcerated in the SIU, including [REDACTED], from having cultural support.”

[38] In response, CSC stated that discussions are taking place between the site and regional-level staff. CSC also indicated:

⁵ IEDM interview with [REDACTED], yyyy-mm-dd.

⁶ Correctional programs entry, SIU activity log, yyyy-mm-dd.

⁷ [REDACTED] activities entries, SIU activity log, yyyy-mm-dd.

⁸ IEDM interview with [REDACTED], yyyy-mm-dd.

⁹ CSC’s response to the IEDM decision, yyyy-mm-dd.

[39] My recommendation addressed systemic issues that are likely difficult to resolve quickly. I also acknowledge that some staff changes are unavoidable, and new staff require training. There was no prolonged delay in filling the position in this case. Finally, I note that [REDACTED] did not take advantage of all opportunities as of mid-October to meet with [REDACTED]

5.2.4. Urinalysis testing and work opportunities

[40] In my last decision, I recommended to CSC: “give [REDACTED] another opportunity to participate in urinalysis testing and not ban him from having a job based on the past “refusal.”

[41] CSC’s response indicated that the Correctional Intervention Board (“CIB”) reviewed [REDACTED] factors in [REDACTED] s case and decided a 15-day suspension would be appropriate, rather than the typical 90-day suspension for a urinalysis refusal.

[42] On [REDACTED] [REDACTED] showed me a confusing CSC memorandum dated [REDACTED]. It states the CIB reviewed his case on [REDACTED] and he would be banned from applying for a job for 90 days, which contradicts the earlier information stating the decision to suspend him for 15 days only. In my interview with [REDACTED], they said it was likely a general “initial” memorandum that is shared in all similar cases, and that the official suspension would indicate the actual number of days decided on.¹¹

[43] AI appears to have set 90 days as the default period for reviewing a job suspension after a refused urinalysis, based on a directive issued by the Warden in 2012, ten years ago. However, CSC’s National Drug Policy sets out 90 days as a cap – not as the standard length – for the review of administrative decisions such as a job suspension “when there is a clear link to the use and/or trafficking of drugs.”¹²

[44] In my Oct. 18 request, I asked CSC several questions on the documentation of [REDACTED]’s alleged refusal to participate in the urinalysis testing, and the relevant CSC policy. I also requested the CIB decision. CSC failed to respond to these requests (see para. 12 above). It is highly problematic for CSC to ignore IEDM questions or information requests, given CSC’s legal obligation to provide requested information, and the particular duty in the context of decisions under s. 37.83(3) of the CCRA.

[45] In any case, the SIU log shows [REDACTED] did get to start to go out to work regularly as of Oct. 4. This job contributed significantly to the time he spent out of cell.

¹⁰ CSC’s response to the IEDM’s request for information of yyyy-mm-dd, received yyyy-mm-dd.

¹¹ IEDM interview with [REDACTED], yyyy-mm-dd.

¹² See: CD-585 National Drug Policy, 2007/05/08, at para. 21.

[46] A log entry indicates [redacted] appeared in front of the Independent Chairperson on Nov. 3 “for refusing to provide a urine sample” and received a 20\$ fine.¹³ This decision suggests his refusal was not justified, but I do not have information on the hearing or the basis for the decision.

[47] On Oct. 21, [redacted] described an issue with the time slot for his job. He said that his set cleaning time is 6 to 8 PM every night. However, with a higher number of inmates on the range, showers take longer. He sometimes does not get out until 7:15PM and he has to lock up for count [redacted]. During that time, he has to shower, clean and use the phone, and it can be difficult to “do it all” during his time slot. The “next guy” is out at 8:30PM.¹⁴

[48] Assuming [redacted]’s description of this timing issue to be accurate, I understand why it is a problem for him. However, the solution is not obvious to me. Adjusting the timing of showers would presumably have an impact on other activities. I encourage CSC to assess options to address this.

[49] [redacted] said he was satisfied as long as he gets to keep his job.¹⁵ Having a job is important to him and he takes pride in keeping the SIU clean.

[50] Once again, I urge CSC to fully respond to IEDM requests for information. CSC should also take steps to avoid administrative practices that confuse inmates, like in this case. However, being mindful of the end purpose of s. 37.83(3) reviews, I note that the length of [redacted]’s job suspension was reduced, and he did ultimately get to have a job.

5.2.5. Phone use

[51] I recommended to CSC to: “ensure that use of the range phone is maximized, so that [redacted] and others can fully take advantage of their calling time.”

[52] CSC responded,

“In order to ensure that all offenders in the ranges in the SIU have equal access to the phone, the time allotments are usually one hour session and could occur more than once a day. Officers will move the telephone from cell to cell during their hourly rounds. There is one range phone available for all offenders or each range that must be shared accordingly.”¹⁶

[53] I find this response unsatisfactory. CSC’s response suggests that CSC may not have understood the issue alleged by [redacted] described in my initial decision at para. 36. A better response would have addressed, for example, whether AI agrees or disagrees there is problem, whether there was any verification, whether any

¹³ Case management entry, SIU activity log, yyyy-mm-dd.

¹⁴ IEDM interview with [redacted] yyyy-mm-dd.

¹⁵ IEDM interview with [redacted] yyyy-mm-dd.

¹⁶ CSC’s response to the IEDM decision, dated yyyy-mm-dd.

practices would be changed, whether management discussed this with SIU staff, or whether there would be increased supervision of staff on this issue.

[54] Phone use can be very important for some inmates. However, for my overall conclusion in this case, I am also considering the CCRA's focus on in-person meaningful contact, and the other opportunities provided to during the period reviewed. did not raise the phone issue again in my interview with him on Oct. 21.

[55] The log shows that used the phone, including the off-range "white" phone, sixteen times during the period reviewed, for calls of varying lengths in the morning and evening. He had one in-person visit.¹⁷

[56] Overall, _ seemed satisfied with CSC's response to my initial decision.¹⁸

5.3. Other issues

[57] In my interview with he said he got to see the doctor soon after my initial decision, although he did not get the prescription he wanted from the doctor.

[58] raised an issue about a discrepancy between the pay for participating in school while in a mainstream unit and while in the SIU. He said that AI had accepted this, but he wondered whether he would receive back pay.

[59] Otherwise, was also concerned about the very limited amount of clothes he had due to the loss of his possessions at [REDACTED]. He said that when he left, he had stuff in his cell that they did not grab, and he had a load of clothes in the wash that they refused to take.¹⁹

[60] CSC should address these issues. However, the decision I must make under s. 37.83(3) of the CCRA focuses on opportunities for time out of cell.

[61] Finally, mentioned a plan to transfer him to [REDACTED], but said that he has [REDACTED] in NB. He does not want to integrate because he is worried it will affect his sentence.²⁰ Again, the current decision does not focus on integration and transfer possibilities.

6. CONCLUSION

[62] For the reasons described above, I find under s. 37.83(3) of the CCRA that CSC took all reasonable steps to provide time out of cell and meaningful human contact following my initial decision.

¹⁷ Visit entry, SIU activity log, yyyy-mm-dd.

¹⁸ IEDM interview with yyyy-mm-dd.

¹⁹ IEDM interview with yyyy-mm-dd.

²⁰ IEDM interview with yyyy-mm-dd.

Janine Lespérance
Independent External Decision-Maker

Date: November 10, [REDACTED]

Inmate Name:

FPS Number: [REDACTED]

Correctional Institution: Atlantic Institution

Date of Initial 5-day Review Decision: May 15, 2020

Date of the Present Decision: June 19, 2020

Independent External Decision Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(3) OF THE CORRECTIONS AND
CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

1. INTRODUCTION

- [1] On April 23, 2020, the Independent External Decision-Makers (“IEDMs”) were notified that for five consecutive days, [REDACTED] had not spent at least four hours out of his cell or had not interacted with others for at least two hours per day, in the Structured Intervention Unit (“SIU”) at Atlantic Institution in Renous, New Brunswick. The *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) required me, as an IEDM, to determine if Correctional Services Canada (“CSC”) had taken all reasonable steps to provide [REDACTED] opportunities for at least four hours out of his cell and two hours of meaningful human contact per day, and to encourage [REDACTED] to take advantage of the opportunities offered.
- [2] In my decision rendered on May 22, 2020, I found that CSC had not taken all reasonable steps in [REDACTED]’s case. I made recommendations to remedy the situation, pursuant to subsection 37.83(2) of the CCRA. On May 22, I received a memorandum signed by the Acting Warden of Atlantic Institution, [REDACTED] (“CSC’s response”), responding to my recommendations.
- [3] I must now assess, in accordance with subsection 37.83(3) of the CCRA, whether CSC has taken all reasonable steps to provide [REDACTED] with the aforementioned opportunities during the period following my initial decision.

2. SUMMARY

- [4] This decision, under s. 37.83(3) of the CCRA, is on whether CSC has taken all reasonable steps to provide [REDACTED] opportunities to leave his cell and interact with others, in the period since an earlier “5-day” IEDM decision. Leisure and phone opportunities were sufficient during the period reviewed. [REDACTED] rarely accepted

recreation offers but usually used the phone. There were no program opportunities. CSC provided no persuasive information to explain why other penitentiaries have been able to offer SIU programs, but Atlantic Institution has not, or to demonstrate that regionally relevant public health guidance was followed. I am not satisfied that CSC has taken all reasonable steps.

3. INFORMATION CONSIDERED

[5] For this review, the following sources of information were considered:

- Daily log information visible in the SIU-LTE application database
- Casework record log for the period from yyyy-mm-dd to yyyy-mm-dd
- Memorandum re: resumption of institutional correctional programs, provided by email Acting Warden [REDACTED] on yyyy-mm-dd and dated yyyy-mm-dd
- General information provided in a telephone interview with Acting Warden [REDACTED] on yyyy-mm-dd
- Memorandum (SIU lockdown yyyy-mm-dd to yyyy-mm-dd), dated yyyy-mm-dd
- Regional review dated yyyy-mm-dd
- Memorandum (Exceptional circumstances 19(1)(b) on yyyy-mm-dd and yyyy-mm-dd), dated yyyy-mm-dd
- Institutional head 30-day SIU transfer decision, dated yyyy-mm-dd (this date appears on the decision but is incorrect; it seems the correct date is yyyy-mm-dd)
- Correctional plans, dated yyyy-mm-dd and yyyy-mm-dd
- Memorandum (Exceptional circumstances 19(1)(b) on yyyy-mm-dd and yyyy-mm-dd), dated yyyy-mm-dd
- Institutional head 5-day SIU transfer decision, dated yyyy-mm-dd
- Criminal profile report, dated yyyy-mm-dd
- Threat risk assessment, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- SIU transfer confirmation, dated yyyy-mm-dd
- Incident history log and incident reports dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd
- SIU transfer authorization, dated yyyy-mm-dd
- Correctional plan, initial, dated yyyy-mm-dd
- Assessment for decision- penitentiary placement and security level, dated yyyy-mm-dd

[6] In conformity with s. 37.71(1) of the CCRA, [REDACTED] was provided a summary of the information I am considering for this review. I also offered him the opportunity to provide written representations, in accordance with s. 37.72 of the CCRA, or to speak to me in a call or meeting.

[7] On May 26, 2020, I received signed confirmation from CSC that [REDACTED] did not wish to share his views with me through one of the means offered.

4. BACKGROUND

[8] is [REDACTED] years old and is from [REDACTED]. He is serving [REDACTED] sentence for crimes including [REDACTED]. It is his [REDACTED] federal sentence [REDACTED]. He is classified as a maximum-security inmate.

[9] His correctional plan notes stabilization of his institutional behaviour since [REDACTED]. It recommends [REDACTED] Program.

[10] was transferred to the SIU on April 18, 2020. The transfer was for his own safety, after he informed staff that [REDACTED], and could not remain in the Unit due to a risk of [REDACTED].

[11] He had previously been in the SIU for [REDACTED] after [REDACTED].

[12] s statutory release date is [REDACTED].

5. LEGAL FRAMEWORK

5.1. The obligations of the Service

[13] The Service's obligations with respect to inmates held in the SIU are set out in s. 36 of the CCRA, which reads as follows:

“Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a structured intervention unit

(a) an opportunity to spend a minimum of four hours outside the inmate's cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a)." [emphasis added]

[14] The CCRA also specifies, at para. 37(1)(a), that para. 36(1)(a) or (b) does not apply "if the inmate refuses to avail themselves of the opportunity [...]". The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 (CCRR) set out other limited exceptions, including an inmate's refusal to comply with security-related instructions (para. 37(1)(b), CCRA), and extreme circumstances including epidemics (para. 19(1)(b), CCRR).

5.2. Framework for reviews under s. 37.83(3) of the CCRA

[15] The present review is conducted in accordance with s. 37.83(3), which states:

"If the Service, within the period of seven days commencing on the day on which it receives recommendations, fails to satisfy the independent external decision-maker that it has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1), the independent external decision-maker shall direct the Service to remove the inmate from the structured intervention unit [...]."

[16] Unlike s. 37.83(1) of the CCRA, s. 37.83(3) does not explicitly specify that the IEDM is to assess whether the CSC has encouraged an inmate to avail themselves of opportunities. Nonetheless, for the legislative scheme on SIUs to be coherent, it should be presumed that CSC's obligations toward inmates in the SIU are at all times constant, regardless of an IEDM's reviews of a situation. In addition, the expression "all reasonable steps" itself implies that proactive efforts must be undertaken by CSC. What meets this standard will depend on the facts and circumstances of the inmate's situation at the time of their detention in the SIU.

[17] Reviews under s. 37.83(3) are not strictly an assessment of whether CSC has implemented the IEDM's earlier recommendations under s. 37.83(2). CSC could convince the IEDM with new information that it would not be reasonable to implement the IEDM's earlier recommendations. It is also possible that CSC could take measures additional to or alternative to those proposed by the IEDM, in order to satisfy the IEDM at the second-stage review that CSC has taken all reasonable steps.

[18] If an IEDM finds that not all reasonable steps have been taken in a review under s. 37.83(3), the CCRA does not appear to leave discretion to the IEDM as to whether the inmate should be released from the SIU or not. Section 37.82 sets out the grounds and factors, including safety and security, that apply to other determinations –under s. 37.8 and 37.81 of the CCRA– as to whether an inmate should remain in the SIU or not. However, s. 37.82 does not state that these grounds and factors apply to s. 37.83(3) determinations. Likewise, the CCRR states that the grounds and factors of s. 37.82 of the CCRA apply to determinations under s. 23.06 of the CCRR, but the CCRR does not mention decisions under s. 37.83(3) of the CCRA.

[19] Thus, if an IEDM finds under s. 37.83(3) that CSC has not taken “all reasonable steps”, they must direct CSC to remove the inmate in question from the SIU.

5.3. Period considered in s. 37.83(3) reviews

[20] The CCRA reflects the intent of ensuring that IEDM oversight is timely and can lead to remedies that address an inmate’s current situation in the SIU. Particularly when significant time has passed since the initial decision under s. 37.83(1)-(2) of the CCRA, it is justified to take into account information regarding the whole period since the initial decision, rather than restrict the assessment to the 7-day period immediately following it.

6. ANALYSIS

6.1. CSC’s response to the initial 5-day decision

[21] CSC’s response to the initial decision consists of a few sentences addressing each recommendation individually. It does not acknowledge or respond to any elements of the analysis or findings made in the decision. Doing so would have improved its quality and usefulness.

[22] To summarize, the response indicates that:

- is next on the wait list for a yard cleaner job;
- CSC follows Health Canada guidelines with respect to COVID-19 and there is a working group developing a transitional plan for a gradual opening;
- Inmates in the SIU have access to program activity sheets, books and the like;
- is on “rec alone” status due to his choice and has refused various recreation groups; and
- He sometimes goes to the yard at the same time as other inmates, in adjacent yards.

6.2. Daily activities in the SIU

[23] I will consider the daily SIU log of [REDACTED]'s activities, available in the SIU-LTE application database, for the period from May 16 to June 18, a 36-day period. As [REDACTED] has not provided any comments, I must rely on CSC's information.

[24] The log shows that [REDACTED] has spent little time out of his cell during the period reviewed. He did not leave his cell on 21 days out of 36. The log shows that he has generally had more interaction time than out of cell time, because CSC includes time spent on range phone calls in the daily totals. The log shows that he has had more than two hours of interaction on 10 days out of 36. The legislative minimums were not fully met on any day during the period reviewed.

[25] The log shows a very consistent pattern of activities. On almost all days, [REDACTED] had three recreation opportunities to go to the yard or the common room. He very rarely accepted any of these offers; he accepted less than 10% of total offers.

[26] It is unclear from the log, since all recreation time is under the category "yard time" in the application, but it seems that most of the opportunities he accepted were to go to the yard in the afternoon, alongside other inmates. For example, on June 5 it is noted, "talking with inmates in the other yards." Similarly, on May 30, when he was at the yard from 5:47pm to 7:47pm,

"[he was] placed in a rec yard adjacent to another rec yard where inmate [REDACTED] was at the same time. Both inmate [REDACTED] [sic] had the opportunity to interact through the rec yard fence as they are few feet apart."

[27] The reasons for his refusals indicated in the log include: that he wanted to sleep, that it was too early to go out, that the bugs were too bad outside, that he wanted to watch TV, that he was drawing, that it was too hot, or that he was listening to music.

[28] In addition, the log makes it clear that he was provided regular access to the phone. On the majority of days, he used the phone once. As reflected in the log, CSC considers this to be meaningful human contact. The 30-day institutional head decision states that these calls have been with his friends and family members.

[29] For the entire period, there are only two recorded staff interactions in the SIU activity log (apart from the offers for leisure time): "cell cleaning" on May 31, lasting 21 minutes; and on June 10, a staff interaction for which the following note appears:

"Met with [REDACTED] to discuss options for his future. At present, he would like to be considered for a transfer to [REDACTED] as it is close to [REDACTED]. For his SR he would like to go to [REDACTED] as it is close to [REDACTED]. We discussed the possibility that he could have a residency condition and may have to go to a CCC for release because of the violence in his past. We talked about the possibility of entering a treatment program upon release and he is interested. He is also interested in taking the

in the SIU when programming restarts. He would like to take maybe a trade when he is released.”

[30] There is no indication in the log that [redacted] had any job opportunities. The same can be said for program opportunities: he had no access to social or correctional programs on any day.

[31] It does not appear that he caused any security incidents that had an impact on the offers made to him, although there is one incident report for the period:

[32] In the entire period, there are two days in particular which are outliers: June 1 and June 2. On these days, there are no recorded opportunities in the SIU log for [redacted]. A memorandum indicates that this was because of a s. 53 search of the SIU, authorized after a serious assault in [redacted].

6.3. Discussion

[33] The efforts made to provide leisure opportunities and access to the phone appear to have been sufficient. With regard to employment, I accept CSC’s information stating that employment opportunities have been sought for him but there are none currently available.

[34] It is encouraging that [redacted] has been able to have social interactions by phone. Although these calls are presumably important for [redacted], phone calls should not be considered a substitute for in-person interaction in all cases. The CCRA does not mention phone calls as a form of interaction in the SIU. S. 32(2) of the CCRA says that CSC should make efforts to ensure that there is no physical barrier interfering in interactions. This suggests that CSC should put emphasis on in-person interaction.

[35] With regard to the search carried out on June 1 and 2, it would have been preferable for this decision for CSC to provide more specific information about the search and especially why it would take two full days, during which no interactions were being offered to any inmates in the SIU (it would seem).

[36] I consider the major issue in this case to be the lack of programming in the SIU. While [redacted] bears responsibility for not participating in leisure opportunities with other inmates, the opportunities that have been provided to him are not reflective of the purpose for SIUs as set out at s. 32(1) of the CCRA and reinforced at s. 36(1)(b). The latter states that CSC shall provide interaction opportunities:

“[...] through activities including, but not limited to, (i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate’s reintegration into the mainstream inmate population, and (ii) leisure time.” [emphasis added]

The use of “and” in this provision, rather than “or,” suggests that both of these two categories of opportunities must be provided to inmates in the SIU, not one or the other for a prolonged time. [REDACTED] has only been provided leisure time. Activity sheets and books are not a replacement for in-person programs in the context of SIUs; while they surely have value, they do not provide meaningful human interaction.

[37] Of course, the current exceptional situation caused by the COVID-19 pandemic must be taken into account. This was discussed at paragraphs 34 to 38 of the initial decision. At para. 37, it was mentioned that Donnacona Institution had already reintroduced programming. Other penitentiaries, including Millhaven Institution, Saskatchewan Penitentiary, and Port-Cartier Institution have already been offering programs. On this issue, Atlantic Institution can thus be considered a laggard compared to other CSC penitentiaries.

[38] While discussing this issue with [REDACTED] on June 9, they suggested that a decision to withdraw program staff was taken at the national level, and that discussions with staff unions are a precursor that have delayed program resumption. A memorandum sent in follow-up (signed by [REDACTED], dated June 8, and which seems to have been sent to CSC staff) also states that pursuant to national level discussions with staff representatives, programs could resume on June 22 at the earliest. [REDACTED] was not able to explain why programs have been available in other institutions’ SIUs and but not at Atlantic Institution. They suggested that Atlantic Institution is following the rules set out nationally.

[39] In IEDM decisions under s. 37.83, the issue is whether CSC is taking all reasonable steps. Depending on the facts of a case, the IEDM’s conclusion may be because of action or inaction at any level of CSC, from SIU staff members, institutional leadership, to the national level. In the present case, it is unclear where the responsibility for the lack of programs at Atlantic Institution actually lies.

[40] No concrete information has been provided to me to demonstrate that public health advice and direction on the regional and provincial risk levels applicable to Atlantic Institution was considered. Given Canada’s size, and the different contexts in the different regions where SIUs are located, a restrictive “one size fits all” approach to dealing with COVID-19 is inappropriate. Moreover, no information has been provided to persuasively show that the restrictive conditions of SIUs, or the health risks of prolonged isolation, were considered and balanced against COVID-19 risk factors in deeming certain staff essential or non-essential.

[41] With regard to [REDACTED] in particular, there is reason to believe that he would both participate in and benefit from programming. The circumstances of his transfer to the SIU show a potential willingness to improve his institutional behaviour. As stated in the May 7 SIU Review Committee (SIURC) recommendation preceding the 30-day institutional head transfer decision,

[42] The same SIURC note also states that he has refused to integrate [REDACTED], and that the general population would no longer be a possibility for him. Correctional programming could potentially make him more open to such a transfer, which could be a step on the path to eventually having his security level reassessed to medium, as he desires.

[43] Furthermore, [REDACTED] has discussed programs with a parole officer. As mentioned above, he has expressed interest in the SIU Motivational Module.

7. CONCLUSION

[44] After assessing the record summarized above, I am unable to conclude that CSC has taken all reasonable steps to provide [REDACTED] with the opportunities referred to in subsection 36(1) of the CCRA during the period under review. As such, I must direct CSC to remove [REDACTED] from the SIU.

[45] In making this direction, I am aware that [REDACTED] has refused to leave the SIU. I do not expect force to be used to implement this decision.

Janine Lespérance
Independent External Decision-Maker

Date: June 19, 2020

Nom (détenu):
SED: ██████████
Établissement: Atlantique
Date de la notification: le 30 juin ██████████
Date de la décision: le 3 août ██████████
Décideuse externe indépendante: J. Lespérance

**DÉCISION EN VERTU DU PARAGRAPHE 37.83(1)
 DE LA LOI SUR LE SYSTÈME CORRECTIONNEL ET LA MISE EN
 LIBERTÉ SOUS CONDITION, L.C. 1992, CH. 20**

RÉSUMÉ

n'avait pas de groupe de marche. Les programmes sociaux lui ont été offerts en anglais, ce qui a eu un impact sur sa participation. Il n'a pas eu la chance de participer à une séance de programme sur plus d'un tiers des jours. Il dit qu'il n'a pas eu la chance de participer aux évaluations de la santé mentale « 14 jours » ni de voir un psychiatre à la suite de ses demandes. Les notes du SCC pour les visites quotidiennes de bien-être et les offres d'évaluation de la santé mentale contiennent du texte copié-collé. En vertu du para. 37.83(1) de la LSCMLC, je conclus que le SCC n'a pas pris toutes les mesures utiles pendant la période visée par cet examen. voudrait que sa cote de sécurité soit réévaluée et que ses efforts pour s'améliorer soient reconnus par le SCC.

1. INTRODUCTION

[1] Le 30 juin ██████████, les Décideurs et Décideuses externes indépendant.e.s (« DEI ») ont reçu une notification selon laquelle ██████████ détenu dans l'Unité d'intervention structurée (« UIS ») de l'Établissement de l'Atlantique (« l'ÉA ») au Nouveau-Brunswick, n'avait pas, pendant cinq jours consécutifs, passé au moins quatre heures en dehors de sa cellule ou n'avait pas interagi avec autrui pour au moins deux heures au quotidien.

[2] En vertu du paragraphe 37.83(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition* (« LSCMLC »), S.C. 1992, ch. 20, il s'agit ici d'examiner si le

Service correctionnel du Canada (« SCC ») a pris toutes les mesures utiles pour accorder à les possibilités prévues au paragraphe 36(1) de la LSCMLC et pour encourager celui-ci à s'en prévaloir.

2. LE DROIT APPLICABLE

2.1. Les obligations du SCC à l'égard des détenus à l'UIS

[3] L'article 36 de la LSCMLC explique les obligations des SCC comme suit:

« Obligations du Service

36 (1) Le Service accorde quotidiennement à tout détenu incarcéré dans une unité d'intervention structurée la possibilité, entre 7 h et 22 h :

a) de passer au moins quatre heures en dehors de sa cellule;

b) d'avoir, pour au moins deux heures, la possibilité d'interagir avec autrui dans le cadre d'activités qui se rapportent, notamment :

(i) à des programmes, des interventions ou des services qui l'encouragent à atteindre les objectifs de son plan correctionnel ou le préparent à sa réintégration au sein de la population carcérale régulière,

(ii) à son temps de loisir.

Temps compté

(2) Le temps consacré à des activités visées à l'alinéa (1)b) est compté pour l'application de l'alinéa (1)a) si celles-ci ont lieu à l'extérieur de la cellule du détenu.

Temps non compté

(3) Lorsque le détenu prend sa douche en dehors de sa cellule, le temps qui y est consacré n'est pas compté pour l'application de l'alinéa (1)a) [soulignement ajouté] ».

[4] Certaines exceptions sont prévues à la LSCMLC et le *Règlement sur le système correctionnel et la mise en liberté sous condition*, DORS/92-620 (« RSCMLC »). Notamment, les alinéas 36(1)(a) et (b) de la LSCMLC ne s'appliquent pas si « le détenu refuse de se prévaloir de la possibilité¹ », si le détenu ne suit pas les

¹ LSCMLC, à l'alinéa 37(1)(a).

instructions pour assurer la sécurité²; ou encore dans certaines circonstances spécifiques, y compris en contexte d'épidémie³.

[5] L'examen actuel se concentre sur les conditions de détention à l'UIS. Les paragraphes 37.83(1) et (2) de la LSCMLC précisent:

« Décision — mesures utiles

37.83 (1) Si, pendant cinq jours consécutifs ou un total de quinze jours au cours d'une période de trente jours, le détenu incarcéré dans l'unité d'intervention structurée n'a pas passé au moins quatre heures par jour en dehors de sa cellule ou n'a pas, au moins deux heures par jour, interagi avec autrui, le décideur externe indépendant doit, dès que possible, déterminer si le Service a pris toutes les mesures utiles pour accorder au détenu les possibilités visées au paragraphe 36(1) et pour encourager celui-ci à s'en prévaloir.

Recommandations

(2) S'il détermine que le Service n'a pas pris toutes les mesures utiles, le décideur externe indépendant peut lui faire les recommandations qu'il estime indiquées pour remédier à la situation [soulignement ajouté] ».

[6] Il s'ensuit que le SCC doit être proactif pour faire en sorte que les détenus à l'UIS sortent de leur cellule et aient des interactions humaines.

[7] De plus, la LSCMLC établit que l'un des objectifs des UIS est de permettre aux détenus de participer à des programmes et d'avoir accès à des services⁴. Le SCC doit déployer des efforts pour faire en sorte que les obstacles physiques n'entravent pas les interactions⁵.

[8] Plusieurs facteurs peuvent expliquer pourquoi les seuils « 4/2 » ne soient pas atteints régulièrement. Le ou la DEI se doit d'examiner la situation et tenir compte de l'ensemble de facteurs pertinents dans le cas du détenu concerné, y compris son profil et ses besoins spécifiques.

[9] Les obligations légales et les conclusions des DEI s'appliquent au SCC en tant qu'organisme gouvernemental, et non pas à un individu ou un établissement particuliers.

² LSCMLC, à l'alinéa 37(1)(b).

³ LSCMLC, à l'alinéa 37(1)(c) et RSCMLC, à l'alinéa 19(1)(b).

⁴ LSCMLC, au para. 32(1).

⁵ LSCMLC, au para. 32(2).

2.2. La période visée par une décision en vertu des paragraphes 37.83(1) et (2)

- [10] Le paragraphe 37.83(1) ne limite pas un.e DEI à uniquement examiner les jours précis qui ont déclenché l'examen. Ne tenir compte que de ces jours laisserait une période sans surveillance. Cela serait problématique, surtout lorsque plusieurs jours écoulent avant qu'un.e DEI ne puisse rendre la décision.
- [11] Tenir compte d'une période plus longue permet un.e DEI de mieux comprendre une situation et toute évolution des circonstances. Ainsi, le ou la DEI est davantage en mesure de formuler des recommandations pertinentes, le cas échéant.
- [12] Je considère que le ou la DEI peut déterminer la période appropriée à examiner afin de prendre une décision en vertu de l'article 37.83.

3. SOURCES D'INFORMATIONS

- [13] Pour rendre la présente décision, j'ai pris en compte les sources d'informations suivantes:
- Registre quotidien de l'UIS, pour la période à partir du aaaa-mm-jj
 - Évaluations de la menace et du risque, pour la période à partir du aaaa-mm-jj
 - Registre d'intervention, pour la période du aaaa-mm-jj au aaaa-mm-jj
 - Liste de contrôle: informations sur la santé mentale, en date du aaaa-mm-jj
 - Notes de rencontre (« encounter notes ») des visites quotidiennes de bien-être, pour la période du aaaa-mm-jj au aaaa-mm-jj
 - Formulaire de la santé mentale, en date du aaaa-mm-jj, aaaa-mm-jj, et aaaa-mm-jj
 - Requête du détenu, en date du aaaa-mm-jj (reçue par le SCC le aaaa-mm-jj)
 - Plan correctionnel – mise à jour (« PC-MAJ »), en date du aaaa-mm-jj
 - Mémoire – options d'intégration, en date du aaaa-mm-jj
 - Décision « 5-jours » à l'UIS, en date du aaaa-mm-jj
 - Autorisation de transfèrement à l'UIS, en date du aaaa-mm-jj
 - Évaluation en vue d'une décision – transfert, en date du aaaa-mm-jj
 - Évaluation en vue d'une décision – niveau de sécurité, en date du aaaa-mm-jj
 - Profil criminel – original, en date du aaaa-mm-jj
- [14] Le 18 juillet [REDACTED], j'ai envoyé une lettre au SCC pour être partagée avec par courriel. Celle-ci contenait un résumé de l'information pertinente et informait de son droit de présenter des observations écrites. Je lui ai aussi proposé la possibilité d'un entretien et d'impliquer son avocat.e aux procédures.
- [15] Le 19 juillet, j'ai reçu l'accusé de réception indiquant que [REDACTED] voulait faire des observations orales. J'ai mené un entretien avec lui par téléphone le 21 juillet. L'appel a duré environ une heure et 14 minutes.

4. CONTEXTE

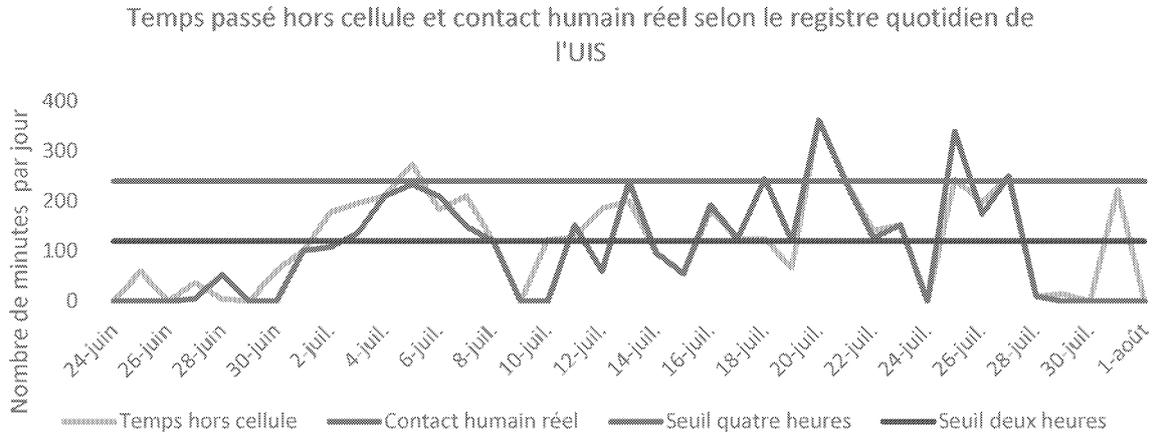
- [16] est âgé de [REDACTED] ans. et vient de [REDACTED].
- [17] Il purge une peine [REDACTED]. Il s'agit de sa [REDACTED] peine fédérale. Le programme de [REDACTED] est recommandé pour lui;
- [18] Il est à l'ÉA depuis [REDACTED]
- [19] Le transfèrement à l'UIS de [REDACTED] a été autorisé le 24 juin [REDACTED], en vertu de l'alinéa 34(1)(b) de la LSCMLC. Selon l'autorisation, il pouvait intégrer la rangée d'association limitée volontaire (« RALV », [REDACTED]). Cependant, il n'a pas accepté cette option.
- [20] Son transfèrement à une UIS a été autorisé [REDACTED] fois au total.

5. ANALYSE

- [21] La présente décision se fonde principalement sur les commentaires de [REDACTED] et le registre d'activités quotidiennes de l'UIS du SCC concernant [REDACTED]. Étant donné le temps passé depuis la date de notification et la date de l'entretien avec [REDACTED] je tiendrai compte des informations du registre pour la période allant du 24 juin au 1^{er} août, une période de 39 jours.

5.1. Totaux quotidiens pour le temps passé en dehors de sa cellule et avec autrui

- [22] Selon le registre quotidien de l'UIS du SCC, [REDACTED] a passé plus de quatre heures en dehors de sa cellule sur cinq jours pendant la période visée par la présente décision (environ 13% de tous les jours), et il a eu plus de deux heures de contact humain réel sur 19 jours (environ 49% de tous les jours). Il a été plus isolé au début de la période et récemment.



[23] Lors de mon entretien avec [redacted] il a affirmé que certains renseignements dans le registre sont un peu exagérés.

5.2. La quantité, l'heure et la coordination des offres

[24] Selon le registre du SCC, [redacted] a pu sortir de sa cellule au moins quatre fois par jour. Certains jours, il a eu plus de possibilités, puisque les agentes de programme sont allées le voir plus qu'une fois, en plus des offres pour les périodes de récréation.

[25] [redacted] semblait globalement satisfait de la quantité de possibilités (c'est « bain correct » et « mieux qu' [redacted] ». Toutefois, [redacted] a dit que le registre est un peu exagéré; le personnel vient, mais pas aussi souvent qu'indiqué. Notamment, l'accès à la salle commune est flexible, mais il faut demander pour y aller⁶. De plus, [redacted] a dit que c'est dommage que la cour extérieure ne soit offerte qu'une fois par jour, et une fois chaque quatre jours, l'offre est très tôt le matin, à 7h45. S'il demande d'aller plus tard, ce ne sera pas permis, sauf exception rare; on lui dit « tu as refusé ce matin »⁷.

[26] [redacted] n'avait pas un groupe de marche. Ainsi, il n'avait pas beaucoup de chances d'interagir avec d'autres personnes plusieurs jours. Il aurait pu interagir avec les autres détenus dans la cour extérieure, à travers une clôture. [redacted] ne fait pas confiance aux autres personnes, surtout après avoir été gravement agressé trois fois⁸.

⁶ Entretien de la DEI avec [redacted] aaaa-mm-jj.

⁷ Entretien de la DEI avec [redacted] aaaa-mm-jj.

⁸ Entretien de la DEI avec [redacted] aaaa-mm-jj.

5.3. La variété de possibilités

- [27] Selon le registre quotidien, [redacted] a eu la possibilité de participer aux types d'activité suivants:
- La récréation (la salle commune et la cour extérieure)
 - Des entretiens avec le personnel (notamment, son Agente de libération conditionnelle (« ALC »))
 - Les programmes sociaux
 - Le programme correctionnel « MM-UIS » (Module de Motivation de l'UIS)
 - L'école
 - Les appels téléphoniques personnels
 - Une visite par vidéo
 - Une visite de l'aumônier
 - Les évaluations périodiques de la santé mentale (voir les paragraphes 39 à 48 ci-dessous)

[28] Le 21 juillet, [redacted] a demandé de travailler sur son programme [redacted]. Il ne semble pas que cela a été discuté davantage avec lui par la suite.

[29] [redacted] a mentionné que l'accès aux vidéo-visites est très limité et souvent la connexion n'est pas bonne. Il est sur une liste d'attente pour un emploi¹⁰.

[30] Je considère que la variété d'activités était adéquate. Cependant, il n'y a eu aucune offre de programme le 24, 25, et 26 juin; le 2, 3, 16, 17, 18, 23, 28, 29, 30, et 31 juillet; et le 1^{er} août; soit 14 jours au total (environ 36% de tous les jours pendant la période visée par cet examen). De plus, après les rencontres initiales, [redacted] n'a eu que sept chances de travailler sur le programme MM-UIS au cours de la période visée par cet examen.

5.4. Les facteurs structurels ou contextuels ayant eu un impact sur les activités

[31] Le manque de personnel francophone est un enjeu qui a eu un impact sur le temps que [redacted] a passé en dehors de sa cellule.

[32]

⁹ Entrée pour les programmes correctionnels, registre de l'UIS, aaaa-mm-jj.

¹⁰ Entretien de la DEI avec [redacted] aaaa-mm-jj.

¹¹ Entretien de la DEI avec [redacted] aaaa-mm-jj.

[33] Les entrées au registre démontrent que [redacted] a parlé de sa préférence pour la programmation en français avec le personnel de l'UIS. Le 27 juin, il a dit à une agente de programme qu'il voulait faire le programme MM-UIS,

[34] L'ÉA est censé être un établissement offrant des services dans les deux langues officielles¹⁵.

[35] D'autres facteurs contextuels ont eu un impact. Par exemple, le 21 juillet, l'APC n'a pu faire qu'une séance de 30 minutes avec lui, dans une salle sécurisée, en raison de la non-disponibilité des salles¹⁶. Selon [redacted] les deux APS n'ont pas le temps pour tout le monde, mais cela n'est pas de leur faute¹⁷.

5.5. Les efforts d'encouragement

[36] Selon le registre de l'UIS, [redacted] a participé aux programmes sociaux quelques fois, a accepté la plupart des séances d'école, et a presque toujours participé aux séances du programme MM-UIS. Il n'a pas accepté la majorité des possibilités pour la récréation, mais il a quand même participé la majorité des jours.

[37] Les entrées au registre indiquent que le personnel a essayé d'encourager [redacted] à participer. Notamment, les APS sont allées le voir plus qu'une fois pour offrir une séance de programme au cours d'une journée à quelques reprises. L'APS lui a fourni un [redacted] en réponse à sa demande.

¹² Entrée pour une « visite professionnelle », registre de l'UIS, aaaa-mm-jj.

¹³ Entrée pour une « visite professionnelle », registre de l'UIS, aaaa-mm-jj.

¹⁴ Entrée pour les programmes sociaux, registre de l'UIS, aaaa-mm-jj.

¹⁵ Voir: Directive du commissaire 087 : Langues officielles, en vigueur depuis aaaa-mm-jj.

¹⁶ Entrée pour les programmes correctionnels, registre de l'UIS, aaaa-mm-jj.

¹⁷ Entretien de la DEI avec [redacted] aaaa-mm-jj.

¹⁸ Entretien de la DEI avec [redacted] aaaa-mm-jj.

[38] Toutefois, il est probable que [redacted] serait sorti de sa cellule plus fréquemment s'il y avait plus de services [redacted] à l'UIS; cela l'aurait encouragé à participer. [redacted] a dit qu'il veut profiter de tous les services disponibles.

5.6. L'appui en matière de santé mentale

[39]

[40] Selon les informations du SCC, [redacted] a participé à l'évaluation « 24 heures » du 24 juin. Les notes indiquent [redacted]

[41]

[redacted]

[redacted]

[42] Ces descriptions laissent entendre que les évaluations ont été offertes

[43]

¹⁹ Entretien de la DEI avec [redacted] aaaa-mm-jj.

²⁰ Formulaire de la santé mentale – évaluation « 24 heures », aaaa-mm-jj.

- [44] Concernant les visites quotidiennes de santé, la plupart des notes du personnel (« encounter notes ») pour la période du 25 juin au 21 juillet sont copiées et collées. Toutes indiquent: « No voiced physical or mental health concerns²¹ ». Les notes indiquent qu'un jour, le 1^{er} juillet, [REDACTED] a demandé de voir [REDACTED] et il a été mis sur la liste du docteur,
- [45] Selon [REDACTED], les visites quotidiennes de bien-être ne sont pas de consultations privées. Au début, il expliquait ses problèmes, mais le personnel revenait le prochain jour comme s'il n'avait rien dit²³.
- [46] [REDACTED] dit qu'il a fait et refait des demandes d'aide. À la suite de ma demande, le SCC m'a fourni une requête datée du [REDACTED]

[47] Selon le registre de l'UIS, [REDACTED] n'a pas eu la chance de voir le docteur ni d'avoir une séance d'appui de quelqu'un de l'équipe de la santé mentale, outre l'évaluation du [REDACTED]

[48] Je présume que prendre des médicaments appropriés pour [REDACTED] pourrait avoir un impact positif sur sa participation à certaines activités à l'UIS.

5.7. Les autres enjeux soulevés par [REDACTED]

- [49] [REDACTED] indique que ça fait plus qu'un an qu'il travaille sur lui, mais cela n'est pas reconnu dans son plan correctionnel, ce qui le décourage. Il voudrait que ce soit mentionné. De plus, il n'a pas eu la chance de faire le programme recommandé pour lui [REDACTED]
- [50] Je comprends que ces facteurs sont une source de frustration pour [REDACTED] et sont sa préoccupation principale. C'est important que tout plan correctionnel soit juste, précis, et mis à jour avec les dernières informations. Toutefois, cet examen porte sur les conditions à l'UIS et je trouve que ces enjeux ne sont pas très pertinents à la question principale de cet examen.

²¹ Notes de rencontre, pour la période du aaaa-mm-jj au aaaa-mm-jj.

²² Notes de rencontre, aaaa-mm-jj.

²³ Entretien de la DEI avec [REDACTED] aaaa-mm-jj.

²⁴ Requête du détenu, en date du aaaa-mm-jj (reçue le aaaa-mm-jj).

6. CONCLUSION ET RECOMMANDATIONS

[51] Compte tenu surtout des jours sans programme, les manquements dans l'accès à la programmation en français, et les informations qui suggèrent que l'appui en matière de santé aurait pu être meilleur, je conclus en vertu du para. 37.83(1) de la LSCMLC que le SCC n'a pas pris toutes les mesures utiles pour fournir les possibilités adéquates à [redacted] à l'UIS.

[52] En vertu du paragraphe 37.83(2) de la LSCMLC, je recommande au SCC de:

- Prioriser l'embauche d'agent.e.s de programmes capables de communiquer en français;
- S'assurer que [redacted] puisse voir un médecin prochainement;
- Essayer d'améliorer la flexibilité de l'accès à la cour extérieure;
- Examiner la possibilité d'offrir le programme [redacted] et
- Améliorer la régularité des offres de programme.

Janine Lespérance
Décideuse externe indépendante
Le 3 août [redacted]

Name:
FPS Number: ██████
Correctional Institution: Atlantic Institution
Date of Initial Decision s. 37.83(1), CCRA: May 29, ██████
Date of the Present Decision: July 9, ██████
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(3) OF THE *CORRECTIONS AND
CONDITIONAL RELEASE ACT*, S.C. 1992, C.20**

SUMMARY

had recreation opportunities daily, and program opportunities most days; mainly social programs. He was provided a program to assist with his upcoming release to the community, and phone-based behavioural counselling. He did not want to associate with other inmates. He was noted as not fully adhering to mental health treatment, which was the stated reason for the continued use of rooms with security barriers for meetings with him. There is a need to improve the quality of TRA information and written responses to IEDMs. Staff should take steps to reduce the use of barriers for interactions and encourage his participation in mental health treatment. Under s. 37.83(3) of the CCRA, CSC took all reasonable steps. ██████ did not share his views for this decision.

1. INTRODUCTION

[1] On March 14 and March 31, ██████, the Independent External Decision-Makers (“IEDMs”) were notified that for five consecutive days ██████ had not spent at least four hours out of his cell or had not interacted with others for at least two hours per day. As an IEDM, I issued a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) on May 29. I concluded that Correctional Service Canada (“CSC”) had not taken all reasonable steps to provide sufficient daily time out of cell and meaningful human contact. I made recommendations under subsection 37.83(2) of the CCRA.

[5] Later that day, I received signed confirmation that [REDACTED] did not wish to share his views through one of the means offered. I must therefore rely on the information provided by CSC.

[6] I did speak to [REDACTED] on May 20, prior to my initial decision.

3. CONTEXT

[7] I [REDACTED] is [REDACTED] years and is from [REDACTED]. He is serving a [REDACTED] sentence, for which his statutory release date is [REDACTED]. He is classified at the medium-security level.

[8] My May 29 decision contains additional background information.

4. LEGAL FRAMEWORK

4.1. Inmates' entitlements in the SIU

[9] The previous decision under s. 37.83(1) of the CCRA set out and interpreted the legal framework in more detail. In summary, s. 36(1) of the CCRA establishes that CSC must provide inmates the opportunity to spend at least four hours outside of their cell and two hours interacting with others, through a range of different activities, each day. There are limited exceptions in the legislation, including an inmate's refusals and extreme circumstances that impede operations. CSC must be proactive and respond to inmates' needs.

4.2. Framework for determinations under s. 37.83(3) of the CCRA

[10] S. 37.83(3) of the CCRA states:

“If [CSC], within the period of seven days commencing on the day on which it receives recommendations, fails to satisfy the [IEDM] that it has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1), the [IEDM] shall direct [CSC] to remove the inmate from the [SIU] [...].”

[11] Unlike s. 37.83(1) of the CCRA, s. 37.83(3) does not explicitly state that the IEDM is to assess whether CSC encouraged an inmate to accept opportunities. However, the standard “all reasonable steps” itself implies that CSC must be proactive. Whether the standard is met will depend on the facts and circumstances relevant to the inmate's situation.

[12] Analysis under s. 37.83(3) is not strictly an assessment of whether CSC has implemented the IEDM's earlier recommendations under s. 37.83(2). CSC could demonstrate with new information that it would not be reasonable to implement them. CSC could also take measures other than those proposed by the IEDM.

[13] Decisions under s. 37.83(3) focus on the activities and services in the SIU rather than the reasons for the SIU placement. If an IEDM finds under s. 37.83(3) that CSC has not taken all reasonable steps, the IEDM must order CSC to remove the inmate from the SIU. The CCRA does not seem to leave discretion to the IEDM as to whether to issue this order. Section 37.82 of the CCRA, which sets out the safety and security-related factors relevant for decisions on the reasons for the SIU placement, does not appear to apply to s. 37.83(3) determinations.

4.3. Period considered

[14] The CCRA reflects the intent of ensuring that IEDM oversight is timely and can lead to remedies that address an inmate's current situation in the SIU. When significant time has passed since the initial decision under ss. 37.83(1)-(2) of the CCRA, the IEDM may take into account information regarding the whole period since the initial decision, rather than only looking at the 7-day period right after it.

5. ANALYSIS

5.1. Main issues in the initial decision of May 29 and CSC's June 4 response

[15] The conclusion in my May 29 decision that CSC had not taken all reasonable steps was based mainly on the circumstances of [redacted]'s transfer from [one medium-security institution to another], and the excessive medical isolation imposed (see paras. 25 to 48 of the decision). Although the situation was not ongoing in [redacted]'s case by the date of the decision, I made recommendations to prevent similar future situations (see para. 68).

[16] My analysis on these issues in [redacted]'s case was relatively detailed, spanning four pages. CSC's response, signed by the AI Warden, was general and simplistic; it did not address any specific issue addressed in the analysis nor any specific recommendation. The entire response on the topic was:

"In addition to the above, you also made a number of recommendations regarding the policies and processes related to medical isolation.

From a Health Services perspective, we will continue to follow the National policy framework for COVID-19 for risk mitigation in conjunction with the most up to date Provincial Public Health requirements for our clients and staff in regards to isolation, testing, and ongoing vaccinations in an effort to ensure the health and safety of our vulnerable population. We continue to look at our processes for sharing pertinent health information while maintaining the privacy and confidentiality of the clients within the Atlantic Region.

In addition, we continue to await updated policy direction from NHQ regarding the processes for transferring offenders from non-SIU sites to the SIU and look for opportunities to reduce the time spent in medical isolation, wherever possible.” (p. 1)

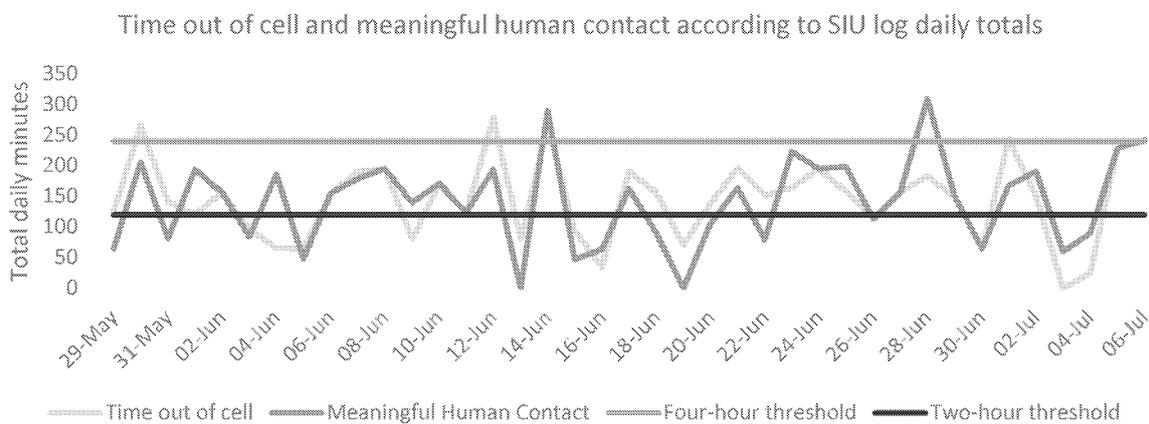
[17] This response does not convincingly demonstrate that any changes were or are being made, nor that CSC officials at the institutional, regional, or national level gave due consideration to the analysis and recommendations in the decision.

[18] Nevertheless, as stated above, I do not consider that decisions under s. 37.83(3) are necessarily to assess whether CSC has adequately implemented all recommendations; the legislation is not phrased that way. I consider that it is important to focus on the inmate’s current situation, and the actual opportunities for the inmate during the period since the initial decision was issued.

[19] The analysis below is based on SIU activity log information, except where noted otherwise.

5.2. Daily totals for time out of cell and meaningful human contact according to the SIU activity log

[20] During the period from May 29 to July 6, a 39-day period, [redacted] spent more than four hours out of his cell and had more than two hours of meaningful human contact on five days (about 13% of all days during the period reviewed). He had more than two hours of meaningful human contact on 24 days (about 62% of all days during the period reviewed).



5.3. Opportunities and participation

[21] According to the SIU log, [redacted]’s patterns of participation seem to have been fairly consistent throughout the period reviewed.

5.3.1. Recreation and programs

[22] generally had recreation opportunities 3-5 times a day and accepted once or twice, often for outdoor recreation, at the same time as others.

[23] He was not, however, in a group for indoor recreation. Threat risk assessment (“TRA”) information indicates that he consistently refused to be placed on a group (see TRA, June 15). The Security Intelligence Officer (“SIO”) Department opined that it would be unsafe to place him on a group without his consent. He had been placed on the medium security range, with a more open evening routine, but he requested to leave on June 12 because he did not want to associate with anyone (see SIU activity log entry for staff interaction, June 12). He reportedly feared that other inmates wanted to hurt him and were saying bad things about him (see SIU activity log entry for staff interaction, June 21). He was moved off the medium range on June 21 (see TRA, June 21).

[24] Social programs offered included both games (often playing Scrabble) and, more recently, the Program focusing on skills for release (e.g. for obtaining employment). The first session was on June 23 and there was one other session. It is positive that has been able to participate in sessions, in light of his upcoming release.

[25] He had social program opportunities most days. Sometimes staff members returned later in the day to offer him a session again. He often participated once per day. His participation was better than during the previous review period.

[26] There were a total of 11 days (about 28%) during the period reviewed on which he had no social program opportunity. On two of these days, it was because of operational factors, according to log notes (due to movements on the D range on June 20, and due to flooding from another inmate breaking a sprinkler on June 29).

[27] Correctional program opportunities (for the MM-SIU program) were much less frequent than social programs opportunities. There were only six days during the period reviewed on which had the opportunity to participate in the MM-SIU. He only turned one MM-SIU offer down. On that occasion, he was worried about missing his canteen delivery, despite assurances from staff. finished the required MM-SIU modules on July 5, but the Correctional Program Officer (“CPO”) did meet with him again.

[28] With regard to the frequency of MM-SIU opportunities, CSC’s June 4 response states, “[...] with the current number of offenders within the SIU and the number of CPO resources, more than 2 offers per week may be difficult to achieve.” During the first four weeks of the period reviewed, had less than two opportunities for the MM-SIU per week, suggesting a need for increased CPO staffing, assuming existing staff are trying to maximize offers.

[29] Finally, [REDACTED] was been asked about a job or school but was disinterested (see SIU activity log entry for staff interaction, June 21). He used the range phone a number of days (11), often for one to two hours.

5.3.2. Mental health challenges and support

[30] There were a few occasions recorded in the log when [REDACTED] made comments suggestive of ongoing paranoia and mental health issues, mentioning a chip in his head, his brain being controlled by others, or other people being able to read his thoughts (see log entries for June 3, June 10, June 21, and July 2). These were similar to previous comments, mentioned in my May 29 decision (see para. 64). He reportedly struggles with [REDACTED], [REDACTED], [REDACTED], [REDACTED] (see log entry, June 10).

[31] [REDACTED] did have mental health support during the period reviewed. However, it appears he participated inconsistently. For example, a log note for [REDACTED] by his Clinical Social Worker indicates,

[32] That session lasted for thirty minutes.

[33] For an MM-SIU session on June 10, the CPO noted:

r

c

[34] There is an entry for “Healthcare treatment provided” on [redacted] with no further description.

[35] Apart from [redacted] the only other direct offer by the clinician recorded in the log was on [redacted].

[36] The clinician also noted in the log,

[37] When his Parole Officer (“PO”) asked on [redacted] if he wanted to see a mental health clinician, [redacted] reportedly said no, “as according to him they never help him” (log entry).

[38] Furthermore, he did not participate in two mental health assessments, on [redacted].

[39] As of [redacted] he had the opportunity for phone sessions with a Behavioural Counsellor [redacted]. There are two other such sessions in the log, for [redacted] and [redacted]. According to CSC’s [redacted] written response to my follow-up questions, a call with the counsellor had also been scheduled for [redacted] “however the call was not successful due to security requirements.” This explanation is vague. The response also indicates that the provision of telephone sessions with a behaviour counsellor is also an effort to ensure meaningful interactions when CPO caseloads increase and it becomes challenging to offer two MM-SIU sessions per week.

[40] This is a positive initiative to provide resources. However, it is unfortunate the Behavioural Counsellor was not on site to see [redacted] the legislation emphasizes in-person support and meaningful human contact opportunities.

5.4. Threat risk assessments and use of security barriers during interactions

[41] CSC has a specific legal obligation to make “every reasonable effort” to avoid the use of barriers during interactions (s. 32(2), CCRA). The steps taken (or not taken) to reduce the use of barriers is a relevant consideration for determinations under s. 37.83 of the CCRA.

- [42] In my written follow-up, I requested clarification concerning seemingly contradictory information on the use of barriers for interactions with
- [43] CSC's response to my initial decision indicates, in summary, that staff make efforts to meet inmates in rooms without barriers, but sometimes this is not possible due to room availability; or, secured rooms are sometimes used for mental health meetings for confidentiality reasons. In contrast, the TRAs for indicate that secured rooms should be used for interviews and programs.
- [44] CSC's response clarified that the information was "valid and applies to all inmates in the SIU." I understand, now, that CSC's initial response was simply making a general claim about their practices. It did not provide any information about the steps taken to reduce the use of barriers in 's case, despite the specific recommendation I had made about this issue in my decision.
- [45] That kind of general statement has little to no value in terms of demonstrating actual steps taken with regard to a particular inmate. An IEDM should not have to follow-up to obtain clear information regarding the use of barriers, particularly in the context of a second-stage decision when the initial decision under s. 37.83(1) explicitly discussed this issue.
- [46] The response to my inquiry did provide additional information, notably that due to 's "mental health and lack of compliance with his pharmaceutical regime", secure rooms were used for all interventions. The response acknowledged that there had been "some discrepancies" in recording the use of barriers in the SIU log. It stated that staff had been reminded to record the use of secured rooms.
- [47] My review of the TRAs for this more recent review period shows a need to improve the clarity and accuracy of TRAs, so that the TRAs reflect the current situation. For example, a TRA for states (repeating a statement barely modified since April),

However, the SIO information section of the same TRA states, seemingly contradicting the earlier statement,

It also notes that there seemed to have been an improvement in 's interactions with staff, and there had been "positive interactions with staff over the last several weeks."

[48] The positive comment about staff interactions was removed from an updated TRA issued later on [redacted]. It indicated that the Health care and psychology departments were consulted; they said that he refused “to take his psychotropic medication” and “they feel his history of impulsivity and violence could return at any moment.”

[49] Staff continued to use barriers for meetings with [redacted]

[50] In my [redacted] request, I requested information on “[...] efforts taken by CSC/SIU staff to reduce the use of barriers [...].” The response noted, “We are continuously communicating with health services with regards to [redacted]. The TRA are reviewed regularly in consultation with the interdisciplinary team.”

[51] Reviewing the use of barriers regularly is important, but simply issuing a new TRA does not demonstrate that CSC is taking steps to reduce the use of barriers, particularly if there is no meaningful update to the TRA’s content.

[52] A better practice for TRAs might involve including brief observations about an inmate’s behaviour on the specific day of the TRA update (or in the days since the last TRA update), whether positive or negative; as well as the decision to continue or end the use of barriers.

[53] If [redacted]

[54] The continuous use of security barriers with [redacted] seems at odds with his medium security classification. It is unlikely to help his transition upon his statutory release in a few weeks.

[55] Staff should also consider that the constant use of secured rooms might cause harm and aggravate mental health problems, in a vicious cycle; although the SIU log does not provide obvious evidence of this in [redacted]’s case.

5.5. Overall comments

[56] With respect to the quality and reliability of the log information, [redacted] having not provided his views, has not called into question the information recorded. I do note some days on which the log information regarding recreation opportunities is unclear or suggests duplications or other data entry errors ([redacted]). However, I generally accept the log information as fairly illustrating the opportunities [redacted] has had.

[57] As shown in this case, there are ongoing issues with the quality of written information provided by CSC, both in the memorandum responses and written

answers to follow-up inquiries. CSC often provides vague, general assurances, rather than concrete statements about steps taken and direct answers to questions.

[58] Prior to my previous decision, [redacted] appeared to be generally fine with the SIU conditions (see paras. 53 to 56). Since that decision, the main improvement in the SIU conditions has been the provision of the CIP program and behavioural counselling sessions to

[59] Overall, I have concerns regarding the infrequency and inconsistency of MM-SIU program offers, and the absence of barrier-free interaction opportunities for [redacted]. There is room for improvement in TRA revision reporting practices and with respect to actually taking steps to reduce the use of barriers. Given that the use of barriers –and [redacted] s avoidance of other inmates– appears largely due to his non-adherence to mental health treatment, finding ways to encourage him to participate and providing consistent support is essential. His turning down recreation time and social program sessions was the main reason for which the minimum daily thresholds were often not met; but again, there appears to be a link with his mental health state.

6. CONCLUSION

[60] Despite the issues identified above, I find the information about the opportunities provided by CSC sufficient to conclude under s. 37.83(3) of the CCRA that CSC took all reasonable steps.

[61] I encourage CSC to address CPO staffing levels, identify strategies to increase [redacted] s engagement in mental health treatment, ensure the provision of clear and precise information to IEDMs, and improve TRA documentation.

Janine Lespérance
Independent External Decision-Maker

Date: July 9, [redacted]

Inmate Name:
FPS Number: ██████████
Correctional Institution(s): Six maximum-security institutions, Regional Treatment Centre
Notification date: August 11, 2022
Review issued: May 12, 2023
Independent External Decision-Maker: J. Lespérance

REVIEW UNDER PARAGRAPH 23.07(1)(a) OF THE *CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS*, SOR/92-620

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SUMMARY

His transfer to the SIU has been authorized 12 times, at six maximum-security institutions.

CSC should commit to avoiding excessive use of isolation. have prevented 's access to . CSC should address this issue. CSC should test him for t He has not had any opportunity for programming or mental health support that is culturally-specific. CSC should address this gap. has had good working relationships with some program officers in the SIU. However, gains from Module have not lasted. may require ongoing interventions in a mainstream population and may be more successful in a smaller unit. He would benefit from behavioural counselling. He could also potentially benefit from doing more intensive core programming, which he has not had the chance to do. Institutional transfers did not result in him staying in a mainstream population. They likely had

CSC should seek to provide stability, and identify

1. INTRODUCTION

[1] On August 11, [REDACTED], the Independent External Decision-Makers ("IEDMs") were notified that a review concerning was necessary, under para. 23.07(1)(a) of the *Corrections and Conditional Release Regulations* ("CCRR"), SOR/92-620. His transfer to a Structured Intervention Unit ("SIU") had been authorized four times within a 180-day period by Correctional Service Canada ("CSC") officials.

2. LEGAL FRAMEWORK

[2] Para. 23.07(1)(a) of the CCRR establishes an IEDM shall review:

"the case of an inmate who was authorized to be transferred to a [SIU] at least four times within a period of 180 consecutive days and, during which period, the matter was not referred to the [IEDM] for the purposes of making a determination in accordance with section 37.8 of the Act;"

[3] These reviews are for inmates who have frequently gone in and out of the SIU. The reference to s. 37.8 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA"), suggests para. 23.07(1)(a) reviews exist to ensure there is IEDM

- Institutional head “5-day” SIU transfer decisions, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- SIU transfer authorizations, dated yyyy-mm-dd, and yyyy-mm-dd
- Institutional head “ad hoc” SIU decisions, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- SIU Review Committee (“SIURC”) recommendation to the IEDM, dated yyyy-mm-dd
- Assessment of affiliation with a security threat group, yyyy-mm-dd
- Statement/observation reports (“SORs”), dated yyyy-mm-dd, yyyy-mm-dd (X2), yyyy-mm-dd, yyyy-mm-dd (X3), yyyy-mm-dd, yyyy-mm-dd (X3), yyyy-mm-dd (X2), yyyy-mm-dd (X2), yyyy-mm-dd (X2), yyyy-mm-dd (X3), yyyy-mm-dd (X4), yyyy-mm-dd (X10), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X9), yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd (X3) yyyy-mm-dd (X3)
- Video footage, from yyyy-mm-dd (range footage from morning incident and midday cell extraction, observation cell video, common area, use of force footage from handheld camera with audio), yyyy-mm-dd (range and common area footage), yyyy-mm-dd (range footage), yyyy-mm-dd (range and dining/common area footage, handheld decontamination and escort footage), yyyy-mm-dd (CCTV footage, and handheld footage of booth and post-use of force), yyyy-mm-dd (range footage) [37 video files in total]
- Senior Deputy Commissioner (“SDC”) decisions, dated yyyy-mm-dd and yyyy-mm-dd
- Regional reviews, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Correctional plan updates – SIU (“CPU-SIU”), dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Correctional plans – updated (“CPU”), dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Criminal profile report (“CPR”) – amendment #4, dated yyyy-mm-dd
- Institutional Head response to IEDM recommendations, dated yyyy-mm-dd
- Emails from ██████████, A/Manager, SIU, received yyyy-mm-dd and yyyy-mm-dd
- Email from ██████████, Acting Chief IMH Services, dated yyyy-mm-dd
- Mental health clinical notes, dated yyyy-mm-dd, and yyyy-mm-dd
- Modified watch observation form, dated yyyy-mm-dd
- Mental health triage and assessment reports, dated yyyy-mm-dd, yyyy-mm-dd (therapeutic unit triage assessment) and yyyy-mm-dd
- CSC’s written responses to the IEDM’s questions, received yyyy-mm-dd and yyyy-mm-dd

- Assessments for decisions (“AFDs”), dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Institutional head “30-day” SIU transfer decisions, dated yyyy-mm-dd and yyyy-mm-dd
- Mental health form – SIU evaluations, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd
- Program reports, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Mental health final/discharge summary reports, dated yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Institutional head ad hoc SIU transfer decisions, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Referral decision sheet – penitentiary placement (transfer), decision dated yyyy-mm-dd
- Memorandums – recreation group, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Memorandums – integration options, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Criminal profile report (“CPR”) – amendment #3, dated yyyy-mm-dd
- Mental Health Need Scales, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Mental health encounter notes, dated yyyy-mm-dd, and for the period from yyyy-mm-dd to yyyy-mm-dd
- Psychological/psychiatric assessment report (re: discharge), dated yyyy-mm-dd
- RTC Certified Patients Integration Categories forms, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Seclusion and restraint observation reports, dated yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, yyyy-mm-dd, and yyyy-mm-dd
- Notice of Mental Health Act Tribunal hearing and Tribunal order, dated yyyy-mm-dd
- Medical isolation forms, dated yyyy-mm-dd and yyyy-mm-dd
- Form 2.1 and 4.1 applications, dated yyyy-mm-dd
- Form 1 Examination certificate, dated yyyy-mm-dd
- Psychiatric hospital and intermediate mental health care referral, dated yyyy-mm-dd
- SIU transfer confirmations, dated yyyy-mm-dd and yyyy-mm-dd
- Security reclassification scale, dated yyyy-mm-dd
- Psychological risk assessment, dated yyyy-mm-dd
- Referral decision sheets –institutional transfer, final decisions dated yyyy-mm-dd and yyyy-mm-dd

[7] I have also reviewed decisions issued by other IEDMs on the following dates: yyyy-mm-dd, and yyyy-mm-dd.

5. NOTIFICATION DATE AND TRIGGERING OF REVIEW

[14] At the time of issuing this review, [redacted] has been transferred to the SIU twelve times in total, at [Maximum-security institution, ' [redacted]], and [Maximum-security institution, ' [redacted]]. The dates of [redacted] 's SIU stays are:

1. Nov. 30, 2019, to Mar. 12, 2020 ([redacted])
2. July 7 to 16, 2020 ([redacted])
3. Mar. 31 to Sept. 20, 2021 ([redacted])
4. Jan. 4 to 13, 2022 ([redacted])
5. Jan. 14 to 25, 2022 ([redacted])
6. Jan. 26 to Feb. 22, 2022 ([redacted])
7. Mar. 23 to April 5, 2022 ([redacted])
8. May 30 to Aug. 8, 2022 ([redacted])
9. Oct. 19 to Dec. 15, 2022 ([redacted])
10. Dec. 21, 2022, to Mar. 9, 2023 ([redacted])
11. Mar. 15 to Apr. 1, 2023 ([redacted])
12. Apr. 14, 2023, to date ([redacted])

[15] This review was triggered on March 23, 2022, after the fourth authorization within a 180-day period, all of which occurred a [redacted] . However, CSC only notified the IEDMs about this review on August 11, 2022. CSC sent the notification 141 days late. [redacted] spent a lot of time in the SIU after that.

[16] IEDMs currently rely on CSC to notify them when reviews have been triggered. CSC's failure to notify the IEDMs in a timely manner is problematic. With that said, this review has been further delayed by other factors, including IEDM caseload, my prioritization of other cases when [redacted] was out of the SIU, various requests for information from CSC, and the volume of information considered.

[17] In the interim, I issued a decision under s. 37.83(1) of the CCRA concerning [redacted] on Dec. 2, 2022, in which I concluded that CSC had not taken all reasonable steps to provide the required time out of cell opportunities in the SIU and encourage to participate. Another IEDM recently issued a decision on SIU conditions of confinement.

6. OVERVIEW OF CSC'S REASONS FOR [redacted] S SIU PLACEMENTS

[18] [redacted] s first SIU stay (Nov. 30, 2019, to Mar. 12, 2020) was at [redacted] . He was transferred to [redacted] to end his SIU stay.

[19] The next SIU authorization (July 7 to 16, 2020) occurred after “multiple range and unit changes due to conflicts with other offenders”⁶ at [REDACTED] and his discharge from the [REDACTED] therapeutic range after he allegedly “ [REDACTED] during an attempted cell search. He later resided on the [REDACTED] range of [REDACTED] unit.

[20] After being placed on [REDACTED] he refused to return to [REDACTED]. This resulted in his SIU transfer on Mar. 31, 2021.

[21] [REDACTED] remained in the [REDACTED] SIU until Sept. 20, 2021, when he was transferred to [REDACTED] because his statutory release plans were for the [REDACTED] region. His statutory release date was [REDACTED].

[22] Below are the reasons for each of his SIU transfers as of Jan. 2022, as summarized in CSC’s SIU transfer authorization documents. Three of the four SIU authorizations at [REDACTED] that triggered the present review were back-to-back transfers in January.

Jan. 4, 2022 (under CCRA, para. 34(1)(b)):

“Inmate [REDACTED] was involved in a physical altercation on Jan 3/22 with [REDACTED] in the [REDACTED] in unit [REDACTED]. Inmate [REDACTED] was having a heated argument with other inmates [REDACTED]”

[23] [REDACTED] was released from the SIU on Jan. 13, to the [REDACTED] range at [REDACTED].

Jan. 14, 2022 (under CCRA, para. 34(1)(b)):

“On January 14, 2022, I/M [REDACTED] was involved in a physical altercation with another inmate on [REDACTED]. A conflict resolution was conducted and both offenders agreed to keep their distance from each other and stated they were able to reside together on the range. A short time after the conflict resolution, [REDACTED] [REDACTED]”

⁶ SIU transfer authorization, yyyy-mm-dd, at p. 3.

⁷ Assessment for decision, yyyy-mm-dd, at p. 6.

⁸ SIU transfer authorization, yyyy-mm-dd, at p. 3.

⁹ SIU transfer authorization, yyyy-mm-dd, at p. 3.

[24] was transferred to Unit [REDACTED] at [REDACTED] on Jan. 25.

Jan. 26, 2022 (under CCRA, para. 34(1)(a)):

On Jan. 26, during lunch movement, [REDACTED] reported [REDACTED]

[REDACTED] Staff considered that he had "burned all bridges at [REDACTED]"

[25] In the evening of Feb. 20, [REDACTED] was moved to [REDACTED]. In the evening of Feb. 22, 2022, [REDACTED] was transferred to [REDACTED] under a Form 1. He was there for just over two weeks. He [REDACTED] on Mar. 8. Following that, CSC returned him to [REDACTED] on Mar. 9.¹²

[26] Once back at [REDACTED] was required to complete [REDACTED] period (first on [REDACTED], then on [REDACTED]), before being returned to the SIU again.

Mar. 23, 2022 (under CCRA, para. 34(1)(a)):

"As I/M [REDACTED] was has resided in every population that he meets the criteria for and all have failed, there are no alternatives to safely manage this offender within an open population at this time."¹³

[27] [REDACTED] was released from the SIU on [REDACTED], for his statutory release. He was released one day early, [REDACTED].

[28]

[29] He returned to [REDACTED] on [REDACTED]. He was put on [REDACTED], which was then changed to [REDACTED]. He was also required to do a period of [REDACTED] which lasted until [REDACTED]. He remained on [reception/isolation range] until [REDACTED], when he was moved to [REDACTED]. He was in [REDACTED] between May 15 and May 30. He was refusing to transfer to the SIU during this time, despite being approved for the SIU as of May 18.¹⁴

May 30, 2022 (under CCRA, para. 34(1)(b)):

[REDACTED] said he would transfer to the SIU willingly once he received his TV, but it had not yet arrived at [REDACTED]. CSC called the Institutional Emergency Response Team ("IERT") to move him to the SIU. However, [REDACTED] did not cause any issue and no physical force was used on him. CSC determined he [REDACTED]

¹⁰ SIU transfer authorization, yyyy-mm-dd, at pp. 3-4.

¹¹ SIU transfer authorization, yyyy-mm-dd, at p. 4.

¹² See: AFD, yyyy-mm-dd, at p. 3.

¹³ SIU transfer authorization, yyyy-mm-dd, at p. 4.

¹⁴ SIU transfer authorization, yyyy-mm-dd, at p. 4.

could not integrate because he had “burned his bridges” in the inmate populations at I

[30] I remained in the SIU until Aug. 8, when CSC transferred him to At I resided in the unit [REDACTED] population, in the “[REDACTED]” unit.

Oct. 19, 2022 (under CCRA, para. 34(1)(b)):

[REDACTED] other inmates assaulted him on Oct. 18. The assault began in I s cell and continued on the range. I

I was moved to “[REDACTED]” unit, but felt unsafe and went to the SIU the next day.¹⁶

[31] He was removed from the SIU on Dec. 15, for his transfer to

Dec. 21, 2022 (under CCRA, para. 34(1)(a)):

“Since I s arrival at on 2022/12/17 he has been involved in t On 2022/12/19 Security information relays

information gathered on 2022/12/22 indicates he cannot remain on [REDACTED] range. There are no other suitable populations where can reside.”¹⁷

[32] The transfer authorization describes that transfer consultations would be sought. It mentions his prior SIU stays and transfers out of and that had previously refused him.

[33] CSC transferred from I to on an involuntary emergency transfer basis on Mar. 9, 2023. One of the factors that led to the transfer was allegedly

Mar. 15, 2023 (under CCRA, para. 34(1)(b)):

“On 2023-03-12, was involved in [REDACTED]

¹⁵ SIU transfer authorization, yyyy-mm-dd, at p. 4.
¹⁶ SIU transfer authorization, yyyy-mm-dd.
¹⁷ SIU transfer authorization, yyyy-mm-dd, at p. 3.
¹⁸ Institutional head ad hoc decision, yyyy-mm-dd, at p. 3.
¹⁹ Incident history log summary.

On 2023-03-14, [redacted] was met with by his Institutional Parole Officer (IPO) and talked about his placement on [redacted] Range. [redacted] indicated that he wanted to remain on [redacted] Range and would come out at the same time as the other inmates when the lockdown concluded. However, at approximately [redacted] on [redacted]

[redacted] wished to go to the SIU. CSC considered he was not safe to remain on [redacted]-range and alternatives were not viable.

[34] Several CSC sites were considered for [redacted]'s potential transfer. Of the sites contacted by his CMT at [redacted] only [redacted] accepted him. He was transferred to [redacted] on Apr. 2, 2023, to end his SIU status. The ERT was used but [redacted] was reportedly compliant with verbal orders.²¹

Apr. 14, 2023 (under CCRA, para. 34(1)(b)):

"On 2023-04-13, while residing on [redacted] unit, [redacted]

t [redacted]. Once unit staff intervened, [redacted] then placed [himself] on voluntary lockup. On 2023-04-14, [he was] assaulted on [redacted]-unit by [redacted] that resulted in warning shots being fired and OC being deployed."²²

[35] As of the time of issuing this review [redacted] is in the [redacted] SIU.

7. THEMATIC DISCUSSION

7.1. Types of behavioural problems leading to SIU stays

[36] It appears [redacted]'s behaviour has worsened during his incarceration.

²⁰ SIU transfer authorization, yyyy-mm-dd, at p. 3.

²¹ Incident history log summary.

²² SIU transfer authorization, yyyy-mm-dd, at p. 1.

²³ CPR – amendment no. 3, yyyy-mm-dd, at p. 8.

²⁴ Number of incidents as of yyyy-mm-dd.

[37] CSC information identifies a significant history of

[38] In addition, there are reports of

“” Based on CSC’s incident history log and SIU activity logs, the first reported incident was in 2018 [REDACTED]. It has been a much more frequent and serious issue recently, especially after his transfer to In April 2023, there were reported incidents of

[39] CSC reports show has sometimes denied or minimized his behaviour (e.g. stating he was “horsing around” with others after being involved in an altercation).

[40] It is not feasible to investigate all reported incidents for this review, and not necessary for making recommendations. I have reviewed videos of a couple of incidents. They appear to show by I

I also note that CSC’s reports about him from different individuals and institutions are similar. Overall, I accept CSC’s information about the ongoing behavioural issues identified, which have led to his numerous, repeated SIU placements.

[41] I do wish to note that

7.2.’s understanding of factors underlying his behaviour

[42] Program records suggest

[43] In my interviews with he said he feels

²⁵ See: Program report, yyyy-mm-dd, at p. 5.

²⁶ PO entry, CWR, yyyy-mm-dd.

²⁷ IEDM interview with 2022/10/19.

7.3 s history of isolation

[44] I believe a history of isolation has been a significant contributing factor to s behavioural issues.

[45] CSC records show

As of the date of this review (May 12, 2023), he has spent about 595 days in SIUs.

[46] Apart from administration segregation and SIU stays, s has experienced other types of isolation, notably restrictive conditions due to the COVID-19 pandemic in spring 2020, other medical isolation due to the pandemic, and observation cell placements, including during his time at s (see below).

7.3.1. s comments about isolation and its impact on him

[47]

[48] Regarding the harms of isolation, s said,

[49] s has made similar comments to CSC staff on various occasions. For example, at the start of his federal sentence, it was noted,

“He stated that he pleaded guilty to the s index offences that

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²⁸ IEDM interview with s 2022/10/19.

²⁹ IEDM interview with s 2022/06/30.

³⁰ CPR – amendment #3, yyyy-mm-dd, at p. 3. This was likely during his admission interview at the s on yyyy-mm-dd. See also, e.g., CPO entry, CWR, yyyy-mm-dd; psychological risk assessment, yyyy-mm-dd, at p. 2 (“During the present interview, s acknowledged that s

[50] In Dec. 2019, he told a CPO, '

7.3.2. Accountability for the harms of isolation

[51] I believe CSC demonstrating greater accountability for the harms of excessive isolation would be beneficial in 's case.

[52] said justice and compensation for his pain and suffering would make a difference to him.

[53] I asked CSC:

“What initiatives does CSC have to track inmates with a substantial history of time in solitary confinement/administrative segregation, and provide measures of accountability and redress towards them? Has there been any official recognition of harm and/or apology?”³³

[54] CSC indicated they maintain records on administrative segregation and SIU stays. CSC also stated, along with a brief summary of the claims process,

“CSC has accepted the Court findings on the now abolished practice of administrative segregation. This includes three class actions, Brazeau, Reddock and Gallone, where Courts have ordered that class members may claim compensation for their time in administrative segregation.”³⁴

[55] In public declarations, CSC has referred to the implementation of SIUs as a part of a “historic transformation.”³⁵

[56] While CSC may have accepted court findings and the goals for SIUs, it does not appear CSC has fully acknowledged the harms caused by administrative segregation and other practices of isolation. CSC could show greater accountability and leadership by acknowledging its shortcomings. A formal recognition that solitary confinement causes harm, and an apology for solitary confinement practices could be meaningful to people who have been subjected to such practices, including those who remain in CSC custody, like . It would also send strongly signal CSC’s commitment to using measures other than isolation to deal with various situations, including those involving mental health issues. Likewise, CSC should take steps to reduce excessive isolation outside of SIUs.

³¹ CPO entry, CWR, yyyy-mm-dd.

³² IEDM interview with yyyy-mm-dd.

³³ Written question submitted by the IEDM to CSC, yyyy-mm-dd.

³⁴ CSC’s written response to the IEDM’s request, received yyyy-mm-dd.

³⁵ See, e.g., “Correctional Service of Canada on Structured Intervention Units,” 2020/10/28, online: <<https://www.canada.ca/en/correctional-service/news/2020/10/correctional-service-of-canada-on-structured-intervention-units.html>>.

[57] CSC could consider adopting a file alert for inmates with a history of excessive solitary confinement. Evidence shows such a history can have a significant impact on mental health and behaviour. Considering the effects of solitary confinement, CSC should invest significantly in mental health and behavioural interventions for people who have experienced excessive isolation in CSC custody. It would be a remedial measure for past practices.

7.4. Supports and services to address mental health and behavioural concerns

[58]

7.4.1. Identified mental health needs

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³⁶ IEDM interview with | ,yyy-mm-dd.

³⁷ IEDM interview with | ,yyy-mm-dd.

³⁸ CPR – amendment no. 4, yyyy-mm-dd, at p. 10.

³⁹ Mental health clinical notes, yyyy-mm-dd, at p. 1.

⁴⁰ Mental health form - SIU 1st day, yyyy-mm-dd, at p. 2.

⁴¹ Mental health form - SIU 1st day, yyyy-mm-dd, at p. 2.

⁴² See: IEDM decision issued yyyy-mm-dd, at p. 8.

⁴³ Psychological risk assessment, yyyy-mm-dd, at p. 4. The test was the Level of Service Inventory-Revised (LSI-R). The assessment was to evaluate " "s risk for difficulties at a medium-security institution and on conditional release.

[63] There has been disagreement between different medical professionals regarding [redacted]'s needs. There have also been concerns about [redacted]

[64] [redacted] has said he would like to be tested for [redacted]

[redacted] I asked CSC whether there had been any [redacted] assessment for [redacted]. CSC's response ([redacted] was a note referring to [redacted]'s attempt to meet with [redacted] on Nov. 18, 2022, to discuss [redacted]. The information provided did not answer my question.

7.4.2. Access to medication

[65] Access to medication has been a longstanding issue in [redacted]'s case.

[66] In my interview with him in June 2022, [redacted] alleged he had seen the doctor and had medications prescribed but that he had not yet started; he alleged he was being [redacted]

⁴⁴ Psychological risk assessment, yyyy-mm-dd, at p. 4.

⁴⁵ Psychological risk assessment, yyyy-mm-dd, at p. 7.

⁴⁶ Psychological risk assessment, yyyy-mm-dd, at p. 5.

⁴⁷ Psychological risk assessment, yyyy-mm-dd, at p. 6.

⁴⁸ Psychological risk assessment, yyyy-mm-dd, at p. 6.

⁴⁹ Mental health final/discharge summary report, yyyy-mm-dd, at p. 1.

⁵⁰ Medical encounter notes, yyyy-mm-dd.

⁵¹ Mental health final/discharge summary report, yyyy-mm-dd, at p. 1. See also: Mental health final/discharge summary report, yyyy-mm-dd, at p. 1 ("previous and current diagnostic impressions appears to be malingering.").

⁵² Mental health clinical notes, yyyy-mm-dd, at p. 2.

⁵³ Mental health final/discharge summary report, yyyy-mm-dd, at p. 2.

⁵⁴ CSC's written response to the IEDM's questions, received, yyyy-mm-dd.

denied proper healthcare; nurses would tell him they would look into it but never get back to him.⁵⁵ To an [redacted] CPO, he commented:

[67] He made similar statements in my Oct. 2022 interview with him. He alleged he received [redacted] in the community [redacted], which cut him off “cold turkey.” He alleged he was told they do not prescribe that medication. He claimed if they had not cut him off, “stuff probably would not have happened.” He said

[68] I believe [redacted] was referring to a decision taken after his transfer to [redacted] in 2020. In their first appointment, the psychiatrist explained, [redacted]

[69] Numerous other CSC reports from different medical professionals and institutions show [redacted] wanted to discuss his medication, and to be prescribed specific medications; he has been described as “relentless in his quest.”⁶⁰

[70] Contrary to [redacted]’s claim that diversion was never a problem in his case, CSC records show he allegedly

⁵⁵ IEDM interview with [redacted], 2022/06/30.

⁵⁶ CPO entry, CWR, yyyy-mm-dd.

⁵⁷ IEDM interview with [redacted] 2022/10/19.

⁵⁸ Encounter notes, yyyy-mm-dd.

⁵⁹ Medical encounter notes, yyyy-mm-dd.

⁶⁰ Mental health clinical notes, yyyy-mm-dd, at p. 2.

⁶¹ SOR no. 204612, yyyy-mm-dd.

⁶² Incident history log.

[71] CSC's information shows his openness to other types of mental health interventions has been inconsistent

[72] As an IEDM, I cannot prescribe medications or make recommendations in that respect. However, I do note that CSC's Drug Formulary was the subject of a previous report by the OCI. Two medical experts raised issues regarding unnecessary restrictions in treatment options, continuity of care with respect to institutional transfers and changes to medication, and inconsistencies in the non-formulary request process.⁶⁴

While CSC's Formulary has been updated, the current version maintains guidelines on l

[73] The extent to which the Formulary's restrictions affected treatment decisions for is not clear to me based on the information I have, but it appears there may have been some impact in some instances, due to the reference to the Formulary in a couple of mental health records.⁶⁷

[74] Finally, I question whether gaps in access or changes to medications coinciding with 's institutional transfers has been a contributing factor to the recent decline in his behaviour. Again, I do not have comprehensive information on this issue.

7.4.3. 's experience at

[75] s experience at seems to have had He spoke of it a lot during my interviews with him, especially in Oct. 2022. He said the experience

⁶³ Mental health clinical notes, yyyy-mm-dd.

⁶⁴ OCI National Drug Formulary Investigation Summary of Findings and Recommendations, 2015/01/27, at pp. 2-4.

⁶⁵ OCI Systemic Investigation of the CSC National Drug Formulary, Professional consultation report, at p. OCI summary, at p. 2.

⁶⁶ CSC National Drug Formulary, 2023/01/01, at p. 16.

⁶⁷ See: mental health encounter note, yyyy-mm-dd; mental health clinical notes, yyyy-mm-dd.

⁶⁸ IEDM interview with 2022/10/19. See also: CPO entry, CWR, yyyy-mm-dd.

comments, I reviewed considerable information regarding his time at [redacted] between two SIU stays at [redacted].

[76] A CSC mental health needs scale completed on [redacted] for [redacted] found [redacted] was certified and sent to [redacted] The transfer to [redacted] was authorized after he said [redacted]

[77] Although [redacted] initially agreed to go, he changed his mind.⁷⁰ As of [redacted] he did not want to be at the [redacted] and wanted to be discharged, but the placement was approved by [redacted]

[78] Regarding his experience at [redacted] told me everyone on the range had TVs and stereos; he had nothing –not even a book–

[redacted]

[79] CSC information is consistent with many of [redacted]'s statements about his conditions of confinement.

[redacted] It appears he only had the chance to get out of his cell for a shower on Feb. 24. There was a decision that day that he could have personal clothing, but not objects like a TV or radio.

[80]

[redacted]

⁶⁹ Form 1 – Examination Certification, yyyy-mm-dd.

⁷⁰ Mental health clinical notes, yyyy-mm-dd.

⁷¹ IEDM interview with I [redacted] 2022/10/19.

⁷² Medical isolation form, yyyy-mm-dd.

⁷³ [redacted] (RTC Certified Patients Integration Categories), yyyy-mm-dd; yyyy-mm-dd, yyyy-mm-dd; yyyy-mm-dd; yyyy-mm-dd; yyyy-mm-dd.

⁷⁴ Mental health final/discharge summary report, yyyy-mm-dd, at p. 1.

⁷⁵ Medical encounter note, yyyy-mm-dd.

[81] As shown in the video,

In CSC documentation, one staff member refers to it as “the isolated cell.”⁷⁶

[82] In a meeting with [REDACTED] reportedly

[REDACTED] CSC moved back to cell [REDACTED] after this meeting.

[83] On Mar. 3,

[84] He was moved to cell [REDACTED] again on [REDACTED] after [REDACTED]
Range video footage shows

[85] [REDACTED] report notes [REDACTED] said

⁷⁶ Mental health clinical notes, yyyy-mm-dd.

⁷⁷ Mental health clinical notes, yyyy-mm-dd.

⁷⁸ Mental health clinical notes, yyyy-mm-dd.

⁷⁹ This was authorized on the form RTC Certified Patients Integration Categories for yyyy-mm-dd, but the privilege was removed the next day: RTC Certified Patients Integration Categories for yyyy-mm-dd.

⁸⁰ Medical encounter note, yyyy-mm-dd. See also: AFD, yyyy-mm-dd, at p. 3.

⁸¹ Mental health clinical notes, yyyy-mm-dd.

[86] In a meeting with expressed

[87] 's experience at shows

7.4.4. Discharge and Return to

[88] determined s a

[89] CSC returned to on AFD strongly suggests discharge was due to However, the discharge report indicates the discharge decision was because been sufficiently addressed," one of three established criteria (categories) for discharge.⁸⁷

[90] The discharge report explains there was a meeting between and officials to discuss the discharge.

[91] said that after his return to "they barely assessed [him]," and held him hostage with no sheets or blankets and a camera in his cell.⁸⁹ These comments likely refer to the period he was before his SIU transfer was re-authorized on Mar. 23.

⁸² Mental health clinical notes, yyyy-mm-dd.

⁸³ Medical encounter notes, yyyy-mm-dd.

⁸⁴ Mental health clinical notes, yyyy-mm-dd.

⁸⁵ Mental health final/discharge summary report, yyyy-mm-dd, at p. 1.

⁸⁶ Mental health final/discharge summary report, yyyy-mm-dd, at p. 1.

⁸⁷ Psychological/psychiatric assessment, yyyy-mm-dd.

⁸⁸ Mental health final/discharge summary report, yyyy-mm-dd, at p. 2.

⁸⁹ IEDM interview with | 2022/10/19.

[92] CSC found [redacted]'s [redacted] needs could be managed with [redacted] so [redacted] range was "not an option."⁹⁰ I requested CSC provide evaluations that explain this decision, but did not receive any.

7.4.5. Mental health support for individuals who show violence

[93] It appears [redacted] has at times prevented him from continuing to access mental health care. For example,

[94] CSC should ensure there are options in place for individuals like [redacted] who have violent behaviour yet may still require ongoing mental health care. I asked CSC to provide "any specific policies for addressing situations when an inmate has mental health needs but has also demonstrated violence while incarcerated on a treatment range or facility." CSC did not respond to this request.

7.4.6. Potential continuity of care issues

[95] [redacted]'s institutional transfers likely had an impact in the continuity of care for him, with respect to both his medications and the professionals who saw him. Various practitioners have assessed and treated him. I do not have information to conclusively show there were consistent efforts made to ensure the continuity of care or interventions with each institutional transfer.

[96] For example, to review his transfer from [redacted] to [redacted] on [redacted], I asked CSC to provide information on all mental health support received at [redacted] including encounter notes. The information I was provided shows he was added to a [redacted] waitlist and seen by a nurse in [redacted], and was approved for the [redacted] therapeutic range. However, the other mental health records I was provided all date from after [redacted]'s SIU transfer. When he met with the psychiatrist [redacted] all his previous medications were discontinued and new ones were prescribed.⁹³ Despite my efforts to obtain more information, I do not have information to show what, if any, mental health services he received before he was the victim of assaults and transferred to the SIU.

⁹⁰ SIU transfer authorization, yyyy-mm-dd, at p. 4.

⁹¹ Mental health final/discharge summary report, yyyy-mm-dd, at p. 1

⁹² SIU transfer authorization, yyyy-mm-dd, at p. 4.

⁹³ Medical encounter notes, yyyy-mm-dd.

[97] During the period reviewed, several mental health assessments were completed by practitioners with whom [redacted] did not have an established relationship. For example [redacted] who saw him in [redacted] noted [redacted] was a “new patient” to him.⁹⁴ [redacted] noted [redacted] often answered “I don’t know” and did not show collaboration.⁹⁵ In [redacted] when [redacted] was seen after an urgent referral due to him being suicidal, the clinician noted they were “not familiar with [redacted] to know his baseline.”⁹⁶

[98] In some instances, [redacted]’s short answers or non-answers in interviews were interpreted negatively. However, misunderstanding, distrust and lack of established rapport can contribute to non-engagement. Based on [redacted]’s comments about having experienced [redacted], he may feel more comfortable with [redacted]. In the context of correctional programming, there are reports showing [redacted] eventually opened up more with staff.⁹⁷ In my own interviews with [redacted], his level of talkativeness varied.

7.5. Impacts of inter-regional transfers

[99] As outlined above, [redacted] has been transferred to new institutions several times. These transfers appear to have done more harm than good. A couple of these transfers are discussed here as examples.

7.5.1. Inter-regional transfer from [redacted] to [redacted] in [redacted]

[100] Before [redacted]’s inter-regional transfer to [redacted] in [redacted], his case management team (“CMT”) thought he might be best suited to remain at [redacted] and integrate a smaller population in unit [redacted], “rather than be sent to an institution with a large population.”⁹⁸ On [redacted] [redacted] was [redacted] about his pending transfer to [redacted].

⁹⁴ Medical encounter notes, yyyy-mm-dd.

⁹⁵ Mental health final/discharge summary report, yyyy-mm-dd, at p. 2.

⁹⁶ Mental health clinical notes, yyyy-mm-dd.

⁹⁷ PO entry, CWR, yyyy-mm-dd (“Y is not usually very forthcoming [sic] but today while waiting for the door to be unlocked he gave this writer some interesting insights.”); CPO entry, CWR, yyyy-mm-dd (“He was very polite and interactive during our session today - even at one point thanking me for not giving up on him. I told him that even though he was not talking very much in some of our session at first, I knew he was following and understanding what I was sharing through his writings I tasked him to complete for our program.”); Program report, yyyy-mm-dd, at p. 5 (“Verbal participation in the Pre-Program Interview and in the first session attended was poor. [redacted] would often indicate that he did not know the answer to questions asked or that he did not wish to talk about it. Verbal participation in the second session attended was viewed as being better.”)

⁹⁸ PO entry, CWR, yyyy-mm-dd.

⁹⁹ CPO entry, CWR, yyyy-mm-dd.

¹⁰⁰ PO entry, CWR, yyyy-mm-dd.

[101] Two weeks before the transfer, [REDACTED]'s CMT did not seem to think the transfer was in his best interest. CWR entries suggest he had a good working relationship with the CPO at [REDACTED] –whom he had become more talkative with– and he felt proud of his progress there.¹⁰³

[102] Once at [REDACTED] he had several conflicts and range placements. He discussed with [REDACTED] that his transfer to [REDACTED] “had been h [REDACTED] While in the SIU in July, he told his PO he wanted to return to [REDACTED] due to his family being there, and was willing to sign a behavioural contract.¹⁰⁵

[103] More positively, after his [REDACTED] SIU stay, he was able to stay on the [REDACTED]-unit [REDACTED] range for over eight months. However, he returned to the SIU in [REDACTED] and spent 173 days there. During that time, [REDACTED]

7.5.2. Inter-regional transfer from [REDACTED] to [REDACTED] in [REDACTED]

[104] [REDACTED]'s PO met with him in the [REDACTED] SIU on [REDACTED] to discuss transfer options. Based on her note, [REDACTED] spoke a lot about wanting a medium security level. He also said he wanted to stay at [REDACTED] and stay in the SIU until getting a medium-security classification.¹⁰⁷ He was reassigned to a new PO. It appears there was no further discussion or consultation with him about transferring or his options.

[105] On [REDACTED] at about 9:10AM, [REDACTED]'s PO shared the AFD and Notice of Involuntary Transfer with him. According to the CWR, “I

[REDACTED] It appears [REDACTED] was blindsided with the news of his transfer.

[106] After a period of relative stability, the number of incidents [REDACTED] was involved in

¹⁰¹ CPO entry, CWR, yyyy-mm-dd.

¹⁰² Program report, yyyy-mm-dd (completed in Mar. [REDACTED]), at p. 3.

¹⁰³ CPO entry, CWR, yyyy-mm-dd.

¹⁰⁴ Medical encounter notes, yyyy-mm-dd.

¹⁰⁵ PO entry, CWR, yyyy-mm-dd.

¹⁰⁶ Program report, yyyy-mm-dd, at pp. 4-5.

¹⁰⁷ PO entry, CWR, yyyy-mm-dd.

¹⁰⁸ PO entry, CWR, yyyy-mm-dd.

[107] expressed

[108] In my own interviews with on Oct. 19 and Nov. 25, his mood appeared

[109] This example shows that consultation and communication, rather than surprising an inmate with a transfer decision, may also help facilitate a safe transfer.

7.5.3. Ending SIU placements through institutional transfers

[110] S. 33 of the CCRA establishes an inmate's confinement in an SIU "is to end as soon as possible."¹¹⁰ The Acting Warden's decision for the transfer from to referred to s. 33 as part of the justification for the decision.¹¹¹ However, s. 33 should be understood contextually, in light of the CCRA as a whole, and Parliament's intention for SIUs. CSC should adopt a commonsense interpretation that prioritizes inmate dignity and well-being. In each case, there should be a realistic analysis of whether a potential institutional transfer will be helpful and lead to an inmate's long-term integration of a mainstream population. Moreover, CSC must apply the criteria set out in s. 28 of the CCRA for penitentiary selection, including accessibility to home, language, culture, and programs.

[111] An institutional transfer can be harmful and counterproductive. It can aggravate stress and anxiety through loss of belongings, increased distance from community supports, dealing with a new environment and unfamiliar peers, lack of continuity of health care, interruption of programming,¹¹² etc. CSC should reconsider plans if a

¹⁰⁹ s rebuttal to transfer to SP, yyyy-mm-dd. CSC's summary of s oral and written rebuttal is in the Referral decision sheet, Warden recommendation, yyyy-mm-dd, at p. 3.

¹¹⁰ CCRA, at s. 33.

¹¹¹ Institutional head ad hoc decision, yyyy-mm-dd, at p. 4.

¹¹² See, e.g. program report, yyyy-mm-dd, at p. 1 ("

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proposed transfer to end an SIU stay is causing a person to become suicidal. CSC should also avoid institutional transfers to institutions where a person is unlikely to be able to receive required supports. A SIURC recommendation completed at [redacted], dated [redacted], before his transfer to [redacted] noted,

[112] The SIURC also noted, “[...] he would likely not be welcome at [redacted]. Despite these factors, [redacted] was transferred to [redacted] on [redacted].”

[113] In [redacted]’s case, there are [redacted]. I believe CSC should focus on providing him stability and reducing [redacted]. It would likely be beneficial for him to be in a place where he can work longer term with mental health professionals and behavioural counsellors who are able to develop a good working relationship with him.

[114] Based on the information before me, CSC should work to clearly identify triggers for [redacted] as well as tools that help calm and de-escalate him. Finally, I also believe it may be beneficial for [redacted] to be in a smaller unit. I directly asked [redacted] whether he might be more successful in a smaller unit; he said he was not sure.¹¹⁶

[115] At the time of writing this review, [redacted]’s most recent preference according to CSC records is to transfer to the [redacted] region.¹¹⁷ I believe CSC should evaluate this

¹¹³ SIURC, yyyy-mm-dd, at p. 2.

¹¹⁴ SIURC, yyyy-mm-dd, at p. 2.

¹¹⁵ Program report, yyyy-mm-dd at p. 4.

¹¹⁶ IEDM interview with [redacted], 2022/10/19.

¹¹⁷ PO entry, CWR, yyyy-mm-dd.

possibility carefully, and even consider transferring there if it is likely he may return to the SIU, if it means he will have access to appropriate supports, as well as being in his home region.

7.6. Other stressors

[116] has mentioned other factors that , to CSC staff and in my interviews with him.

7.6.1. Toxic environment and racism

[117] has also stated that it “takes two to tango,” and that guards have insulted him, told him “to do stuff,” and provoked him to assault. According to him, with a lot of this treatment over time, eventually a person “snaps.”¹¹⁸ He has also said

[118] said he feels like a lot of stuff happens because He has reported that officers at used He said at he was A he said

[119] described a specific incident that would have occurred at on I I had requested video footage that CSC said was unavailable. Under s. 37.83(2) of the CCRA, I recommended CSC fully investigate the incident.¹²³ The institutional head’s response indicates was asked about the incident, told to speak to the CM, and told to place a complaint; and that the CM was informed. I have no information to show significant steps were taken to address the allegations.

7.6.2. External stressors

[120] Some external situations had an impact on during his incarceration. For example, in

¹¹⁸ IEDM interview with , 2022/10/19.

¹¹⁹ Program report, dated yyyy-mm-dd.

¹²⁰ CPO entry, CWR, yyvv-mm-dd.

¹²¹ IEDM interviews with , 2022/10/19, 2022/11/25.

¹²² See: IEDM decision under s. 37.83(1) of the CCRA concerning yyyy-mm-dd, at paras. 70 to 71.

¹²³ IEDM decision under s. 37.83(1) of the CCRA concerning yyyy-mm-dd, at para. 89.

¹²⁴ PO entry, CWR, yyyy-mm-dd.

¹²⁵ CPO entry, CWR, yyyy-mm-dd.

7.7. Interventions to address behavioural issues

[121] While correctional plans have indicated

[122] The CPO who worked with him in the SIU in

[123] Noted barriers to his participation in programming have included possible cognitive deficits and mental health concerns.

[124] Regarding s participation in interventions during his various SIU stays, he has often participated fairly consistently in the MM-SIU program and in school, when

¹²⁶ AFD, yyyy-mm-dd, at p. 3.

¹²⁷ IEDM interview with 2022/10/19.

¹²⁸ See, e.g. program report, yyyy-mm-dd, at p. 4; program report, yyyy-mm-dd, at p. 4.

¹²⁹ Program report, yyyy-mm-dd, at p. 4.

¹³⁰ Program report, yyyy-mm-dd, at p. 2.

[125] While in the SIU in , CSC provided him the opportunity to meet with from [REDACTED] by phone. After their first call on noted,

[126] He participated two more times and refused once. Five other planned sessions never happened due to operational coordination issues.¹³⁴ CSC's failure to consistently offer these sessions is unfortunate given 's interest to participate. was then transferred to

[127]

[128] I do not have any information to show CSC took efforts to ensure had access to behavioural counsellor support once at even though remote

¹³¹ See: Program report, yyyy-mm-dd, at p. 2.

¹³² Employment coordinator entry, CWR, yyyy-mm-dd.

¹³³ Behavioural counsellor entry, CWR, yyyy-mm-dd.

¹³⁴ entry, CWR, yyyy-mm-dd ("Writer then called the number provided and they appeared surprised when writer asked about speaking with [REDACTED] for . They then said there was an incident on the unit and they would get back to me.") entry, CWR, yyyy-mm-dd ("I called at 1605 as a call wasnt recieved. My name and number were taken and person on the other line said they would let the supervisor know. This writer waited until 1615, a call was not recieved.") entry, CWR, yyyy-mm-dd ("[...] the scheduled phone call to for interventions on this day, could not be facilitated due to staffing.") entry, CWR, yyyy-mm-dd ("[...]the call would not be facilitated today due to lack of staffing.") entry, CWR, yyyy-mm-dd ("[...] no call came. Writer called at 1417 and was told we were not on the list for a call today or tomorrow.")

¹³⁵ See, e.g., CPO entry, CWR, yyyy-mm-dd.

¹³⁶ Program report, yyyy-mm-dd, at p. 1.

¹³⁷ Program report, yyyy-mm-dd, at p. 5.

sessions presumably could have been continued. He did not have such an opportunity in the SIU.

[129] On the other hand, the SIU activity log shows had behavioural counselling opportunities in the and SIUs, but his engagement was low: he had several opportunities but only participated a few times. As suggested above, his transfers may have had a negative impact on his motivation. Given his initial interest in such sessions as expressed last year, CSC should identify rapport-building and other strategies to increase his participation. Consistency may also encourage his participation.

[130] Records suggest MM-SIU sessions have been of value to and provided him some tools and coping skills. However, his behaviour has worsened and he has continued to return to SIUs. This could suggest he requires very consistent support, including when he is in a mainstream population, or that other types of interventions may be of more value to him, including potentially more intensive core programming.

[131] has said he was never offered the chance to do he had spoken “at length” with a CPO about “his concerns about taking the program in order to reduce his security level.”¹³⁹ His most recent CPU encourages him to participate in the Program.

[132] In relation, who evaluated him in stated, “[i]t may be more prudent for to participate in consultation, and general rehabilitation programming and then have a specialized before he is required to attend

7.8. Culturally-relevant support

[133] Since are factors I raised, I asked him whether he has ever received support adapted for him as said he has never had any support from staff. However, he didn’t know whether that would help.

[134] I asked CSC about efforts “to provide support from CSC staff members or culturally-relevant support for him (from either within or outside CSC) as an .” CSC indicated had a assisted PBC post-suspension hearing, in summer . Moreover, CSC claimed , called to speak with on Her CWR entry states he “refused his programs for the day” and

¹³⁸ IEDM interview with 2022/10/19.

¹³⁹ CPO entry, CWR, yyyy-mm-dd.

¹⁴⁰ Psychological risk assessment, yyyy-mm-dd, at p. 6.

no contact was made.¹⁴¹ However, according to the SIU log, he did participate in a MM-SIU session that day [redacted] indicated that they have “an Ethno-cultural committee member that may visit the SIU if he chooses to attend” and [redacted] “hires CSC staff members from various cultural backgrounds following the Employment Equity Action Plan.”¹⁴²

[135] I believe it would be helpful for [redacted] to receive culturally-sensitive mental health support. I do not have any information showing [redacted] has had that opportunity. I have noticed that in the [redacted] assessment, comments by [redacted] regarding [redacted]

[136] Overall, it appears there have been few, if any, opportunities for [redacted] to participate in culturally-relevant programming or to receive program or mental health interventions from [redacted] staff who he might more easily feel comfortable with.

8. RECOMMENDATIONS

[137] Based on the analysis above, I make the following recommendations under s. 23.07(3) of the CCRR, some of which are broad and some which are focused on [redacted]:

- Revise practices for notifications to IEDMs under s. 23.07(1)(a) of the CCRR to ensure prompt and consistent notification of IEDMs
- Take steps to commit to and to reduce the use of isolation outside of SIUs for security, mental health, or other reasons; including by formally recognizing the harms of solitary confinement
- Develop a policy framework for using inter-regional transfers to attempt to end SIU stays, including consideration of the following for decision-making:
 - A holistic and contextual understanding of s. 33 of the CCRA
 - The actual likelihood that the transfer will lead to a long-term, stable integration of a mainstream population and reduction of isolation
 - The potential harms caused by institutional transfers
 - The impact of a transfer on an individual’s access to certain interventions or supports
 - The factors for penitentiary choice identified at s. 28 of the CCRA

¹⁴¹ Email from PO [redacted], received yyyy-mm-dd; CWR, yyyy-mm-dd. The offer does not appear in the SIU activity log. [redacted] reportedly made a second attempt on Aug. 12, but Mr. Y had been transferred to I [redacted]

¹⁴² CSC’s written response to the IEDM’s questions, received yyyy-mm-dd.

¹⁴³ Psychological risk assessment, yyyy-mm-dd, at p. 5.

- Whether there is a plan in place and steps have been taken to ensure the continuity of care despite the transfer (including with respect to prescribed medications and access to interventions)
 - Whether there has been adequate communication with the inmate about the transfer
 - The inmate's subjective feelings about the transfer, and whether a proposed transfer is causing them significant distress
-
- Ensure any institutional transfers of [REDACTED] are based on consideration of the above-mentioned factors, and are carried out only after adequate communication with [REDACTED]
 - Identify measures to ensure instances of violent behaviour do not preclude access to mental health treatment when needed
 - Provide [REDACTED] the opportunity to participate in [REDACTED] testing
 - Provide [REDACTED] the opportunity to receive culturally-relevant mental health and programming support for him as a [REDACTED], which he could potentially continue if he is transferred to the [REDACTED] region and released to the community
 - Provide consistent behavioural counselling opportunities, reminding [REDACTED] of his previously-expressed interest for this type of intervention and otherwise identifying strategies to encourage his participation
 - Work with [REDACTED] to identify his triggers for problematic behaviour and tools or strategies that help him de-escalate
 - Provide [REDACTED] the opportunity to participate in core rehabilitative programming, beyond the MM-SIU program
 - If [REDACTED] is transferred to a mainstream population, ensure supportive interventions are ongoing

Janine Lespérance
Independent External Decision-Maker

Date: May 12, 2023

Nom (détenu):	
Numéro SED:	■
Établissement:	MAX1
Date de la décision initiale 37.83(1):	3 novembre ■
Date de la décision du Sous-commissaire principale du SCC:	14 octobre ■
Date de la présente décision:	13 novembre ■
Décideuse externe indépendante:	J. LESPÉRANCE

**DÉCISION EN VERTU DE
L'ARTICLE 23.06 DU RÈGLEMENT SUR LE SYSTÈME
CORRECTIONNEL ET LA MISE EN LIBERTÉ SOUS CONDITION
ET
L'ARTICLE 37.8 DE LA LOI SUR LE SYSTÈME CORRECTIONNEL ET
LA MISE EN LIBERTÉ SOUS CONDITION, L.C. 1992, CH. 20**

1. INTRODUCTION

[1] Le 21 septembre ■, les Décideurs et Décideuses externes indépendant.e.s (« DEI ») ont reçu une notification selon laquelle ■ dans l'Unité d'intervention structurée (« UIS ») de l'Établissement de [sécurité maximale, « MAX1 »] ■, n'avait pas, pendant cinq jours consécutifs, passé au moins quatre heures en dehors de sa cellule ou n'avait pas interagi avec autrui pour au moins deux heures au quotidien. En vertu du paragraphe 37.83(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition* (« LSCMLC »), S.C. 1992, ch. 20, j'ai examiné si le Service correctionnel du Canada (« SCC ») avait pris toutes les mesures utiles pour accorder à ■ les possibilités visées au paragraphe 36(1) de la LSCMLC et pour l'encourager à s'en prévaloir. J'ai conclu que le SCC avait pris toutes les mesures utiles. Lors de cette décision, rendue le 3 novembre, ■ n'avait pas, pendant 10 jours consécutifs, passé au moins quatre heures par jour en dehors de sa cellule ou interagi avec autrui pendant au moins deux heures. Une décision est ainsi nécessaire en vertu de l'article 23.06(1) *Règlement sur le système correctionnel et la mise en liberté sous condition* (« RSCMLC »), DORS/92-620.

[2] De plus, une décision en vertu de l'article 37.8 de la LSCMLC est nécessaire. Le 14 octobre ■, le Sous-commissaire principal (« SCP ») du SCC a décidé que

devait demeurer dans l'UIS. Un.e DEI doit rendre une décision 30 jours après la décision du SCP.

- [3] La présente décision est ainsi une décision fusionnée, en vertu de l'article 23.06 du RSCMLC et de l'article 37.8 de la LSCMLC. Les deux types de décisions portent sur le maintien en UIS de

2. RÉSUMÉ

- [4] La présente décision porte sur le maintien de [REDACTED] dans l'UIS. La situation n'a pas évolué de façon significative depuis mes dernières décisions à ce sujet. [REDACTED] ne veut pas quitter l'UIS. Le SCC devrait lui fournir un appui lui permettant d'aborder [REDACTED]

3. CONTEXTE

- [5] La présente décision devrait être lue en parallèle avec mes dernières décisions fusionnées 23.06/37.8 concernant [REDACTED] rendues le 22 juillet [REDACTED] et le 16 septembre, ainsi que la décision la plus récente en vertu du para. 37.83(1) de la LSCMLC, datée du 3 novembre. Afin d'éviter la répétition, la présente décision se concentra uniquement sur les nouveaux faits.

- [6] La présente décision est la neuvième décision d'un.e DEI concernant [REDACTED]

4. LE DROIT APPLICABLE

- [7] Mon interprétation du cadre législatif n'a pas évolué depuis mes dernières décisions. La présente décision porte sur l'incarcération de [REDACTED] dans l'UIS et les motifs de son maintien en UIS. Je dois notamment tenir compte des facteurs liés à la sécurité de toute personne et du pénitencier. La LSCMLC établit que les séjours dans l'UIS doivent être courts.

- [8] Cependant, le cadre législatif ne contient pas de dispositions spécifiques concernant les situations où un détenu ne veut pas quitter l'UIS, mais qu'un.e DEI doit rendre une décision en vertu de l'article 23.06 du RSCMLC ou de l'article 37.8 de la LSCMLC. Je considère qu'il est approprié que le ou la DEI fasse un examen afin d'identifier des options viables ou formuler des recommandations constructives qui pourraient faire en sorte que le détenu accepte d'intégrer une population hors l'UIS.

5. SOURCES D'INFORMATIONS

- [9] Pour rendre la présente décision, j'ai pris en compte principalement les sources d'informations suivantes du SCC:

- Note de service: Réponse à la décision du DEI du [redacted] Obligations rencontrées, datée du [redacted]
- Note de service: CRCUIS / Recommandation en vue d'une décision du DEI, datée du [redacted]
- Registre d'activités de l'UIS, pour la période à partir du [redacted]
- Décision du sous-commissaire principal, datée du [redacted]
- Note de service – réponse à la décision du DEI du [redacted] Maintien en UIS – Note du [redacted] datée du [redacted]
- Réexamen régional, daté du [redacted]
- Plan correctionnel propre à l'UIS, daté du [redacted]
- Fiche de décision de renvoi relativement au transfèrement volontaire, datée du [redacted]
- Fiche de décision de renvoi relativement au niveau de sécurité, datée du [redacted]
- Évaluation en vue d'une décision - niveau de sécurité et transfèrement volontaire, datée du [redacted]
- Décision du 30-jours de l'UIS de la directrice d'établissement, datée du [redacted]
- Décision du transfèrement à l'UIS du 5e jour ouvrable de la directrice d'établissement, datée du [redacted]
- Autorisation de transfèrement à l'UIS, datée du [redacted]
- Rapport sur le rendement dans le cadre d'un programme, daté du [redacted]
- Plan correctionnel, daté du [redacted]
- Évaluation en vue d'une décision - transfèrement involontaire, datée du [redacted]
- Rapport sur le profil criminel, daté du [redacted]

[10] Conformément au paragraphe 37.71(1) de la LSCMLC, un résumé de l'information pertinente pour la présente décision a été transmis à [redacted]. Je l'ai également informé par écrit qu'il avait le droit de présenter ses observations écrites, conformément à l'article 37.72 de la LSCMLC, et je lui ai proposé la possibilité de communiquer son point de vue lors d'un entretien.

[11] J'ai mené un entretien téléphonique avec [redacted] le 30 octobre, pendant environ une demi-heure. Mes questions ont porté sur les conditions dans l'UIS ainsi que les options d'intégration.

[12] Puisque la décision en vertu de l'article 23.06 du RSCMLC porte sur le même sujet que la décision en vertu de l'article 37.8 de la LSCMLC, je considère que [redacted] a déjà eu l'occasion de présenter ses observations et qu'il est approprié de fusionner les deux décisions.

6. ANALYSE

6.1. La position de

[13] Le 30 octobre, l' a indiqué qu'il n'intégrerait pas un quelconque autre établissement de niveau de sécurité maximum ou moyen. Le [établissement de niveau de sécurité moyen, <] est pour les détenus []. Il est [] ([]) donc ce n'est pas pour lui. [] fait qu'il ne pourrait pas intégrer les établissements [] ou []. En revanche, il accepterait d'aller directement à un établissement de niveau minimum.

[14] Il veut éviter les situations potentiellement problématiques avec les autres détenus et ne veut pas rallonger son temps d'incarcération.
Il n'a pas de stress dans l'UIS. Il veut qu'on le laisse tranquille où il est.

[15] Il a aussi mentionné qu'il a eu quelques rendez-vous de suivi pour [], mais qu'il n'a pas eu d'appui en ce qui a trait aux impacts psychologiques de l'incident du [] qui a mené à son transfèrement à l'UIS.

6.2. La position du SCC

[16] Je considère que la note de service de recommandation du Comité de réexamen des cas de l'unité d'intervention structurée (« CRCUIS ») du 2 novembre représente un résumé de la position actuelle du SCC. En fait, les dernières notes de service du CRCUIS ainsi que les décisions du SCP n'ont presque pas changé; une grande partie du contenu a été copiée et collée. Bref, [] ne peut pas intégrer une population ordinaire de l'établissement [] et il refuse les options de niveau de sécurité moyen [], outre

6.3. Observations de la DEI

[17] Les documents du SCC répètent que [] dit qu'il n'irait qu'à l'établissement []. Cependant, selon ses observations du 30 octobre, il semble que [] a changé d'avis par rapport à cette option. Il est encore moins ouvert à un transfèrement éventuel.

[18] À ce stade, il me semble que son niveau de sécurité moyen est approprié et qu'un transfèrement à un établissement minimum serait prématuré.

[19] J'observe que

7. CONCLUSION ET RECOMMANDATIONS

[20] Comme pour ma dernière décision en vertu de l'article 23.06 du RSCMLC et l'article 37.8 de la LSCMLC, je conclus que ce ne serait pas approprié de forcer à intégrer une population contre sa volonté.

[21] Face à la situation, je répète une recommandation faite lors de ma décision en vertu de l'article 37.8, rendue le 16 septembre, ainsi que ma décision en vertu du para. 37.83(1), rendue le 3 novembre, concernant

- Le SCC devrait consentir davantage d'efforts pour aborder les racines profondes de la préférence de [redacted] de rester à l'UIS et d'éviter les autres détenus, et pour comprendre [redacted] une évaluation psychologique et l'appui régulier d'un.e conseiller.e ou d'un.e autre professionnel.le en santé mentale pourraient être utiles.

[22] Il ne semble pas que le SCC ait réellement consenti des efforts pour mettre en œuvre les recommandations des décisions précédentes. Les explications fournies sont insatisfaisantes. En fait, la réponse du SCC à la décision du 16 septembre, et celle à la décision rendue le 3 novembre affirment tout simplement qu'ils prennent « bonne note » des recommandations et commentaires.

Janine Lespérance
Décideuse externe indépendante
Le 13 novembre [redacted]

Inmate Name:
FPS Number: ██████
Correctional Institution: Maximum-security Institution
Date of Initial s. 37.83(1) Decision: September 1, ██████
Date of CSC SDC Decision: September 13, ██████
Date of the Present Decision: October 13, ██████
Independent External Decision-Maker: J. Lespérance

**DETERMINATION UNDER
SECTION 23.06 OF THE
CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS, SOR/92-620
AND
SECTION 37.8 OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, c. 20**

SUMMARY

CSC has decided ██████ cannot integrate a population at [maximum-security Institution, "MAX1"] due to security risks for him. The Security Intelligence department may have changed their assessment recently, but CSC did not provide clear information about this. ██████ hesitated to integrate. He should not be forced to, but CSC should work on encouragement strategies. There have been few incidents involving him recently. His security level reclassification could be a possibility. He is in his home region. He has been isolated in the SIU and has shown signs of distrust and paranoia. He feels his incarceration is illegal and has been fixated on this issue. His inter-regional transfer against his will may worsen the situation, rather than improve it. He did not provide his views to the IEDM. Under s. 23.06(1) of the CCRR and s. 37.8 of the CCRA, I find there are grounds for ██████ to remain in the SIU.

1. INTRODUCTION

[1] ██████ is incarcerated in the MAX1 Structured Intervention Unit ("SIU"). As an Independent External Decision-Maker ("IEDM"), I issued a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") on Sept. 1, ██████. I concluded Correctional Service Canada ("CSC") had taken all reasonable steps to ensure ██████ had time out of cell and meaningful human contact. A review under s. 23.06(1) of the *Corrections and Conditional Release Regulations* ("CCRR"), SOR/92-620, was triggered.

[2] In addition, CSC's Senior Deputy Commissioner ("SDC") decided on Sept. 13, [REDACTED], that [REDACTED] should remain in the SIU. Consequently, a decision under s. 37.8 of the CCRA is required.

[3] The main question I must answer is: should [REDACTED] stay in the SIU?

2. SOURCES OF INFORMATION

[4] I have consulted mainly documentary information from CSC; [REDACTED] did not directly provide comments for this review, so I must rely on CSC information (see annex for details).

3. CONTEXT

[5] [REDACTED] is [REDACTED] years old and is from [REDACTED].

[6] Since [REDACTED], he has been serving a [REDACTED] sentence. His statutory release date is set in [REDACTED]. I [REDACTED] CSC has classified him at the maximum-security level. This is his [REDACTED] federal sentence.

[7] His current SIU stay is his first.

4. ANALYSIS

4.1. Do I have a legal basis to decide on [REDACTED] s SIU placement?

[8] Yes, my jurisdiction is uncontroversial.

[9] IEDM decisions under s. 37.8 of the CCRA and s. 23.06(1) of the CCRR are required in different circumstances.

[10] A s. 37.8 decision follows CSC decisions that a person should stay in the SIU: the institutional head "5-day"¹ and "30-day"² decisions, and the SDC decision.³ The IEDM decision is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.

[11] A s. 23.06(1) decision follows an IEDM decision on SIU conditions. This type of decision is triggered when an IEDM decides CSC provided adequate time-out-of-cell and interaction opportunities to someone in the SIU, but they were nonetheless very isolated for ten consecutive days when the IEDM issued the decision.⁴

¹ Under CCRA, s. 29.02(2).

² Under CCRA, para. 37.3(1)(b).

³ Under CCRA, s. 37.4.

⁴ CCRR, s. 23.06(1).

[12] The decision on [redacted]'s SIU placement is necessary both because CSC's SDC decided [redacted] should stay in the SIU Sept. 13; and because [redacted] had been highly isolated for ten days when I issued the Sept. 1 decision on SIU conditions.

[13] Decisions under s. 37.8 and s. 23.06(1) focus on why someone is in the SIU. The factors considered in both types of decision are the same. For this reason, the analysis below is not separated into two parts.

4.2. Is [redacted]'s security classification appropriate?

[14] According to the law, in this decision on [redacted]'s SIU stay, I must consider whether his security classification is appropriate.⁵

[15] CSC's last decision on his security classification was issued [redacted], almost [redacted] ago. It was based on a custody rating scale score in the maximum range, as well as the case management team assessment. Some of the incidents considered had occurred while he was in provincial custody. Some improvement since his recent admission to federal custody was noted.

[16] There was a report of [redacted]. Since then, there have been very few recorded incidents involving him. One incident appearing in the incident history log actually involved [redacted].

[17] Before he was transferred to the SIU, [redacted] was a cleaner on [redacted] unit [redacted] and completed the Program [redacted].

[18] Since he has been in the SIU, CSC has provided him very few opportunities to participate in correctional programming. He inconsistently participated in SIU Motivational Module ("MM-SIU") sessions, social programs, school, and religious support.

[19] Staff notes show he has been extremely focused on [redacted].

⁵ CCRA, s. 37.82(2); CCRR, s. 23.06(2).

⁶ Incident report, 2023/03/14.

⁷ Unit references are fictionalized for the purposes of public release.

⁸ CPU-SIU, 2023/09/11, p. 2.

⁹ See, e.g., social programs entry, SIU activity log, 2023/09/28.

[20] I find the previous security classification assessment reasonable. Even so, considering the few incidents of late, CSC could consider reassessing his security classification to create an alternative to him staying in the SIU, or making a clear plan for doing so. A reclassification could also allow him to remain in his home region, in a different institution.

4.3. Can [redacted] return to a population at MAX1?

[21] Overall, at this stage, it appears [redacted] s unwillingness to integrate is the main factor blocking his integration at MAX1; CSC has not clearly established their position.

[22] SIU stays are meant to “end as soon as possible.”¹¹ There is a presumption that a person should be released from the SIU. As an IEDM, I can only decide an inmate should stay in the SIU if I have information that makes me believe their release “would jeopardize” safety, including their own personal safety; or “would interfere” with a serious investigation.¹² The risk must be higher than just a possibility of incidents, since there is always some danger in the penitentiary context.

[23] The CCRA does not consider situations when an inmate wants to stay in the SIU. An IEDM may make recommendations, particularly when the inmate has refused integration options that CSC proposed.

4.3.1. Context of [redacted] 's transfer to the SIU

[24] [redacted] s current sentence began in [redacted]. He arrived at [redacted] on [redacted]. He was placed to MAX1, arriving [redacted]. He was in MAX1’s population for about five months before he was transferred to the SIU. He resided on unit C, MAX1’s “open population.”

[25] An incident report for [redacted] explains:

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¹⁰ Incident history log,

¹¹ CCRA, s. 33.

¹² CCRA, s. 37.82(1); CCRR, s. 23.06(2).

¹³ Incident report,

[26] CSC has not indicated whether the perpetrators were ever identified, such as by using CCTV footage.

[27] was reportedly taken to Unit for a shower, refused to leave unit, and refused integration options.¹⁴ While he was on unit, CSC staff obtained additional information about a series of events in the previous days that also suggested there may be security risks for in the population.¹⁵

[28] CSC transferred him to the SIU July 18. The transfer authorization adds

[29] MAX1's security intelligence department validated s safety concerns regarding MAX1's open population (units), and found he could not integrate the Range" (as well. Other populations (ranges) were considered inappropriate for his profile.

4.3.2. CSC's position or 's integration

[30] As of 's SIU transfer, all CSC decisions ("5-day" and "30-day" warden decisions, and the "60-day" SDC decision) conclude has no viable integration options at MAX1, due to concerns for his personal safety. Likewise, the Oct. 6 SIU Review Committee ("SIURC") memorandum recommends be maintained in the SIU, noting the Security Intelligence Officer ("SIO") department "confirmed" does not have integration options.

[31] The SIURC does not identify when SIOs were consulted; I question whether it simply repeats the rationale from earlier documents, without having properly consulted SIOs more recently.

[32] In fact, records show the SIO position on 's integration changed. s Parole Officer ("PO") told him Oct. 4 that it had been determined he could safely integrate unit ¹⁶

[33] After noticing the contradiction, on Oct. 13, I was able to reach s PO. confirmed an SIO had informed them Oct. 4 that population changes in unit made s integration a possibility.¹⁷ I attempted to reach the SIOs by phone and email on Oct. 13 for an explanation, without success. The SIOs were well aware this decision was pending. My assistant had sent a general reminder for disclosure soon after the SDC decision, and I had spoken to an SIO in the morning of Oct. 4 regarding a protected report. SIOs have not provided me any details or explanations about why their position shifted, nor whether it has changed again since Oct. 4.

¹⁴ SIU transfer authorization, 2023/07/12 (completed 2023/07/13), p. 3.

¹⁵ A report on this information was summarized for me orally by SIO on 2023/10/04.

¹⁶ PO entry, CWR, 2023/10/04.

¹⁷ Oral comments of , PO, 2023/10/13.

[34] Consequently, CSC's position regarding [REDACTED]'s integration is not clear at this stage.

4.3.3. [REDACTED]'s position on his integration at MAX1

[35] CSC records provide insight into [REDACTED]'s views about his SIU stay. As noted, he was initially unwilling to integrate any population at MAX1.

[36] On July 28, he reportedly declined a social programs offer because he did not feel safe at MAX1.¹⁸

[37] On Aug. 8, [REDACTED] said he was willing to integrate the [REDACTED]

[38] On Aug. 31, he turned down the chance to meet with the unit committee,²⁰ for unknown reasons.

[39] [REDACTED] participated in the most recent SIURC meeting, Oct. 3. Based on the SIURC's summary of his comments, he did not talk about whether he felt he could go back to a population at MAX1 on that occasion.

[40] In the Oct. 4 PO conversation with [REDACTED] about re-integrating unit [REDACTED] he expressed hesitation:

[REDACTED]

[41] There is no record of a PO discussion with him the next day, nor of any conversation with him since then about the possibility of him integrating at MAX1.

[42] [REDACTED] seems to have been more preoccupied about his incarceration than his placement in the SIU. He raised this issue numerous times, with various individuals. He turned down the chance to speak to sentence management, who could provide him explanations about this issue. However, it appears he would be willing to speak to someone else who he perceives as more independent (i.e. someone he does not see as having been involved in changes to sentence management information).²²

¹⁸ Social programs entry, SIU activity log, 2023/07/28.

¹⁹ Review panels entry, SIU activity log, 2023/08/08.

²⁰ Peer support entry, SIU activity log, 2023/08/31.

²¹ PO entry, CWR, 2023/10/04.

²² See: health encounter notes, 2023/09/14.

4.3.4. IEDM discussion of [REDACTED]'s potential return to a population at MAX1

- [43] As discussed, CSC did not provide adequate information in this case. While the incidents preceding his SIU transfer suggest there are risks, it is unclear whether CSC believes anyone on unit [REDACTED] could cause issues for [REDACTED]. Based on my own verification, a couple of the individuals that could have been problematic are no longer in the unit [REDACTED] open population.
- [44] Based on the information I have, it appears [REDACTED]'s own lack of will to integrate a population at MAX1 is the main barrier to his integration currently. Since forcing him to integrate a population could create security risks, and would probably be unlikely to lead to his long-term integration of a population, this does provide a basis to find that he remain in the SIU.
- [45] At the same time, CSC should seek to encourage him to integrate, through steps like allowing him to meet with the inmate committee; providing security assurances; allowing him to visit unit [REDACTED] providing ongoing mental health support, possibly with a different staff member; encouraging him to meet with individuals who can help him understand the reasons for his incarceration; etc.
- [46] There are indications that [REDACTED]'s mental health has not been good, but also that he has not engaged with mental health services. [REDACTED] has been extremely isolated for much of his SIU stay, so finding a way to encourage him to integrate is important.

4.4. Is [REDACTED]'s penitentiary placement appropriate or should he be transferred?

- [47] I find [REDACTED]'s transfer out of the region should be avoided unless there is a significant shift in his mental health state and views.
- [48] Apart from safety-related factors, the legal criteria for penitentiary placement, include proximity to home, language, and culture.²³
- [49] Since [REDACTED] is from [REDACTED], he is currently in his home region, the [REDACTED] region, [REDACTED]. He has contact with some family members and has community support from [REDACTED], who has supported him since [REDACTED].²⁴ From this perspective, [REDACTED]'s placement at MAX1 is appropriate. However, if his integration at MAX1 is not possible for safety-related reasons, his institutional transfer may be necessary.
- [50] CSC has intended to transfer [REDACTED] to MAX2. His transfer was approved in a final decision dated Aug. 30.
- [51] [REDACTED] has not wanted to be transferred out of the region to MAX2.²⁵ He rebutted this proposed transfer. As summarized by CSC, [REDACTED] on Aug. 16,

²³ CCRA, s. 28.

²⁴ [REDACTED] participated in my in Aug. 28 interview with [REDACTED] for my previous decision, as a support for see: decision under s. 37.83(1) of the CCRA concerning [REDACTED] 2023/09/01.

²⁵ Review panels entry, SIU activity log, 2023/08/08.

[52] While his transfer was approved, CSC's final decision noted that it "should not be actioned without further consultation with [MAX2] if [REDACTED] is unwilling to integrate on arrival."²⁷ It also mentioned that the transfer was not to occur until [REDACTED]. According to the SDC decision, [REDACTED].

[53] Records show [REDACTED] has shown signs of significant distrust towards staff and paranoid thinking during his SIU stay, as well as fears regarding his transfer (including of documents being lost). It seems likely that an inter-regional transfer against his will might aggravate these issues, and would be unlikely to lead to his viable integration of a mainstream population.

5. CONCLUSION

[54] Under s. 23.06(1) of the CCRR and s. 37.8 of the CCRA, I find there are grounds for [REDACTED] to remain in the SIU, because of his unwillingness to integrate. CSC should develop a strategy to encourage him to do so, considering the comments above.

Janine Lespérance
Independent External Decision-Maker

Date: October 13, [REDACTED]

²⁶ Referral decision sheet, warden recommendation, [REDACTED] 2.

²⁷ Referral decision sheet, final decision, [REDACTED] p. 4.

²⁸ SDC decision, [REDACTED] p. 5.

6. ANNEX: SOURCES OF INFORMATION AND COMMENT S OPPORTUNITY TO

[55] I have considered the following sources of information from CSC:

- SIU daily activity log, for the period as of
- Threat risk assessments (“TRAs”), for the period as of
- Oral information from Parole Officer [REDACTED], communicated
- Casework record (“CWR”) log, for the period from
- Incident history log report, generated on
- Institutional charges report, generated on
- Health encounter notes, for the period from
- Mental health forms, dated

- SIU Review Committee (“SIURC”) recommendation, dated
- Memorandum – information sharing, dated 2
- Regional reviews, dated
- Memorandums – recreation group options, dated

- Incident reports, dated :
- Out of facility information, for the period from
- Senior Deputy Commissioner (“SDC”) decision, dated
- CSC’s response to IEDM decision, dated 2023/09/12
- Correctional plan updates – SIU (“CPU-SIU”), dated

- Referral decision sheet – institutional transfer, dated
- Statement/observation reports (“SORs”) dated

- Mental health clinical notes, dated
- Mental health checklist, undated, received from CSC
- Institutional head “30-day” SIU transfer decision, dated
- Assessment for decision – institutional transfer, dated
- Correctional plan – updated (“CPU”), dated
- Memorandum – integration options, dated
- Institutional head “5-day” SIU transfer decision, dated :
- SIU transfer authorization, dated 2023/07/18
- Oral summary (Oct. 4) of security intelligence report dated
- Referral decision sheet – offender security level, dated
- Assessment for decision – offender security level and penitentiary placement, dated
- Criminal profile report (“CPR”) – original, dated

[56] I sent [REDACTED], via CSC, a summary of the information I am considering for this review on Oct. 10. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[57] Later that day, I received signed confirmation from CSC that [redacted] did not wish to share his views through one of the means offered. Based on the SIURC summary of [redacted]'s Oct. 3 comments, trust issues and I [redacted]'s disbelief that I am independent from CSC may have contributed to his decision to not participate in an interview with me. Because [redacted] did not provide comments, I must rely on the information provided by CSC.

Inmate Name:
FPS Number: [REDACTED]
Correctional Institution(s): MED1, MAX1
Date of CSC SDC Decision under s. 37.4, CCRA: [REDACTED]
Date of Notification from CSC: [REDACTED]
Date of the Present Decision: [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SECTION 37.8 OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, c. 20**

SUMMARY

was transferred to the SIU from a medium-security institution. His security classification was increased based on a history of incidents and alleged involvement in the introduction of contraband. The basis for the reclassification is reasonable overall. feels he can be managed at the medium-security level. He is doing the maintenance program in the SIU. He worries his transfer to MAX2 will prevent him from finishing it, which seems to be a valid concern. His statutory release is Section 33 of the CCRA should be understood in light of the history and intention behind it, and other sections of the CCRA. CSC should ensure the strategy for ending 's SIU stay contributes to his rehabilitation, and community reintegration. Under s. 37.8 of the CCRA, I conclude should remain in the SIU.

1. INTRODUCTION

- [1] On [REDACTED], the Senior Deputy Commissioner ("SDC") of Correctional Service Canada ("CSC") determined, pursuant to section 37.4 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") that should remain in the Structured Intervention Unit ("SIU") at [maximum-security institution, "MAX1"] in [REDACTED].
- [2] As an Independent External Decision-Maker ("IEDM"), I must answer the following question: should remain in the SIU?

2. SOURCES OF INFORMATION

[3] For this decision, I have consulted documentary information from CSC and s oral comments of [REDACTED] (see annex for details).

3. CONTEXT

[4] [REDACTED] is [REDACTED] years old and is from [REDACTED]. He is [REDACTED]. [REDACTED]. He reportedly grew up in [REDACTED]. He [REDACTED] and [REDACTED].

[5] Since [REDACTED], he has been serving a [REDACTED] sentence for [REDACTED] offences. It is his [REDACTED] federal sentence.

[6] His transfer to the SIU was authorized [REDACTED], under para. 34(1)(a) of the CCRA.

4. ANALYSIS

4.1. Do I have a legal basis to review [REDACTED]'s SIU placement?

[7] Yes, my jurisdiction is uncontroversial.

[8] IEDMs only issue decisions in certain situations. An IEDM decision under s. 37.8 follows CSC decisions concluding the inmate should stay in the SIU, specifically: the institutional head's "5-day"¹ and "30-day"² decisions, and the SDC decision.³ If the SDC decides a person should remain in the SIU, an IEDM decision is triggered. It is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.

[9] In this case, the SIU transfer was approved in the "5-day" Acting Warden decision of [REDACTED], the "30-day" decision of [REDACTED], and the SDC decision of [REDACTED].

4.2. Is [REDACTED]'s security classification appropriate?

[10] I must consider the appropriateness of [REDACTED]'s security classification in my decision on his SIU placement.⁴ In this case, [REDACTED]'s reclassification from medium to maximum security is directly linked to his SIU transfer.

[11] I find [REDACTED]'s maximum-security classification appropriate.

4.2.1. Context of [REDACTED]'s SIU transfer

[12] [REDACTED] had been at [medium-security institution, "MED1"] since [REDACTED] s current and only SIU transfer was authorized after the discovery of [REDACTED]

¹ Under CCRA, s. 29.02(2).

² Under CCRA, para. 37.3(1)(b).

³ Under CCRA, s. 37.4.

⁴ CCRA, s. 37.82(2).

⁵ He was

considered “no longer suitable” for medium security.⁶

[13] CSC considered he could not integrate at [maximum-security institution, “MAX2”], because of his STG associations, and he would not integrate at [REDACTED] because he does not have an “integrated” profile.⁷

[14] MED1 does not have an SIU. He was sent to MAX1 and was in the MAX1 SIU as of the [REDACTED] of [REDACTED].

4.2.2. CSC’s decision to reclassify [REDACTED] from medium to maximum-security

[15] The final decision on [REDACTED]’s security reclassification was issued [REDACTED], based on the assessment for decision (“AFD”) dated [REDACTED]. His SRS score was [REDACTED], in the medium-security range. However, an override was recommended; his institutional adjustment was rated as high (increased from moderate), his escape risk was moderate (increased from low), and his public safety risk was moderate. The AFD and subsequent recommendation and decision referred to his involvement in incidents [REDACTED].

[16] The finding that he was involved in crime for gain was partly based on intelligence information. He had reportedly “consistently come to the attention” of the security intelligence office as of his arrival at MED1. As outlined in a gist report, between [REDACTED] and [REDACTED], [REDACTED] supporting the conclusion [REDACTED].

4.2.3. [REDACTED]’s comments regarding his security classification

[17] [REDACTED] disputed his reclassification to maximum security. He had a medium SRS score.

⁵ SIU transfer authorization, [REDACTED], p. 3.

⁶ SIU transfer authorization, [REDACTED], p. 4.

⁷ SIU transfer authorization, [REDACTED], p. 4.

⁸ RDS, MAI recommendation, [REDACTED] (final decision dated [REDACTED]), p. 2.

⁹ Memorandum – gist of PS file, [REDACTED].

[18]

[19]

[20] also argued his security reclassification was procedurally unfair because he did not get to present his rebuttal to the Warden; it was to the MAI.

[21] Finally, argues he will be able to in a medium-security institution. He wants to be released to the community from a medium-security institution.

4.2.4. Recent behaviour in the MAX1 SIU

[22] The log indicates has often been spending over six or seven hours outside his cell daily, although the daily totals varied from day to day.

[23] himself estimated he often spends around five hours daily outside of his cell. He spends about half an hour outside his cell twice a day for his job, has three hours of with his group – currently composed of people–, goes three times per week to the, and is participating in the program and the Maintenance program.¹²

[24] but was transferred to the SIU

: According to the SIU activity log, he participated well in all sessions after that. There was only one occasion when he did not participate, because he wanted to do it in the afternoon rather than the morning that day.¹⁴

[25] Regarding incidents, there is only one reported incident for the period of his SIU stay: the alleged discovery of a SIM card in his cell.¹⁵ In his interview comments, denied it was found in his cell; he believes it must have been from another cell. He said his phone and SIM card were taken. He noted he did not get institutional charges for the incident.¹⁶ While I have not investigated his

¹⁰ also denied having said that to CSC staff. See: PO entry, CWR, .

¹¹ This is confirmed by file information. The Acting PO who authored the AFD began working with him on , the day he is alleged to have said he would . See: AFD – security level, , pp. 3, 5.

¹² IEDM interview with .

¹³ CPU, , p. 4.

¹⁴ Correctional programs entry, SIU activity log, .

¹⁵ Incident report, .

¹⁶ IEDM interview with .

claim, he has provided sufficient reasons that I believe CSC should investigate and ensure there was no mistake in indicating the SIM card was his.

[26] CSC's incident history log also lists an intelligence report during the period reviewed. CSC has not provided it. If this report is relevant to the current decision, I find CSC has violated s. 37.7(1) of the CCRA by not providing it. There is no summary of its contents in the most recent Regional Review or the SIURC recommendation.

[27] Overall, the information suggests [redacted] has not been overly isolated in the SIU, [redacted] has been engaged in activities, and has not shown problematic behaviour. He appears to be complying with his correctional plan.

4.2.5. IEDM commentary regarding security classification

[28] I find the justification for the security classification is clearly set out and is reasonable; there is no obvious unfairness nor incorrect elements. While [redacted] has raised some doubts about the validity of the reclassification, reclassification decisions involve an exercise of discretion; the contraband allegation did not need to be proven beyond question. The reclassification was not based on just one incident, mistake, or report; it was the culmination of problematic behaviour over a long time.

[29] As an IEDM, I do not have the capacity to fully investigate every allegation against [redacted]. For intelligence information, it is difficult to determine the reliability of the information without knowing the individual identity of sources, having contextual information on their reliability, and being able to directly interrogate them.

[30] Nevertheless, it would have been relevant to review the intelligence information gathered concerning [redacted]. CSC is legally obligated to provide "all" relevant information to an IEDM.¹⁷ The IEDM assistant sent a general request for disclosure with a reminder that "protected C" information is to be provided to the IEDM. Despite that, CSC did not provide the intelligence reports; only a "gist" report was provided. I find this non-disclosure problematic.¹⁸

[31] Regarding [redacted]'s escape risk rating, I cannot determine whether [redacted] said [redacted] as alleged. I find CSC's approach to escape risk ratings generally flawed, because the ratings given are not tied to a specific setting, even though escape risk will vary in different settings; presumably, every inmate's escape risk will be lower in a maximum-security institution than a minimum-security environment. Regardless, the moderate escape risk rating for [redacted] seems consistent with other escape risk evaluations I have reviewed.

[32] Finally, I observe [redacted] was included in the decision on his security classification. However, it does not appear that consideration was given to whether he had

¹⁷ CCRA, s. 37.7(1).

¹⁸ Requesting the reports would have required delaying this decision past the due date set by law.

experienced any differential treatment during his sentence, or whether adapted programming or supports could help to manage his risk.

[33] While I have found the reclassification sufficiently justified, there may be reasons to reassess and lower his security classification from the SIU, as discussed below.

4.3. Is there a suitable integration option for [REDACTED] ?

[34] Yes, [maximum-security institution, "MAX3"] has been identified; however, there may be reasons to delay his transfer there or find an alternative solution.

[35] Like at the time of his SIU authorization, CSC considers [REDACTED] cannot integrate at MAX2, and his "non-integrated" status means he will not integrate [REDACTED].¹⁹ Several maximum-security sites refused to take [REDACTED] upon consultation, including MAX3.

4.3.1. Gang affiliations

[36]

[37]

I encourage CSC to address this request.

[38]

Reportedly, inmates from MAX3 said [REDACTED] was welcome, as he knows several individuals in the population.²¹

[39] According to the [REDACTED] SIURC, the final transfer decision is pending.

4.3.2. [REDACTED] s views regarding a transfer to MAX3

[40] [REDACTED] did not rebut the transfer to MAX3.

[41] However, in my [REDACTED] interview with [REDACTED] he expressed not wanting to go to MAX3 due to the timing of the transfer, considering his upcoming Parole Board hearings and release date. He would have been willing to go if it were a few months earlier. However, at this point, based on what he knows on flight intervals, he assumes the transfer would be in [REDACTED]. He believes it would prevent him from [REDACTED] n turn, that would have a negative impact on him for parole; he has a parole hearing in [REDACTED]. He doubts he would have the chance to do [REDACTED] at MAX3; he would

¹⁹ SIURC recommendation, [REDACTED], p. 2.
²⁰ See: AFD, [REDACTED], p. 5.
²¹ Regional Review, [REDACTED], p. 4.

have to do [redacted]. He would also again have a new PO at MAX3, after having multiple POs recently. Moreover, due to the approximate flight dates, he would likely be transferred [redacted] and be put in an SIU again before his release date.²²

[42] At the medium-security level, [redacted] believes he could go to MED1 or MED2.²³

4.3.3. IEDM commentary on integration options

[43] I can only decide an inmate should stay in the SIU if information makes me believe their release “would jeopardize” safety, including their personal safety; or “would interfere” with a serious investigation.²⁴ The risk must be higher than just a possibility of incidents. There is always some danger in the penitentiary context.

[44] I do not have reasons to doubt CSC’s conclusion regarding MAX2, and forcing [redacted] to integrate at MAX1 would likely create safety concerns. Thus, while the information regarding these options is minimal, I accept [redacted] does not have maximum-security integration options [redacted]. His inter-regional transfer is necessary for him to safely integrate a maximum-security population.

[45] According to s. 33 of the CCRA, SIU stays are to “end as soon as possible.”²⁵ This section needs to be understood in light of the history and intention behind SIUs, notably the need to end solitary confinement and the mental health harms arising from it. I believe the provision is intended to prevent prolonged stays in abusive conditions. It does not mean CSC should resort to institutional transfers in situations when doing so may be harmful, counterproductive to rehabilitation, or not lead to a long-term viable integration of a mainstream population. A person’s progress in the SIU should be considered.

[46] This decision does not focus on SIU conditions, but it is relevant to take [redacted]’s conditions of confinement into account.²⁶ CSC’s log and [redacted]’s comments indicate the SIU conditions are restrictive, but not highly isolating for him (see paras. 22 to 27 above). Positively, he has been able to [redacted], as well as other types of interventions [redacted] should be beneficial for individually, as well as for institutional security and public safety, provided he applies

[47] Section 33 should also be interpreted in light of other provisions of the CCRA, including the legal criteria for penitentiary placement. These include safety, proximity to home, language, culture, and program and service availability.²⁷

²² IEDM interview with [redacted].

²³ IEDM interview with [redacted].

²⁴ CCRA, s. 37.82(1).

²⁵ CCRA, s. 33.

²⁶ I can consider any factors I consider relevant in this decision. See: CCRA, s. 37.82(2).

²⁷ CCRA, s. 28.

[48] [REDACTED] has positive community support from his family [REDACTED]. His transfer to MAX3 would take him far from them. MAX3's [REDACTED] comments accepting him did not specify whether [REDACTED] opportunities would be immediately available for him. I find this factor important, especially at this stage of his sentence [REDACTED]; concern that he will not get to do [REDACTED] immediately at MAX3 seems reasonable, based on my reviews in many other cases, which have shown waitlisting for [REDACTED] is common at the maximum-security level.

[49] Likewise, [REDACTED]'s concern about being briefly transferred [REDACTED] and then transferred [REDACTED] again, only to go back to an SIU, appears valid. [REDACTED] is past his parole eligibility dates and his statutory release date is set for [REDACTED], roughly [REDACTED] from now. I do not have information from CSC confirming the precise timing of [REDACTED]'s potential transfers, although I understand his transfer to MAX3 on the next flight is anticipated.

[50] In sum, I believe CSC should reassess [REDACTED]'s situation with a holistic, common-sense approach, to identify the strategy that would best contribute to his rehabilitation and reintegration during the remaining time of his incarceration.

[REDACTED] if sent to MAX3, he should be maintained in the SIU until he [REDACTED]. While I find the previous reclassification decision reasonable, there may be reasons to reduce [REDACTED]'s security level back to medium security after [REDACTED], provided he has maintained adequate behaviour in the SIU. If so, medium-security options closer to his home and release destination could be considered. Presumably, that would allow for an easier transition to the community than a maximum-security institution.

5. CONCLUSION

[51] Under s. 37.8 of the CCRA, I find [REDACTED] should remain in the SIU. CSC should ensure the plan to end his SIU stay will contribute to his successful rehabilitation and community reintegration.

Janine Lespérance
Independent External Decision-Maker

Date: [REDACTED]

6. ANNEX: INFORMATION CONSIDERED AND OPPORTUNITY TO COMMENT

[52] For this review, the following items are my sources of information:

- SIU activity log, for the period from [REDACTED]
- Threat risk assessments (“TRAs”), for the period as of [REDACTED]
- Casework record (“CWR”) log, for the period from [REDACTED] to [REDACTED]
- Incident reports, dated [REDACTED], [REDACTED] (X3), [REDACTED] (X2), [REDACTED], and [REDACTED]
- Referral decision sheet – institutional transfer, dated [REDACTED]
- SIU Review Committee (“SIURC”) recommendation, dated [REDACTED]
- Correctional plans – updated (“CPU”), dated [REDACTED] and [REDACTED]
- Regional reviews, dated [REDACTED] and [REDACTED]
- Correctional plan update – SIU (“CPU-SIU”), dated [REDACTED] and [REDACTED]
- Institutional charges report, generated on [REDACTED]
- Incident history log report, generated on [REDACTED]
- Senior Deputy Commissioner (“SDC”) decision, dated [REDACTED]
- Statement/observation report, dated [REDACTED]
- Institutional head “30-day” SIU transfer decision, dated [REDACTED]
- Referral decision sheet – offender security level, dated [REDACTED]
- Institutional head “5-day” SIU transfer decision, dated [REDACTED]
- Memorandum – gist of PS file, dated [REDACTED]
- Assessment for decision – institutional transfer, dated [REDACTED]
- Memorandum - Correctional Interventions Board (“CIB”), dated [REDACTED]
- Assessment for decision – offender security level, dated [REDACTED]
- Security reclassification scale, dated [REDACTED]
- SIU transfer authorization, dated [REDACTED]
- Criminal profile report – original, dated [REDACTED]

[53] I sent I [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process. I requested CSC plan a video call for [REDACTED].

[54] On [REDACTED], I received signed confirmation, dated [REDACTED], that [REDACTED] would share his views.

[55] We spoke by videoconference on [REDACTED], for about 48 minutes. The call started with a very slight delay due to connection issues on my end. Less than an hour after the planned start time, an officer entered the room to inform us that the room was needed for a court call, cutting the interview short. I had not been informed of the short time limitation beforehand. MAX1 was able to facilitate a phone call that afternoon. I spoke to [REDACTED] for an additional 43 minutes.

Name:
FPS Number: [REDACTED]
Correctional Institution: MAX1
Date of initial decision under s. 37.83(1), CCRA: [REDACTED]
Date of CSC Senior Deputy Commissioner Decision: [REDACTED]
Date of the Present Decisions: [REDACTED]¹
Independent External Decision-Maker: J. Lespérance

**DETERMINATIONS UNDER
SECTION 37.8 AND SUBSECTION 37.83(3)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, c. 20**

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¹ The s. 37.8 decision is two days late. The delay is explained at para. 24 below.

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SUMMARY

s SIU stay followed an incident on [REDACTED]

s statements about the incident appear reliable. Staff reports have some inaccuracies or details missing. I am concerned staff actions may have escalated the situation and about a potential improper use of force against

CSC has not identified issues between inmates that would prevent from integrating [REDACTED]. [REDACTED] has consistently expressed his preference to return to [REDACTED]. Staff safety concerns on [REDACTED] should be manageable. [REDACTED] is far from his home and culture, but feels he can be more successful at MAX1 than [REDACTED]. His opinion about going to MAX2 has varied during his SIU stay. CSC did not accept an IEDM recommendation to plan for his re-integration at MAX1 and pause the inter-regional transfer process. [REDACTED] to stop his transfer to MAX2. CSC initially said [REDACTED] could not integrate [REDACTED]. However, as of [REDACTED], CSC finds he can integrate [REDACTED]. [REDACTED] wanted to speak to the inmate committee before going, but he has not been able to since then. Under s. 37.8 of the CCRA, I find [REDACTED] should not remain in the SIU. He should be able to integrate unit [REDACTED] or [REDACTED] at MAX1. CSC should ensure he can meet with inmate committees as soon as possible, and that he continues to receive [REDACTED] support.

In the SIU, [REDACTED] has consistently had access to recreation (including the gym) and interventions (including [REDACTED] cultural support). For some sessions, staff did not have enough time or space to meet with him, which is a structural issue. He had a recreation group for most of the period reviewed. During the absence of the

Correctional Programs Officer, other CPOs checked in with him. His participation improved in the second part of his SIU stay. himself is mostly concerned about decisions to reduce his medications, and his access to mental health care. CSC's information shows efforts to provide him support. Under s. 37.83(3) of the CCRA, I find CSC took all reasonable steps to provide the required out-of-cell opportunities to in the SIU.

1. INTRODUCTION

- [1] On █████, the Independent External Decision-Makers ("IEDMs") were notified that for five consecutive days, █████ had not spent at least four hours out of his cell or had not interacted with others for at least two hours per day, in the Structured Intervention Unit ("SIU") at [maximum-security institution, "MAX1"]. As an IEDM, I issued a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") on █████. I concluded that Correctional Service Canada ("CSC") had not taken all reasonable steps to provide █████ time out of cell and meaningful human contact. I made recommendations under subsection 37.83(2) of the CCRA.
- [2] I must assess, under subsection 37.83(3) of the CCRA, whether CSC has taken all reasonable steps since my initial decision.
- [3] Another type of decision is also required. I must determine whether █████ should remain in the SIU, under s. 37.8 of the CCRA. On █████, CSC's Senior Deputy Commissioner ("SDC") determined, under section 37.4 of the CCRA, that he should remain in the SIU.
- [4] This text includes both types of decisions, but my analysis under each provision is separate.

2. LEGAL FRAMEWORK

2.1. CSC's legal obligations toward inmates in the SIU

- [5] CSC must provide inmates the daily opportunity to spend at least four hours outside of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates' specific needs.
- [6] The previous decision under s. 37.83(1) of the CCRA explained CSC's legal obligations in more detail.

2.2. Determinations under s. 37.83(3) of the CCRA

- [7] Decisions under s. 37.83(3) of the CCRA are second-stage decisions. S. 37.83(3) of the CCRA states:

“If [CSC], within the period of seven days commencing on the day on which it receives recommendations, fails to satisfy the [IEDM] that it has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1), the [IEDM] shall direct [CSC] to remove the inmate from the [SIU] [...].”

- [8] Unlike s. 37.83(1) of the CCRA, s. 37.83(3) does not explicitly state that the IEDM must assess whether CSC encouraged an inmate. However, “all reasonable steps” is a high standard that implies CSC must be proactive and try new approaches.
- [9] The determination under s. 37.83(3) is not based only on whether CSC has implemented recommendations. CSC could demonstrate that it would not be reasonable to do so. CSC could also take steps other than those proposed by the IEDM. More, CSC’s written response to the s. 37.83(1) decision is not the only relevant source of information.
- [10] Decisions under s. 37.83(3) focus on activities and services in the SIU, not the safety and security basis for the SIU placement.
- [11] If an IEDM finds under s. 37.83(3) that CSC has not taken all reasonable steps, the IEDM must order CSC to remove the inmate from the SIU. The CCRA does not seem to leave the IEDM discretion as to whether to issue this order.
- [12] In sum, if the conditions of confinement are inadequate, the remedy set out in the CCRA is the inmate’s removal from the SIU.

2.3. Period considered for s. 37.83(3) determinations

- [13] IEDM oversight should be timely and address an inmate’s current situation in the SIU. When more than seven days have passed since an initial decision under s. 37.83(1) of the CCRA, the IEDM may consider information on a period longer than the seven-day period.

2.4. Framework for determinations under s. 37.8 of the CCRA

- [14] An IEDM decision under s. 37.8 follows CSC decisions concluding that the inmate should stay in the SIU, specifically: the institutional head’s “5-day”² and “30-day”³ decisions, and the SDC decision.⁴ The IEDM decision is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.
- [15] This type of decision focuses mainly on the safety and security basis for the SIU placement, not the conditions in the SIU.

² Under CCRA, s. 29.02(2).

³ Under CCRA, para. 37.3(1)(b).

⁴ Under CCRA, s. 37.4.

[16] The law says that an inmate's SIU placement should "end as soon as possible."⁵ In a s. 37.8 decision,

"The [IEDM] may determine [...] that an inmate should remain in a [SIU] only if the [IEDM] believes on reasonable grounds that allowing the inmate's reintegration into the mainstream inmate population

(a) would jeopardize the safety of the inmate or any other person or the security of the penitentiary; or

(b) would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence [emphasis added]."⁶

[17] There are always some risks in the penitentiary context. Belief on reasonable grounds that an inmate's integration of a mainstream population "would" jeopardize safety or security means there is more than just a possibility of incidents. There must be facts showing an undue probability of safety or security incidents actually happening. If the standard used were too low, there would always be a reason for keeping an inmate in the SIU. This outcome would be at odds with the legislation.

[18] The IEDM must consider the inmate's correctional plan, the appropriateness of their confinement in the penitentiary they are in, the appropriateness of their security classification, and any other relevant factors.⁷

[19] The CCRA does not consider situations when an inmate wants to stay in the SIU. An IEDM may make recommendations, particularly when the inmate has refused integration options that CSC has proposed.

3. INFORMATION CONSIDERED

[20] I have considered the following sources of information:

- SIU daily activity log, for the period as of [REDACTED]
- Threat risk assessments ("TRAs"), for the period as of [REDACTED]
- Incident history log
- IEDM phone interview with [REDACTED], AI Acting Assistant Warden Operations ("AWO"), [REDACTED]
- SIU Review Committee ("SIURC") recommendation, dated [REDACTED]
- Casework record ("CWR") log, for the period from [REDACTED] to [REDACTED]
- Statement/observation reports ("SORs"), numbered: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Medical encounter notes, for the period from [REDACTED] to [REDACTED] in particular

⁵ CCRA, s. 33.

⁶ CCRA, s. 37.82(1).

⁷ CCRA, s. 37.82(2).

- CSC's answers to the IEDM's written questions (based on emailed answers from [REDACTED], Assistant Warden Interventions ("AWI"); [REDACTED] Security Intelligence Officer ("SIO"); [REDACTED] Acting Correctional Manager ("CM"); [REDACTED], Manager Assessment Intervention ("MAI"); [REDACTED] Parole Officer ("PO"); and [REDACTED] A/AWO); received by the IEDM via email [REDACTED] and [REDACTED]
- Mental health clinical notes, dated [REDACTED] (X3), [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] (X4), and [REDACTED]
- Mental health forms – 14-day, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]
- Memorandums – recreation group, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Memorandum – integration options, dated [REDACTED]
- Referrals for health services, dated [REDACTED], [REDACTED], and [REDACTED]
- Regional reviews, dated [REDACTED] and [REDACTED]
- Health case management notes, dated [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Incident reports, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] (X2), [REDACTED], [REDACTED], and [REDACTED]
- Memorandum – indigenous ceremony, dated [REDACTED]
- Referral decision sheets, dated [REDACTED], [REDACTED], and [REDACTED]
- SDC decision, dated [REDACTED]
- Habeas Corpus application of Mr. G, dated [REDACTED]
- Assessment for decision ("AFD") – institutional transfer, dated [REDACTED]
- Institutional head "30-day" SIU transfer decision, dated [REDACTED]
- Mental health form – 28-day, dated [REDACTED]
- Inmate request form, dated [REDACTED]
- Emails from MAX1 Correctional Manager ("CM") [REDACTED], received [REDACTED] and [REDACTED]
- Email from MAX1 PO [REDACTED], received [REDACTED]
- Email from MAX1 CM [REDACTED], received [REDACTED]
- Email from [REDACTED], MED1 A/Assistant Warden of Management Services, received [REDACTED]
- Correctional plan – updated ("CPU"), dated [REDACTED]
- Correctional plan – SIU ("CPU-SIU"), dated [REDACTED]
- Institutional head "5-day" SIU transfer decision, dated [REDACTED]
- Inmate version of events form, dated [REDACTED]
- Use of force report, dated [REDACTED]
- Mental health form – 1st day, dated [REDACTED]
- Range video footage for incident on [REDACTED]
- Contraband/unauthorized item seizure tag, dated [REDACTED]
- Use of force duty CM checklist, dated [REDACTED]
- SIU transfer authorizations, dated [REDACTED], [REDACTED] and [REDACTED]
- Assessment for decision – involuntary institutional transfer and offender security level, dated [REDACTED]
- Security reclassification scale, date [REDACTED]
- SIU transfer cancellation, dated [REDACTED]
- Mental health form – 1st day, dated [REDACTED]

- Mental health checklist, dated [REDACTED]
- Criminal profile report (“CPR”) – original, dated [REDACTED]

[21] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[22] He provided written comments to the SIURC, which CSC provided to me on [REDACTED].

[23] On [REDACTED], I learned [REDACTED] would share his views. We spoke by videoconference on [REDACTED], for approximately 80 minutes. [REDACTED] participated in the call (joining by audio only) as a support, at [REDACTED]’s request.

[24] At the time of my [REDACTED] interview with [REDACTED] I was waiting to receive information from CSC, in response to my [REDACTED] request for information. I had requested a response from CSC by [REDACTED]. After receiving CSC’s response, I sent additional questions to CSC on [REDACTED], to which I received a response [REDACTED]. On [REDACTED], I sent another notice to [REDACTED], summarizing the additional information received, and giving him an opportunity to comment if he wished to do so. He indicated on the form that he wanted another interview. I received that form from CSC at the end of the business day [REDACTED] (Friday) and did not hear back about doing an interview during the weekend. I chose to delay the decision under s. 37.8 of the CCRA until I had another chance to provide his views, to respect s. 37.71(1) of the CCRA (“Disclosure to inmate”). CSC’s full and proactive disclosure of *all* relevant information, in accordance with s. 37.7(1) of the CCRA, immediately after the SDC decision, would help to avoid this type of situation.

[25] The delay in issuing the decision under s. 37.83(3) is due to my caseload and caseload management decisions, not CSC.

[26] I spoke to [REDACTED] by telephone for just under twenty minutes on [REDACTED].

[27] [REDACTED] had also made comments relevant to the decision under s. 37.8 of the CCRA during my in-person interview with him on [REDACTED].

4. CONTEXT

[28] [REDACTED] is [REDACTED] years old. According to file information, he is from [REDACTED], where he was born, and [REDACTED]. It is [REDACTED] and has a primary language of [REDACTED].⁸

[29] I have been informed there is no [REDACTED] review or Gladue report on file for [REDACTED]. File information states,

⁸ [REDACTED] online: [REDACTED] (accessed [REDACTED]).

⁹ AFD – ITI and OSL, [REDACTED], at p. 4.

[30] I

[31] He has a significant history of incarceration since [REDACTED]. Since [REDACTED], he has been serving a sentence of [REDACTED].

[32]

[33] He was transferred from MAX1 to [medium-security institution, "MED1"] in [REDACTED]. His transfer to the SIU was authorized at MED1 on [REDACTED], under para. 34(1)(a) of the CCRA. He was transferred back to MAX1 on [REDACTED]. He was reclassified from medium to maximum security. He was placed in the [REDACTED]. His transfer to the SIU was re-authorized at MAX1 on [REDACTED], again under para. 34(1)(a) of the CCRA. Both authorizations followed incidents involving physical struggles between him and officers, after he had been identified to be searched.

[34] The MAX1 Warden approved the SIU transfer in the "5-day" decision of [REDACTED], and the "30-day" decision of [REDACTED].

[35] [REDACTED]'s transfer to the SIU has been authorized four times.

5. ANALYSIS UNDER S. 37.83(3) OF THE CCRA

5.1. Period reviewed

[36] In light of the time passed, I will consider information from CSC's SIU activity log ("the log"), for the period from [REDACTED] to [REDACTED]. This is a period of 60 days (including [REDACTED]).

¹⁰ AFD – ITI and OSL, [REDACTED], at p. 2.

¹¹ AFD – ITI and OSL, [REDACTED], at p. 11; mental health form – 28-day SIU, [REDACTED], at p. 3.

¹² AFD – ITI and OSL, [REDACTED], at pp. 9 - 10.

5.2. Daily time out of cell and meaningful human contact

[37] According to the log for the period reviewed, [REDACTED] spent four hours or more out of his cell on three days; or four days (about 7% of all days) if [REDACTED], when he was marked “out of facility” for six hours [REDACTED] is included. He had two hours or more of social interaction on 28 days (about 47% of all days).

[38] The average for time out of cell was about one hour and 45 minutes daily. The average for interaction was just over two hours. Compared to the period reviewed in my initial decision, the average for time out of cell was a bit lower, and the average for interaction was almost forty minutes higher.

[39] The log suggests [REDACTED] started spending a bit more time out of his cell as of around [REDACTED], but the trend was not that significant and the daily totals varied from day to day.

5.3. Activities and participation

[40] According to the log, [REDACTED] usually had several (at least five) opportunities to get out of his cell during the day, throughout the day.

[41] [REDACTED] had the following types of opportunities:

- social programs
- staff interactions (most often with his PO)
- indoor common room time and outdoor recreation
- gym time (three times)
- school
- [REDACTED] us cultural services (including opportunities to watch a documentary, [REDACTED] and meet with [REDACTED])
- video visits (three times)
- meeting with a Correctional Programs Officer (“CPO”), including for the [REDACTED] program
- meeting with the [REDACTED] inmate committee (once, a [REDACTED]-minute meeting on [REDACTED] [REDACTED], according to the log)
- personal phone calls (on just over half of all days)

[42] Recreation offers were the most frequent type of offer. However, other types of interventions were offered regularly. Social programs were often offered more than once per day, and more than one type of intervention was often offered. There were efforts to accommodate [REDACTED] s preferred time of day.

[43] There were some issues with staff running out of time to offer sessions, lack of room availability, and timing conflicts between different types of activities. These issues are structural and should be addressed by CSC.

- [44] One of my previous recommendations concerned [redacted]'s recreation group. On [redacted], he was approved for a recreation group with someone he had requested to be with. He had a recreation group up until [redacted].¹³ The log shows he was able to participate in some intervention sessions with his recreation partner, which may have encouraged him to participate.
- [45] By the time of my [redacted] interview with [redacted] his partner was gone. He said that someone new came to the SIU, who he would ask to be with. He did not raise any concerns about recreation group approval or delays during the period reviewed.¹⁴ [redacted] mentioned that his previous group member appeared to be a resource person for [redacted] who was helpful for him and helped him make positive improvements. A CSC memorandum confirms [redacted] was approved for a group later on [redacted].
- [46] According to the log, [redacted] took advantage of most opportunities for school, Indigenous cultural activities, social programs, and meetings with his assigned CPO, although he did turn down some offers. His participation in recreation was more sporadic.
- [47] His assigned [redacted]) was absent for the first half of the period reviewed. Other CPOs checked-in with [redacted] during this period, but less regularly. Moreover, of the five times CPOs offered to meet with him in [redacted], he accepted once, but the CPO was not actually able to meet with him that day because no rooms were available.¹⁵ This is unfortunate. [redacted]'s absence seems to have had a negative impact on [redacted] participation. It improved as of the return of [redacted].
- [48] In my previous decision, I recommended, "[d]iscuss the possibility of getting a job with [redacted] [...]."¹⁶ CSC's response to the decision stated he was on the waitlist for employment. There is no SIU activity log record about him going out to work, so presumably no spot opened up.

5.4. Application of additional security measures

- [49] There was an incident involving [redacted] during the period reviewed. on [redacted].

¹³ Memorandum – rec group, [redacted].

¹⁴ IEDM interview with [redacted].

¹⁵ Correctional programs entry, SIU activity log, [redacted].

¹⁶ IEDM decision under s. 37.83(1), [redacted], at para. 79.

¹⁷ Incident report for incident no. [redacted].

¹⁸ IEDM interview with [redacted].

[50]

[51] I find the measures were applied for a reasonable length of time and did not block him from accessing time out of cell.

5.5. Health support

[52] Regarding SIU conditions, the issue seemed the most concerned about in my interview with him was health care. He alleged that

[53]

[54] While I cannot recommend specific medical treatment, s comments about the impacts of medication changes on his behaviour suggest it may be advisable to re-evaluate the decision.

[55] Regarding mental health services, acknowledged on that :

[56] My previous recommendation regarding mental health care was, "Provide additional opportunities to meet with a mental health clinician, and assess the possibility of him receiving remote services from someone he has previously worked with."²³ The text of my decision had identified a specific individual he had had a positive working relationship with.²⁴ CSC's response to the decision dismissed the

¹⁹ IEDM interview with I ██████; CSC health records show this decision was taken ██████.

²⁰ IEDM interview with ██████; CSC health records show this decision was taken ██████.

²¹ Medical encounter notes, ██████.

²² IEDM interview with ██████.

²³ IEDM decision under s. 37.83(1), ██████, at para. 79.

²⁴ IEDM decision under s. 37.83(1), ██████, at para. 72.

idea of remote services, noting, “[s]ervices can currently be met by staff on site [...]”.²⁵

[57] CSC records show the Acting Chief of Mental Health Services followed up with [REDACTED]’s assigned clinician, on [REDACTED], regarding my [REDACTED] decision comments. A [REDACTED] note from the clinician, who had previously worked with [REDACTED] but is not the person named in my decision), indicates they tried to engage with him during wellness checks, but he declined to participate in treatment planning.²⁶

[58] On [REDACTED], [REDACTED] participated in the “28-day” mental health assessment, meeting with a psychologist via video conference. This meeting is not in the SIU log, which indicates that [REDACTED] refused a “14-day” assessment that day. The psychologist, observing the previous work of [REDACTED] with a licensed social worker, noted he would “benefit from access to a mental health professional” but [REDACTED] was “on the fence about it.”²⁷

[59] On [REDACTED], a mental health nurse met with [REDACTED] because he was requesting to speak with Mental Health. The note suggests [REDACTED] was feeling isolated and wanted to talk about his situation.

[60] [REDACTED] declined “14-day” assessments on [REDACTED] and [REDACTED].²⁸ The form for [REDACTED] indicates, “he has been assigned to a clinician with whom he has yet to meet, declining each interview request.”²⁹ It is unclear when these requests were made, although clinical notes suggest it was likely during daily wellness checks.

[61] On [REDACTED], there was a self-harm incident (superficial scratches to his arm) that a mental health nurse met with [REDACTED] about.

[62] The log shows that following the [REDACTED] “14-day” assessment, a referral was submitted for more regular follow-up with [REDACTED]; he wanted help to develop safe coping skills.

[63] On [REDACTED], a different mental health social worker met with him after his request when she was in the SIU.³⁰

[64] [REDACTED]

²⁵ CSC’s response to IEDM decision, [REDACTED], at p. 2.

²⁶ Mental health clinical notes, [REDACTED].

²⁷ Mental health form, SIU – 28-day, [REDACTED].

²⁸ Mental health forms, SIU – 14-day, [REDACTED] and [REDACTED].

²⁹ Mental health form, SIU – 14-day, [REDACTED].

³⁰ Mental health clinical notes, [REDACTED].

[65]

|
|

[66] On [REDACTED] and [REDACTED], his assigned clinician tried to meet with him but was unable. [REDACTED] was at the library on [REDACTED], and there were unspecified operational constraints on [REDACTED].³² On [REDACTED], the clinician arrived at the SIU ([REDACTED]) for an interview, but [REDACTED] was on his way to the gym. They did meet later on [REDACTED]. They met again more briefly on [REDACTED] to discuss consent regarding psychiatric care.

[67] Overall, the information gives reason for concern about [REDACTED]'s mental health. I still question whether providing the opportunity to [REDACTED] to work with the same individual who he had made progress with in the past would have been beneficial and encouraged him to participate. However, on the whole, the information shows that CSC staff made efforts to follow-up with him regarding mental health support, and that it was only fairly recently that [REDACTED] became more open to engaging. The attempts to meet with him on [REDACTED], [REDACTED], and [REDACTED] do show a need to carefully coordinate activities and address operational barriers to interventions.

5.6. Conditions on the [REDACTED] range

[68] In my [REDACTED] interview with [REDACTED], he expressed his concerns about the conditions and time-out-of-cell opportunities on the [REDACTED] range at MAX1, where, according to him, "they get nothing."

[69] I have heard other individuals make similar comments. I am concerned that [REDACTED] may be operating as an isolation range without oversight. However, IEDM jurisdiction is restricted to SIUs. This issue does not affect my conclusion concerning [REDACTED] under s. 37.83(3) of the CCRA.

6. ANALYSIS UNDER S. 37.8 OF THE CCRA

6.1. Examination of [REDACTED] incident

[70] [REDACTED]'s SIU placement is the result of an incident involving staff on [REDACTED].

[71] When a conflictual incident involving staff leads to an SIU placement, and is the reason for CSC not allowing an inmate to re-integrate a population, it is relevant for an IEDM to review an incident. Even so, IEDMs have resource limitations and cannot conduct full investigations for every incident. Moreover, IEDMs' role is not to conduct use of force evaluations.

³¹ Referral for health services, [REDACTED].

³² Mental health clinical notes, [REDACTED].

[72] For the █████ incident, my comments below regarding this incident can be considered to be based on a partial investigation: my interviews with █████, SOR review, and video review. A full investigation would involve interviewing the █████ staff members involved and █████ inmates who witnessed part of the incident through a range barrier. █████ also suggested I could interview the inmate who had been █████ and witnessed the incident █████.³³

[73] The █████ SIURC summarizes the incident as follows:

6.1.1. Video footage summary of the █████ incident

[74] Video footage provided to me is range footage from two opposite ends of the hallway, without sound. The video shows █████ officers assembled outside █████ s cell when his door opened (10:33:38).

[75]

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³³ IEDM interview with I █████.

³⁴ SIURC recommendation, █████, at p. 2.

[76]

[77]

wall.

[78]

6.1.2. I [REDACTED]'s comments regarding [REDACTED] incident

[79] I [REDACTED]'s account of what happened in the range hallway matches the video.

[80]

[81]

[82]

t

[83]

6.1.3. Staff statement/observation reports for the [REDACTED] incident

[84] The use of force checklist indicates all staff present completed SORs.⁴³ However, only [REDACTED] staff wrote SORs for the incident; it appears [REDACTED] staff members who

³⁵ CSC's internal review found that in the circumstances, staff likely should have used a camera.

³⁶ IEDM interview with [REDACTED].

³⁷ IEDM interview with [REDACTED].

³⁸ IEDM interview with [REDACTED].

³⁹ See: [REDACTED] affidavit, [REDACTED], at p. 1.

⁴⁰ See: [REDACTED] affidavit, [REDACTED], at p. 1.

⁴¹ IEDM interview with [REDACTED].

⁴² IEDM interview with [REDACTED].

⁴³ Use of Force – Duty CM Checklist, [REDACTED].

were involved in the incident did not write reports. CSC has acknowledged a need for improvement: all staff involved are expected to complete SORs.⁴⁴

[85] SORs allege

[86] There are some inconsistencies in the SORs:

- SOR [REDACTED], SOR [REDACTED], and [REDACTED] indicate or strongly suggest
i
i
- SOR [REDACTED] claims “officers
,
i
- SOR [REDACTED] states

-

⁴⁴ CSC’s written answer to the IEDM. [REDACTED].

⁴⁵ SORs [REDACTED],

- SOR [REDACTED] alleges |

-

[87] SOR [REDACTED] appears

[88]

[89] The CM's SOR confirms

6.1.4. Reliability of information and findings regarding the [REDACTED] incident

[90] The video footage

[91]

[92] I find the SORs' reliability questionable due to the inconsistencies and omissions described above.

[93] I am unable to make conclusive findings about what happened inside the cell.

[94]

⁴⁶ Seizure tag, [REDACTED]. SOR [REDACTED] indicates

⁴⁷ SOR [REDACTED].

⁴⁸ SOR [REDACTED].

⁴⁹ The first page; the electronic scan of the second page of this application is mostly unreadable; the original was provided to the [REDACTED] Courthouse.

[95]

. I am mindful of the broader context: evidence shows CSC staff disproportionately use force against I

6.2. Risks towards staff

[96] CSC's position is that staff safety concerns prevent 's integration anywhere on ■■■■■, because the officers involved in the incident on ■■■■■ work throughout the unit. Two officers are opposed to his return.⁵¹

[97]

CSC appears to presume intent to harm from these acts.

[98]

[99] CSC records confirm that I spoke to staff of his desire to mediate with officers on at least ■■■■■, ■■■■■, ■■■■■, ■■■■■, and ■■■■■.⁵³

[100] I note that the majority of staff involved in the ■■■■■ incident did not take a position on 's return to the unit.⁵⁴

[101] Moreover, in the immediate aftermath of the incident, the CM was willing to let return to his cell on ■■■■■.

[102] As summarized above, ■■■■■ has been participating in SIU activities, particularly in the last two months. This shows an engagement with his correctional plan and effort to make progress on his risk factors. The ■■■■■ incident (see para. 49 above)

⁵⁰ See: Office of the Correctional Investigator, Annual Report: 2020-2021, 2021/06/30, at pp. 15 - 21.

⁵¹ CSC's written answers to the IEDM, ■■■■■.

⁵² IEDM interview with ■■■■■.

⁵³ SIU activity log.

⁵⁴ CSC's written answers to the IEDM, ■■■■■.

[103] I believe CSC should be able to manage staff safety risks if [redacted] were to return to [redacted], as in other maximum-security populations. CSC has not clearly established why the risk would be higher there than in the other maximum-security populations CSC has proposed for

[104] CSC should ensure that if [redacted] returns to a mainstream population, he can continue to receive the support of [redacted] and regular mental health services.

6.3. Range options at MAX1

[105] CSC considers [redacted] cannot integrate [redacted] due to his profile. I accept this position and will concentrate the below analysis on the most viable options.

6.3.1. [redacted]'s range placement history at MAX1

[106] [redacted] has been housed in [redacted] and [redacted] at MAX1.

[107] Previous SIU decision documents from [redacted] show that on [redacted], [redacted] requested to leave [redacted] and go to the SIU. On [redacted], he integrated a [redacted] population.

[108] [redacted].
[redacted] He was transferred to the SIU that day.

However, on [redacted], the authorization was cancelled: CSC decided he could safely re-integrate [redacted].

[109] There was an issue for [redacted] in [redacted] in [redacted]: he requested to leave the range and re-integrated [redacted]. This followed a [redacted] incident.

[110] N

6.3.2. CSC's position with regard to integration options

6.3.2.1. Unit [redacted]

[111] CSC's position on [redacted]'s ability to integrate unit [redacted] has evolved during his SIU stay.

[112] In the [redacted] SIURC recommendation, for the SDC decision, the SIURC stated,

The MED1

Department does not support the return to the [integrated population] for inmate [redacted] for security reasons.”⁵⁵

[113] However, the [redacted] SIURC recommendation for the current decision explains,

Based on a revaluation [sic] of the variables preventing him from integrating [redacted], it was determined on [redacted] that unit [redacted] is an alternative to the SIU.”⁵⁶

[114] CSC has acknowledged, “[t]ypically offenders who have resided in [redacted] or are not always welcome back to [redacted]” but stated, “the inmate rep and other offenders have indicated that [redacted] could return to the range at this time.”⁵⁷

[115] The SIURC recommended [redacted] be released from the SIU to [redacted].⁵⁸

[116] The SIURC also explained that [redacted] expressed a preference to transfer to unit [redacted], and wished to speak to the [redacted] inmate committee before integrating [redacted]. [redacted] was given the chance to transfer to [redacted] on [redacted], but he did not accept.⁵⁹

[117] Due to renovations on [redacted], all inmates who were there are now on [redacted], which limits bed space.⁶⁰ I do not know whether there is actually a space at this time of issuing this decision; I had requested information from CSC about this issue but CSC’s [redacted] response did not state whether a bed was free.

6.3.2.2. [Integrated population unit]

[118] The [redacted] SIURC stated [redacted] could not re-integrate unit [redacted] due to issues with inmates on those ranges (see para. 112 above). However, the [redacted] recommendation did not mention any potential inmate-related conflicts on [redacted].

[119] In a written request, I asked CSC to clarify any ongoing concerns with regard to unit [redacted]. I requested,

“Please provide specific examples, supporting information, and details (for example, the nature of the previous issues, dates of previous incident(s), names of any incompatible inmates or inmates remaining in that population with whom he’d have potential issues) to substantiate these general claims.”

⁵⁵ SIURC recommendation, [redacted], in SDC decision, [redacted], at p. 4.

⁵⁶ SIURC recommendation, [redacted], at p. 2.

⁵⁷ CSC’s written answers to the IEDM, [redacted].

⁵⁸ SIURC recommendation, [redacted], at pp. -3.

⁵⁹ Case management entries, SIU activity log, [redacted].

⁶⁰ CSC’s written answers to the IEDM, [redacted].

[120] CSC's response stated, "With regards to █████ as explained above given the incident and the officers still present in that unit, █████ in totality is not an option." No answer was provided regarding any potential issues between █████ and other inmates on █████.

6.3.3. █████ s preferences

[121] The SIU activity log shows █████ has been fairly consistently concentrated on staying at MAX1. On █████, █████ said he wanted to return to █████, █████, or the Range (█████, "█████" range █████), but he was told MED1 was processing him for an inter-regional transfer.⁶¹ On █████, he refused the

[122] In my █████ interview with █████ he said he would rather go back to █████ but would have no problems on other ranges on █████.⁶³ He is more comfortable with █████ than █████. He noted that he got a medium-security classification from █████, and feels he has better chances there.

[123] █████ was not sure why there had been delays preventing him from meeting the █████ committee. CSC's log does not show any meeting since █████, which was before CSC had accepted to allow █████ to integrate there.

6.3.4. Overall IEDM comments regarding range options

[124] As noted above, I find staff safety concerns on █████ should be manageable. Moreover, CSC has not established that inmate-related issues on █████ prevent █████ from safely integrating a range there; the general statement from the █████ SIURC is not sufficient, and CSC did not provide additional information or explanation.

[125] I accept CSC's most recent position that █████ can integrate █████'s request to meet with the inmate committee is reasonable, though. CSC should facilitate this meeting as soon as possible, as well as a meeting with a █████ representative.

[126] Considering the information as a whole, it appears █████ might be slightly better for █████ avoiding potential conflicts with staff, whereas █████ might be a more appropriate population considering he was there before his transfer to MED1.

⁶¹ PO entry, CWR, █████. See also: MAI entry, CWR, █████; PO entry, CWR, █████.

⁶² Case management entry, SIU activity log, █████.

⁶³ IEDM interview with █████.

6.4. Penitentiary placement and institutional transfer options

[127] At MAX1, [REDACTED] is far from his home region and thus his [REDACTED] culture. From this perspective, [REDACTED]'s placement at MAX1 is inappropriate [REDACTED]'s [REDACTED] has reportedly written to CSC requesting that he be "admitted [REDACTED] | in [REDACTED] to be closer to family."⁶⁴

[128] However, in my interviews with [REDACTED], he commented that he feels he can be more successful in the [REDACTED] region than in [REDACTED]. This is because it allows him to stay further away from [REDACTED] in his home region.⁶⁵ He observed he was able to obtain a medium-security classification from MAX1.

[129] [REDACTED]'s written comments received [REDACTED] are similar: he states he is trying to cascade back down to medium security, [REDACTED]. He feels MAX1 has more resources for him and he would be willing to do a behavioural contract.

[130] In my decision issued [REDACTED], I had noted [REDACTED]'s concerns about his transfer and that it was having an impact on him and his participation in SIU services. Among my recommendations, I had recommended that CSC "[p]ause the inter-regional transfer process and develop an interventions plan setting out behavioural expectations for his return to a population at MAX1." CSC's response indicated that it had been determined he could not return to an MAX1 population and an inter-regional transfer was necessary; the recommendation was not accepted.

[131] CSC planned to transfer [REDACTED] to [maximum-security institution, "MAX2"] on [REDACTED].

[132] In my [REDACTED] interview with [REDACTED] he reported that his PO had told him he would "not be going anywhere anytime soon," so the transfer came as a "complete shock." He was not packed, and he did not want to go because of processes underway: his [REDACTED] application, an inquiry [REDACTED] at MAX1,⁶⁷ and the current "90-day" review. [REDACTED] did not know about the transfer ahead of time either and was not involved in communicating with [REDACTED] about it. [REDACTED] said that if he had been told of the transfer ahead of time, he would have gone.⁶⁸

⁶⁴ Mental health clinical notes, [REDACTED].

⁶⁵ IEDM interview with [REDACTED].

⁶⁶ Case management entry, SIU activity log, [REDACTED].

⁶⁷ It appears he participated on [REDACTED].

⁶⁸ IEDM interview with [REDACTED].

[133] CSC's CWR shows that his PO⁶⁹ met with him several times throughout his SIU stay to discuss his preferences and potential transfer options, including MAX3, MAX4, MAX5, and MAX6. requested to go to MAX2 on [REDACTED], but was told it was too late as his transfer to MAX7 was approved.⁷⁰ However, on [REDACTED], a notice of transfer to MAX2 was shared.⁷¹ He then rebutted that option on [REDACTED], stating his preference to stay at MAX1.⁷² In the morning of [REDACTED], he told a staff member, "he was advised that he won't be going anywhere anytime soon."⁷³ However, that afternoon, his PO tried to meet with him to share the final transfer decision for MAX2. Her note describes

(

[134] They met on [REDACTED]. The PO's note suggests the meeting mainly concentrated on stressors he was dealing with [REDACTED] his potential integration of [REDACTED], and his upcoming SIURC.⁷⁴

[135] They met again in the afternoon of [REDACTED], when they discussed the possibility of integrating [REDACTED], which was not supported by the SIO at the time.⁷⁵ Records suggest there was no follow-up with [REDACTED] on that issue before CSC's attempt to transfer him on [REDACTED]. CSC's records imply the decision to put him on the [REDACTED] flight was a last minute decision after a spot opened up.⁷⁶

[136] More recently, CSC records show [REDACTED] asked about going to [REDACTED] and said on [REDACTED] and [REDACTED] that he wants to go to MAX2, along with another inmate.⁷⁸ In my [REDACTED] call with [REDACTED] he clarified that he would rather just go back to a population at MAX1.

[137] I find there were significant efforts to meet with [REDACTED] consider and adapt to his transfer preferences –if not his desire to stay at MAX1–, and provide general notice about the transfer to MAX2. He seems to have been ambivalent about MAX2.

[138] However, since the [REDACTED] and [REDACTED] conversations focused on MAX1, CSC's intentions may have been unclear. Since the flight decision was last minute, it is possible [REDACTED] had been told he would remain at MAX1 for some time, as he says, despite the prior approval of his transfer to MAX2. It appears [REDACTED] was not given advance warning of the day or a more precise expected timeframe of the transfer. It may have been useful to involve [REDACTED] staff, or other staff he had developed a

⁶⁹ Although most meetings were with one PO, he also met with two other POs, including one from MED1.

⁷⁰ PO entry, CWR, [REDACTED].

⁷¹ PO entry, CWR, [REDACTED].

⁷² A/MAI entry, CWR, [REDACTED].

⁷³ Indigenous activities entry, SIU activity log, [REDACTED].

⁷⁴ PO entry, CWR, [REDACTED].

⁷⁵ PO entry, CWR, [REDACTED].

⁷⁶ See: case management entry (on SIURC), SIU activity log, [REDACTED].

⁷⁷ Case management entry, SIU activity log, [REDACTED].

⁷⁸ Professional Visit - By Phone entry (PO), SIU activity log, [REDACTED]; case management entry, SIU activity log, [REDACTED].

positive rapport with, in the process of notifying him about the transfer, particularly closer to or on the actual date. Additional communication with closer to the transfer might have clarified the situation.

[139] Finally, I note that four different POs (but mainly two), including one from MED1, met with him during his SIU stay to discuss his options. Greater continuity in POs may have been beneficial.

[140] 's case shows that last minute decisions to transfer someone, even if intended to end an SIU stay, can have harmful consequences.

6.5. Security classification

[141] 's current SIU placement followed not long after his security level re-classification from medium to maximum-security. The Security Reclassification Scale ("SRS") of , gave a score of , in the medium security range, so his security level increase was based on an override. The rationale for this decision is set out in an AFD dated , completed by his MED1 PO. The AFD reviews previous incidents in and at both MAX1 and MED1.

[142] An incident on resulted in him being transferred to restricted movement unit: he was non-compliant during a section 53 search, reportedly "physically resistive and assaultive", and several contraband items were found in his cell.⁷⁹ Regarding this incident, 's comments to me on were similar to his previous comments to CSC staff, summarized in the AFD.⁸⁰ He admits he barricaded his cell. He claims he would have complied if he had the chance; once in his cell, staff gave no directions, and he was thrown to the ground. For the purposes of this decision, I have not examined this incident closely (e.g. I have not viewed video footage).

[143] The final security reclassification decision was issued .

[144] I find the basis for the security reclassification, as set out in the AFD, reasonable. Further incidents since 's return to MAX1 suggest his maximum-security classification is currently appropriate and he needs to show more consistent progress before returning to a medium-security institution.

⁷⁹ AFD – ITI and OSL, , at pp. 6 - 7.

⁸⁰ AFD – ITI and OSL, , at p. 7.

7. CONCLUSIONS

[145] Under s. 37.83(3) of the CCRA, I conclude CSC took all reasonable steps to provide the required opportunities in the SIU since my initial decision under s. 37.83(1) of the CCRA.

[146] Under s. 37.8 of the CCRA, I find [REDACTED] should be released from the SIU. I find he could integrate the [REDACTED] population as recommended by CSC. I also find the staff safety concerns on [REDACTED] should be manageable, like in other maximum-security populations, and [REDACTED] is more likely to integrate this population. CSC has not established [REDACTED] would have issues with other inmates there.

[147] I urge CSC to facilitate [REDACTED]'s meetings with inmate committees as soon as possible to increase his confidence about integrating. I also encourage CSC to ensure a continuity of support services – notably, [REDACTED] cultural support and mental health services – for [REDACTED] if he integrates a mainstream population at MAX1.

Janine Lespérance
Independent External Decision-Maker

Date: [REDACTED]

Name:
FPS Number: [REDACTED]
Correctional Institution: MED1, MAX1
Date of CSC Senior Deputy Commissioner Decision: [REDACTED]
Date of the Present Decision: [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DETERMINATION UNDER SECTION 37.8 OF THE *CORRECTIONS AND
CONDITIONAL RELEASE ACT, S.C. 1992, c. 20***

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1. INTRODUCTION

[1] On [REDACTED], the Senior Deputy Commissioner (“SDC”) of Correctional Service Canada (“CSC”) determined, pursuant to section 37.4 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) that [REDACTED] should remain in the Structured Intervention Unit (“SIU”) at [maximum-security institution, “MAX1”] in [REDACTED]. [REDACTED] was transferred to the MAX1 SIU from the [medium-security institution, “MED1”] [REDACTED].

[2] As an Independent External Decision-Maker (“IEDM”), I must determine whether Mr. K should remain in the SIU, under s. 37.8 of the CCRA.

2. SUMMARY

[3] There is not a sufficient security basis to justify [REDACTED]’s continued placement in the SIU. Although there were previous incidents, his SIU placement and security reassessment to maximum security were largely based on his non-compliant reaction to a proposed strip search. The justification for this search was questionable. CSC reports do not support the allegation that he incited others at the time of that incident. The months since have been uneventful. In the SIU, [REDACTED] has had a job, participated in correctional programming, and worked on his education.

3. INFORMATION CONSIDERED

[4] For this review, the following items are my sources of information:

- SIU daily activity log in the SIU application database, for the period as of [REDACTED] Institutional charges log
- Memorandum- SIU Review Committee Recommendation for IEDM Decision, dated [REDACTED]
- Regional review, dated [REDACTED]
- Memorandum: Concerns with disclosure of Protected C information IEDM review [REDACTED], dated [REDACTED]
- Referral Decision Sheet for Institutional transfer (involuntary), dated [REDACTED]
- Senior Deputy Commissioner decision, dated [REDACTED]
- Referral Decision Sheet for Offender security level, dated [REDACTED]
- Institutional head 30-day SIU transfer decision, dated [REDACTED]

- Incident reports, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Institutional transfer rebuttal representation (by [REDACTED]), dated [REDACTED]
- Correctional plan – update, dated [REDACTED]
- Security reclassification scale, [REDACTED]
- Assessment for decision – Institutional transfer and Offender security level, dated [REDACTED]
- Threat risk assessments, dated [REDACTED] and [REDACTED]
- Institutional head 5-day SIU transfer decision, dated [REDACTED]
- Casework record log entry, dated [REDACTED]
- Statement/observation reports ([REDACTED], [REDACTED], [REDACTED]), dated [REDACTED], [REDACTED], and [REDACTED]
- SIU transfer authorization, dated [REDACTED]
- Video footage of incident that occurred [REDACTED]
- Assessment for decision – Institutional transfer and Offender security level, dated [REDACTED]
- Criminal profile report – original, dated [REDACTED]

[5] I sent [REDACTED] via CSC, a summary of the information I am considering for this review. I also offered him the opportunity to provide written representations, in accordance with s. 37.72 of the CCRA, or to speak to me in a call or meeting.

[6] On [REDACTED], I received signed confirmation from CSC that [REDACTED] did not wish to share his views with me through one of the means offered. I had spoken to him by telephone on [REDACTED], in the context of a previous conditions of confinement review.

4. CONTEXT

[7] [REDACTED] is [REDACTED] years old and [REDACTED]. He has [REDACTED].

[8] He is serving a sentence of [REDACTED] for [REDACTED], for which the statutory release date is [REDACTED]. Until his transfer to the MAX1 SIU, he had been at MED1 [REDACTED]. As of [REDACTED], [REDACTED] was [REDACTED] the ICPM Multi-Target Moderate Intensity program. His [REDACTED] correctional plan states that he had been “doing reasonably well in the program.”

[9] Currently, CSC classifies him at the maximum-security level. His level was recently increased from medium security, as a result of an incident in the [REDACTED] of [REDACTED]. This was the same incident that led to his [REDACTED] SIU placement. To briefly summarize the incident, CSC staff wanted to interview him and strip search him to locate a cellphone. He perceived he had been racially targeted. A physical struggle ensued.

[10] His transfer to the SIU was authorized on [REDACTED], under s. 34(1)(a) of the CCRA. He was moved to the [REDACTED] in [REDACTED]. The MED1 Warden’s transfer decision was issued [REDACTED]. [REDACTED] was physically transferred from the MED1 [REDACTED] to the MAX1 SIU on [REDACTED].

5. LEGAL FRAMEWORK

5.1. Inmates' entitlements in the SIU

[11] CSC's obligations toward inmates held in the SIU are set out in s. 36 of the CCRA. CSC must allow inmates to spend at least four hours outside of their cell and two hours meaningfully interacting with others daily, through a range of different activities. There are limited exceptions. CSC must be proactive and encourage inmates to spend time out of their cell and interacting with others. The amounts of time set out in s. 36(1) are minimums.

5.2. Framework for reviews under s. 37.8 of the CCRA

[12] An IEDM decision under s. 37.8 of the CCRA concerns an inmate that has been in the SIU for around 90 days, a long stay. Such a decision is to be issued 30 days after a CSC Commissioner decision under s. 37.4 of the CCRA, which itself follows by 30 days an institutional head decision under s. 37.3(1)(b) of the CCRA concluding that an inmate should remain in an SIU.

[13] S. 33 of the CCRA states that an inmate's confinement in an SIU should "end as soon as possible." For s. 37.8 decisions, there is a presumption that an inmate should be released from the SIU. S. 37.82(1) of the CCRA establishes:

"The [IEDM] may determine under sections 37.8 and 37.81 that an inmate should remain in a [SIU] only if the [IEDM] believes on reasonable grounds that allowing the inmate's reintegration into the mainstream inmate population

(a) would jeopardize the safety of the inmate or any other person or the security of the penitentiary; or

(b) would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence [emphasis added]."

[14] Belief on reasonable grounds that reintegration into the mainstream inmate population "would" jeopardize safety or security, implies a standard higher than a mere possibility of incidents if the inmate were to be released from the SIU. It implies a heightened probability of safety or security actually being jeopardized. I interpret s. 37.82(1) of the CCRA as requiring an IEDM to identify a factual basis to justify a decision to maintain an inmate in an SIU.

[15] If the standard applied were too low, there would be a basis for maintaining an inmate in the SIU in practically all cases of inmates initially transferred to the SIU for posing a security risk. This outcome would be at odds with the legislation's intent and provisions.

- [16] In a decision under s. 37.8 of the CCRA, the IEDM must consider the inmate's correctional plan, the appropriateness of their confinement in the penitentiary in which they are incarcerated, and the appropriateness of their security classification, in accordance with s. 37.82(2) of the CCRA. Para. 37.82(2)(d) states that the IEDM will take into account "any other consideration that he or she considers relevant."
- [17] Although s. 37.8 decisions are primarily to determine whether an inmate should remain in the SIU, I consider that it is also appropriate for an IEDM to make constructive recommendations, particularly when the inmate has turned down integration options that CSC considers viable.

6. ANALYSIS

6.1. Summary of positions

6.1.1. CSC

- [18] I consider that the SIU Review Committee ("SIURC") recommendation [REDACTED] presents CSC's position. CSC considers that in an [REDACTED] incident at MED1 [REDACTED] refused direct orders; :

[REDACTED] this was a sufficient basis to transfer [REDACTED] to the SIU and increase his security level to maximum-security. In the [REDACTED] decision, the SDC decided he should remain in the SIU pending his involuntary inter-regional transfer to a maximum-security institution.

- [19] With regard to his placement options, the [REDACTED] SIURC states,

6.1.2.

- [20] It would have been useful to speak to [REDACTED] again before issuing this decision. I conducted a brief phone interview with him on [REDACTED], in the context of a previous decision on the conditions of confinement in the [REDACTED] and SIU. On that occasion, he made some comments relevant to the current review. Also, many parts of his ten-page rebuttal to CSC, dated [REDACTED], regarding the institutional transfer decision, are relevant to this decision.
- [21] In his rebuttal, [REDACTED] states that the [REDACTED] incident arose from CSC having received false intelligence [REDACTED].

6.2. Security classification

6.2.1. The recent reassessment of [REDACTED]'s security classification

[22] The custody rating scale ("CRS") completed on [REDACTED], yielded a score of "minimum" for [REDACTED], but his case management team did not agree with this, and recommended a variance. An [REDACTED] assessment for decision recommended his placement to MED1, based on "moderate" categorizations for institutional adjustment, escape risk, and public safety. At that time, [REDACTED] "did not voice specific opposition" to a placement at MED1, but his expressed preference was MED2 ([REDACTED]).

[23] [REDACTED]'s security level was recently addressed in an assessment for decision dated [REDACTED]. It explains (pp. 3-4):

This report will conclude with a recommendation of Maximum Security, with individual ratings of High Institutional Adjustment, Moderate Escape Risk and Moderate Public Safety Risk."

[24] Although the writer opines that certain factors could have yielded a higher rating on the scale had they been factored in, I note that on the scale itself, "correctional

plan motivation” is answered as “no motivation, limited participation in programs to address identified factors in C.P.” which seems incorrect, given that

[25] The assessment for decision sets out a “high” rating for institutional adjustment. It mentions misconduct while in provincial custody in [REDACTED], in remand custody, and in federal custody since [REDACTED], referring to incidents in [REDACTED], [REDACTED], and [REDACTED], and the recent one on [REDACTED]

p
“i

[26] The incidents are summarized as follows (p. 4):

[27] s rebuttal, addressed to the MED1 Warden, addresses these incidents.

[28] For the [REDACTED], incident, he states (p. 6):

[29] With regard to the [REDACTED], incident, states that

[30] With respect to the [REDACTED], incident, he alleges that

[31] Finally, I argues that I

o
le

[32] I do not have full information on these previous incidents. I find I 's account of the [REDACTED] incidents plausible.

6.2.2. The context of the [REDACTED] Incident and the basis for strip-searching

[33] The [REDACTED] incident occurred because MED1 staff acted on information received indicating that

[34] Strip searches are extremely invasive. They intrude on a person's constitutionally-protected rights; notably, the right to be secure against unreasonable search or seizure, guaranteed by section 8 of the Canadian Charter of Rights and Freedoms. The Supreme Court of Canada has held that strip searches are "inherently humiliating and degrading for detainees regardless of the manner in which they are carried out and for this reason they cannot be carried out simply as a matter of routine policy" (*R. v. Golden*, 2001 SCC 83 (CanLII), [2001] 3 SCR 679, at para. 90; emphasis added). The Court also noted, "Women and minorities in particular may have a real fear of strip searches and may experience such a search as equivalent to a sexual assault," and African Canadians "are overrepresented in the criminal justice system and are therefore likely to represent a disproportionate number of those who are arrested by police and subjected to personal searches, including strip searches" (para. 83). Equality and discrimination concerns are therefore relevant.

[35] Inside penitentiaries, privacy rights must be balanced against security considerations. Inmates cannot expect the same degree of privacy as people outside. In cases of individual suspicion, the CCRA allows for strip searches when certain conditions are met, notably:

- there are reasonable grounds to believe an inmate is carrying contraband, and
- a strip search is necessary to find the contraband (see s. 49(3), CCRA).

[36] It appears that before or at some point during the [REDACTED] confrontation, [REDACTED] was informed of CSC staff's intention to strip search him.

[37] From the information before me, it does not appear that the CM took steps to verify the truth of the information received suggesting
The information does not appear to have been corroborated by other information. It was ultimately shown to be false. There is no indication that CSC staff considered

[38]

[39] I am not satisfied there was a sufficiently compelling basis to

6.2.3. The nature of the [REDACTED] incident

[40] Having initially requested access on [REDACTED], I was able to view video footage of the [REDACTED] incident in the afternoon [REDACTED]. It was also at this time that I was provided access to the “protected C” reports on the information received suggesting that I
I took detailed notes at the time, but I have not been able to review this information at the time of drafting, which is not ideal. The following description does not reflect a full investigation of the incident and will not make any conclusions regarding the use of force or criminal responsibility.

[41]

[42]

[43]

[44]

6.2.4. The allegation of

[45] With regard to s alleged

[46]

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6.2.5. s correctional plan and his recent behaviour

[49] _____

[50] Almost months have passed since the [redacted] and [redacted] incidents, and more than months have passed since the assessment for decision.

[51]

[52] From the SIU log, it appears he has had a job in the SIU as a [REDACTED] since [REDACTED]. The [REDACTED] SIURC memorandum summarizes, "Beside one occasion where he left early [REDACTED], he has been doing his job consistently." It appears he also stayed in bed on [REDACTED].

[53] The SIURC also states, "
" This reflects the information in the SIU log.

[54]

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[55] SIU log notes for his participator indicate:

[56] His participation in social programs has been less consistent. The SIURC summarizes,

[57] The SIU log is essentially consistent with this statement. Reasons for him turning down social program sessions include that he wanted to isolate due to COVID-19, he wanted to clean his room, it was too early, he wanted to “take it easy” over the weekend, he was feeling sick with a sore throat, and he wanted to concentrate on school work to get his work done to graduate. This last reason appears a few times in the log.

[58] A couple of the SIU log notes for the sessions he did participate in are:

6.2.6. IEDM observations in relation to security level

[59] In my view, both appropriate and inappropriate factors were considered in the assessment for decision recommending to increase s security level, and some relevant factors were not given meaningful consideration. The main incidents that would support the increase of his security level are those that occurred on ■■■■; ■■■■; ■■■■; ■■■■; and ■■■■. There were considerable lapses of time between these incidents and the first was over a year ago. Moreover, the factors described above would justify the ■■■■ and ■■■■ incidents being given lesser weight in the analysis. In the institutional head's ■■■■ decision on security level, in the referral decision sheet, the main focus was the ■■■■ incident. For this incident, the tenuous basis for the strip search should be considered a mitigating factor in assessing 's responsibility, and the allegation of incitement should not be considered at all, in my view.

[60] I also note that the decisions on institutional transfer and security level summarize s position, but do not give any apparent consideration to his comments and whether they have any validity.

[61] Moreover, almost three months have passed since the cited incidents. I believe the most recent period should be taken into account.

[62] The information shows that since his transfer to the SIU, [REDACTED] has shown progress in relation to his correctional plan, although it seems premature to consider it significant or sustained progress.

[63] Overall, I believe there is some basis to show [REDACTED] could be managed in a medium-security institution without undue security risk as an alternative to an SIU placement, with the understanding that any involvement in further incidents would almost certainly entail his transfer to a maximum-security institution.

6.3. Penitentiary placement

[64] Under the CCRA, penitentiary selection should be based on finding the least restrictive environment while considering safety and security, accessibility to home community and family, the cultural and linguistic environment, and program availability (see. s. 28, CCRA).

[65] From the perspective of accessibility to home community and family, the [REDACTED] region is clearly the most appropriate option for [REDACTED]. His rebuttal makes it clear that this is a major priority for him.

[66] CSC has planned his transfer to MAX2 in [REDACTED]. The assessment for decision states ([REDACTED]), "Incompatible considerations [...] are not believed to impact a placement at MAX2 which is the current consideration." The transfer comments from MAX2, which accepted his placement there, stated, "There are no known STG and/or incompatible concerns at the present time that would preclude his transfer to MAX2 and placement in our [REDACTED]."

[67] However, it is clear from his rebuttal that [REDACTED] is very opposed to a transfer to MAX2. He expresses strong concerns about being sent [REDACTED] away from his [REDACTED] family. He states (p. 3),

"I have no community support out of province whatsoever, no family nothing, [REDACTED] family are right here [REDACTED] as they always have been,

[68] In addition, he states (██████) that the most important part of his rebuttal is that he has safety concerns in MAX2 that he had “not reported to anyone because the time has never called for it until now.” He continues,

[69] Apart from MAX2, comments were requested from the ██████ region. The ██████ SIURC states that the ██████ region had yet to respond.

[70] ██████ is currently at MAX1 in ██████, ██████ in the SIU. ██████, it would not be appropriate for ██████ to integrate ██████ because he does not have this profile. Both ██████ and CSC seem to accept this.

[71] The ██████ maximum-security institution ██████ is MAX3, but it does not appear to be a viable option (██████)

[72]

[73] Because CSC reassessed ██████ to maximum security, medium-security institutions were not considered for him and I do not have information regarding

these options. It would appear that another medium-security institution [REDACTED] would be more appropriate than MED1.

7. CONCLUSION

[74] There appear to be options for [REDACTED] to integrate a mainstream population at a penitentiary other than MAX1, at the maximum security or the medium security level, without unduly jeopardizing the safety or security of the penitentiary. I do not find there is a sufficient safety or security basis to justify him remaining in the SIU in accordance with the criteria of the CCRA. [REDACTED] should not remain in the SIU.

Janine Lespérance
Independent External Decision-Maker

Date: [REDACTED]

Inmate Name: [REDACTED]
FPS Number: [REDACTED]
Correctional Institution: MAX1
Date of s. 37.83(1) notification: [REDACTED]
Date of CSC Senior Deputy Commissioner Decision: [REDACTED]
Date of the Present Decisions: [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DETERMINATIONS UNDER SECTION 37.8
AND SUBSECTION 37.83(1)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, c. 20**

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SUMMARY

[redacted] was quite isolated in the SIU. However, she regularly had access to a variety of activities. She rarely went to recreation, but she participated in programs – particularly behavioural counselling and social programs– except school. There were few correctional programs opportunities, and no progress towards offering her core programming. She no longer has a group. She would like more program opportunities and to get to go out more for her [redacted] job. There were encouragement efforts. Under s. 37.83(1) of the CCRA, I find CSC took all reasonable steps to provide the required opportunities in the SIU.

The situation at MAX1 has not changed since my last decision on [redacted] ’s SIU placement: her reintegration would be unsafe. An institutional transfer is required.

[redacted] wants to go to MAX2 and integrate there. She heard there were bedspace issues and is willing to wait in their SIU. CSC just identified MAX2 as appropriate for her. SIU to SIU transfers are appropriate in some cases. In decisions on how and when to end SIU stays, CSC should consider broader principles, including dignity, humanity, and respect for [redacted] identity. [redacted] should be transferred to MAX2 as soon as possible, unless it will interfere with her [redacted]. Under s. 37.8 of the CCRA, I find [redacted] . should not remain in the MAX1 SIU.

1. INTRODUCTION

[1] On [redacted], the Senior Deputy Commissioner (“SDC”) of Correctional Service Canada (“CSC”) determined, under section 37.4 of the *Corrections and Conditional Release*

Act, S.C. 1992, c. 20 (“CCRA”) that [redacted] should remain in the Structured Intervention Unit (“SIU”) at [maximum-security institution (“MAX1”)] in [redacted].

[2] In addition, on [redacted], CSC notified the Independent External Decision-Makers (“IEDMs”) that a decision under s. 37.83(1) of the CCRA concerning [redacted] is necessary.

[3] As an IEDM, if I have jurisdiction, I must answer the following questions:

- Did CSC take all reasonable steps to provide [redacted] at least four hours outside her cell and two hours of meaningful human contact each day in the SIU, and encourage her to take advantage of those opportunities?²
- Should I [redacted] remain in the SIU?

2. SOURCES OF INFORMATION

[4] I have considered CSC documentary information, including the SIU daily activity log (“the log”), and [redacted]’s oral comments of [redacted] (see annex for details). The interview took place on [redacted].

3. CONTEXT

[5] I [redacted]. Since [redacted], she has been serving an [redacted] sentence, her [redacted] federal sentence. [redacted]. She [redacted]. CSC has classified her at the maximum-security level.

[6] I [redacted]’s SIU placement has been authorized sixteen times.

[7] She has been in the MAX1 SIU since [redacted], aside from a brief transfer to MAX1’s [redacted] [redacted].

[8] I have issued previous decisions concerning [redacted]. This decision should be read alongside my [redacted] and [redacted] decisions.

4. ANALYSIS UNDER S. 37.83(1) OF THE CCRA

4.1. Do I have a legal basis to review [redacted]’s time-out-of-cell opportunities?

[9] Yes, I do.

² CCRA, s. 37.83(1).

³ [redacted] history log.

[10] If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.⁴

[11] CSC's log shows I [REDACTED] was isolated from [REDACTED], triggering a review. If the date my last decision under s. 37.83(1) of the CCRA was issued is excluded, the review would have been triggered the next day. Either way, I have jurisdiction now.

4.2. What is the relevant period of review?

[12] This review focuses on [REDACTED] ("the period reviewed"), a period of 53 days.

[13] I consider it appropriate to assess the period since my last conditions of confinement decision, including the days since the five days that triggered the review.

4.3. How much time did [REDACTED] spend out of her cell and interacting with others each day?

[14] According to CSC's log, [REDACTED] spent four hours or more out of her cell on one day during the period reviewed (about 2% of all days). She did not leave her cell at all on 16 days (about 30% of all days). She had two hours or more of social interaction on 11 days (about 21% of all days). The average for time out of cell was about one hour and two minutes daily. The average for interaction was about 58 minutes.

[15] The daily totals are not very different from those for previous review periods. They varied throughout the period reviewed with no obvious trend.

4.4. Were the quantity and timing of offers adequate?

[16] Yes. I find CSC provided the "4+2" minimum opportunities.

[17] CSC's log shows [REDACTED] was offered the required minimum quantity of time out of cell and interaction each day. There were often six or more offers throughout the day, often for an hour or two of time out-of-cell.

[18] [REDACTED] said she was not getting the "4+2", mentioning insufficient program offers.⁵ [REDACTED] challenged the accuracy of some log information.

[19] However, she did not fully convince me that the log is very inaccurate and unreliable.

⁴ CCRA, s. 37.83(1).

⁵ IEDM interview with [REDACTED].

4.5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[20] CSC has not provided information about any special situations that affected opportunities for [REDACTED] and did not invoke a legal exception.

[21] There is some indication in the log that limited program room availability in the SIU affected her opportunities. This is an ongoing infrastructure challenge.

4.6. What type of opportunities did [REDACTED] have?

[22] The log shows [REDACTED] had access to a variety of activities.

[23] SIUs are meant to provide inmates access to leisure time as well as programs, interventions, and services that reflect their needs and interests.⁶

[24] [REDACTED] had the following types of opportunities:

- recreation: indoor common room and outdoor yard
- staff interactions (especially with her Parole Officer (“PO”) and Correctional Managers (“CMs”))
- correctional programs (the SIU Motivational Module (“MM-SIU”) program)
- social programs
- [REDACTED] cultural support
- religious support from the Chaplain
- work as a range representative
- school
- periodic mental health evaluations
- personal phone call

[25] She had some sort of program or intervention opportunity on 39 days (about 74%) of all days). While programs were regular in general, correctional programming was only offered twice. [REDACTED] would like social programs more often.

[26] She got a job at the start of the period reviewed, which is an improvement compared to the previous review period. However, the log shows she only went out once for her job ([REDACTED]).

[27] [REDACTED] said it is difficult to get out and do her job as : [REDACTED]
[REDACTED] When asked whether having a set time for her job would be helpful, she said it would be.⁷

[28] [REDACTED] said she has never gotten support for her as [REDACTED] person. She does not know any support group but knows there are groups [REDACTED].⁸

⁶ CCRA, para. 32(1)(b).

⁷ IEDM interview with [REDACTED].

⁸ IEDM interview with [REDACTED].

According to her PO, there had been discussion with [REDACTED] about getting outside support for her from [REDACTED] organization in case her application for [REDACTED] was unsuccessful, but [REDACTED] was not interested at the time.⁹

4.7. Did CSC make efforts to allow [REDACTED] to interact with other inmates?

[29] Yes, although [REDACTED] no longer has a group.

[30] Having a recreation group often reduces someone's isolation in the SIU a lot.

[31] The log shows [REDACTED] had a group for just under a month, leaving it at the start of [REDACTED].

[32] [REDACTED] described having trouble with getting in arguments with another inmate. She said it would be an issue with any group.¹⁰

4.8. Did CSC encourage [REDACTED] to participate in time-out-of-cell and interaction opportunities?

[33] Yes, there were encouragement efforts.

[34] An inmate may turn down opportunities in the SIU; there is a legal exception for "refusals."¹¹ Regardless, IEDMs must assess whether CSC encouraged them to participate in activities.¹²

4.8.1. Participation

[35] The log shows [REDACTED] rarely took recreation time, although she went out slightly more when she had a group. Her non-participation in recreation time contributed significantly to the daily totals for time out-of-cell being so low.

[36] Her participation was good in most types of interventions aside from school, although there were some refusals, sometimes because she felt unwell. She accepted 30 of 38 social programs offers, 10 of 12 behavioural counselling offers, 4 of 7 religious support offers, 4 of 5 [REDACTED] support offers, 1 of 2 correctional programs offers, and 2 of 16 school offers.

4.8.2. Healthcare

[37] The log shows [REDACTED] accepted one and turned down one periodic mental health assessment. She also had one healthcare appointment.

[38] [REDACTED] said she is getting "shit treatment" from healthcare. She mentioned her papers to set a date for [REDACTED] were supposed to be sent that day, but she was told the clinician was sick so it would be done the next day. Getting the

⁹ IEDM interview with PO [REDACTED], [REDACTED].

¹⁰ IEDM interview with I [REDACTED].

¹¹ CCRA, para. 37(1)(a).

¹² CCRA, s. 37.83(1).

done is important to her. She said she is “not even bothering” with mental health services as they say she does not meet the criteria.¹³

[39] It does not appear she was facing significant mental health challenges that affected her participation in SIU activities during the period reviewed. Her frustration regarding delays is understandable, but it is positive she has been able to progress towards [redacted] from the SIU.

4.8.3. Encouragement

[40] Encouragement efforts I note from the log include: verbal encouragement, checking in with her at her door outside of program offers, following up with her regarding requests (e.g. a purchase order), intervening to try to de-escalate a situation she was upset about, offering group program sessions, providing reassurance that she could go directly to a phone call regarding her surgery even if she came out for a meeting, offering materials, offering more than one program opportunity on a day, and offering a variety of opportunities.

[41] Correctional programs were infrequent, and there does not seem to have been any progress towards offering her the chance to [redacted] in the SIU as previously suggested.¹⁴ I consider this an area requiring attention. However, the other types of programs offered compensated for this shortcoming.

4.8.4. Potential forms of encouragement

[42] Apart from offering relevant correctional programming, I consider there should be renewed efforts to identify outside transgender support organizations for her. Based on [redacted]'s comments, consideration should be given to ways to allow her to come out more for her job, such as giving her a set time to go out, or potentially switching her to another job. Program sessions may also be an opportunity to mediate issues between her and other inmates or work on inter-personal skills so that she does not self-isolate from other inmates. Offering social programs more often would likely result in her spending more time out of cell, as she does participate frequently.

4.9. Did any other issues affect [redacted] in the SIU?

[43] [redacted] said she never got a “pen pack.” This issue is of low relevance to my decision under s. 37.83(1) of the CCRA, but CSC should discuss this with [redacted].

5. ANALYSIS UNDER S. 37.8 OF THE CCRA

5.1. Do I have a legal basis to review [redacted] s SIU placement?

¹³ IEDM interview with [redacted].

¹⁴ See: decision under s. 37.83(1) of the CCRA concerning [redacted], para. 25.

[44] Yes, my jurisdiction is uncontroversial.

[45] An IEDM decision under s. 37.8 follows CSC decisions concluding that the inmate should stay in the SIU, specifically: the institutional head's "5-day"¹⁵ and "30-day"¹⁶ decisions, and the SDC decision.¹⁷ If the SDC decides a person should remain in the SIU, an IEDM decision is triggered. It is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.

[46] As mentioned, the SDC decided [REDACTED] should remain in the SIU [REDACTED].

5.2. Can [REDACTED] integrate a mainstream population at MAX1?

[47] No. She should be transferred to another institution.

[48] SIU stays are meant to "end as soon as possible."¹⁸ I can only decide [REDACTED] should stay in the SIU if I have information that makes me believe her release "would jeopardize" safety, including her personal safety; or "would interfere" with a serious investigation.¹⁹ In my decision on [REDACTED]'s SIU placement, I must consider the appropriateness of her placement at MAX1.²⁰

[49] The criteria for a decision under s. 37.8 of the CCRA are the same as for a decision under s. 23.06(1) of the CCRR. I issued a decision under s. 23.06(1) concerning [REDACTED] on [REDACTED]. I will minimize repetition here.

[50] In my [REDACTED] decision, I found there were grounds to maintain [REDACTED]'s SIU stay; she could not safely integrate a population at MAX1. I had not received comments from [REDACTED] before that decision.

[51] [REDACTED]'s [REDACTED] interview comments confirmed that she does not feel she could safely integrate a population at MAX1, including the Range [REDACTED]. She said her reintegration of an MAX1 population is "not happening."²¹

[52] I do not have reasons to believe the situation for [REDACTED] at MAX1 has evolved since my [REDACTED] s. 23.06(1) decision concerning her.

5.3. Is [REDACTED]'s security classification appropriate?

[53] Yes, I find her maximum-security classification appropriate.

¹⁵ Under CCRA, s. 29.02(2).

¹⁶ Under CCRA, para. 37.3(1)(b).

¹⁷ Under CCRA, s. 37.4.

¹⁸ CCRA, s. 33.

¹⁹ CCRA, s. 37.82(1); CCRR, s. 23.06(2).

²⁰ CCRA, s. 37.82(2); CCRR, s. 23.06(2).

²¹ IEDM interview with [REDACTED].

[54] I must consider the appropriateness of [redacted] s security classification in my decision on her SIU placement.²² My analysis is the same as for my [redacted] decision (see paras. 43 to 48). There have been no recorded incidents involving [redacted] since [redacted], which is positive. However, a reclassification seems premature at this time.

[55] Considering that, ending her SIU stay requires that an appropriate maximum-security population be identified for her.

5.4. Is there another suitable transfer option for [redacted] ?

[56] Yes, [maximum-security institution, "MAX2"] has recently been identified as an appropriate transfer site for [redacted]

5.4.1. [redacted] s views

[57] In my [redacted] interview with [redacted], she confirmed her desire to transfer to MAX2 and integrate a population there. According to her, she will "go right to a range." They were nice to her when she was there overnight. She believes there is a range with [redacted] individuals on it, including a friend. She is aware MAX2 has had bedspace issues impeding her transfer. She said if need be, she will "sit" in the MAX2 SIU until a space opens up for her on a range.

5.4.2. CSC's position

[58] CSC had identified [redacted] s situation as a complex transfer case. I requested and provided transfer comments from different sites. As of [redacted],²⁴ MAX2 did not support her transfer there. MAX2 indicated they were "at capacity." They noted [redacted] s history of SIU placements [redacted] inmates had not historically integrated successfully. However, MAX2 had also indicated she would be suitable for their highest protection range.²⁵

[59] [redacted] s PO confirmed MAX2 has just been identified as an appropriate location for her transfer, through the complex transfer case process.

5.4.3. IEDM comments

[60] [redacted] has now been in the MAX1 SIU for roughly 117 days, following the [redacted] and [redacted] authorizations. This is a long-term SIU stay. It also follows closely after an SIU stay at [maximum-security institution, "MAX3"].

[61] Considering [redacted] s willingness to integrate at MAX2, I do not consider the previous reasons from MAX2 justify the continuation of [redacted] s SIU stay. While the

²² CCRA, s. 37.82(2).

²³ IEDM interview with [redacted].

²⁴ The specific date of MAX2's comments is not indicated.

²⁵ Memorandum: unsupportive transfer comments, [redacted].

risk of returning to an SIU exists, CSC should seek ways to support her ability to remain in a population and develop an integrated strategy.

[62] In addition, while SIU to SIU transfers should not be the norm, they can be appropriate in certain circumstances. They may allow someone to integrate a mainstream population sooner, as well as meet broader goals of the Canadian correctional system, such as by providing someone access to more appropriate supports for them.

[63] Finally, although I do not find there is a sufficient security rationale to prevent her transfer out of the MAX1 SIU to MAX2, CSC did not provide information regarding the procedures and logistics associated with

CSC should not schedule an inter-regional transfer if it will prevent her from getting

[64] S. 33 of the CCRA, on ending SIU stays as soon as possible, should not be read in isolation. It should be interpreted in a way that respects dignity and human rights, and interpreted holistically with other provisions of the CCRA, such as the principles of safe and humane custody, and of respecting her identity and expression.

6. CONCLUSION

[65] Under s. 37.83(1) of the CCRA, I find CSC took all reasonable steps to provide the required opportunities. Still, I suggest CSC consider the comments at para. 42 above regarding programming, her job, support for her and encouraging her to not self-isolate from other inmates.

[66] Under s. 37.8 of the CCRA, I find she should not remain in the SIU, and should be transferred to MAX2. However, this transfer should be delayed if it would interfere with

Janine Lespérance
Independent External Decision-Maker

Date: [REDACTED]

²⁶ See, e.g., social programs entry, SIU activity log, [REDACTED].

ANNEX: SOURCES OF INFORMATION AND [REDACTED]'S OPPORTUNITY TO PROVIDE COMMENTS

[67] I have considered the following sources of information from CSC:

- SIU daily activity log, for the period as of [REDACTED] in particular
- Threat risk assessments (“TRAs”), for the period as of [REDACTED] in particular
- Casework record (“CWR”) log, for the period from [REDACTED] to [REDACTED]
- Email to the IEDM from PO [REDACTED], [REDACTED]
- SIU Review Committee (“SIURC”) recommendation, dated [REDACTED]
- Regional reviews, dated [REDACTED] and [REDACTED]
- Memorandums – info sharing for review, dated [REDACTED] and [REDACTED]
- Memorandums – recreation group, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]
- Incident history log report, generated on [REDACTED]
- Institutional charges report, generated on [REDACTED]
- Correctional plan updates – SIU (“CPU-SIU”), dated [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Senior Deputy Commissioner (“SDC”) decision, dated [REDACTED]
- Statement/observation reports (“SORs”), dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Incident reports, dated [REDACTED], [REDACTED], and [REDACTED]
- Decision history log report, generated on [REDACTED]
- Segregation history log report, generated on [REDACTED]
- SIU history log report, generated on [REDACTED]
- Institutional head “30-day” SIU transfer decision, dated [REDACTED]
- Complex transfer case – intelligence stream preliminary assessment, [REDACTED]
- Institutional head “5-day” SIU transfer decisions, dated [REDACTED] and [REDACTED]
- Memorandums – integration options, dated [REDACTED] and [REDACTED]
- SIU transfer confirmation, dated [REDACTED]
- SIU transfer authorizations, dated [REDACTED] and [REDACTED]
- Health encounter notes, for the period from [REDACTED] to [REDACTED]
- Psychological/psychiatric assessment reports, dated [REDACTED] and [REDACTED]
- Memorandum – unsupportive transfer comments, dated [REDACTED]
- Mental health forms, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED]
- Mental Health Need Scale, dated [REDACTED]
- Mental health clinical notes, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]
- Memorandum – attempt to integrate unit, dated [REDACTED]
- Immediate needs – [REDACTED] dated [REDACTED]
- Correctional plan – updated (“CPU”), dated [REDACTED]
- Referral decision sheet – offender security level, dated [REDACTED]
- Criminal profile report (“CPR”) – amendment #1, dated [REDACTED]
- Assessment for decision – institutional transfer, dated [REDACTED]
- Assessment for decision – offender security level, dated [REDACTED]
- Security reclassification scale, dated [REDACTED]

- review – initial, dated [REDACTED]

[68] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered her the opportunity to provide written comments, to speak to me in an interview, and to have her lawyer involved in the process.

[69] I learned [REDACTED] would share her views. We spoke by telephone on [REDACTED], for approximately 27 minutes.

[70] After the interview with [REDACTED] I contacted [REDACTED] s PO. I spoke to [REDACTED] briefly via telephone on [REDACTED].

Name:
FPS Number: [REDACTED]
Correctional Institution: Maximum-security institution
Date of initial decision under s. 37.83(1), CCRA: [REDACTED]
Date of CSC SDC Decision under s. 37.4, CCRA: [REDACTED]
Date of the Present Decision: [REDACTED]
Independent External Decision-Maker: J. Lespérance

**DETERMINATIONS UNDER SECTION 37.8 AND SUBSECTION 37.83(3)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, c. 20**

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SUMMARY

spent more time out of his cell compared to the period reviewed in my initial decision on SIU conditions. Recreation, social programs, and school were offered consistently. He appreciated program sessions. [REDACTED] s recreation partner left. CSC did not show efforts to find him a new group, which is problematic, but [REDACTED] has not asked for a new group. Under s. 37.83(3) of the CCRA, I find CSC took all reasonable steps to provide time out of cell and interaction opportunities.

[REDACTED]. He is concerned he will not get health care for his [REDACTED] if he is transferred to another institution. He is near home. He says he does better time in the SIU. His involvement in past incidents on various ranges at [maximum-security institution, "MAX1"] mean he may have difficulty integrating any range at MAX1. CSC recently attempted to move him to [REDACTED] Under s. 37.8 of the CCRA, there are grounds for [REDACTED] to remain in the SIU. However, CSC should re-verify whether he can go to unit [REDACTED], and ensure he can meet with the inmate committee. CSC should also ensure [REDACTED]

1. INTRODUCTION

[1] On [REDACTED], the Independent External Decision-Makers ("IEDMs") were notified that for five consecutive days, Mr. B had not spent at least four hours out of his cell or had

not interacted with others for at least two hours per day, in the Structured Intervention Unit (“SIU”) at MAX1 in [REDACTED]. As an IEDM, I issued a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) on [REDACTED]. I concluded that Correctional Service Canada (“CSC”) had not taken all reasonable steps to provide [REDACTED] time out of cell and meaningful human contact. I made recommendations under subsection 37.83(2) of the CCRA. I must now assess, under subsection 37.83(3) of the CCRA, whether CSC has taken all reasonable steps since my initial decision.

- [2] In addition, I must determine whether [REDACTED] should remain in the SIU, under s. 37.8 of the CCRA. On [REDACTED], CSC’s Senior Deputy Commissioner (“SDC”) determined, under section 37.4 of the CCRA, that he should remain in the SIU.
- [3] I have combined both types of decisions in this text, but my analysis under each provision is separate.

2. LEGAL FRAMEWORK

2.1. CSC’s legal obligations toward inmates in the SIU

- [4] CSC must provide inmates the daily opportunity to spend at least four hours outside of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates’ needs.
- [5] The previous decision under s. 37.83(1) of the CCRA explained CSC’s legal obligations in more detail.

2.2. Determinations under s. 37.83(3) of the CCRA

- [6] Decisions under s. 37.83(3) of the CCRA are second-stage decisions. S. 37.83(3) of the CCRA states:

“If [CSC], within the period of seven days commencing on the day on which it receives recommendations, fails to satisfy the [IEDM] that it has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1), the [IEDM] shall direct [CSC] to remove the inmate from the [SIU] [...].”

- [7] Unlike s. 37.83(1) of the CCRA, s. 37.83(3) does not explicitly state that the IEDM must assess whether CSC encouraged an inmate. However, “all reasonable steps” is a high standard that implies CSC must be proactive and try new approaches.
- [8] The determination under s. 37.83(3) is not based only on whether CSC has implemented recommendations. CSC could demonstrate that it would not be reasonable to do so. CSC could also take steps other than those proposed by the

IEDM. More, CSC's written response to the s. 37.83(1) decision is not the only relevant source of information.

- [9] Decisions under s. 37.83(3) focus on activities and services in the SIU, not the safety and security basis for the SIU placement.
- [10] If an IEDM finds under s. 37.83(3) that CSC has not taken all reasonable steps, the IEDM must order CSC to remove the inmate from the SIU. The CCRA does not seem to leave the IEDM discretion as to whether to issue this order.
- [11] Overall, if the conditions of confinement are inadequate, the remedy set out in the CCRA is the inmate's removal from the SIU.

2.3. Period considered for s. 37.83(3) determinations

- [12] IEDM oversight should be timely and address an inmate's current situation in the SIU. When more than seven days have passed since an initial decision under s. 37.83(1) of the CCRA, the IEDM may consider information on a period longer than the 7-day period.

2.4. Framework for determinations under s. 37.8 of the CCRA

- [13] An IEDM decision under s. 37.8 follows CSC decisions concluding that the inmate should stay in the SIU, specifically: the institutional head's "5-day"¹ and "30-day"² decisions, and the SDC decision.³ The IEDM decision is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.
- [14] This type of decision focuses mainly on the safety and security basis for the SIU placement, not the conditions in the SIU.
- [15] The law says that an inmate's SIU placement should "end as soon as possible."⁴ In a s. 37.8 decision,

"The [IEDM] may determine [...] that an inmate should remain in a [SIU] only if the [IEDM] believes on reasonable grounds that allowing the inmate's reintegration into the mainstream inmate population

(a) would jeopardize the safety of the inmate or any other person or the security of the penitentiary; or

¹ Under CCRA, s. 29.02(2).

² Under CCRA, para. 37.3(1)(b).

³ Under CCRA, s. 37.4.

⁴ CCRA, s. 33.

- Memorandums – rec group, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Correctional plan update (“CPU”), dated [REDACTED] and [REDACTED]
- Medical encounter notes, for the period from [REDACTED] to [REDACTED]
- Mental health clinical notes, dated [REDACTED], [REDACTED], [REDACTED] (X2), [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Mental health forms – SIU 14-day, dated [REDACTED], and [REDACTED]
- Institutional head “30-day” SIU transfer decision, dated [REDACTED]
- Mental health form – SIU “28-day”, dated [REDACTED]
- Memorandum – offender management plan, dated [REDACTED]
- Institutional head “5-day” SIU transfer decision, dated [REDACTED]
- Memorandum – personal effects, dated [REDACTED]
- Mental health form – SIU “1st-day”, dated [REDACTED]
- SIU transfer authorization, dated [REDACTED]
- Criminal profile report, dated [REDACTED]
- Assessment for decision – security level and penitentiary placement, dated [REDACTED]

[20] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[21] On [REDACTED], I learned [REDACTED] would share his views. We spoke by telephone on [REDACTED] [REDACTED] (no videoconference was available at MAX1 that day). The interview lasted approximately one hour and fifteen minutes. I had previously interviewed him on [REDACTED] [REDACTED].

4. CONTEXT

[22] [REDACTED] is [REDACTED] years old. He is a [REDACTED] man from [REDACTED]. He has also lived in [REDACTED], and, in [REDACTED]. He has [REDACTED] but has some employment history, notably in the [REDACTED] industry.

[23] [REDACTED]

[24] Since [REDACTED], he has been serving a sentence of [REDACTED]. His statutory release date is set for [REDACTED]. CSC has classified him at the maximum-security level.

[25] His transfer to the SIU was authorized on [REDACTED], under para. 34(1)(b) of the CCRA. The MAX1 Warden approved the SIU transfer in the “5-day” decision of [REDACTED], and in the “30-day” decision of [REDACTED]. After a short-lived transfer to a regular unit on [REDACTED], [REDACTED] returned to the SIU.

[26] This is [redacted]'s [redacted] SIU stay.

5. IEDM JURISDICTION AND DATE OF DECISION

[27] The reviews for decisions under ss. 37.8 and 37.83(3) of the CCRA were triggered during [redacted]'s SIU stay that started with the transfer authorization dated [redacted].

[28] [redacted] was transferred out of the SIU on [redacted] to the [redacted] range at MAX1. He was almost immediately involved in an incident. Following that, he was returned to the SIU. CSC issued a new SIU transfer authorization on [redacted].

[29] I do not have reasons to believe [redacted]'s transfer out of the SIU was an attempt to avoid IEDM oversight; rather, I believe CSC attempted to allow [redacted] to integrate a population at MAX1, in line with his preferences.

[30] The CCRA and CCRR do not provide guidance for situations like this one. In my view, a transfer out of the SIU does not automatically cancel a pending SIU decision. Because [redacted] is back in the SIU, a decision on his SIU placement is still relevant; it is not moot. I also note that there was almost no break between the "two" SIU stays; for the purpose of reviews and decisions, it should be considered one continuous SIU stay.

[31] For these reasons, I am proceeding with the decisions.

[32] Normally, the decision under s. 37.8 of the CCRA would be due on [redacted], which is 30 days after the SDC decision. I am issuing it early, noting that CSC's SDC decision was late due to "administrative error"; the SDC decision should have been issued [redacted], which would have meant that the IEDM decision would normally be due [redacted].

6. ANALYSIS UNDER S. 37.83(3) OF THE CCRA

6.1. Daily time out of cell and meaningful human contact

[33] I will consider SIU activity log information for the period from [redacted] to [redacted], a period of 34 days ("the period reviewed").

[34] During this period, [redacted] spent more than four hours outside his cell on four days (about 12% of all days), according to CSC's log. He had more than two hours of meaningful human contact on 21 days (about 62% of all days). The average for time out of cell was about one hour and 51 minutes daily. The average for interaction was about two hours and 13 minutes. The daily totals varied a lot from day to day.

[35] The totals and averages for this period show an improvement compared to the period reviewed in my initial [redacted] decision under 37.83(1) of the CCRA.

6.2. Opportunities and participation

6.2.1. Overview of opportunities

[36] The log shows [REDACTED] has usually had various (five or more) opportunities to get out of his cell each day, throughout the day.

[37] He had the following types of opportunities:

- recreation: indoor common room time and outdoor yard time
- staff interactions (especially with his Parole Officer (“PO”) and CMs)
- correctional programs (the SIU Motivational Module (“MM-SIU”) program)
- social programs
- school in the library
- mental health assessment and session with a clinician
- phone-based resiliency program (offered by volunteers)
- call with the [REDACTED]
- personal phone calls on the range phone

[38] In my [REDACTED] interview with [REDACTED] he seemed generally satisfied with the conditions in the SIU.

6.2.2. Recreation group

[39] I had recommended to CSC to “Take steps to improve communication with and other inmates about reasons for any recreation group request denials; as well as improve documentation of reasons and SIO interactions with inmates about this subject.”

[40] CSC’s response indicates MAX1 was working on “establishing a process to streamline recreation groups,” with anticipated implementation by [REDACTED]. As of the time of issuing this decision, I have not received a further update.

[41] The log shows [REDACTED] had a recreation group at the start of the period reviewed. He went to social program sessions along with his recreation partner several times. There were no reported issues or incidents with him and his partner. However, log notes show he was alone for indoor recreation as of [REDACTED], when his group partner was transferred out of the SIU. There is no record of any staff member discussing a new group with him, whether in the log or in supplementary information from CSC.

[42] [REDACTED] himself said no one came to talk to him after his group partner left.⁷ [REDACTED] said he has “given up on finding a group” and he is “getting better” at cell-time. He said it could be distracting during school sessions when another inmate was there too. He said he did not put any requests for a new group in, but he did mention the name of someone he would potentially like to be in a group with. When I asked if he felt isolated in the SIU, he said “no;” he loves being by himself, and he can stay

⁷ IEDM interview with [REDACTED]

out of trouble. He said he is “good” as long as he can go out to talk to program officers.

[43] I find CSC’s failure to find a new group for him, over a period of almost three weeks, a significant shortcoming. It is concerning that [redacted] appears to be getting used to isolation. On the other hand, I take note of [redacted]’s preferences, the fact that he is aware how to put in a request and did not do so, and that other forms of interaction have compensated for his lack of group recently.

6.2.3. Programs and interventions access

[44] I had recommended to CSC to “[m]ake efforts to more frequently offer program and school sessions in the morning or afternoon,” in light of [redacted]’s comment that he is more alert earlier in the day.

[45] I had also recommended to CSC to: “[a]ddress staffing and space issues that prevent program officers from offering sufficient interaction opportunities to and other inmates.” For that recommendation, CSC’s response states:

“CSC takes note of your recommendation, but is unable to address this recommendation in the 7 days offered in legislation to respond to your 37.83 (1).

Nonetheless, we continue to find ways to provide services to offenders outside of the SIU. We started a physical education class on Sunday mornings as on [redacted] in our personal development location. This will occur every second Sunday. We continue to use the hallway rooms as well as the library to allow us the flexibility to provide more services within the SIU.”

[46] For IEDM recommendations that CSC cannot fully implement within a short time, CSC should describe steps that have been taken in the short-term. CSC has not done so in this case. However, I do acknowledge the additional efforts taken to provide opportunities outside the SIU and outside regular business hours.

[47] In addition, one of the issues I had noted in my initial review was there had been several days when [redacted] accepted to participate in social programs, but staff ran out of time. This does not appear to have been a major issue during the period reviewed; he had social programs opportunities on most days, sometimes more than once during the day (24 offers on 20 days; with an incident interfering with an accepted offer on an additional day). Most were morning or afternoon offers. He participated 15 times (16 acceptances).

[48] In my interview with [redacted], he noted a change in practices: he said the social programs officers (“SPOs”) now come to your door and if you say yes, they take you right away. When I asked his opinion on whether it was better, he said it depends what time they come. He said he appreciates talking to someone who is not an

inmate, but acknowledged he sometimes turns down social programs if he does not feel like coming out.

[49] CSC's log shows social programs and school were the most frequent type of program opportunity for ██████ during the period reviewed. He had school opportunities on 17 days (there were three other days when ██████ was not available due to another activity), sometimes more than once during the day. ██████ accepted the majority of these opportunities: he took part in 21 sessions, which usually lasted roughly an hour.

[50] ██████ said he has been making progress in the SIU that he was not able to make on a regular unit. For example, for school, he only saw the teacher once a week on the regular unit, but sees the teacher almost every day in the SIU.

[51] The log shows MM-SIU offers have been less frequent: there were five opportunities, an occasion when ██████ had accepted but the CPO was pulled away for another matter, and an occasion when the CPO went by when ██████ was on the phone and wanted to finish his call.

[52] ██████ had an opportunity for 1 ██████ program, but told staff he did not want to continue due to the overlap of the material with the MM-SIU.⁹ He told me he found the phone sessions boring.¹⁰

[53] Mental health support during the period reviewed was not regular. ██████ turned down the "14-day" assessment on ██████, stating he was "good,"¹¹ and he participated in a session with the clinician on ██████. In my ██████ interview with ██████ he did not raise mental health support as a concern. He said he has ups and downs but recently has been doing better.

[54] A log note indicates ██████ got a job as an ██████.¹² However, it does not appear he has gone out to work yet.

6.2.4. Access to the gym

[55] I had recommended to CSC to give ██████ the chance to go to the gym. CSC's response states there are two SIU gym time slots per week, and ██████ would be given the chance to go to the gym at the next available slot, ██████. CSC's log confirms he was offered to go to the gym that day, but he chose to go to the library with the teacher instead.

⁸ IEDM interview with ██████.

⁹ Case management entry, SIU activity log, ██████.

¹⁰ IEDM interview with ██████.

¹¹ Health entry, SIU activity log, ██████.

¹² Correctional programs entry, SIU activity log, ██████.

[56] When I asked I [redacted] about gym opportunities on [redacted], he said he used to like doing weights, but “I can’t go to the gym with [redacted].”¹³

[57] While one opportunity to go to the gym is minimal, it does appear this type of activity is lower priority for I [redacted] right now; getting healthcare for [redacted] is more important to him.

6.2.5. Other support and issues

[58] Apart from programs, there were several case management meetings with [redacted] to discuss his placement options and progress. He had the opportunity to speak with an [redacted] by phone on [redacted] to discuss various supports around his community reintegration. He declined their proposal of mental health support from a CSC clinician and an outside clinic, and declined to meet her in person.¹⁴

[59] In my [redacted] interview with [redacted] he expressed some openness to this kind of support; he said he is open to anything, it depends on how he is feeling that day. He said “BIFA” came by “the other day” and he said no.

[60] He expressed having difficulty getting a lawyer call, but also said when he does talk to a lawyer they say they cannot do anything.¹⁵ CSC’s log shows he had at least three lawyer calls and there was another occasion when staff contacted a firm on his behalf.

7. ANALYSIS UNDER S. 37.8 OF THE CCRA

7.1. Circumstances of [redacted]’s transfer to the SIU

[61] [redacted] was transferred to the SIU after [redacted]

7.2. [redacted]’s institutional history at MAX 1

[62] [redacted] has been at MAX1 for roughly [redacted] months. He was emergency transferred from [medium-security institution, “MED1”] to MAX1 on [redacted].

[63] At MAX1, he has resided on various ranges and been involved in several incidents. The following is an overview of his different range placements with the

¹³ IEDM interview with [redacted].

¹⁴ Case management entry, SIU activity log, [redacted].

¹⁵ IEDM interview with [redacted].

¹⁶ Incident report, dated [redacted].

incidents that occurred in those settings, as summarized in CSC's incident history log¹⁷:

¹⁷ Names of other inmates have been removed.

¹⁸ The AFD dated [REDACTED] reports this incident occurred on [REDACTED] rather than [REDACTED], and that he went to [REDACTED] on [REDACTED]. I believe this is an error.

-

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[64] I have not done an in-depth investigation or review of each one of these incidents. However, the information is sufficient to conclude that _____ has shown

[65]

[66] The incident history log suggests

7.3. Integration possibilities at MAX1

7.3.1. Unit

[67] Before the recent transfer out of the SIU, was more focused on integrating unit than going to unit Based on my interview with it seems this is mainly due to the profile of the inmates on unit

[68] As noted, CSC attempted to allow I to integrate unit on █████, despite concerns that because he had previously resided on █████, he would not be able to integrate safely.

[69] himself had said he could safely integrate unit I¹⁹ He had been asking to meet with the inmate committee,²⁰ and had not gotten that opportunity.

[70] There was an incident upon s arrival. ,

v This would suggest I cannot safely return.²³

[71] has acknowledged the incident and accepted he cannot return to .²⁴

7.3.2.

[72] According to CSC,

¹⁹ IEDM interview with I █████ 6; Review panels entry, SIU activity log, █████.

²⁰ Review panels entry, SIU activity log, █████.

²¹ Incident report for incident on █████, dated █████.

²² IEDM interview with SIO █████, █████.

²³ IEDM interview with SIO █████, █████.

²⁴ SOR █████, dated █████.

²⁵ Memorandum – integration options, █████.

[73]

[74] In my [earlier] interview with [redacted] he questioned why

[75] I find he did not provide convincing reasons to show he can safely integrate there.

7.3.3. Unit

[76] CSC claims other inmates do not welcome [redacted] back to unit [redacted] According to the [redacted], AFD,

[77] More than [redacted] months have passed since I [redacted] was in unit ([redacted] and since the [redacted] CSC has not provided me with the original reports on these statements. As such, I am unable to verify whether the inmates who made the statements are still on the unit. This non-disclosure is problematic; CSC has not provided all relevant information as it is legally required to do.³⁰

²⁶ IEDM interview with SIO [redacted], [redacted].

²⁷ AFD – ITI, [redacted], at p. 3.

²⁸ Memorandum – integration options, [redacted].

²⁹ Memorandum – integration options, [redacted].

³⁰ CCRA, at s. 37.7(1).

[78]

[79] CM █████ confirmed he consulted with the unit committee recently, roughly █████ to a █████ ago. The committee representative said █████ was not welcome.³² While it would be preferable for this information to have been documented, I do not have reason to doubt this information.

[80] On █████, the day after █████ attempt to integrate █████ the Acting SIU Manager met with him. According to █████ SOR, █████ “acknowledged that he has no options left at MAX1.”³³

[81] However, in my █████ interview with █████ he said that in the meeting he had said, “yeah, whatever,” because he was “sick and tired of arguing.” He clarified he thought unit █████ would be an option for him. He said if he had the choice, he would like █████ or █████. He said CSC was going off information from months ago and said “half the guys from before are not even there anymore.” He was aware some people have been “shipped out,” and mentioned individuals he would be “good” with. After the successful conflict resolution with the inmate from unit █████ that person said he would talk to the guys there for

[82] █████ noted he only ever briefly resided on █████, and the reason he left had nothing to do with other individuals (a loud air conditioner that gave him trouble sleeping, and for mental health services).

[83] He said he wanted the chance to talk to the inmate committee. He has asked multiple times, and neither committee has come to see him; he is not sure why he has not gotten to see them.³⁴

[84] CSC’s log confirms █████ has not had the chance to meet with the committee himself since being in the SIU.

7.3.4. Unit █████

[85] CSC claims, in the integration memorandum dated █████, that some inmates who were on unit █████ when █████ are not receptive to █████ integrating there for that reason. Although the incident date is not stated in the memorandum, I believe CSC is referring to the █████ incident. Another inmate may have influenced █████ into committing the █████ incident as retaliation for █████.

³¹ Mediation and informal resolution entry, SIU activity log, █████; IEDM interview with CM █████, █████;

IEDM interview with SIO █████, █████.

³² IEDM interview with CM █████, █████.

³³ SOR █████, dated █████.

³⁴ IEDM interview with █████.

[86] CSC's report for that incident states

;
|
|

[87] In my [REDACTED] interview with the CM, he suggested [REDACTED] could be a possibility for [REDACTED]. Additional follow-ups are advisable, however.

7.3.5. Mental health unit

[88] [REDACTED]. CSC claims the [REDACTED] incident there caused inmates to be upset at [REDACTED].

[89] [REDACTED] has not suggested [REDACTED] would be safe for him to integrate.

7.4. [REDACTED]'s security classification

[90] CSC has classified [REDACTED] at the maximum-security level. His security level was last revised in [REDACTED]; the rationale is set out in an assessment for decision dated [REDACTED], and the final decision was issued on [REDACTED]. The reasons are clear, and in light of the various incidents [REDACTED] has been involved in at MAX1, including recently, I find his security classification appropriate. The most appropriate way to end his SIU stay is to identify a maximum-security population for him to integrate.

7.5. Appropriateness of penitentiary placement and institutional transfer options

[91] Since [REDACTED] is from [REDACTED], MAX1 is the closest maximum-security institution to his home. His [REDACTED] is an important source of support for him. [REDACTED] has said [REDACTED] would not be able to visit him if he were transferred, as [REDACTED] [REDACTED] and [REDACTED].³⁶ From that perspective, MAX1 is the most appropriate penitentiary for him. In addition, [REDACTED] has received some positive support from staff members at MAX1 (e.g. his PO and teacher in the SIU), who may have insight into factors that help him be successful.

[92] In my [REDACTED] interview with [REDACTED], he expressed his goal to stay at MAX1. On [REDACTED], he said he would rather remain at MAX1 and integrate unit C than transfer to [maximum-security institution, "MAX2"], and he would refuse to integrate at MAX2, where CSC has planned to transfer him to.

³⁵ Memorandum – integration options, [REDACTED].

³⁶ IEDM interview with [REDACTED].

[93] In a meeting on [REDACTED], [REDACTED] reportedly said he would prefer to go to [maximum-security institution, "MAX3"] over MAX2.³⁷ However, MAX3 did not accept him. [REDACTED] previously told me he would not integrate at MAX3.³⁸

[94] On [REDACTED] [REDACTED] expressed two specific concerns regarding his potential inter-regional transfer.

[95] First, he is concerned his transfer to MAX2 would prevent him from finishing his GED, which is his goal, as described above.

[96] Second, he is concerned that transfer documents he received indicate he has no physical or mental health concerns. He maintains this is not true. He said the nurse practitioner thinks he may [REDACTED], and he is waiting to see an [REDACTED] following a referral for a [REDACTED].

[97] More generally, [REDACTED] said he thinks he does better time in the SIU, because it allows him to avoid unit politics and he has been able to access programs. He thinks if he does better in the SIU, he should be allowed to stay in the SIU, rather than being "shipped out." He mentioned that he will be out in [REDACTED].

7.6. Overall comments regarding SIU placement

[98] While there is reason to believe [REDACTED] may have difficulty integrating any range at MAX1, I believe CSC should re-verify whether [REDACTED] can integrate unit [REDACTED] including [REDACTED], and ensure he is given the opportunity to meet directly with the unit inmate committee himself.

[99] Considering the geographic proximity of his home and community support, his approaching release, and [REDACTED] s views, CSC should only transfer him to another institution as a last resort, and with efforts taken to ensure [REDACTED]

In addition, I believe his transfer out of the SIU should only be attempted after [REDACTED] as this is a significant goal for him.

[100] [REDACTED] CSC could consider adopting a behavioural contract or plan with him with the involvement of staff members he has developed a rapport with.

³⁷ SOR 292393225, dated [REDACTED].

³⁸ IEDM interview with [REDACTED].

³⁹ IEDM interview with [REDACTED].

8. CONCLUSION

[101] Under s. 37.8 of the CCRA, I find there are grounds for [redacted] to remain in the SIU.

[102] For the purpose of s. 37.83(3) of the CCRA, I conclude CSC took all reasonable steps to provide the required time out of cell and meaningful human contact, although my review above identified issues, notably regarding steps to ensure has a recreation group in the SIU.

Janine Lespérance
Independent External Decision-Maker

Date: [redacted]

Inmate Name:
FPS Number: ██████████
Correctional Institution(s): MED1, MAX1, MAX2, MAX3
Notification date (s. 37.83(1), CCRA): ████████; ████████; ████████
Notification date (para. 23.07(1)(a), CCRR): ████████
Decision/review issued: ████████
Independent External Decision-Maker: J. Lespérance

**REVIEW UNDER PARAGRAPH 23.07(1)(a) OF THE
CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS, SOR/92-620
AND
DECISION UNDER SUBSECTION 37.83(1) OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, C.20**

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SUMMARY

was transferred to an SIU multiple times at MED1. His security classification was increased from medium to maximum, which was reasonable. CSC has targeted “integrated” populations for him, but he has wanted to go to a “GP” population. CSC should resolve this underlying issue rather than transferring him again.

A referral for | does not seem to have been acted on. He is from [REDACTED] and his community support there is important to him.

CSC's log shows I [REDACTED]'s transfer from MAX1 to MAX2 had a negative impact on him; he was more isolated and disengaged from interventions he had been participating in. The required quantity of time out of cell and interaction was not always offered to him in the SIU. There were different shortcomings in his opportunities to interact with other SIU inmates at different institutions. A recent effort to encourage him to join a group with "GP" inmates in the MAX3 SIU was successful and reduced his isolation significantly. Under s. 37.83(1) of the CCRA, I conclude CSC did not take all reasonable steps to provide the required SIU opportunities and encourage him.

1. INTRODUCTION

- [1] On [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a review concerning [REDACTED] is necessary, under para. 23.07(1)(a) of the *Corrections and Conditional Release Regulations* ("CCRR"), SOR/92-620. [REDACTED] is currently in the [maximum-security institution, "MAX3"] Structured Intervention Unit ("SIU"). He was previously incarcerated in the SIUs at [maximum-security institution, "MAX1"] and [maximum-security institution, "MAX2"]; and in the [medium-security institution, "MED1"]
- [2] In addition, on [REDACTED]; [REDACTED]; and [REDACTED], CSC notified the IEDMs that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act* ("CCRA") concerning [REDACTED] is necessary.
- [3] If I have a legal basis to review [REDACTED]'s situation, I must analyze his SIU placements and make recommendations to CSC.¹ I must also answer this question: did CSC take all reasonable steps to provide [REDACTED] at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?²

2. INFORMATION CONSIDERED

- [4] I have considered CSC documentary information (see annex for details). [REDACTED] did not provide comments for this review, so I must rely on CSC information.

3. CONTEXT

- [5] [REDACTED] is [REDACTED] years old and is from [REDACTED]. He has [REDACTED].
- [6] Since [REDACTED], he has been serving a [REDACTED] sentence for which his statutory release date is [REDACTED]. He currently has a maximum-security classification.

¹ CCRR, para. 23.07(1)(a).

² CCRA, s. 37.83(1).

[7] For his current SIU authorization at MAX3, the SIU transfer was approved in the “5-day” Warden decision of [REDACTED] and the “30-day” decision of [REDACTED].

4. ANALYSIS UNDER PARA. 23.07(1)(A) OF THE CCRR

4.1. IEDM jurisdiction and framework

[8] A review under para. 23.07(1)(a) of the CCRR is for an inmate who has frequently gone in and out of the SIU. This type of review ensures there is IEDM oversight for a person who has spent significant time in the SIU, without an IEDM having analyzed why.

[9] This type of IEDM review is triggered when two conditions are met:

- 1) CSC authorizes someone’s transfer to the SIU four times within a 180-day period; and
- 2) There was no referral for an IEDM decision under s. 37.8 of the CCRA.³

[10] These two conditions were met in [REDACTED]’s case. As described below, he was sent to an SIU four times within a short period. CSC’s Senior Deputy Commissioner did not issue a decision on his SIU placement, so no IEDM decision under s. 37.8 of the CCRA was triggered.

[11] The legislation allows the IEDM to determine what factors to analyse under para. 23.07(1)(a) of the CCRR. It is often relevant to consider the inmate’s correctional plan, security level, and penitentiary placement, like for determinations under s. 37.8 of the CCRA and s. 23.06(1) of the CCRR. The purpose of the correctional system and principles that guide CSC⁴ are relevant; as well as s. 33 of the CCRA, which states that an inmate’s confinement in an SIU should “end as soon as possible.” The IEDM may also consider SIU conditions of confinement.

4.2. Overview of [REDACTED]’s SIU authorizations and placements

[12] [REDACTED]’s transfer to the SIU has been authorized five times in total. The first authorization was in [REDACTED], after his involvement in an altercation with another inmate. The four SIU transfer authorizations that triggered the 23.07(1)(a) review were all closely linked. The following is an overview of these transfers.

[REDACTED] – at MED1

[13] [REDACTED] had been at MED1 since [REDACTED].

³ CCRR, para. 23.07(1)(a).

⁴ As set out in the CCRA, at ss. 3-4.

[14] He was transferred to the MED1

a

[15] was in until [REDACTED], about [REDACTED] days. He was transferred to MAX1, as an emergency transfer, in the [REDACTED] of [REDACTED].

[REDACTED] – at MAX1

[16] was placed on the “orientation range” upon arrival at MAX1.⁶ He was reclassified to the maximum-security level.

[17] He had wanted to integrate the [REDACTED] “non integrated” or “general population” [REDACTED], but CSC was not open to this option. CSC offered him to integrate [REDACTED], but he refused. The authorization also referred to “information” that had “been received” since his arrival at MAX1. The authorization also indicated, [REDACTED] tied of [sic] barriers in the Unit and asked for the [REDACTED] committee to see them. [REDACTED] did comply with staff direction to unblock the barriers and the meeting was facilitated.”⁷

[18] His SIU stay at MAX1 lasted about [REDACTED] days. He was transferred to MAX2 on Jan. 24.

[REDACTED] – at MAX2

[19] He arrived at MAX2 in the [REDACTED] of [REDACTED]. MAX2 had proposed he integrate [REDACTED].⁸ In a meeting with him [REDACTED] reportedly said “he never had the intention to integrate a population at [MAX2] and is not open to discuss the possibility to integrate [REDACTED].”

[20] He remained in the MAX2 SIU for about [REDACTED] days, until [REDACTED]. He was then transferred to MAX3.

[REDACTED] – at MAX3

[21] According to the transfer authorization, [REDACTED] refused to integrate, said he never had the intention to integrate, [REDACTED].⁹

[22] As of the time of issuing this review, he remains in the MAX3 SIU. He has been in the MAX3 SIU for about [REDACTED] days.

4.3. Issue regarding inmate profile

⁵ SIU authorization under CCRA, para. 34(1)(a).

⁶ SIU transfer authorization, [REDACTED].

⁷ SIU transfer authorization, [REDACTED], p. 2. The SIU authorization was under CCRA, para. 34(1)(a).

⁸ SIU transfer authorization, [REDACTED], p. 3.

⁹ The SIU authorization was under CCRA, para. 34(1)(a).

¹⁰ The SIU authorization was under CCRA, para. 34(1)(b).

4.3.1. Case history and [REDACTED]'s position

- [23] [REDACTED]'s current sentence is his [REDACTED] federal sentence. He has never been incarcerated in a mainstream maximum-security population.
- [24] He was initially classified at the medium-security level (decision date [REDACTED]) and penitentiary-placed to MED2. He was maintained at the medium-security level until his recently reclassification to maximum-security, in a decision dated [REDACTED].
- [25] The main reason [REDACTED] has been transferred to the SIU repeatedly is a disagreement about his inmate profile/status. CSC has wanted to place him in populations known as "integrated" or "protective custody" ("PC"). [REDACTED] has wanted to integrate a "general population" ("GP") setting.
- [26] For example, [REDACTED], an MAX1 staff member noted, "[h]e feels very strongly that he is and wants to be considered a general population offender yet he is not being allowed to integrate the [REDACTED] GP [REDACTED]."¹¹ Before his transfer to MAX2, [REDACTED] expressed concerns about a proposed placement in MAX2's [REDACTED] unit, in a rebuttal. He said he would refuse to go because it is the "integrated unit"; he wanted to go to the [REDACTED] unit.¹
- [27] Despite [REDACTED]'s consistent position, CSC may again try to transfer him to another institution's "integrated" population as a purported way to end his MAX3 SIU stay. He was accepted for transfer to an integrated [REDACTED] ([REDACTED]) at MAX4. The assessment for decision mentions, as part of the rationale for rejecting him from MAX4's GP ranges, that he "refused integration options at MAX3, MAX2 and MAX1 [...]."¹⁴ It should have been mentioned that he refused integrated/"PC" populations [REDACTED]; CSC blocked him from "GP" populations.
- [28] [REDACTED] presented a verbal rebuttal to the proposed transfer to MAX4, indicating he would prefer to transfer to MAX 5, since his family and support are in [REDACTED].¹⁵

4.3.2. [REDACTED]'s possible transfer to a "GP" population

- [29] The distinction between integrated and non-integrated profiles is not purely factual and objective. Whether a person can safely integrate a "GP" or "PC" population depends on their own views and the opinions and perceptions of other inmates. Moreover, CSC staff's oral statements and the content of shared file documents can influence perceptions and affect a person's ability to safely integrate a GP population.
- [30] There is reason to believe [REDACTED] could potentially integrate a "GP" population.

¹¹ CPO entry CWR, [REDACTED].

¹² MAI entry, CWR, [REDACTED].

¹³ CPO entry, CWR, [REDACTED].

¹⁴ AFD - ITI, [REDACTED], p. 6.

¹⁵ MAI entry, [REDACTED].

[31]

[32] He has never integrated a PC population.

[33] At MAX1, there were security concerns impeding his integration of the MAX1 GP population specifically.

[34] There were also separate initial concerns arising from

[35] In addition, [REDACTED] recently ([REDACTED]) joined a recreation group in the MAX3 SIU, composed of inmates considered "GP" inmates. As of [REDACTED], there have been no recorded incidents between him and his group members. I have no reason to believe there have been issues. I consider it a positive (although belated) step that he was encouraged and allowed to join this group.¹⁹ This development supports his possible transfer to a "GP" population.

[36] In sum, I believe CSC should reassess whether [REDACTED] could integrate into a "GP" maximum-security population, and not transfer him to another institution until he agrees with the integration option proposed.

[37] I am aware of information showing [REDACTED] was likely

The implications of these events on his current options are not clear. It may be worth closely examining whether there is any potential of him integrating a maximum-security population [REDACTED] without undue risk.

4.3.3. Profile issues generally

[38] More generally, rigid adherence to PC vs. GP labels is an issue that arises and has led to prolonged SIU stays in several cases. CSC should develop a strategy that aims to reduce maximum-security inmates' adherence to these classifications, addressing individual cases and more systemic causes of the distinction. For example, this might include developing SIU interventions that focus specifically on this issue.

¹⁶ CPR, [REDACTED], p. 5.

¹⁷ AFD – ITI, [REDACTED], p. 2.

¹⁸ Incident report for incident [REDACTED], [REDACTED], p. 1 ([REDACTED]).

¹⁹ See: MAI entry, CWR, [REDACTED].

[39] Regarding █████ specifically, I am aware █████ maintains the █████ is not a “PC” █████. However, inmates generally do not consider the █████ a “GP” █████. It is foreseeable that an inmate who considers himself “GP” will refuse to integrate the █████. I have heard from and of prisoners who feel CSC tricked them into integrating █████ when they were unfamiliar with █████ dynamics, only to discover that █████ is generally not considered “GP.” This can cause issues for someone in the longer term, as it will limit their integration options and potentially lead to SIU stays due to disagreement about their status within the inmate population.

4.4. Underlying needs

[40] Based on CSC documents, █████ have been ongoing challenges for █████ before and during his federal incarceration.

[41] That involvement appears to stem, at least partly, from adverse childhood experiences. The criminal profile report summarizes, “The █████ relationships, issues surrounding █████, and unresolved trauma from █████ appear to be at the root of much of █████”

[42]

[43]

[44]

[45] Records also indicate █████

[46] During his recent SIU stays, he has reported

²⁰ CPR, █████, p. 7.

²¹ CPR, █████, p. 6.

²² MAI entry, CWR, █████.

²³ MAI entry, CWR, █████.

²⁴ Program performance report, █████, p. 7.

²⁵ Mental health form, █████.

[47]

[48]

4.5. s security classification

[49] I believe it is appropriate to consider the factors considered in decisions under s. 37.8 of the CCRA in reviews under s. 23.07(1)(a) of the CCRR. These reviews fill an oversight gap for an inmate who has not gotten the benefit of an IEDM s. 37.8 review. One of these factors is the appropriateness of an inmate's security classification.²⁷

[50] 's [REDACTED] SIU placement was associated with his security level increase. The [REDACTED] security reclassification scale yielded a score in the maximum-security range ([REDACTED]).

[51]

It appears it would be premature to reassess his security classification at this stage.

4.6. Over-reliance on inter-regional transfers

[52] An institutional inter-regional transfer is an appropriate way to end some SIU stays. However, a transfer is not an appropriate solution in all cases. CSC should meaningfully assess and address the root causes of an SIU placement, developing a plan with the inmate concerned as much as possible.

²⁶ Referral for mental health services, [REDACTED].

²⁷ CCRA, para. 37.82(2)(c).

²⁸ Program performance report, [REDACTED], p. 9.

[53] CSC has used inter-regional transfers in [REDACTED]'s case. This approach will likely not resolve the underlying issues discussed above.

[54] His transfer to MAX4 would likely to lead to another SIU authorization. It may worsen [REDACTED]'s situation.

[55] First, transferring him against his will could have

[56] Second, a transfer to MAX4 would take him far away from his community support. The legal criteria for penitentiary placement include safety, proximity to home, language, culture, and program and service availability.³² These should be considered in all institution selection decisions. For [REDACTED] records show being close to his family, in [REDACTED], is important to him. In the past, being [REDACTED] has motivated him to do better. His MAX2 PO observed that it seemed to provide him a sense of value and usefulness outside of the criminal sphere.³³

[57] Another potential issue is the loss or delayed return of personal belongings. My reviews as an IEDM have shown this issue is common when institutional transfers occur. It is often a source of frustration for inmates, especially when sentimental or valuable objects are lost.

4.7. Isolation outside SIUs

[58] I am concerned about isolation outside of SIUs. Likewise, I am concerned about CSC's use of ranges outside SIUs that are not mainstream population ranges to

²⁹ See: PO entries, CWR, [REDACTED], [REDACTED];

³⁰ AFD – ITI, [REDACTED], p. 3.

³¹ See, e.g., AFD – ITI, [REDACTED], p. 4.

³² CCRA, s. 28.

³³ PO entry, CWR, [REDACTED].

³⁴ See, e.g.: PO entry, CWR [REDACTED], PO entry, CWR, [REDACTED]; PO entry, CWR, [REDACTED].

³⁵ CPO entry, CWR, [REDACTED].

³⁶ PO entry, CWR, [REDACTED].

avoid SIU placements, avoid CCRA obligations for SIUs, and avoid IEDM oversight. This issue appears to arise at MAX1.

[59] In this case, [REDACTED] was on the MAX1 [REDACTED] range, known as the reception or isolation range, for about [REDACTED]. While I have not been able to speak to [REDACTED] about his experience there, other inmates have described the conditions as more isolated than the SIU.

5. ANALYSIS UNDER S. 37.83(1) OF THE CCRA

5.1. Do I have a legal basis to review [REDACTED]'s time-out-of-cell opportunities?

[60] Yes, I do.

[61] As independent administrative decision-makers, IEDMs determine their jurisdiction based on law. IEDMs only do reviews in specific situations. If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.³⁷

[62] CSC's log shows [REDACTED] was isolated from [REDACTED] to [REDACTED], triggering a review.

[63] [REDACTED]'s transfer from MAX1 to MAX2, and then to MAX3, did not cancel the review triggered. Since I already had jurisdiction, the subsequent review notifications CSC sent were redundant. IEDM jurisdiction is triggered by the conditions in the law existing; s. 37.83(1) notifications from CSC do not have legal value in and of themselves.

5.2. What is the relevant period of review?

[64] This review focuses on [REDACTED] to [REDACTED] ("the period reviewed"), a period of 113 full days (excluding the two days [REDACTED] was in transit, [REDACTED] and [REDACTED]).

[65] An IEDM is not limited to only examining the days that triggered the review. The IEDM decides the appropriate period to review, based on legal and practical factors. Considering the human rights at stake, the need to avoid gaps in oversight, and the importance of fully understanding a situation to make recommendations, an IEDM

³⁷ CCRA, s. 37.83(1).

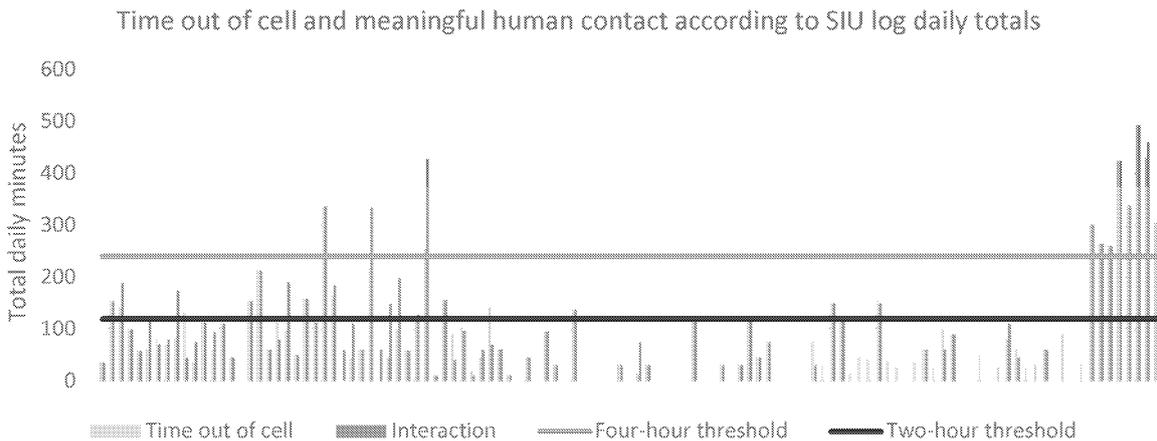
may examine a longer period, especially if many days have passed since the review was triggered.

[66] The period in this case is very long due to unfortunate delay, arising largely from IEDMs' high caseload and understaffing of IEDM positions. The period reviewed involves three back-to-back SIU stays at different institutions that essentially amount to one continuous SIU stay. It is still relevant to assess the periods when [redacted] was at MAX1 and MAX2 for this reason. It can also provide more insight into his situation.

5.3. How much time did [redacted] spend out of his cell and interacting with others each day?

[67] According to CSC's log, [redacted] spent four hours or more out of his cell on ten days during the period reviewed (about 9% of all days). He had two hours or more of social interaction on 29 days (about 26% of all days). The average for time out of cell was about one hour and 21 minutes daily. The average for interaction was about one hour and 24 minutes.

[68] As shown by the graphic below,³⁸ the daily totals decreased significantly around the time when [redacted] was transferred from MAX1 to MAX2. They remained very low until a significant improvement in his situation recently.



[69] Various factors may explain why an inmate is isolated. Total daily hours for time out of cell and social interaction show whether CSC's efforts to reduce isolation were successful. If a person has been very isolated for a long time, as [redacted] has been overall, CSC should be making great efforts to improve the situation.

5.4. Were the quantity and timing of offers adequate?

³⁸ Dates deleted for the purpose of public sharing.

[70] No. The quantity of opportunities was inadequate some days and the bare minimum on others. More, CSC information appears unreliable.

5.4.1. Framework

[71] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates daily, between 7AM and 10PM.³⁹ Showers do not count towards time out of cell.⁴⁰ Offers should generally be adequately spread throughout the day.

5.4.2. Log information

[72] CSC's log shows CSC generally met its minimum quantitative obligations, but did not meet its basic obligations on [REDACTED], [REDACTED], and [REDACTED].

[73] Based on log entries, [REDACTED] often only had two chances to get out of his cell during the day at MAX2, amounting to the bare minimum to meet the four-hour threshold for time out-of-cell. On the days when an extra activity was recorded, it was often at the same time as another activity, without explanation (e.g. on [REDACTED], he only had a yard opportunity at 8:30AM, a half-hour medical appointment at 9AM (which overlapped with the yard period), and two types of program opportunities both at 1:15PM). CSC does not appear to have fully used the evening hours, as typically there were no offers past 6PM. Most log entries show offers at rounded times (e.g. 8:30AM, 1PM), which strongly suggests the hours are rounded estimates rather than a precise representation of reality.

[74] The log shows he usually had multiple chances to get out of his cell at MAX1 and MAX3, throughout the day. However, log entries for MAX3 especially have reliability issues since there are internal inconsistencies between entries and unexplained timing overlaps, similar to entries for MAX2. There are also chaplaincy log entries where the description indicates [REDACTED] declined, but a half hour meeting was nonetheless recorded in the log.

[75] When CSC's data appears unreliable, I cannot conclude CSC met its quantitative obligations.

5.5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[76] Yes, but no legal exception applied.

[77] Contextual situations or circumstances can affect activities in the SIU. There are legal exceptions for some specific situations, including epidemics and staff work refusals.⁴¹ However, if those specific situations do not exist, CSC must provide the

³⁹ CCRA, s. 36(1) – (2).

⁴⁰ CCRA, s. 36(3).

⁴¹ CCRA, para. 37(1)(c); CCRR, s. 19(1).

regular opportunities. Moreover, even if an exception applies, CSC must continue efforts.

[78] For █████, CSC indicated there was “unexpected absence of Social Programs Officer (SPO) [sic]” at MAX3.⁴² Similarly, there was no SPO or Behavioural Counsellor on shift on █████,⁴³ and interventions staff ran out of time to make an offer to █████ on █████.⁴⁴ These are foreseeable staffing issues that have frequently arisen and do not fit into the legal exceptions. CSC should address this situation at MAX3.

[79] Otherwise, the log for MAX3 contains references to operational challenges and routine disruptions arising from searches and staff responses to incidents.

[80] CSC did not raise a legal exception.

5.6. What type of opportunities did █████ have?

[81] █████ had a variety of recreation and program opportunities, but most program opportunities were social programs.

5.6.1. Framework

[82] Apart from leisure time, SIUs are meant to provide inmates access to programs, interventions, and services that reflect their needs and interests.⁴⁵ Activities may aim to help them achieve their correctional plan goals or reintegrate a mainstream population.⁴⁶

5.6.2. Types of opportunities during the period reviewed

[83] █████ had the chance to participate in:

- recreation: indoor common room, indoor range, and outdoor yard
- staff interactions (especially with his Parole Officer (“PO”) and Correctional Managers (“CMs”) at MAX1 and MAX2)
- correctional programs (the SIU Motivational Module (“MM-SIU”) program)
- social programs
- behavioural counselling (at MAX2 only)
- religious support from the Chaplain
- inmate committee meeting (with MAX1’s unit 1 committee, once)
- work as a server (at MAX3 only, as of █████; there are also a couple of log entries for cleaner work but they may be an error)
- school

⁴² Situational context note, SIU activity log, █████.

⁴³ Situational context note, SIU activity log, █████.

⁴⁴ Situational context note, SIU activity log, █████.

⁴⁵ CCRA, para. 32(1)(b).

⁴⁶ CCRA, para. 36(1)(b).

- periodic mental health evaluations, and mental health and other medical interventions
- phone-based volunteer “██████” program
- “7th Step” volunteer program
- personal phone calls

5.6.3. Programs and interventions

[84] He had some type of program opportunity (including religious support) on 72 days (about 64% of all days). There were some gaps in programming during the period reviewed, in ██████, for a week in ██████, and at the ██████ (after he got a recreation group). There was a decent variety and frequency of program offers. However, social programs sessions were offered far more frequently than programming more focused to help him progress in his areas of need.

5.6.4. Work

[85] ██████ requested a job on the range on ██████. He did not get a job until he was at MAX3, once he had a group.

5.6.5. Mental Health support

[86] As summarized above ██████ received some mental health services in the SIU. However, he did not receive regular counselling through his SIU stays and it does not appear there was follow-up on a referral made at MAX1 after his transfer. He did not receive regular counselling interventions during the period reviewed.

5.7. Did CSC make efforts to facilitate ██████’s interaction with other inmates?

[87] I am not satisfied with efforts in this area. There were different shortcomings at each institution.

[88] Having a recreation group often reduces someone’s isolation in the SIU a lot. Having a group provides a person with more chances for interaction and often encourages their participation in activities.

[89] At MAX1, there was no delay in placing ██████ in a group. He had a group until CSC ended his group ██████. I know why this decision was taken, but I question it. There had been no incidents between ██████ and his recreation partner, and having a group provided him a source of barrier-free meaningful human contact.

[90] At MAX2, ██████ seems to have had a group throughout his time, but there is no documentation to show the group choice reflected his preferences. Since CSC is supposed to provide “meaningful” human contact opportunities, an inmate’s own views are important. ██████ did not take any recreation time at MAX2, which suggests he did not approve of his group. He did not have any program opportunities some days; one can conclude ██████ did not have any meaningful human contact opportunities on those days.

[91] At MAX3, his PO met with him for an initial interview four days after his arrival (■■■■). It is not clear whether he was encouraged to join a group then.

[92] He was encouraged to join a “GP” group on ■■■■. Although there is no clear documentation on this issue, it appears he did so soon after. The group was approved ■■■■. I consider this a positive initiative and development, which may help to resolve his SIU placement, aside from providing interaction opportunities in the SIU. However, the encouragement and subsequent approval was late coming.

5.8. Did CSC encourage I ■■■■ to participate in time-out-of-cell and interaction opportunities?

[93] There is some evidence of encouragement, but there are shortcomings in this respect.

5.8.1. Framework

[94] An inmate may turn down opportunities in the SIU; there is a legal exception for “refusals.”⁴⁷ Even so, IEDMs must assess whether CSC encouraged them to participate in activities.⁴⁸ Encouragement can take various forms. An IEDM may also assess whether CSC discouraged a person’s participation in activities, such as by using security barriers during meetings. CSC must make “every reasonable effort” to ensure physical barriers do not impede interactions.⁴⁹

5.8.2. Participation rates

[95] For recreation, ■■■■ accepted some recreation time on most days at MAX1 (35 of 45 days). However, he did not take advantage of most recreation opportunities. After he lost his group, his leisure time out of cell decreased. At MAX2, he did not take any of the daily recreation opportunities. At MAX3, he accepted recreation time on 28 of 40 days, for indoor range time. The time he spent out of cell increased dramatically after he got a recreation group.

[96] CSC’s log shows ■■■■ accepted: 14 of 56 social programs opportunities, 7 of 14 school opportunities, 13 of 15 MM-SIU opportunities (although one of these instances, the program was not provided in the end, because he was “verbally and physically uncooperative with CX staff”⁵⁰), 4 of 4 “■■■■” opportunities, 1 of 4 behavioural counselling opportunities, 1 of 7 religious support opportunities (there was also another occasion when he had said he would come out later, but it does not appear he got the chance⁵¹), and the one 7th step opportunity.

[97] He participated in some, but not all, periodic mental health evaluations offered.

⁴⁷ CCRA, para. 37(1)(a).

⁴⁸ CCRA, s. 37.83(1).

⁴⁹ CCRA, s. 32(2).

⁵⁰ Correctional programs entry, SIU activity log, ■■■■.

⁵¹ Religious or Spiritual activities entry, SIU activity log, ■■■■.

[98] There was an obvious overall trend in his participation: it decreased significantly immediately after his transfer to MAX2. His program participation rate was high at MAX1: he accepted 26 of 29 offers overall (a participation rate about 90%). His acceptance rate at MAX2 and MAX3 was much lower (16 of 73 offers overall, a participation rate about 22%).

[99] For the one behavioural counselling session he accepted (all offers were at MAX2), he left earlier due to the lack of remuneration for program participation.

5.8.3. Encouragement and discouragement

[100] There are some encouragement efforts recorded in the log. The log shows CSC staff made efforts to encourage [REDACTED] by offering a group session (although this was at MAX2, where it appears he did not approve of his group), offering informal discussions rather than structured program sessions, and offering materials for in-cell use (e.g. workout sheets).

[101] Numerous social programs entries appear copy-pasted and do not really demonstrate efforts to build rapport. While numerous case management meetings were recorded at MAX1, and some at MAX2, there were only a couple at MAX3, which suggests a lack of encouraging interventions there outside of program offers. His "initial" interview with his PO there was four days after his arrival; it does not appear there was earlier engagement with him.

[102] The significant decrease in [REDACTED]'s engagement in SIU activities after his transfer from MAX1 suggests the transfer itself had a discouraging impact on him, or that MAX1 was more successful in encouraging [REDACTED] than MAX2 and MAX3.

[103] For the [REDACTED] program, he had started at MAX1, but it appears MAX2 only looked into it after [REDACTED] himself raised it in a program session.⁵²

[104] There were periods when CSC applied extra security measures, including the use of barriers for meetings with staff.

[105] Measures were applied [REDACTED], due to threats and confrontational behaviour that had started a couple of days earlier. Threat risk assessments ("TRAs") suggest regular revision of the measures during this time. During the first part of the period, there were also interventions to attempt to address his behaviour and the measures in place. However, between [REDACTED], he had no program opportunity and there were no documented attempts to address the TRA measures. Security measures were again applied [REDACTED], soon before his transfer to MAX2.

[106] At MAX2, measures were imposed Jan. 31 due to veiled threats, apparently due to his frustration with being at MAX2. They were maintained until [REDACTED]. There was an attempt to discuss the measures with him [REDACTED], which he reportedly refused. Otherwise, it appears there was no other attempt to discuss the measures with him

⁵² Social programs entry, CWR, [REDACTED].

between [REDACTED] and [REDACTED]. He turned down all program offers during that period, so it appears the measures had a discouraging impact.

6. CONCLUSION AND RECOMMENDATIONS

[107] Under s. 37.83(1) of the CCRA, I conclude CSC did not take all reasonable steps to provide the required daily opportunities to [REDACTED] in the SIU and encourage his participation. I have a broad power to make recommendations to remedy the situation under s. 37.83(2) of the CCRA.

[108] A review under s. 23.07(1)(a) of the CCRR does not require the IEDM to take a specific decision. For this type of review, I must make recommendations, and provide them to the inmate, the Correctional Investigator, and CSC's Commissioner.⁵³ The recommendations are intended for CSC. Legislation does not limit the type of recommendations an IEDM can make; an IEDM may make recommendations that address broader, systemic issues.

[109] The following recommendations are made under s. 37.83(2) of the CCRA and para. 23.07(1)(a) of the CCRR. I do not find it necessary to separate recommendations into different categories. I recommend to CSC to:

- Suspend [REDACTED] s planned transfer to MAX4
- Reassess the possibility and institutional transfer options for [REDACTED] to transfer to a maximum-security "GP" population
- Not transfer [REDACTED] to an "integrated" population unless he is in agreement with the proposed plan, and focus interventions with him on this issue
- Offer [REDACTED]
- Provide [REDACTED] mental health counselling
- Provide [REDACTED] programming and support specifically focused on [REDACTED]

- Ensure constitutional and international standards for time out of cell and meaningful interaction are respected on all ranges
- Conduct broad research into underlying reasons for inmate and staff adherence to "GP"/"PC" labels and strategies for reducing that adherence, including potentially developing interventions focusing specifically on that issue

⁵³ CCRR, at s. 23.07(3).

- Mental health triage form, dated [REDACTED]
- Incident reports, dated [REDACTED], [REDACTED] (X2), [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (X2)
- Statement/observation reports (“SORs”), numbered SOR [REDACTED], SOR [REDACTED], SOR [REDACTED], SOR [REDACTED], [REDACTED], SOR [REDACTED]
- Mental health need scale, dated [REDACTED]
- Out of facility information, for the periods of [REDACTED] and [REDACTED]
- Referral decision sheet – offender security level, dated [REDACTED]
- Program performance report, dated [REDACTED]
- Assessment for decisions – offender security level and institutional transfer, dated [REDACTED] and [REDACTED]
- SIU transfer cancellation, dated [REDACTED]
- Memorandum – protected C gist, dated [REDACTED]
- Security reclassification scale, dated [REDACTED]
- Criminal profile report (“CPR”) – original, dated [REDACTED]

[111] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[112] On [REDACTED], I received signed confirmation (dated [REDACTED]) from CSC that [REDACTED] had been provided a copy of the notice but refused to sign it, and indicated that he did not wish to speak to an IEDM.

Name:
FPS Number: ██████
Correctional Institution: MAX1
Date of Notification: ██████
Date of Decision: ██████
Independent External Decision Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

has been very isolated in the SIU. He distrusts staff and inmates. He has turned down various types of opportunities, including for mental health support. Staff met with him to encourage him to participate.

, but this did not affect daily totals much. He had issues accessing his possessions after his institutional transfer, which caused tension. Staff found temporary solutions; they loaned him a TV and stereo. CSC should take steps to reduce delays and losses affecting inmates' things after institutional transfers, especially for SIU inmates. Under s. 37.83(1) of the CCRA, I conclude that CSC took all reasonable steps. did not share his views for this review.

I. INTRODUCTION

[1] On ██████, Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning ██████ was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at MAX1 in ██████.

II. LEGAL FRAMEWORK

- [2] CSC must provide inmates the daily opportunity to spend at least four hours out of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates' specific needs.
- [3] Under s. 37.83(1) of the CCRA, an IEDM determines whether CSC has taken all reasonable steps to provide an inmate the required opportunities in the SIU and encourage them to participate. The IEDM can determine the specific period to consider.
- [4] I have issued previous decisions under s. 37.83(1) of the CCRA concerning that set out the relevant legal provisions in more detail.

III. SOURCES OF INFORMATION

- [5] I have consulted the following sources of information from CSC:
- SIU daily activity log, for the period as of [REDACTED] in particular
 - Casework record log, for the period from [REDACTED] to [REDACTED] in particular
 - Threat risk assessments ("TRAs"), for the period as of [REDACTED] in particular
 - Email response to IEDM written questions, from [REDACTED], MAX1 Assistant Warden Interventions, dated [REDACTED]
 - Institutional head "5-day" SIU transfer decision, dated [REDACTED]
 - Correctional plan update – SIU ("CPU-SIU"), dated [REDACTED]
 - Memorandum: epidemics exception, dated [REDACTED]
 - SIU transfer authorization, dated [REDACTED]
 - Correctional plan – updated ("CPU"), dated [REDACTED]
 - Assessment for decision – security level and institutional transfer, dated [REDACTED]
 - Criminal profile report – original, dated [REDACTED]
- [6] I consulted additional information for my previous reviews concerning [REDACTED], in [REDACTED]. Dates of past IEDM decisions or end of process notices concerning him are: [REDACTED], and [REDACTED].¹ I have consulted decisions issued by IEDMs [REDACTED] and [REDACTED].
- [7] I sent [REDACTED], via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.
- [8] On [REDACTED], I learned that [REDACTED] did not wish to share his views through one of the means offered. As I was at MAX1 myself that day, I spoke to him briefly at his cell

¹ This list may not be exhaustive.

door to confirm that he did not wish to share his views. I had spoken to [REDACTED] in [REDACTED] for previous reviews.

[9] Since [REDACTED] did not provide comments for the current review period, I must rely on the information provided by CSC.

IV. CONTEXT

[10] [REDACTED] is [REDACTED] years old. He is [REDACTED], [REDACTED], and [REDACTED]. Since [REDACTED], he has been serving [REDACTED] sentence.

[11] [REDACTED] was transferred from MAX2 to MAX3 in [REDACTED]. He was in the SIU from [REDACTED] to [REDACTED]. He was transferred to MAX1 on [REDACTED] due to court matters in [REDACTED].

[12] His transfer to the SIU was authorized on [REDACTED] under para. 34(1)(b) of the CCRA. According to the authorization, [REDACTED] was “adamant” that he was only willing to integrate the SIU and would only be moved out of the SIU by force. The authorization describes,

[13] Threat risk assessments (“TRAs”) add that

[14] This is his eleventh SIU authorization.

V. ANALYSIS

[15] My determination in this case is based mainly on CSC’s SIU activity log (“the log”). The period reviewed in the discussion below is [REDACTED] to [REDACTED], a 32-day period.

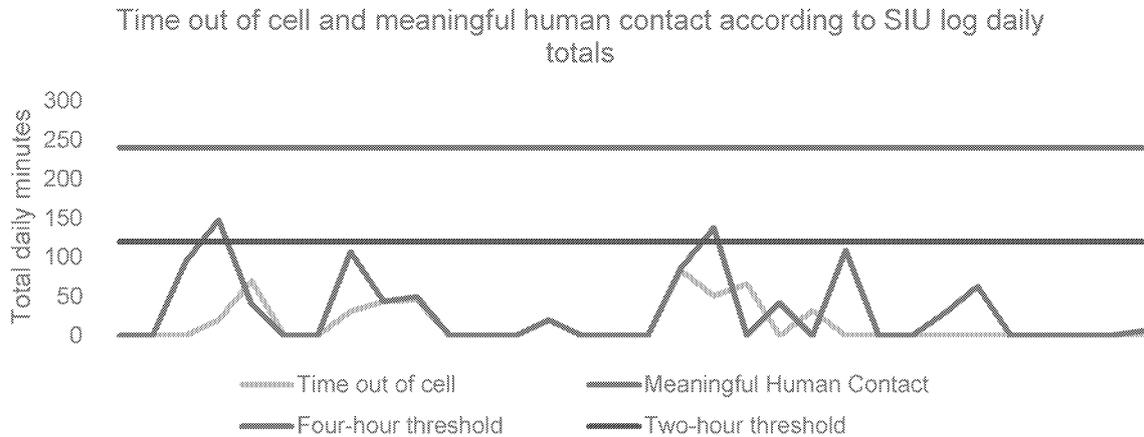
[16] I have verified the log for the couple of days since then. Those log entries are consistent with the information discussed below.

1. Daily time out of cell and meaningful human contact

[17] [REDACTED] has been extremely isolated. According to the log’s daily totals, [REDACTED] spent four hours or more out of his cell on zero days during the period reviewed. He had two hours or more of meaningful human contact on two days (about 6% of all days).

² SIU transfer authorization, [REDACTED], at p. 4.

The overall daily average for time out of cell was about 15 minutes, and for interaction was about 31 minutes.



[18] may have spent slightly more time out of his cell than indicated by these daily totals, due to going out to heat his meals (see para. 28 below), and being out at court on [REDACTED]. The SIU-LTE database indicates he was “out of facility” that day for four hours and 35 minutes, but the daily total does not include this time.

2. Quantity and timing of daily offers

[19] usually had the opportunity to get out of his cell at least four times throughout the day, for one or two-hour time blocks. It does not appear there was a significant issue with the timing of opportunities.

[20] He did not have a recreation group, which meant that on a number of days, opportunities for meaningful human contact were very limited.

3. Structural or contextual factors affecting activities

[21] CSC invoked the exception for epidemics (CCRR, para. 19(1)(b)) for the period from [REDACTED] to [REDACTED]. As mentioned above

[22] was reportedly informed that because he was required CSC might not be able to provide the regular SIU entitlements. He would be offered individual activities and social programs, if he were willing to follow PPE (personal protective equipment) protocol.³

[23] CSC's invocation of the exception was reasonable in the circumstances. The relevance of the exception does not provide a "blank cheque" to CSC to stop providing time out of cell. However, an IEDM should show greater deference to CSC in assessing whether CSC took "all reasonable steps."

[24] The log shows that the first program offer to was only on [REDACTED]. However, there were a few earlier staff meetings with him, or attempts to meet, between [REDACTED] and [REDACTED]. On [REDACTED], he was out of the facility for about 4.5 hours. The daily totals for the period CSC invoked the exception were not that different from the rest of the period reviewed, due to 's consistent refusal of opportunities.

4. Variety of opportunities for

[25] had the following types of opportunities:

- indoor and outdoor recreation
- staff interactions, often with the Correctional Manager ("CM") or his Parole Officer ("PO")
- correctional programs (the SIU Motivational Module ("MM-SIU") program)
- social programs
- mental health clinician meeting and assessments
- personal phone calls

[26] Recreation offers were by far the most frequent type of opportunity. Social programs were offered 16 times and MM-SIU sessions were offered 10 times.

[27] Apart from periodic mental health assessments, had the opportunity to meet with a Social Worker for mental health support on [REDACTED], and on [REDACTED] (along with his PO).

[28] Some log entries under "religious or spiritual activities" refer to being out to heat up food. Staff may not have consistently recorded this time in the log. For example, on [REDACTED], the CPO noted that was in the common room heating up a meal.⁴ However, there is no corresponding recreation entry for time in the common room.

5. 's participation and CSC's encouragement efforts

³ Epidemics exception memorandum, [REDACTED], at p. 1.

⁴ Correctional programs entry, SIU activity log, [REDACTED].

[29] On [REDACTED], a few days after arriving in the SIU,

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[30] During the period reviewed, I [REDACTED] did not accept any social or correctional program offer, and only rarely took leisure time beyond heating up his meals. He made personal phone calls 13 times.

[31] Encouragement efforts I note are: staff returning later in the day to offer another chance to do a program session ([REDACTED], [REDACTED], and [REDACTED]); staff offering more than one type of program during the day ([REDACTED], [REDACTED], and [REDACTED]); and verbal encouragement, including through CM and PO meetings.

[32] In a meeting with his PO and a clinician on [REDACTED]

[33] Additional security measures can discourage participation in activities or interfere with meaningful human contact. During [REDACTED]'s first days in the SIU, staff applied additional security measures –handcuffing from behind, barriers for meetings, and three-officer escorts– due to his behaviours to get transferred to the SIU (see para. 13 above). The information does not show the measures were a major factor contributing to his refusals of opportunities. They were removed on [REDACTED].

[34] [REDACTED] had issues accessing his personal effects during the period reviewed, following his inter-regional transfer.

[35] Having personal effects and in-cell activities can contribute to an inmate's well-being by providing mental stimulation and reducing boredom. Conversely, issues with personal effects may lead to frustration with CSC and distrust in staff, which may cause a person to refuse to meet with staff for programs and interventions. For that reason, this issue can be relevant for reviews under s. 37.83 of the CCRA.

[36] The log shows SIU staff discussed [REDACTED]'s concerns with him various times and provided some temporary solutions. I [REDACTED] received a loaned TV on [REDACTED]. He seems to have gotten some of his personal effects on [REDACTED],⁸ and he received his gaming system on [REDACTED].

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⁵ Case management entry, SIU activity log, [REDACTED].

⁶ Case management entry, SIU activity log, [REDACTED].

⁷ Case management entry, SIU activity log, [REDACTED].

⁸ Correctional programs entry, SIU activity log, [REDACTED].

⁹ Administrative entry, SIU activity log, [REDACTED].

There were also efforts to help him pass the time in his cell, by providing books, cards, and a letter writing kit.

[37] I take note of the efforts by SIU staff in [redacted]'s case.

[38] CSC should take steps to reduce delays and losses affecting access to personal effects after institutional transfers, especially for SIU inmates. This would alleviate tensions and reduce the pressure on unit staff to find temporary solutions.

VI. CONCLUSION

[39] [redacted] consistently turned down services and activities, including mental health support, and staff made encouragement efforts. Since [redacted] did not share comments, I am relying on CSC's log information. Hearing [redacted]'s views directly could have changed my analysis of the situation.

[40] I conclude under s. 37.83(1) of the CCRA that CSC took all reasonable steps to provide [redacted] opportunities for time out of cell and meaningful human contact in the SIU. Because of that conclusion, I will not make formal recommendations under s. 37.83(2) of the CCRA.

Janine Lespérance
Independent External Decision-Maker

Date: [redacted]

¹⁰ Case management entry, SIU activity log, [redacted].

Name:
FPS Number: ██████
Correctional Institution: MAX1
Date of Notification: ██████
Date of Decision: ██████
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SUBSECTION 37.83(1)
 OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

SUMMARY

██████ and has had multiple SIU stays. Most offers for time out of cell were for recreation alone and social programs. He mainly took range time to shower, make phone calls, and heat food. Social program offers were frequent but he rarely participated. There was a lack of offers for correctional programming, school, and work. The SIU log contains copy-pasted notes and lacks details. Threat risk assessments do not demonstrate an ongoing basis for security measures or efforts to limit their use. The lack of programming, the use of barriers and cuffs, and cutting off ██████'s medication, discouraged his participation in activities. There is no information showing efforts to encourage him to join a recreation group. Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps to provide ██████ opportunities to leave his cell and interact with others in the SIU. I ██████ wishes to transfer to an institution where he can receive services ██████ and be close to his family.

I. INTRODUCTION

- [1] On ██████, Correctional Service Canada (“CSC”) notified the Independent External Decision-Makers (“IEDMs”) that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) concerning ██████ was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit (“SIU”) at [maximum-security institution, “MAX1”] in ██████.
- [2] An IEDM must determine if CSC has taken all reasonable steps to ensure ██████ spends time out of his cell and has social interaction.

II. LEGAL FRAMEWORK

1. CSC's legal obligations toward inmates in the SIU

[3] Section 36 of the CCRA describes CSC's obligations towards inmates in the SIU. It states:

“Obligations of Service

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a [SIU]

(a) an opportunity to spend a minimum of four hours outside the inmate's cell; and

(b) an opportunity to interact, for a minimum of two hours, with others, through activities including, but not limited to,

(i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and

(ii) leisure time.

Time included

(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).

Time not included

(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a).”

[4] The CCRA also specifies that s. 36(1) does not apply “if the inmate refuses to avail themselves of the opportunity [...]”.¹ The CCRA and the *Corrections and Conditional Release Regulations*, SOR/ 92-620 (“CCRR”) set out other limited exceptions, including an inmate's refusal to comply with security-related instructions at the time of the offer,² and certain specific contextual circumstances, including epidemics.³

[5] The current decision focuses on SIU conditions of confinement. Ss. 37.83(1) and (2) of the CCRA state:

“Decision — reasonable steps

¹ CCRA, at para. 37(1)(a).

² CCRA, at para. 37(1)(b).

³ CCRR, at para. 19(1)(b).

37.83 (1) If, for five consecutive days or for a total of 15 days during any 30-day period, an inmate confined in a [SIU] has not spent a minimum of four hours a day outside the inmate's cell or has not interacted, for a minimum of two hours a day, with others, an [IEDM] shall, as soon as practicable, determine whether [CSC] has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1) and to encourage the inmate to avail themselves of those opportunities.

Recommendations

(2) If the [IEDM] determines that [CSC] has not taken all reasonable steps, he or she may make any recommendation to [CSC] that he or she considers appropriate to remedy the situation. [emphasis added]"

- [6] Considering s. 37.83, CSC must be proactive and seek alternatives to ensure that an inmate spends time out of their SIU cell and has meaningful social interaction. More, the SIU's purpose includes allowing an inmate to participate in programs and access services.⁴ CSC must make "every reasonable effort" to ensure physical barriers do not impede interactions.⁵
- [7] Many factors may explain why an inmate does not spend time out of their cell and the "4/2" thresholds are not met. The IEDM must analyze the facts and circumstances of each situation to determine whether CSC took enough steps.
- [8] The legal obligations, and IEDMs' conclusions, apply to CSC as a whole, not a specific institution or individual, such as a staff member.

2. The period to be taken into account for IEDM determinations under s. 37.83

- [9] The CCRA does not specify the period of SIU activities that the IEDM should consider for a decision under s. 37.83 of the CCRA.
- [10] Only looking at the five days that triggered the review would leave a period without oversight, especially when many days have passed before the IEDM can issue their decision.
- [11] In my view, it is appropriate to consider SIU activities beyond the five-day period that triggered the review. The IEDM will have a better understanding of what has happened. The IEDM's conclusion will have a more solid foundation. They will be able to make better recommendations, if needed.

⁴ CCRA, at s. 32(1).

⁵ CCRA, at s. 32(2).

III. SOURCES OF INFORMATION

[12] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of [REDACTED]
- Threat risk assessments (“TRAs”), for the period as of [REDACTED]
- Mental health monitoring forms, dated [REDACTED] and [REDACTED]
- Medical encounter notes, for the period from [REDACTED] to [REDACTED]
- Mental health forms, dated [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Casework record (“CWR”) log, for the period from [REDACTED] to [REDACTED]
- Mental Health clinical notes, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Incident reports, dated [REDACTED], [REDACTED], and [REDACTED]
- Institutional head “5-day” SIU transfer decision, dated [REDACTED]
- SIU transfer confirmation, dated [REDACTED]
- SIU transfer authorization, dated [REDACTED]
- Correctional plan – updated (“CPU”), dated [REDACTED]
- Assessments for decision (“A4Ds”), dated [REDACTED] and [REDACTED]
- Criminal profile report – amendment [REDACTED], dated [REDACTED]
- Review under section 23.06(1) dated [REDACTED]
- Critical response and incident management plan, [REDACTED]
- Modified watch observation forms, dated [REDACTED]
- Inmate request dated [REDACTED]
- Initial treatment plan summary, dated [REDACTED]

[13] I have also consulted decisions concerning [REDACTED] previously issued by other IEDMs.

[14] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[15] Later on [REDACTED], I learned [REDACTED] would share his views. We spoke by videoconference, [REDACTED] on [REDACTED], for approximately 30 minutes.

[16] The call started about 30 minutes late, as I waited online for [REDACTED]’s arrival. An MAX1 staff member contacted me not long after the planned start time to advise me of the delay. I do not know the reasons for the delay, however.

IV. CONTEXT

[17] [REDACTED] is [REDACTED] years old. He is from [REDACTED] and also has family connections [REDACTED].

[18] CSC documents indicate [REDACTED].

[19] Since [REDACTED], he has been serving a [REDACTED] for crimes including [REDACTED]. He has been in the [REDACTED].⁹ CSC classifies him at the maximum-security level.

[20]

[21] He was at MAX2 from [REDACTED] until his transfer to MAX1, on [REDACTED]. His transfer to the SIU was authorized on [REDACTED], under para. 34(1)(a) of the CCRA. According to the transfer authorization, he requested to leave his cell block, was temporarily placed on another cell block,

[22] The MAX1 Warden approved the SIU transfer in the “five-day” decision of [REDACTED], and the Acting Warden did so in the “30-day” decision of [REDACTED].

[23] This is [REDACTED] s ninth SIU transfer.

V. ANALYSIS

[24] The overall log totals referred to below are from CSC’s SIU activity log (“the log”), for the period from [REDACTED] to [REDACTED]. This is a period of 36 days.

1. Daily time out of cell and meaningful human contact

[25] [REDACTED] has been extremely isolated in the SIU. According to CSC’s SIU activity log, [REDACTED] spent four hours or more out of his cell on two days during the period reviewed (about 6% of all days). He had two hours or more of social interaction on three days (about 8% of all days). The daily average for time out of cell was just over 1.5 hours and the average for meaningful human contact was just under 45 minutes. As shown in the graphic below,¹¹ [REDACTED] often was alone when he was out of his cell.

⁶ CPU, [REDACTED], at p. 9.

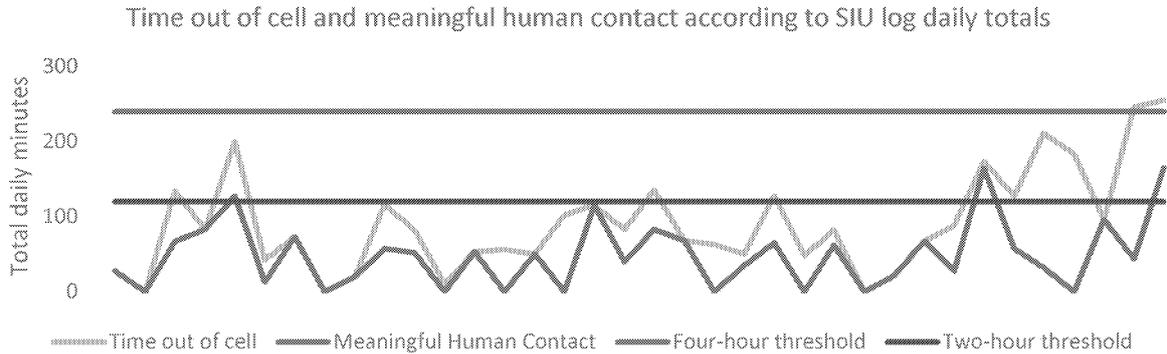
⁷ CPU, [REDACTED], at p. 8.

⁸ CPU, [REDACTED], at p. 6.

⁹ CPU, [REDACTED], at p. 5.

¹⁰ CPU, [REDACTED], at p. 10.

¹¹ Dates deleted for publication.



2. Quantity and timing of opportunities

[26] According to the SIU log, the number of daily offers varied, but there were usually a few to several opportunities during the day for I to get out of his cell, for one to 1.5 hour time blocks.

[27] In contrast to the log information, estimates that he gets about two hours daily outside his cell.¹²

[28] On most days, I's opportunity for in-person meaningful human contact was limited to social program sessions or conversations through cell doors, because he did not have a recreation group.

3. Structural or contextual factors affecting activities

[29] The information before me does not provide insight into any structural or contextual factors that may have limited the opportunities CSC provided to

4. Types of opportunities and participation

[30] had the following types of opportunities:

- indoor and outdoor recreation
- Parole Officer ("PO") meetings
- correctional programs (the SIU Motivational Module ("MM-SIU") program)
- social programs
- work as a cleaner
- periodic ("14-day" and "28-day") mental health assessments
- health meetings
- personal phone calls

¹² IEDM interview with [REDACTED].

[31] Recreation was the most frequent type of offer, followed by social programs. Social program sessions were offered daily, usually two or three times during the day. J confirmed that Social Programs Officers (“SPOs”) come two or three times per day. However, he said they do not come on weekends,¹³ which is not consistent with the log information.

[32] The log shows that often took range time and used the phone on the range, but he refused almost all programs and outdoor recreation time. In the log, his phone use was often recorded separate from and in addition to range time. I question whether this was a “double counting” of time, and similarly, whether showering time was added into range time totals.

[33] himself says that he tends to only go out to take a shower, heat up food. He started going to social programs very recently.¹⁴

[34] There was a significant shortcoming in the variety of offers. He was not offered the chance to participate in school. A CWR suggests he would be referred to SIU programming after a “Correctional Intervention Board” meeting. According to the SIU activity log, was the first day a Correctional Programs Officer (“CPO”) tried meeting with to discuss doing the MM-SIU, almost one month after was transferred to the SIU. According to the log, he expressed disinterest on that occasion, as well as in follow-up attempts on and . The first chance he had to go out to work was on .

[35]

—
—

5. Efforts to encourage to participate in activities and services

[36] Based on activity log entries, the main form of encouragement I observe is that staff seem to have consistently provided him more than one opportunity to participate in social programs throughout the day, after initial refusals.

[37] There are also log references to staff’s verbal encouragement efforts. However, the activity log does not provide a reliable description of interactions with or of offers for time out of cell. There are numerous copy-pasted notes for offers. For example, the following note appears 27 times: “The writer made an effort to encourage the offender to participate in social programs during the offering period. However, the offer was refused and no reason was provided.” The vast majority of notes for social programs offers are equally non-detailed and do not provide any insight into the interaction with if any actually took place.

¹³ IEDM interview with
¹⁴ IEDM interview with
¹⁵ IEDM interview with

[38] There is no record to show staff met with [REDACTED] about joining a recreation group like he was part of at MAX2, or that staff encouraged [REDACTED] to join a group, which would have significantly increased his opportunities for meaningful human contact. [REDACTED] has said there is no one he is interested in taking recreation with.¹⁶ However, there still should have been encouragement efforts in this regard.

[39] [REDACTED] said that the MAX1 SIU and the MAX2 SIU are like “night and day.”¹⁷ CSC records from [REDACTED] indicate that at MAX2, he was interacting with SIU staff (in a respectful way, except for once), regularly spent close to nine hours a day out at recreation in a group of eight or more inmates, and had a few range jobs.¹⁸ He was refusing intervention offers, however. This suggests that a different environment or approach could result in [REDACTED] spending more time out of cell.

6. Factors discouraging participation

[40] Some factors discourage [REDACTED] s participation in activities and services.

6.1. Application of security measures and threat risk assessments

[41] The use of barriers affects the quality and “meaningfulness” of an interaction, and may discourage participation in activities.

[42] All TRAs up until [REDACTED] did not require any security measures for [REDACTED]. An incident occurred on [REDACTED]. According to the incident report,

[43] A TRA that shows no actual risk assessment has very little value, if any; it amounts to empty paperwork. The [REDACTED] TRA indicates barriers were required for [REDACTED] due to threats to himself and officers. It has no specifics or indication of an actual assessment of risks. In a [REDACTED] CWR, the PO noted [REDACTED] was “polite and appropriate.”²¹ TRAs dated [REDACTED], and [REDACTED]; and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], also provide no details; no mention of whether problematic behaviour was ongoing, and no sign of any analysis. CSC issued TRAs repeatedly, with no updates.

[44] Although the PO attempted to meet with him a couple of times, there are no records to show that Correctional Managers (“CMs”) or other staff members tried to

¹⁶ IEDM interview with [REDACTED].

¹⁷ IEDM interview with [REDACTED].

¹⁸ CPU, [REDACTED], at pp. 5, 7.

¹⁹ Incident report for incident no. [REDACTED], [REDACTED].

²⁰ Nurse entry, CWR, [REDACTED].

²¹ PO entry, CWR, [REDACTED].

meet with him throughout the period the security measures were applied, to discuss the conditions or behavioural expectations for their removal.

[45] CSC removed the requirement for barriers [REDACTED], after about 19 days.

[46] The use of security measures deterred [REDACTED]'s participation in activities, as he told me. Likewise, a CPO's CWR for [REDACTED] states,

[47] Despite the gravity of the allegations about [REDACTED]'s behaviour, I do not have sufficient information to conclude that CSC took "every reasonable effort" to ensure that physical barriers did not impede meaningful human contact opportunities, as required by s. 32(2) of the CCRA.

[48] In relation, [REDACTED] was cuffed during my interview with him on [REDACTED]

6.2. The impact of transfer decisions on an inmate's ability to benefit from activities and services in the SIU

[49] This decision under s. 37.83(1) of the CCRA focuses on SIU conditions, rather than the circumstances of [REDACTED]'s institutional and SIU transfers. However, an underlying issue is that

[50] According to I

[51] My perception is that [REDACTED] is essentially accommodating CSC, rather than CSC accommodating his linguistic needs.

[52] In their [REDACTED], decision concerning [REDACTED] IEDM [REDACTED] noted the importance of finding a solution for him that would respond to [REDACTED] and consider his proximity to his family, which was of clear

²² CPO entry, CWR, [REDACTED].

²³ IEDM interview with [REDACTED].

²⁴ IEDM interview with [REDACTED].

importance to him.²⁵ The failure to give weight to these types of factors in transfer decisions may affect the likelihood that someone returns to the SIU, as well as their ability to participate in and benefit from SIU services.

[53] Aside from carefully considering transfer decisions, CSC could explore the possibility of offering remote programming in the SIU through phone or video link. In the information before me, there is no indication CSC explored this possibility.

6.3. Cutting off access to medication

[54] The [REDACTED] decision to cut off [REDACTED]'s medication,

[55]

[56] The communication and follow-up with him about this issue was not ideal.

[57] [REDACTED] said that even if he were offered the chance to

VI. CONCLUSION AND RECOMMENDATIONS

[58] Due to the shortcomings identified above, I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide [REDACTED] adequate time out of his cell and meaningful human contact, and encourage him to avail himself of opportunities.

²⁵ See: Decision under s. 23.06(1) of the CCRR concerning [REDACTED], at paras. [REDACTED]. See also: A4D, [REDACTED], which refers to him being "fixated" on being closer to his family supports, seemingly giving a negative connotation to his wish to see his family.

²⁶ Mental health clinical notes, [REDACTED].

²⁷ Medical encounter notes, [REDACTED].

²⁸ Medical encounter notes, [REDACTED].

²⁹ Medical encounter notes, [REDACTED].

³⁰ IEDM interview with [REDACTED].

³¹ IEDM interview with [REDACTED].

[59] Under s. 37.83(2) of the CCRA, I recommend to CSC to:

- ensure staff have a comprehensive meeting with all inmates admitted to the SIU, to understand their needs, ensure they understand the SIU model, and discuss recreational groups with them;
- ensure that if security measures are applied, they are justified and proportional to risks; and that there is ongoing, daily documentation of behavioural concerns or improvements in actual risk assessments;
- encourage [redacted] to join an appropriate recreation group;
- provide [redacted] the opportunity to see a medical practitioner regarding the discontinuation of his medication, if he has not already been able to;
- provide [redacted] the opportunity to take part in visual art activities;
- provide [redacted] correctional programming –

- identify an appropriate institutional transfer option for [redacted] basing the decision on a comprehensive assessment of the factors identified at s. 28 of the CCRA and the likelihood of avoiding another SIU transfer.

[60] I also urge MAX1 to ensure that the SIU log contains accurate log entries and descriptive notes that clearly depict SIU activities and interactions with SIU inmates, including for refused offers.

Janine Lespérance
Independent External Decision-Maker

Date: [redacted]

Inmate Name:
FPS Number: [REDACTED]
Correctional Institution(s):
Date of Notification: [REDACTED]
Date of Decision: [REDACTED]
Independent External Decision-Maker: Janine Lespérance

**DECISION UNDER SUBSECTION 37.83(1) OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, C.20**

SUMMARY

was in the restricted movement unit then transferred to 's structured intervention unit. He has been very isolated CSC offered the required minimum quantity of daily time out of cell and interaction. The variety of activities could have been better; he mostly had recreation, social programs, and religious support opportunities. Staff encouraged his participation. He rarely took recreation time until getting a new recreation group. feels he has been offered his entitlements in the SIU

He has not had a medical mattress. He has challenged the reasons for his SIU transfer. He has been able to get legal calls. Under s. 37.83(1) of the CCRA, I conclude CSC took all reasonable steps to provide opportunities to leave his cell and have interactions in the SIU.

I. INTRODUCTION

[1] On [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act* ("CCRA") concerning is necessary. He is incarcerated in the Structured Intervention Unit ("SIU") at in [REDACTED]. He was previously in the Jnit (

[2] If I have a legal basis to review s situation, I must answer this question: did CSC take all reasonable steps to provide at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?¹

¹ CCRA, s. 37.83(1).

II. BACKGROUND

- [3] [REDACTED] is [REDACTED] years old and is from [REDACTED]. He has been serving [REDACTED] sentence since [REDACTED].
- [4] His transfer to the SIU was authorized [REDACTED], under para. 34(1)(a) of the CCRA, when he was at [REDACTED]. The authorization alleges he incited other inmates, disrespected staff, attempted intimidation, and disobeyed orders. In addition, items were discovered in his cell. CSC re-classified him from medium to maximum-security. [REDACTED] has challenged the allegations against him and his security level increase [REDACTED] process.
- [5] The SIU transfer was approved in the “5-day” Acting Warden decision of [REDACTED], but not the “30-day” decision of [REDACTED]: the Acting Warden found he could integrate [REDACTED]’s [REDACTED] population.
- [6] This is [REDACTED]’s [REDACTED] SIU placement.

III. SOURCES OF INFORMATION

- [7] I have considered CSC documentary information, notably the SIU daily activity log (“the log”), and [REDACTED]’s [REDACTED] oral comments (see annex for details).

IV. ANALYSIS

1. Do I have a legal basis to review [REDACTED]’s time-out-of-cell opportunities?

- [8] Yes, I do. My jurisdiction is uncontroversial.
- [9] IEDMs only do reviews in specific situations. If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.²
- [10] CSC’s log shows [REDACTED] was isolated from [REDACTED] to [REDACTED], triggering a review.

2. What is the relevant period of review?

- [11] This review focuses on [REDACTED] to [REDACTED] (“the period reviewed”), a period of 63 days.
- [12] An IEDM is not limited to only examining the days that triggered the review. The IEDM decides the appropriate period to review, based on legal and practical factors. Considering the human rights at stake, the need to avoid gaps in oversight, and the importance of fully understanding a situation to make recommendations, it is

² CCRA, s. 37.83(1).

appropriate for an IEDM to examine a longer period, especially if many days have passed since the review was triggered.

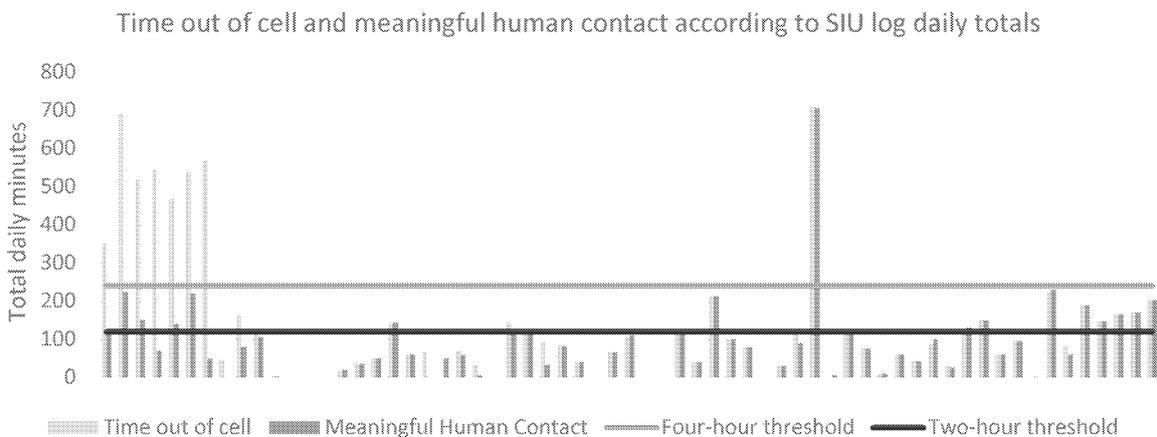
[13] In this case, I am examining the period as of [redacted]'s SIU authorization. It is a lengthy period due to the delay in issuing this decision. IEDM understaffing and caseload contributed significantly to the delay.

[14] The period reviewed includes both his time in the [redacted] and in the SIU. Transfers from an [redacted] to an SIU are to be done within five working days.³ [redacted] was transferred to [redacted] on [redacted], his [redacted] day after the SIU authorization. His time in the [redacted] was lengthy because of [redacted], but it did comply with the legislative standard. IEDMs have jurisdiction for both [redacted] and SIUs.

3. How much time did [redacted] spend out of his cell and interacting with others each day?

[15] According to CSC's log, [redacted] spent four hours or more out of his cell on eight days during the period reviewed (about 13% of all days). He had two hours or more of social interaction on 17 days (about 27% of all days). The average for time out of cell was about two hours and 16 minutes daily. The average for interaction was about one hour and 28 minutes.

[16] As shown by the graphic below, [redacted] spent more time out of his cell when in the [redacted] than in the SIU. In the [redacted] SIU, there was a slight improvement of the situation as time went on. There was one day on which he spent a lot of time out of his cell,



[17] The log totals for meaningful human contact may be a bit exaggerated for some days when he was a [redacted]. A couple of social programs log entries indicate [redacted] was out of his cell having interaction, but the explanatory notes state he was not

³ CCRA, s. 37.91(1).

interested in speaking with the programs officer, and suggest there was only a very brief interaction with him when he was at his door (e.g. █████, █████). On the other hand, it appears a 40-minute discussion with him on █████ was not counted in the log totals.⁴

[18] In my interview with him, █████ I did not comment on the accuracy of log totals.

[19] I find █████ s level of prolonged isolation concerning. However, █████ has said he is “perfectly fine” to live in his own head, in his own cell.⁵

[20] Various factors may explain why an inmate is isolated. Total daily hours for time out of cell and social interaction show whether CSC’s efforts to reduce isolation were successful. If a person has been very isolated for a long time, CSC should be making great efforts to improve the situation.

4. Were the quantity and timing of offers adequate?

[21] Yes, the required minimums were offered.

[22] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates daily, between 7AM and 10PM.⁶ Showers do not count towards time out of cell.⁷ Offers should generally be adequately spread throughout the day.

[23] CSC’s log shows CSC offered the required minimum amount of time out-of-cell and interaction on every day. For █████, the overall total suggests the required opportunities were not provided, but a note explains there were issues with the application not working; he had actually had two programs opportunities (declined).⁸ █████ usually had five or more chances to get out of his cell each day, throughout the day.

[24] In my interview with █████ he did not raise concerns about the quantity of time out-of-cell and interaction offered. He was generally satisfied with the opportunities and said staff have “done their due diligence” and offered him his entitlements.⁹

5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[25] Contextual situations or circumstances can affect activities in the SIU. There are legal exceptions for some specific situations, including epidemics and staff work

⁴ Daily IH visit note, SIU activity log, █████.

⁵ IEDM interview with █████.

⁶ CCRA, s. 36(1) – (2).

⁷ CCRA, s. 36(3).

⁸ End of day note, SIU activity log, █████.

⁹ IEDM interview with █████.

refusals.¹⁰ However, if those specific situations do not exist, CSC must provide the regular opportunities. Moreover, even if an exception applies, CSC must continue efforts.

[26] CSC did not invoke an exception and did not provide information about any special circumstances.

[27] However, log notes show operational issues had an impact on [redacted]'s time out of cell a few times. A couple of program sessions were late starting or cut short due to excessive movement in the SIU. At least once, there was an issue with meeting rooms being fully occupied. These are ongoing structural issues that CSC should address.

6. What type of opportunities did [redacted] have?

[28] Recreation was the most frequent type of opportunity, followed by social programs and religious support. I find the variety of activities could have been better.

[29] Apart from leisure time, SIUs are meant to provide inmates access to programs, interventions, and services that reflect their needs and interests.¹¹ Activities may aim to help them achieve their correctional plan goals or reintegrate a mainstream population.¹² I must consider whether there was a reasonable variety of activities for [redacted] in light of his profile.

6.1. Profile information

[30]

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6.2. Types of opportunities during the period reviewed

[31] According to the SIU log, [redacted] had the chance to participate in: indoor and outdoor recreation, social programs, staff interactions, the motivational module (“MM-SIU”) program, chaplaincy support, periodic mental health assessments, and healthcare appointments. He had one meeting with the MED1 inmate committee ([redacted]), and one meeting with the MAX1 [redacted] inmate committee ([redacted]). He had one

¹⁰ CCRA, para. 37(1)(c); CCRR, s. 19(1).

¹¹ CCRA, para. 32(1)(b).

¹² CCRA, para. 36(1)(b).

¹³ CPU, [redacted].

¹⁴ Religious or spiritual activities entry, SIU activity log, [redacted].

volunteer visit from █████ (████).¹⁵ The behavioural counsellor went to see him once (████). He was recently offered a job as a █████ (████).

[32] He had some type of program opportunity (including religious support) on 45 days (about 71% of all days). While program offers were fairly regular, I find the variety of activities was somewhat low, given how rarely he had certain types of opportunities. Social programs and religious support were far more frequent than other types of interventions. The religious support involved opportunities to meet with different chaplains, including a Muslim chaplain.

[33] It does not appear the programming had any particular focus on substance use, despite that having been identified as a problem area for him.

[34] In my interview with █████ he confirmed he just got a job. Considering his █████, I asked him about access to legal calls. He said he had not had issues getting legal calls and staff had been helpful and “exceedingly professional.”¹⁶

7. Did CSC make efforts to facilitate I █████’s interaction with other inmates?

[35] Yes, I consider efforts were adequate.

[36] Having a recreation group often reduces someone’s isolation in the SIU a lot. Having a group provides a person with more chances for interaction and often encourages their participation in activities.

[37] At MED1, █████’s opportunities for interaction with other inmates were extremely limited. I █████⁷ Apart from seeing the inmate committee, it does not seem there were other realistic options to allow him to interact with other inmates.

[38] For the MAX1 SIU, the log shows staff talked to █████ about joining a recreation group in the SIU. Although he was not initially interested, a group was approved █████. The grouping was ended due to █████.

[39] In my interview with I █████ he described himself as “not a social butterfly” although he had a couple of friends on the range. He essentially explained he is older than many other inmates and is bored of their stories.¹⁸

[40] The log indicates █████ was approved for a new group in the afternoon after my interview with him (████).

¹⁵ The nature of this volunteer meeting is not clearly identified.

¹⁶ IEDM interview with I █████.

¹⁷ As mentioned in the log and by █████.

¹⁸ IEDM interview with █████.

8. Did CSC encourage to participate in time-out-of-cell and interaction opportunities?

[41] Yes, I find there were encouragement efforts.

[42] An inmate may turn down opportunities in the SIU; there is a legal exception for “refusals.”¹⁹ Even so, IEDMs must assess whether CSC encouraged them to participate in activities.²⁰ Encouragement can take various forms. An IEDM may also assess whether CSC discouraged a person’s participation in activities, such as by using security barriers during meetings.

8.1. Participation rates

[43] Regarding recreation, the log shows that at MED1, either was out at recreation or had access to indoor recreation for much of his time in This mostly explains the very high daily totals for that period. At MAX1, he rarely took recreation time despite multiple daily opportunities. He occasionally took indoor recreation (on about a third of all days in the MAX1 SIU, often for less than half an hour).

[44] Regarding programs, CSC’s log shows accepted: 27 of 42 social programs opportunities, 3 of 6 correctional programs opportunities, 0 of 1 behavioural counselling opportunities, and 12 of 21 religious support opportunities. He has not made personal phone calls.

[45] For religious support, there was an additional occasion when there were no rooms available and did not want to stand at the door and talk;²¹ I have excluded this from the total opportunities, because an interaction on the range, through a cell door, likely would not be very meaningful.

[46] Of I s three refusals to meet with the correctional programs officer (“CPO”), the log indicates two were because he was working on his rebuttal, the other was because he already had a full day (.....).

[47] The log shows he received medical attention during the period reviewed for some health conditions. I did not request, and CSC has not provided, detailed healthcare records for the period reviewed. Some log entries suggest was dealing with some physical pain, and was frustrated about his SIU transfer. However, there is no indication of serious mental health challenges that would have significantly affected his participation in SIU activities.

[48] confirmed that he turns down a lot of interactions. He does not blame CSC for that.

¹⁹ CCRA, para. 37(1)(a).

²⁰ CCRA, s. 37.83(1).

²¹ Religious or spiritual activities entry, SIU activity log,

8.2. Encouragement efforts

- [49] The log shows CSC staff made efforts to encourage [REDACTED] by supporting him for his [REDACTED], facilitating lawyer calls, beginning a conversation at his door as he waited for a review committee meeting (which did not occur in the end, so he met with the CPO in a room), meeting with him directly at his door (i.e. interventions staff meeting with him at his door), and coming back later in the day after he turned down a morning offer. There were several documented staff interactions with him outside of program offers, especially regarding his SIU placement situation. Staff provided activities for in-cell use (e.g. puzzles, journal) and followed up on a request for shoes; such efforts can help general well-being.
- [50] [REDACTED] went to inside recreation daily after getting a new group, so the group's approval is a factor that has encouraged him to come out more.
- [51] For social programs, [REDACTED]'s participation seems to have gotten more consistent during the period reviewed, which suggests encouragement was successful.
- [52] I also note soon after his transfer to MAX1, [REDACTED] told a staff member he felt the SIU was segregation "dressed with a bowtie,"²² but when meeting with me on [REDACTED], his description was more positive: having spent years in segregation, he described the SIU as "absolutely" different from segregation. He said the new SIU model helps keep you balanced.²³
- [53] He seems to have had meaningful interactions. In the [REDACTED] interview, [REDACTED] confirmed he has staff interactions, including talking with officers about sports and changes in the correctional system. He mentioned it is nice to be able to talk about the real world.
- [54] [REDACTED] said his body was betraying him, not CSC. When asked about accommodations, he said having more medical mattresses available would be helpful. He does not have one at MAX1. He had had one at MED1, although he mentioned it was not a "proper" medical mattress. In addition, he said it would be nice to have a different type of chair in his cell, rather than a hard chair.
- [55] Otherwise, [REDACTED] made comments about SIU conditions that could improve well-being. He said additional shelf space would be helpful (he said there is one shelf for the TV and one for eating), and the cells could use painting. He said his cell was "not particularly clean" when he arrived.²⁴
- [56] There have been no incidents recorded during [REDACTED]'s SIU stay, so this is not a factor that affected opportunities or his participation.

²² Social program entry, SIU activity log, [REDACTED].

²³ IEDM interview with [REDACTED].

²⁴ IEDM interview with [REDACTED].

8.3. Potential encouragement measures

[57] said it would help to have more jobs in the SIU. He mentioned, for example, a peer education counsellor who could provide basic healthcare information.²⁵ may be a good candidate for this kind of position.

[58] In the interview room I met with | in, there was a moveable office chair with a better seat than the regular metal stools. It would likely be beneficial, and possibly encourage his participation, to let use this chair during program sessions.

9. Did any other issues affect in the SIU?

[59] In my interview with | , he spoke at length about the circumstances that led to his SIU transfer and reclassification. I have taken note of his comments. I will address those issues if a decision on the reasons for his SIU placement is necessary in the future.

V. CONCLUSION AND RECOMMENDATIONS

[60] Under s. 37.83(1) of the CCRA, I conclude CSC took all reasonable steps to provide the required opportunities in the SIU. Even so, I encourage CSC to diversify and adapt the opportunities provided to | and provide him accommodations such as a medical mattress. I also find 's comments about diversifying the jobs available in the SIU and improving SIU cell conditions worth considering.

Janine Lespérance
Independent External Decision-Maker

Date: [REDACTED]

²⁵ IEDM interview with [REDACTED].

VI. ANNEX: SOURCES OF INFORMATION AND [REDACTED]'S OPPORTUNITY TO PROVIDE COMMENTS

[61] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of [REDACTED]
- Threat risk assessments (“TRAs”), for the period as of [REDACTED]
- Casework record (“CWR”) log, for the period from [REDACTED] to [REDACTED]
- Memorandum – SIU Case Conference (“SIUCC”), dated [REDACTED]
- Memorandums – recreation group, dated [REDACTED] and [REDACTED]
- Regional review, dated [REDACTED]
- Correctional plan update – SIU (“CPU-SIU”), dated [REDACTED]
- Memorandum – integration options, dated [REDACTED]
- Institutional head “30-day” SIU transfer decision, dated [REDACTED]
- Referral decision sheet – offender security level, dated [REDACTED]
- Correctional plan – updated (“CPU”), dated [REDACTED]
- Security reclassification scale, dated [REDACTED]
- Assessment for decision – offender security level, dated [REDACTED]
- Immediate needs identification and referral – security, dated [REDACTED]
- Immediate needs identification and referral – suicide, dated [REDACTED]
- Institutional head “5-day” SIU transfer decision, dated [REDACTED]
- Memorandum – [REDACTED] dated [REDACTED]
- Psychological/psychiatric assessment report, dated [REDACTED]
- SIU transfer authorization, dated [REDACTED]
- Incident reports, dated [REDACTED] (X3)
- Criminal profile report (“CPR”) – amendment #2, dated [REDACTED]

[62] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[63] I learned [REDACTED] would share his views. I interviewed him in-person at MAX1 on [REDACTED], for more than an hour.

Name:
FPS Number:
Correctional Institution:
Date of initial decision under s. 37.83(1), CCRA:
Date of CSC Senior Deputy Commissioner Decision:
Date of the Present Decision:
Independent External Decision-Maker:

█
 MAX1
 █
 █
 █
 J. Lespérance

**DETERMINATIONS UNDER SECTION 37.8 AND SUBSECTION 37.83(3)
 OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, c. 20**

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SUMMARY

Under s. 37.83(3) of the CCRA, I find CSC took all reasonable steps to provide the required time out of cell and meaningful contact in the SIU. The “4/2” daily thresholds for were surpassed on almost all days. had a recreation group. Most of his time out of cell was recreation and work time. He had different types of opportunities, including programs and counselling. The COVID-19 pandemic affected opportunities during the period reviewed. raised issues about the cold temperature, lack of gym equipment, and inconsistency and inaccessibility of mental health interventions in the SIU, among others.

█. CSC’s information about the petition was inconsistent participated well in the MM-SIU program until recently. However, he has still been involved in incidents in the SIU. More regular counselling opportunities throughout his SIU stay could have assisted him. His statutory release date is █ and he will likely █. Under s. 37.8 of the CCRA, I find there are reasonable grounds to maintain █’s SIU placement at this time.

1. INTRODUCTION

- [1] On █, the Independent External Decision-Makers (“IEDMs”) were notified that for five consecutive days had not spent at least four hours out of his cell or had not interacted with others for at least two hours per day, in the Structured Intervention Unit (“SIU”) at [maximum-security institution, “MAX1”] in █. As an IEDM, I issued a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) on █. I concluded that Correctional Service Canada (“CSC”) had not taken all reasonable steps to provide time out of cell and meaningful human contact. I made recommendations under subsection 37.83(2) of the CCRA. I must now assess, under subsection 37.83(3) of the CCRA, whether CSC has taken all reasonable steps since my initial decision.
- [2] Another type of decision is also required. I must determine whether should remain in the SIU, under s. 37.8 of the CCRA. On █, CSC’s Senior Deputy Commissioner (“SDC”) determined, pursuant to section 37.4 of the CCRA, that he should remain in the SIU.
- [3] My analysis under each provision is separate below, as the relevant issues are different.

2. LEGAL FRAMEWORK

2.1. CSC’s legal obligations toward inmates in the SIU

- [4] CSC must provide inmates the daily opportunity to spend at least four hours outside of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates’ needs.
- [5] The previous decision under s. 37.83(1) of the CCRA explained CSC’s legal obligations in more detail.

2.2. Determinations under s. 37.83(3) of the CCRA

- [6] Decisions under s. 37.83(3) of the CCRA are second-stage decisions. S. 37.83(3) states:

“If [CSC], within the period of seven days commencing on the day on which it receives recommendations, fails to satisfy the [IEDM] that it

has taken all reasonable steps to provide the inmate with the opportunities referred to in subsection 36(1), the [IEDM] shall direct [CSC] to remove the inmate from the [SIU] [...].”

- [7] Unlike s. 37.83(1) of the CCRA, s. 37.83(3) does not explicitly state that the IEDM must assess whether CSC encouraged an inmate. However, “all reasonable steps” is a high standard that implies CSC must be proactive and try new approaches.
- [8] The determination under s. 37.83(3) is not based only on whether CSC has implemented recommendations. CSC could demonstrate that it would not be reasonable to do so. CSC could also take steps other than those proposed by the IEDM. CSC’s written response to the s. 37.83(1) decision is not the only relevant source of information.
- [9] Decisions under s. 37.83(3) focus on activities and services in the SIU, not the safety and security basis for the SIU placement.
- [10] If an IEDM finds under s. 37.83(3) that CSC has not taken all reasonable steps, the IEDM must order CSC to remove the inmate from the SIU. The CCRA does not seem to leave the IEDM discretion as to whether to issue this order.
- [11] Overall, if CSC does not provide adequate conditions of confinement, the CCRA’s remedy is the inmate’s removal from the SIU.

2.3. Period considered for s. 37.83(3) determinations

- [12] IEDM oversight should be timely and address an inmate’s current situation in the SIU. When more than seven days have passed since an initial decision under s. 37.83(1) of the CCRA, the IEDM may consider information on a period longer than the seven-day period.

2.4. Determinations under s. 37.8 of the CCRA

- [13] An IEDM decision under s. 37.8 comes after CSC decisions concluding that the inmate should stay in the SIU: the institutional head’s decisions (under s. 29.02(2) and para. 37.3(1)(b), CCRA), and the SDC decision (s. 37.4, CCRA). The IEDM decision is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.
- [14] This type of decision focuses mainly on the safety and security basis for the SIU placement, not the conditions in the SIU.
- [15] The law says that an inmate’s SIU placement should “end as soon as possible” (s. 33, CCRA). In a s. 37.8 decision,
 - “The [IEDM] may determine [...] that an inmate should remain in a [SIU] only if the [IEDM] believes on reasonable grounds that allowing the inmate’s reintegration into the mainstream inmate population
 - (a) would jeopardize the safety of the inmate or any other person or the security of the penitentiary; or
 - (b) would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence [emphasis added]” (s. 37.82(1), CCRA).
- [16] There are always some risks in the penitentiary context. Belief on reasonable grounds that an inmate’s integration of a mainstream population “would” jeopardize safety or security means there is more than just a possibility of incidents. There must be facts showing an undue probability of safety or security incidents actually happening. If the standard used were too low, there would always be a reason for keeping an inmate in the SIU. This outcome would be at odds with the legislation.

[21] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[22] On [REDACTED], I learned [REDACTED] would share his views. We spoke by videoconference on [REDACTED], for approximately an hour and twenty minutes.

[23] The interview began at the planned time with no issues.

[24] There was, however, an issue with a staff member potentially listening to the interview: [REDACTED] became distracted and visibly less comfortable at one point, and said that an officer was sitting in the room across the hallway listening. Inmates should be able to speak to IEDMs confidentially (s. 94(2), Schedule, CCRR).

4. CONTEXT

[25] [REDACTED] is [REDACTED] years old and is from [REDACTED]. He is reported as having had [REDACTED] upbringing but have been very affected by [REDACTED].

[26] He is serving a [REDACTED] federal sentence of [REDACTED] for crimes including [REDACTED].

[27] He is classified at the maximum-security level. He has been at MAX1 since his penitentiary placement in [REDACTED].

[28]

[29] His transfer to the SIU was authorized on [REDACTED], close to [REDACTED], under para. 34(1)(a) of the CCRA. It is [REDACTED]'s third SIU stay.

[30] The SIU transfer was confirmed on [REDACTED]. The MAX1 Acting Warden approved the SIU transfer in the "5-day" decision of [REDACTED] and the "30-day" decision of [REDACTED].

5. ANALYSIS

5.1. Determination under s. 37.83(3) of the CCRA

5.1.1. CSC's written response to IEDM recommendations

[31] In my [REDACTED] decision under s. 37.83(1) of the CCRA, my "not all reasonable steps" conclusion was based mainly on the inadequacy of opportunities and the information on [REDACTED]'s first few days in the SIU. The situation had already improved by the time I issued my decision.

[32] My recommendations were:

- "Increase the frequency of MM-SIU offers to [REDACTED];"
- Continue to offer counselling opportunities to [REDACTED] and consider strategies to encourage participation, such as the social worker offering sessions directly rather than a correctional officer;
- Provide reasonable notice to [REDACTED] of upcoming programming and intervention opportunities;
- Take steps to reduce isolation during an inmate's initial days in the SIU, even if they have been involved in a serious incident."³

¹ Correctional Plan Updated ("CPU"), [REDACTED], at p. 7.

² CPU - Progress, [REDACTED], at p. 10.

³ IEDM decision concerning I [REDACTED], at para. 54.

[33] CSC's response generally indicates what they do, rather than indicating that any practices would be changed. With regard to counselling, CSC states, "Health Services does not walk the ranges to provide offers," without explaining why not.

5.1.2. 's daily time out of cell and interaction

[34] Looking at CSC's SIU activity log for the 38-day period after my initial decision, from [REDACTED] to [REDACTED], [REDACTED] spent more than four hours out of his cell on 35 days during the period reviewed (about 92% of all days). He had more than two hours of meaningful human contact on 36 days (about 95% of all days).

[35] There were many days on which the daily totals were above six hours, with an average daily time out of cell of almost six hours. This is an improvement compared to the period reviewed in my previous decision.

[36] With respect to time out of cell, [REDACTED] said that there are only totals for more than six hours because he is in a group.⁴

5.1.3. Quantity and timing of daily offers

[37] According to the SIU log, [REDACTED] usually had 4 to 6 chances to get out of his cell each day. They were adequately distributed throughout the day. [REDACTED] had a recreation group so his time out of cell almost always involved interaction.

[38] There was one day that was more problematic than others in terms of the quantity of offers: [REDACTED]. That day, he only had two recreation opportunities, in the morning and in the early evening. He only spent 30 minutes outside his cell.

5.1.4. Structural or contextual factors affecting offers and [REDACTED] participation

[39] For [REDACTED], CSC's SIU log indicates that a "situational context" affected offers, but there is no explanation of what happened. This is a shortcoming in information recording.

[40] CSC memorandums refer to staffing issues, notably due to the teacher's absence ([REDACTED] to [REDACTED]), no employment coordinator onsite due to COVID-19 risks ([REDACTED] to [REDACTED]), and the unforeseen absence of Social Programs Officers ("SPOs") ([REDACTED]). There was also COVID-19 PCR testing between the afternoon of [REDACTED] and [REDACTED], which meant [REDACTED] could not participate in the [REDACTED] class despite wanting to.

[41] MAX1 expressly invoked the legislative exception for epidemics as of [REDACTED], following the discovery of positive inmate cases at MAX1, albeit not in the SIU. CSC did not provide information about positive staff cases.

[42] In my interview with [REDACTED] he spoke of shortcomings in the SIU that are more structural or general in nature. He said there is a TV in the common room but they are not allowed to use it. He said they do not have gym access and are supposed to get gym equipment in the SIU but get "different answers every time."⁵

[43] [REDACTED] after the launch of SIUs, it is pressing for CSC to ensure SIUs are equipped with adequate amenities for health and well-being.

5.1.5. The variety of opportunities [REDACTED] had

[44] According to the SIU log, [REDACTED] did have different types of opportunities, but most of his chances for time out of cell were for recreation time, especially range time. He also went out regularly as a food server. He had less frequent opportunities for correctional programs, school (the Health for Life class), and social programs. He had three mental health counselling opportunities, one chance to do a session, and one video visit.

⁴ IEDM interview with [REDACTED].

⁵ IEDM interview with [REDACTED].

Social programs

[45] only had two chances for social programs sessions.⁶ More recently, Social Programs Officers (“SPOs”) have offered in-cell activities.

[46] s comments suggested that if social programs had been offered to him more often, he would have come out for that purpose. He said social programs are offered only to people without groups and the only reason he got to go once was because his group member asked the SPO for him to go out with them.⁷

[47] His comments also suggested that it would encourage him to have more opportunities to participate in a program with an outside organization.

meeting but turned down a chance to speak with someone from a [REDACTED] program.

Video visits

[48] CSC’s log says had a visit with [REDACTED] on [REDACTED].

[49] , however, alleged that the person in charge of “V+C” was not answering his family’s emails, and singling him out by not letting him go out for visitations.

Correctional programs

[50] With respect to the SIU “Motivational Module” (“MM-SIU”) program, I had been participating extremely consistently. He did not miss a session until [REDACTED]. His [REDACTED] interfered with his availability, and then log notes indicate he told staff on [REDACTED] that he no longer wanted to do the MM-SIU program because of his upcoming release.

[51] In my interview with him, disputed that he refused to continue, but was somewhat inconsistent about what he said. He was concerned the Correctional Programs Officer (“CPO”) was only writing inaccurate, negative things in reports, and was just seeking to get information for CSC about the incident leading to his SIU transfer. He also suggested that he was given the impression that his participation would not change anything. He said that he should be able to do his core program.

[52] Despite ’s concern about negative words, the CPO’s program report does contain positive remarks about his participation, as will be discussed below.

Mental health

[53] was polite throughout my interview with him, but presented as being in a

[54] CSC’s response to my initial decision says that the counsellor meets with him “once per week.” Based on SIU log entries, this is an overstatement of the services provided. There are three entries for counselling with the clinical social worker: a 5-minute check-in with at his cell ([REDACTED]), a meeting with him at the range barrier after his request ([REDACTED]; he made the request to officers [REDACTED]),⁹ and a one-hour out of cell session with him ([REDACTED]).

[55] A clinical social worker note explains the gap in services. They had a session booked for [REDACTED], but attended a school session at that time instead.¹⁰ In

⁶ SIU activity log.

⁷ IEDM interview with [REDACTED].

⁸ IEDM interview with [REDACTED].

⁹ As noted in the SIU log. See Professional Visit - In Person entry, [REDACTED].

¹⁰ Mental health clinical note, [REDACTED].

addition, the worker was away from █████ to █████, and then there was █████, meaning the next meeting they could have was the week of █████.

[56] It is unclear to me whether I █████ knew about the scheduled counselling session of █████ ahead of time, or whether CSC could have taken steps to avoid the conflict between different activities. There were a number of days when he only had recreation time and meal-serving opportunities, so he would not have had to choose between two programs.

[57] I █████

5.1.6. Other issues raised by

[58] █████ alleged that the SIU cells are very cold due to CSC not putting heating on; inmates have not been provided warm blankets and some people are starting fires in their cells to try to stay warm. Staff have not taken complaints seriously.¹¹

[59] This issue is concerning. It is somewhat outside the scope of a s. 37.83(1) review. However, poor living conditions may cause health challenges, frustration, and incidents, and thus can affect SIU operations and inmate participation.

[60] █████ also claimed that if he asks for a (COVID-19) mask, it is “hit or miss” as to whether he is given one.

5.2. Determination under s. 37.8 of the CCRA

5.2.1. IEDM access to information

[61] CSC has a proactive disclosure obligation under the CCRA (s. 37.7(1), CCRA). In my view, institutions should review files to identify all relevant information and provide this information to the IEDM as of the triggering of an IEDM review, for example, after a SDC decision finding an inmate should remain in the SIU.

[62] In this case, the IEDM assistant sent a reminder by email on █████, mentioning security and health information. While the site sent health information promptly, there was no response regarding security information, which is at the heart of s. 37.8 determinations. My assistant or I sent further email reminders or follow-ups on █████, █████, █████, and █████. MAX1 first acknowledged the request and provided additional information on █████, a few days before the decision due date.

[63] Ultimately, I have decided that the information I have is sufficient to find there are grounds for maintaining █████’s SIU placement until his release, as discussed below. However, additional information would have been relevant. I would appreciate CSC’s greater attention to disclosure and communication with IEDMs.

5.2.2. Appropriateness of penitentiary placement and security classification

[64] █████’s penitentiary placement at MAX1 is appropriate in light of the fact that █████ is his home region, where his family is located. Moreover, his statutory release is scheduled for █████. I have been informed that he will be released █████. It should be noted that I █████ is frustrated with the way things are run at MAX1 (especially the SIU), and does not want to stay there.

[65] I find his maximum-level security classification appropriate and uncontroversial at this time, considering the incidents he has been involved in, including recent incidents and the particularly serious incident of █████.

[66] The main issue for the determination under s. 37.8 of the CCRA is whether I █████ can integrate a population at MAX1.

¹¹ IEDM interview with I █████.

5.2.3. Institutional history prior to current SIU transfer

[67] A survey of CSC’s incident history log concerning _____ shows that he has been alleged to have been involved in various incidents _____ during his time at MAX1.

[68] This is _____’s third transfer to the SIU.

5.2.4. The _____ incident

[69] The main incident that led to _____’s transfer to the SIU was on _____, only _____ after _____’s return to a mainstream population.

[70]

[71] _____.¹⁵ _____.

[72] _____ He said that CSC does not know the full story, and there was no camera in the room.

[73] When I asked whether I should view video footage, he did not appear enthusiastic about it, which could be suggestive of admission of responsibility.

[74] More, CSC’s incident report for the _____ incident contains a detailed chronology of events based on an SIO’s viewing of video footage. I do not have concerns about this report’s reliability. It describes _____

[75] For this s. 37.8 decision, a criminal conviction is not necessary for me to take into account _____’s participation in the incident.

[76] However, involvement in an incident, even if serious, cannot justify that an inmate remain in the SIU indefinitely. Placement in a SIU is not meant to be for punishment. It is intended for situations when there is an ongoing risk. _____’s comments were not particularly helpful in clarifying whether there is an ongoing security risk related to the _____ incident.

[77]

[78]

¹² SIU transfer authorization, _____.

¹³ SIU transfer authorization, _____.

¹⁴ See, e.g., CPU – SIU, _____, at p. 2.

¹⁵ Institutional Head “30-day” SIU transfer decision, _____, at p. 4.

¹⁶ CPU – SIU, _____, at p. 8.

5.2.5. The petition for [redacted]'s return

[79]

[80]

[81]

[82]

[83] It is difficult to understand how in one case, CSC confirms receipt of a petition, but in another case, CSC denies that same petition was received. This inconsistency is problematic; it calls into question the reliability of CSC's information and statements regarding the inmate population's position.

[84] Nevertheless, I do not consider the existence of a petition to be conclusive about all risks associated with [redacted]'s return to [redacted].

5.2.6. [redacted]'s participation in the MM-SIU program

[85] [redacted]'s program participation is relevant in assessing whether [redacted] can return to a mainstream population. [redacted]'s CPO was not involved in the [redacted] SIURC meeting despite having worked closely with him.

[86] The final program report appears to be a fair and balanced assessment of his participation and behaviour.

[87]

[88] On the other hand, the report indicates,

¹⁷ Incident report for incident number [redacted], [redacted].

¹⁸ IEDM interviews with [redacted], and [redacted].

¹⁹ Inmate petition of [redacted], at p. 2.

²⁰ CSC response to request for information of IEDM [redacted] of [redacted], date unknown.

²¹ The response also implied that CSC had no knowledge of a petition, but it was mentioned in the last decision that I issued concerning [redacted], on [redacted], at para. 31.

²² Program performance report - final, [redacted], at p. 2.

²³ Program performance report - final, [redacted], at p. 4.

²⁴ Program performance report - final, [redacted], at p. 3.

[89] In addition and in relation to programming, I believe if CSC had provided consistent counselling opportunities for [REDACTED] as of his transfer to the SIU, this could have helped prepare him for a return to a mainstream population. Records show that he requested mental health support very soon after his transfer to the SIU,²⁷ but the social worker was not able to offer [REDACTED] a meeting until [REDACTED], due to issues with workload demands, [REDACTED] and CSC training.²⁸

5.2.7. I [REDACTED] s behaviour as of his transfer to the SIU

[90] Incident reports describe

[91] I was also informed by CSC that along with [REDACTED] N recently [REDACTED] firmly denied this allegation, stating that it was not him and requesting that I get camera footage.³¹

[92]

[93]

[94]

[95] The incidents since his SIU transfer have been less serious than the [REDACTED] incident, but do support the notion that there would be undue risks associated with him transferring to a mainstream population.

[96] I understand that a general assessment of risk due to involvement in incidents is the basis for CSC's determination that [REDACTED] should remain in the SIU.³⁴

[97] It appears that if he were not approaching his statutory release, CSC would have transferred [REDACTED] to [maximum-security institution, "MAX2"] to integrate a population there. On [REDACTED], MAX2 provided positive comments regarding his transfer

²⁵ Program performance report - final, [REDACTED], at p. 4.

²⁶ Program performance report - final, [REDACTED], at p. 4.

²⁷ Referral for health services, [REDACTED].

²⁸ Mental health clinical notes, [REDACTED]. See also: SIU activity log.

²⁹ Incident report for incident number, [REDACTED], [REDACTED].

³⁰ Email from [REDACTED] A/MAI, [REDACTED], referring to a comment by a CM.

³¹ IEDM interview with [REDACTED].

³² IEDM interview with [REDACTED].

³³ Statement/observation reports number [REDACTED], [REDACTED], and [REDACTED], [REDACTED].

³⁴ As stated in an email from [REDACTED], Senior Project Officer, SIU Oversight ([REDACTED]), [REDACTED].

there. The transfer was recommended in a █████ assessment for decision³⁵ and approved on █████.³⁶ CSC has not provided a rationale to explain why a transfer to MAX2 would lessen risks and allow █████ to safely and viably integrate.

5.2.8. Changes to █████ ranges

[98] In my █████ interview with █████, he said CSC was blocking him from going to the only range he is comfortable with, the █████ range in █████. In my █████ interview with him, he said that he had heard that the range is being shut down, but he had been told different rationales for that, including: █████. He suggested that previously, he would have been fine there, but now they [CSC] can say he is at risk.³⁷

[99] CSC informed me in writing that the █████ inmates currently on that range will be relocated “█████ [...]”³⁸ The exact timeframe is unknown to me.

5.2.9. Other relevant factors

[100] In weighing the various types of potential risks in this case, I also consider it relevant to consider that less than a week remains until █████ will be released from MAX1, the █████ incident occurred very soon after his last SIU release, and that he has not been excessively lacking meaningful human contact in the SIU.

6. CONCLUSION

[101] Under s. 37.83(3) of the CCRA, I conclude that CSC took all reasonable steps. Ultimately, the minimum “4/2” thresholds were surpassed on almost all days, and █████ did have different types of opportunities. However, this review points to a continued need to provide amenities; ensure a liveable environment; and improve the consistency and frequency of interventions, including for mental health.

[102] Considering all the factors discussed above as a whole, I find under s. 37.8 of the CCRA that there are reasonable grounds to justify that █████ remain in the SIU until his statutory release.

Janine Lespérance
Independent External Decision-Maker

█████

³⁵ Assessment for decision – institutional transfer, █████, at p. 6.

³⁶ SIURC recommendation, █████, at p. 2.

³⁷ IEDM interview with █████.

³⁸ Email from █████, CSC Senior Project Officer, SIU Oversight (█████), █████.

Name (inmate):
FPS Number: ██████
Correctional Institution: MAX1
Date of this notice: November 26, ██████
Independent External Decision-Maker: Janine LESPÉRANCE

**NOTICE OF DELAYED DECISION UNDER S. 37.8 OF THE CORRECTIONS AND
CONDITIONAL RELEASE ACT, L.C. 1992, CH.20**

- [1] This is a formal notice to signal that my decision under s. 37.8 of the *Corrections and Conditional Release Act* (“CCRA”), as an Independent External Decision-Maker (“IEDM”), concerning ██████, is still pending. This decision should have been issued thirty days after the October 23 Correctional Service of Canada (“CSC”) Senior Deputy Commissioner decision. In addition, my decision under s. 37.83(1) of the CCRA on the conditions of confinement is still pending.
- [2] Determinations under s. 37.8 of the CCRA are on whether an inmate should remain in the SIU or not. They involve analysis of security-related factors.
- [3] On Nov. 13, I sent a letter to ██████, via CSC, providing a summary of information and requesting representations. I only received the response through CSC five days later, on Nov. 18. On Nov. 13, my administrative assistant requested observation reports and security information on my behalf. On Nov. 16, I was granted access to additional information from CSC. I conducted phone interviews with ██████ and CSC Security Intelligence Officer (“SIO”) ██████ on Nov. 20. Through these conversations, it came to my attention that there were additional relevant documents or records that CSC had not provided to me. [The SIO] also suggested that I should speak with their colleague, SIO ██████. I am also waiting to hear back from a lawyer as to whether they will be making additional representations on ██████’s behalf.
- [4] I am still waiting to receive access to additional documentary information that, based on my current understanding, is directly relevant to the issues that I must consider in a decision under s. 37.8. In summary, this information pertains to:
- Petitions from inmate committees for ██████’s return to the population;
 - I ██████ said there were two petitions of this kind done, in ██████ and ██████, but I have been told by email from a CSC security intelligence assistant that there is no petition in his case; thus, this requires clarification;
 - Information received by CSC as to the security risks for ██████
- [5] An IEDM cannot do their job properly and issue well-founded decisions if CSC does not provide them all relevant information, including “Protected C” information. In fact, CSC has the legal obligation to provide information to the IEDM, as set out in s. 37.7 of the CCRA.
- [6] It is my view that an IEDM should be provided all relevant information shortly after a SDC decision under s. 37.4 of the CCRA, which triggers the need for an IEDM decision under s. 37.8 of the CCRA. Someone within CSC with knowledge of the specific case, full access to all information, and an understanding of the factors relevant to s. 37.8 decisions, should review the information within CSC’s control and ensure that the relevant information is provided to the IEDM. An IEDM cannot be expected to guess what information CSC does or does not have. An IEDM should not have to investigate or do multiple follow-ups simply to receive the information necessary.

[7] I request that CSC staff provide this notice to _____ I apologize to _____ for my inability to issue the s. 37.8 decision in accordance with the legislative deadline.

—
Janine Lespérance
Independent External Decision-Maker (IEDM)

Name:
FPS Number: ██████
Correctional Institution: ██████
Date of Notification (s. 37.83(1), CCRA): ██████
Date of previous decision (s. 37.8, CCRA): ██████
Date of Decision: ██████
Independent External Decision-Maker: J. Lespérance

**NOTICE REGARDING LEGAL COMPLIANCE
 AND DECISION UNDER SUBSECTION 37.83(1)
 OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C.20**

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SUMMARY

remained in the SIU after an IEDM s. 37.8 decision that he should return to a population at MAX1. CSC did not respect ss. 37.7, 37.8, and 37.4 of the CCRA. CSC did not provide the IEDM all relevant information for the s. 37.8 decision, including information the IEDM requested. CSC did not follow the decision under s. 37.8. Instead, CSC reassessed the situation. CSC seems to have not considered all relevant details. CSC has not filed for judicial review. If CSC ignores the IEDM's reasons and conclusions, it does not show respect of s. 37.8 of the CCRA. CSC's Commissioner did not issue another decision on ██████'s SIU placement under s. 37.4, even though he is still in the SIU and there is supposed to be regular CSC and

IEDM oversight. CSC tried to transfer [REDACTED] to MAX2, which made [REDACTED]. CSC's non-respect of the law had a negative impact on [REDACTED]'s well-being and conditions of confinement. He had access to regular program interventions and time out of cell in the SIU, including several inmate committee meetings. However, he reported issues contacting his lawyer and accessing mental health. There were mental health interventions in response to crises, but [REDACTED] did not get regular counselling. CSC did not let him have recreation time with inmates from the ranges he wants to integrate. CSC did not adequately justify that position on recreation groups. Under s. 37.83(1) of the CCRA, CSC did not take all reasonable steps to provide [REDACTED] opportunities for time out of cell and meaningful human contact.

I. INTRODUCTION

- [1] On [REDACTED], Correctional Service Canada ("CSC") notified the Independent External Decision-Makers ("IEDMs") that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning [REDACTED] was necessary. For five consecutive days, he had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit ("SIU") at MAX1 in [REDACTED].
- [2] On [REDACTED], I issued a decision under s. 37.8 of the CCRA finding [REDACTED] should not remain in the SIU. I found he should be returned to a population at MAX1, namely [REDACTED]. Despite that decision, [REDACTED] remains in the SIU. The conditions of confinement review remains relevant and is not moot.
- [3] Removing [REDACTED] from the SIU likely would have been the most effective way of providing him opportunities for time out of cell and meaningful human contact. The analysis below will discuss legal compliance issues regarding information disclosure to me as an IEDM and my prior removal decision. The compliance issues have had an impact on [REDACTED] and his conditions of confinement.

II. LEGAL FRAMEWORK

- [4] CSC must provide inmates the daily opportunity to spend at least four hours out of their cell and two hours interacting with others, through various activities. There are limited exceptions to this legal obligation. CSC should be proactive and respond to inmates' needs.
- [5] Under s. 37.83(1) of the CCRA, an IEDM determines whether CSC has taken all reasonable steps to provide an inmate the required opportunities in the SIU and encourage them to participate. The IEDM can decide the specific period of activities to consider.
- [6] My previous decisions concerning [REDACTED] set out the relevant legal provisions in more detail.
- [7] In my view, in some cases, such as this one, it is appropriate for an IEDM to consider the broader context in a s. 37.83(1) analysis, when it has an impact on the inmate's well-being and access and participation in out-of-cell activities.
- [8] I also consider that in cases when CSC has not implemented an IEDM decision that an inmate should not remain in the SIU, an IEDM has the implicit ongoing authority to review issues regarding the implementation of that decision.

III. SOURCES OF INFORMATION

- [9] I have considered the following sources of information, from CSC:
- SIU daily activity log, for the period as of [REDACTED]

- Threat risk assessments (“TRAs”), for the period as of [REDACTED]
- Memorandum – Response to IEDM Information Clarification, [REDACTED]
- Memorandum – Warden’s response to IEDM Review/Decision, dated [REDACTED]
- Email from [REDACTED], Acting Warden Interventions, dated [REDACTED]
- Memorandum – SIO conversation, dated [REDACTED]
- Mental health clinical notes, dated [REDACTED], [REDACTED] (X2), [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Health case management notes, dated [REDACTED], [REDACTED], and [REDACTED]
- Regional reviews, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Memorandums – rec group, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Patient safety plan, [REDACTED]
- Mental health monitoring form, dated [REDACTED], [REDACTED], [REDACTED]
- Modified watch observation form, dated [REDACTED] and [REDACTED]
- Critical response and incident management plan (“CRIMP”), dated [REDACTED]
- Incident reports, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (X2)
- Structured Intervention Unit Review Committee (“SIURC”) recommendation, dated [REDACTED]
- [REDACTED] interview with MAX1 Security Intelligence Officer (“SIO”) [REDACTED], [REDACTED]
- [REDACTED] interview with MAX1 [REDACTED] Correctional Manager (“CM”) [REDACTED], [REDACTED]
- Memorandums – integration options, dated [REDACTED] and [REDACTED]
- Mental health need scale, dated [REDACTED]
- [REDACTED] interview with MAX1 SIO [REDACTED], [REDACTED]
- Inmate request form ([REDACTED] petition), dated [REDACTED]
- Inmate [REDACTED] petition, undated
- Correctional plans – SIU (“CPU-SIU”), dated [REDACTED], [REDACTED], and [REDACTED]
- Senior Deputy Commissioner (“SDC”) decisions, dated [REDACTED] and [REDACTED]
- Mental health forms – SIU “14 day,” dated [REDACTED], [REDACTED], and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]
- Health encounter notes, for the period from [REDACTED] to [REDACTED], [REDACTED] to [REDACTED], and [REDACTED] to [REDACTED]
- Institutional head response to IEDM decision (“CSC’s response”), dated [REDACTED]
- Institutional head “30-day” SIU transfer decision, dated [REDACTED] and [REDACTED]
- Mental health form – SIU “28” day, dated [REDACTED]
- Assessment for decision (“AFD”) – institutional transfer, dated [REDACTED]
- Encounter notes, for the period as of [REDACTED] to [REDACTED]
- Referrals for health services, dated [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Casework record log, for the period from [REDACTED] to [REDACTED]
- Statement/observation reports (“SORs”), numbered: [27 reports]
- Referrals for health services, dated [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Consent to participate in/receive health services, dated [REDACTED], and [REDACTED]
- Institutional head “5-day” SIU transfer decisions, dated [REDACTED] and [REDACTED]
- Correctional plan – updated (“CPU”), dated [REDACTED] and [REDACTED]
- SIU transfer authorization, dated [REDACTED] and [REDACTED]
- AFD – security level and penitentiary placement, dated [REDACTED]
- AFD – security level and institutional transfer, dated [REDACTED]
- Criminal profile report – initial (“CPR”), dated [REDACTED]

[10] I have not listed “protected C” information above. As for my [REDACTED] decision, some information I have carefully considered is not discussed in detail in the text below for security-related reasons.

[11] I first told [REDACTED] about the review under s. 37.83(1) of the CCRA during my telephone interview with him on [REDACTED]. That interview was for my decision under s. 37.8 of the CCRA. At the time, I had not been able to provide [REDACTED] the required disclosure of information about SIU conditions. I told him I would issue the s. 37.8 decision first, and if he remained in the SIU, I would do the conditions of confinement review under s. 37.83(1).

[12] I sent [REDACTED], via CSC, a formal notice of this review with a summary of the information on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[13] On [REDACTED], I received a 14-page letter from [REDACTED] (scanned and sent to me by email by CSC), dated [REDACTED].

[14] On [REDACTED], I also learned [REDACTED] would share his views. I interviewed him by videoconference on [REDACTED], for under an hour.

[15] Although I had asked CSC to provide [REDACTED] a copy of the SIU activity log with my notice letter, I [REDACTED] said he had not received it. When I asked whether he wanted another opportunity to provide comments after getting a copy of the log, he said it was not necessary.

[16] I received information from CSC after the date of my interview with [REDACTED]. I did not share a summary of that information with him. However, he was already aware of some general aspects of that information. Other details could not be shared for safety and security reasons.

IV. CONTEXT

[17] [REDACTED] is [REDACTED] years old and is from [REDACTED].

[18] He is serving his [REDACTED] federal sentence. His next [REDACTED]. This date could change, however. He could [REDACTED].

[19] He is classified at the maximum-security level.

[20] His transfer to the SIU was authorized on [REDACTED], under para. 34(1)([REDACTED]) of the CCRA.

[21] This is [REDACTED] s [REDACTED] SIU stay.

[22] I have issued the following decisions concerning

- [REDACTED]: decision under s. 37.83(1) of the CCRA, concluding CSC did not take all reasonable steps
- [REDACTED]: decision under s. 37.83(3) of the CCRA, concluding CSC took all reasonable steps
- [REDACTED]: decision under s. 37.8 of the CCRA, concluding [REDACTED] should not remain in the SIU

[23] The current decision should be read alongside those previous decisions, especially the decision issued [REDACTED].

V. ANALYSIS

1. Legal compliance issues related to prior decision under s. 37.8 of the CCRA

1.1. The binding nature of IEDM decisions

[24] In a decision on the constitutionality of the former administrative segregation system, Justice Leask of the Supreme Court of British Columbia stated: “an independent reviewer must have the authority to release an inmate from segregation, not simply make recommendations that the warden may override or disregard.”¹ On appeal, the Court of Appeal for British Columbia found procedural fairness required external review, to ensure independence and impartiality.²

¹ *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, at para. 410 (cited in *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228, at para. 104).

² *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228, at para. 173 to 198. The Court also noted in the analysis, at para. 173, that the “Attorney General acknowledge[d] that

[25] The CCRA contains clear language that shows the legislative intent to give IEDMs the authority to make legally binding decisions affecting inmates in SIUs. Records of legislative debates suggest the same.³ CSC Commissioner Anne Kelly has publicly stated IEDM decisions are binding.⁴

[26] In my view, decisions under s. 37.8 of the CCRA are legally binding on CSC. They are not intended to be recommendations that lead to additional review, information-gathering, and delay within CSC; ongoing dialogue between CSC and IEDMs; or IEDMs' continuous re-evaluation of evolving situations.

[27] IEDM oversight under s. 37.8 has little value if CSC takes whatever route to end an SIU placement it wants, regardless of the IEDM's reasons and findings. Section 33 of the CCRA already requires CSC to end a person's SIU confinement as soon as possible, in all cases. Considering that obligation, an IEDM's decision under s. 37.8 becomes essentially redundant if CSC only gives weight to the IEDM conclusion to remove the inmate from the SIU.

[28] If CSC disagrees with an IEDM decision, CSC can file for judicial review.

1.2. CSC's response to the [REDACTED] decision

[29] The Warden of MAX1 provided a one-page response to my [REDACTED] decision on [REDACTED]. In summary, it explains that, following my decision, MAX1 did more evaluation and consulted with CSC's regional and national subject matter experts. CSC considers risks for [REDACTED]'s personal safety are unmanageable at MAX1, but risks are manageable at MAX2. The memorandum describes efforts to transfer him there (see paras. 74 to 83 below), even though "CSC respects [my] decision that it would be best for [REDACTED] to remain at [MAX1]."

[30] The letter does not mention judicial review. I do not have reason to believe CSC filed for judicial review of my [REDACTED] decision, despite CSC's apparent disagreement with my conclusions.

[31] I sent questions to CSC on [REDACTED], which CSC responded to that day. CSC also provided me access to additional security documents, on [REDACTED]. These documents date both from before and after my [REDACTED] decision. There were some developments at MAX1 [REDACTED] after the decision.

[32] I appreciate CSC's efforts to explain CSC's position and to provide additional information.

[33] However, the information confirmed concerns I had about information-sharing shortcomings before my [REDACTED] decision. In addition, as will be discussed below, I have concerns about the quality, objectivity, and reliability of the analysis at the institutional level.

1.3. Information not provided by CSC

[34] Section 37.7(1) of the CCRA states,

"The Service shall furnish to an independent external decision-maker all information under the Service's control that is relevant to the making of a determination in respect of an inmate by the independent external decision-maker."

[35] As an IEDM, I have repeatedly emphasized the importance of CSC respecting this obligation, in numerous decisions and staff interviews and meetings. Because I have often found CSC's disclosure of information inadequate, I have often requested information from CSC under s. 37.7(2) of the CCRA.

the legislation [was] procedurally unfair because it require[d] institutional heads to review their own segregation decisions."

³ See, e.g.: House of Commons Debates, 42nd Parl, 1st sess, 2019/03/01 (statements by the Hon. Ralph Goodale).

⁴ [REDACTED].

[36] For s. 37.8 decisions, CSC knows an IEDM must issue a decision once the SDC decides to keep an inmate in the SIU. In my view, CSC should take steps to disclose all relevant information to the IEDM as of the SDC decision date.

[37] In [REDACTED]'s case, the SDC decision was issued [REDACTED]. An initial reminder to MAX1 about the s. 37.8 decision, requesting all relevant security information and requesting ongoing disclosure of any new information to the IEDM, was sent on [REDACTED].

[38] I sent additional specific requests between then and the decision due date (in particular, on [REDACTED], [REDACTED], and [REDACTED]). However, I did not receive all relevant information for the decision.

1.3.1. Petitions

[39] On [REDACTED], I specifically requested CSC provide me "any petitions" for [REDACTED]'s return. I was sent one petition on [REDACTED].

[40] After my interview of [REDACTED] on [REDACTED], I made another request (to the SIO department) for petitions on [REDACTED]. SIO [REDACTED] responded that the "only petition" from [REDACTED] was the one I had already received.⁵

[41] After my interview with [REDACTED], I sent another request to CSC on [REDACTED]; I asked for the [REDACTED] petition [REDACTED] had presented in the SIURC meeting (the [REDACTED] SIURC recommendation does not mention it). CSC sent it on [REDACTED].

[42] At the time of issuing my [REDACTED] decision, I doubted CSC had provided all petitions advocating for [REDACTED]'s return to a population at MAX1.⁶

[43] Since my decision, CSC has provided me an SIO report, dated [REDACTED], stating that, by that time, CSC had received [REDACTED] petitions concerning [REDACTED] from [REDACTED] and [REDACTED] from [REDACTED].

[44] CSC had thus withheld information from me that would tend to support [REDACTED]'s ability to integrate a population at MAX1.

1.3.2. Intelligence report

[45] The aforementioned [REDACTED] intelligence report was clearly and directly relevant to the decision on [REDACTED]'s SIU placement. CSC did not provide it to me, nor inform me about it, before the s. 37.8 decision due date. It contains information about issues I requested to interview SIO [REDACTED] (or another informed staff member) about on [REDACTED]. That request was not granted.

[46] It included a detail that could be considered to support [REDACTED]'s ability to integrate a population at MAX1.

1.3.3. Audio recording of SIURC meeting

[47] CSC's current rationale for not allowing [REDACTED] to integrate a range at MAX1 seems to rely in large part on an interference based on a comment made by [REDACTED] at the [REDACTED] SIURC meeting, at which the A/SIU Manager, his PO, and his CPO were present.

[48] In my four interviews with [REDACTED] he did not make any comment suggesting he could not integrate at MAX1.

[49] The SIURC recommendation states, "[REDACTED]'s SIURC was audio recorded, the decision maker is encouraged to listen to the recording for an exact breakdown of his comments and the conversation."⁷ A paragraph summarizes [REDACTED]'s comments at the meeting. The summary does not suggest [REDACTED] made any comment that would imply he could not safely integrate at MAX1.

⁵ Email to the IEDM from SIO [REDACTED], [REDACTED].

⁶ Decision under s. 37.8 of the CCRA concerning [REDACTED], at paras. 48 to 52.

⁷ SIURC, [REDACTED], at p. 2.

[50] CSC did not clearly communicate that the recording was of particular importance for my decision. CSC did not provide me the recording.

[51] In a [REDACTED] email, I asked for the recording, among other requests and questions (including to explain why CSC had not facilitated an interview with a [REDACTED] inmate representative [REDACTED], as I had requested).

[52] CSC's [REDACTED] response stated, "The recording is with the DW and a copy will be provided once [REDACTED] returns from annual leave and can transfer a copy onto CD."⁸ CSC stated, "We apologize for the inability to provide detailed responses at this time, and respectfully ask that an update [sic] version be sent to you on [REDACTED] when all the above information can be verified with key identified staff members."⁹

[53] In my email back to CSC that day, I referred to the legal deadline for the decision under s. 37.8 of the CCRA, CSC's disclosure obligations, and my prior requests, and wrote:

"In light of the context, legal provisions, and circumstances, I think I will have to issue my decision based on the information that has been provided to me thus far. I understand that [REDACTED]. However, I don't think there are exceptional circumstances that would warrant me delaying my decision past the legislative deadline in this case, which guarantees external oversight decisions on SIU placements within an established timeframe."

[54] I acknowledge my [REDACTED] request was somewhat last-minute. However, CSC did not share the relevant information before then.

[55] I have not been provided the audio recording since the decision date.

1.3.4. CSC's internal experts

[56] As mentioned, the Warden's response to my [REDACTED] decision states MAX1 consulted with regional and national subject matter experts following my decision.

[57] If CSC believes regional or national experts have important relevant information for an IEDM decision, CSC should bring that to the attention of an IEDM before their decision.

1.4. Other concerns regarding CSC's analysis

[58] Through my review of the additional security/intelligence reports CSC provided after my decision under s. 37.8, I have identified issues that further lead me to question the objectivity, quality, and reliability of MAX1's analysis in this case. I noticed both errors and omissions.

[59] For example, a [REDACTED] report on [REDACTED] s case ignores relevant information in my [REDACTED] decision regarding my interview with [REDACTED].¹⁰ A report dated [REDACTED] suggests only [REDACTED] petitions were received by that date, even though it later mentions another [REDACTED] petition provided by [REDACTED] that day, which would presumably bring the total number of petitions received to [REDACTED].

[60] Other significant details I noticed –and which CSC staff seem to have not considered– concern sensitive information CSC is relying on to keep [REDACTED] in the SIU; I believe CSC made an incorrect inference and missed relevant details. I will provide additional commentary about this issue to CSC separately.¹¹

1.5. Implications of CSC's inadequate disclosure

[61] I find CSC did not respect ss. 37.7(1) and (2) of the CCRA before my s. 37.8 decision.

⁸ Email from Clerk [REDACTED] (author of answers unknown [REDACTED]).

⁹ Email from Clerk [REDACTED] (author of answers unknown), [REDACTED].

¹⁰ See: decision under s. 37.8 of the CCRA concerning [REDACTED], at paras. 51, 52, and 56 to 59.

¹¹ At the time of issuing this decision, I plan to provide this information [REDACTED].

[62] CSC's failure to fulfill its legal information sharing obligations cannot justify its non-respect of a decision under s. 37.8 of the CCRA.

[63] In this case, the disclosure issues made my decision-making role as an IEDM more difficult. However, since my [REDACTED] decision, I have not received information that would have changed it at the time, and again, I am concerned about the reliability of MAX1's analysis. I do have some concerns that CSC may have taken steps since the decision that might increase potential security risks within the institution.

[64] I do not have information on whether there have been further developments at MAX1 within the last two weeks that would affect [REDACTED]'s ability to safely integrate a population.

2. CSC's violation of legal provisions on oversight

[65] Section 37.4 of the CCRA requires CSC's Commissioner to decide whether an inmate should remain in an SIU "every 60 days after the Commissioner's last determination under this section that the inmate should remain in the [SIU]." In practice, the SDC typically issues the decisions under s. 37.4 of the CCRA. If they decide an inmate must remain in the SIU, an IEDM must issue a decision under s. 37.8 of the CCRA 30 days later. In other words, s. 37.4 of the CCRA guarantees ongoing internal CSC oversight, potentially leading to external IEDM oversight

[66] The legislation does not consider a situation where an inmate stays in the SIU despite an IEDM removal decision; the CCRA seems to presume CSC will comply.

[67] As noted, the SDC's last decision under s. 37.4 of the CCRA concerning [REDACTED] was issued [REDACTED]. Consequently, another decision under s. 37.4 of the CCRA was due [REDACTED]. If the SDC again concluded [REDACTED] should remain in the SIU, another IEDM decision under s. 37.8 of the CCRA would be necessary.

[68] In my view, CSC has violated s. 37.4 of the CCRA. I do not consider the Acting Assistant Deputy Commissioner, Correctional Operations ("ADCCO") regional reviews (issued [REDACTED] and [REDACTED] in [REDACTED]'s case) to be equivalent; they do not lead to IEDM oversight decisions. The CCRA requires repeat decisions for an inmate who remains in the SIU long-term.

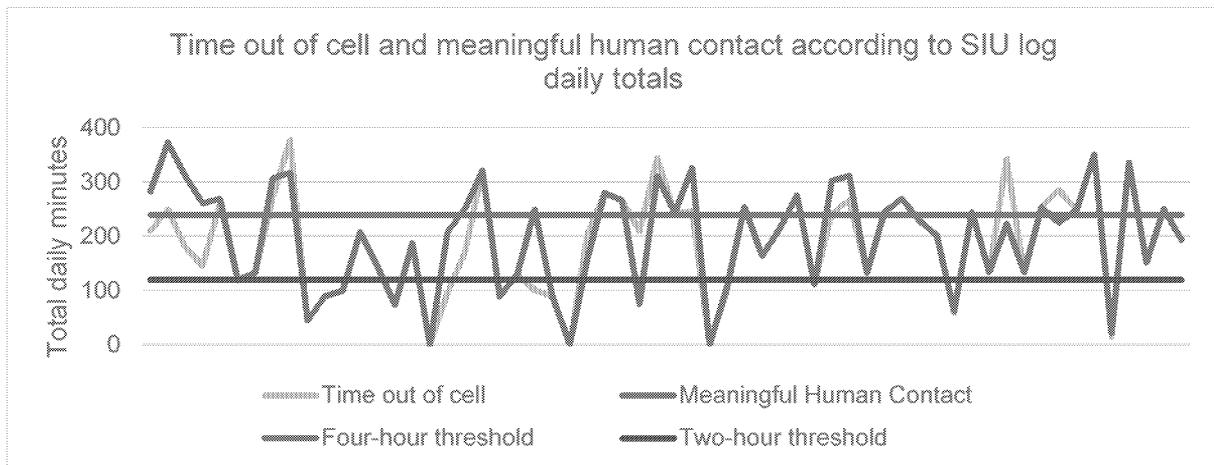
3. Daily totals for time out of cell and meaningful human contact

[69] My last conditions of confinement review concerning [REDACTED] was issued [REDACTED].

[70] The analysis below focuses on the period from [REDACTED] to [REDACTED], a 60-day period ("the period reviewed"). This period includes days before and after my decision that [REDACTED] should not remain in the SIU.

[71] According to CSC's SIU activity log, [REDACTED] spent four hours or more out of his cell on 24 days (about 40% of all days) during this period. He had two hours or more of meaningful human contact on 45 days (about 75% of all days). The average for time out of cell was about three hours and eight minutes, whereas the average for interaction was three hours and 18 minutes.

[72] This represents an overall improvement compared to the periods reviewed in my previous decisions under s. 37.83 of the CCRA, especially the initial period after [REDACTED]'s transfer to the SIU. The daily totals varied from day to day. As shown in the graphic below, there was no significant trend during the period reviewed.



4. CSC's efforts to transfer I to MAX2

[73] As mentioned, my [REDACTED] decision concluded [REDACTED] should not remain in the SIU, and could integrate a population at MAX1, namely [REDACTED].¹² I noted [REDACTED]'s concerns about [REDACTED] transfer, and found it would be better for I to remain in the [REDACTED].¹³

[74] Despite those findings, CSC attempted to end [REDACTED]'s SIU stay through an [REDACTED] transfer to MAX2.

[75] [REDACTED] had made his opposition to going to MAX2 clear to CSC. On [REDACTED], when CSC's transfer decision was shared with him, he told his PO

[76] CSC tried to transfer [REDACTED] to MAX2 on [REDACTED]. According to CSC information, the "Emergency Response Team" ("ERT") was used to extract I from his cell.

[77] In my interview with [REDACTED] he said the ERT showed up at his door in the morning just after breakfast, with no warning, [REDACTED].¹⁴ His letter alleges the ERT "kidnapped" him out of his bed "without any information being given to [him]."¹⁷

[78] After that, I

[79] CSC has stated there was another plan to transfer him to MAX2 on [REDACTED], but it was stopped

[80] There are references in the SIU log to I

[81] In [REDACTED]'s letter, he expresses his concerns about CSC's "lack of cooperation" with, and disregard of, my s. 37.8 decision. He maintains it is in his best interest and the interest of his rehabilitation to stay at MAX1. He states he has voiced his concerns to "over 20" staff members. He describes a meeting with him [REDACTED] as an effort to coerce him to agree to go to MAX2.

[82] Similarly, in my [REDACTED] interview with [REDACTED] he said staff were telling him to transfer to MAX2, even if he were to go back to the SIU there; he feels CSC is ignoring his

¹² IEDM decision under s. 37.8 of the CCRA, [REDACTED], at para. 91.

¹³ IEDM decision under s. 37.8 of the CCRA, [REDACTED], at para. 90.

¹⁴ Case management entry, SIU activity log, [REDACTED].

¹⁵ Incident report for incident no. [REDACTED], [REDACTED].

¹⁶ IEDM interview with [REDACTED].

¹⁷ [REDACTED]'s letter to the IEDM, [REDACTED], at p. 10.

¹⁸ [REDACTED]'s letter to the IEDM, [REDACTED].

comments that it would not be safe for him to transfer to MAX2. He was also concerned about ██████.¹⁹

[83] I do not find the effort to transfer ██████ to MAX2 shows compliance with s. 37.8 of the CCRA (see para. 27 above). It does not reflect the conclusions of my ██████ decision. Even if the transfer had ended ██████'s SIU stay, I would not consider it showed respect of IEDM authority. The most recent Regional Review of ██████ states, "CSC will continue to work on alternatives outside of [MAX1] to action IEDM Lespérance's decision" and, "CSC is working to action IEDM Lespérance's transfer out decision rendered on ██████."²⁰ Similarly, I do not find these ongoing transfer efforts to be a way to "action" my decision, even if they could potentially lead to an alternative to end ██████'s SIU stay.

5. Conditions of confinement in the ██████ observation cell

[84] CSC has not provided information about ██████'s conditions of confinement in the observation cell.

[85] ██████ said he was not allowed to call a lawyer while there. He had no access to recreation or interventions. He had no clothes, pillow, book, or cup to drink water from. It was "far worse" than the SIU. He said he was asking repeatedly that day for someone from Mental Health to come, but no one did after the initial meeting; he wanted to be sent back to the SIU.²¹

[86] I consider ██████ is partly a result of CSC's non-implementation of my ██████ decision and CSC's attempt to forcibly transfer ██████. While not physically in the SIU for most of the day ██████, he can be considered as still having an SIU "status" at that time.

6. General opportunities and participation in the SIU

[87] In the SIU (█████), ██████ has had regular daily opportunities to get out of his cell, for: indoor and outdoor recreation, the ICPM MT Maintenance program with the Correctional Programs Officer ("CPO"), social programs, work as a cleaner, meeting with the Chaplain, case management meetings, and phone calls.

[88] Importantly, and to CSC's credit, ██████ was also able to meet with inmate committee representatives on several occasions: ██████, ██████, and ██████; ██████, ██████, ██████, and ██████; and ██████, ██████, and ██████.

[89] The log shows he consistently met with his "case management team" and the CPO when he had the opportunity, and went out to ██████. He met with the Chaplain three out of four opportunities. During the first part of the period reviewed, he rarely took recreation time. As of around ██████, he started taking more recreation time, often once or twice per day. This coincides with his placement on a recreation group.

[90] Although the log appears generally reliable, in my interview with ██████ he said a ██████ recreation offer at ██████ recorded in the log did not happen, because the Team came for him five minutes after breakfast that day, which is usually at ██████.²² In his letter, he states the ERT showed up at about ██████.

[91] ██████ has said unit-level staff "couldn't do more," but the administration has the idea that the SIU is segregation.²³ He also did express some concerns regarding SIU opportunities during the period reviewed.

7. Issues with SIU opportunities

¹⁹ See: Regional Review, ██████, at p. 1. ██████. The most recent regional review, of ██████, also does not refer ██████. It states ██████.

²⁰ Regional Review, ██████, at pp. 2 and 3.

²¹ IEDM interview with ██████.

²² IEDM interview with ██████.

²³ IEDM interview with ██████.

7.1. Contact with lawyer

[92] [redacted] claimed he had had difficulty getting private lawyer calls. He had to call his lawyer using the range phone. In relation, he has also had some difficulty getting documents sent to his lawyer, including CSC documents and IEDM decisions (one staff member claimed his lawyer's email was not working whereas another had no issues).²⁴

[93] CSC information confirms he requested a lawyer call when in the [redacted] observation cell on [redacted].²⁵

[94] I accept [redacted]'s comments about lawyer calls. [redacted] I believe confidentially communicating with his lawyer is a form of meaningful and important contact for him, so any difficulty in this area is very significant.

7.2. Recreation group approval

[95] As I have commented in several previous reviews, having a recreation group often makes a significant difference for the level of isolation of someone held in the SIU. Group choices should reflect a person's preferences if there are no overriding security concerns.

[96] According to CSC information, [redacted] had a recreation group from [redacted], but his recreation [redacted] then left the SIU.²⁶ He did not have a recreation group from [redacted], which is much of the period reviewed.

[97] A Correctional Manager ("CM") asked him about a group on [redacted] but he "didn't seem too interested."²⁷ He was told to let the CM know if there was anyone he wanted to have recreation with. A [redacted] memorandum states he "remains on rec alone, however he does have rec group options."²⁸

[98] Another SIO memorandum states he was approved for a group on [redacted],²⁹ which is consistent with log entries. [redacted] said he believed it had been approved earlier on.³⁰

[99] During the period reviewed, CSC prevented certain inmates from being in a recreation group with [redacted], despite their mutual requests, because they previously resided on ranges at MAX1 that [redacted] wishes to integrate.³¹ One of these individuals was in the SIU as of [redacted]. Given my conclusion in the s. 37.8 decision, I question CSC's logic on this issue. It appears [redacted] could have been placed on a group earlier.

[100] Moreover, considering the more controlled environment of the SIU, placing [redacted] in a recreation group with an inmate or inmates formerly from these populations could be a way of gaining more information about the actual risks of returning him to a population at MAX1.

[101] In addition, in my [redacted] interview with [redacted] he said he got "double-doored" the week before, with one of the inmates he wanted to be in a group with; they were sitting in a common room together without issue, before staff became agitated about it and separated them.³²

[102] There is no recorded incident between [redacted] and any other inmate after [redacted].³³

²⁴ IEDM interview with [redacted]; [redacted] letter to the IEDM, [redacted], at p. 10.

²⁵ Critical response and incident management plan ("CRIMP"), [redacted], at p. 1.

²⁶ Memorandum: recreation group, [redacted].

²⁷ Case management entry, SIU activity log, [redacted].

²⁸ Memorandum: recreation group, [redacted].

²⁹ Memorandum: recreation group, [redacted].

³⁰ IEDM interview with [redacted].

³¹ SOR by SIO [redacted], unnumbered, dated [redacted].

³² IEDM interview with [redacted].

³³ For discussion of that prior incident, see: IEDM decision under s. 37.8 of the CCRA concerning [redacted], at paras. 69 to 74. Both recent regional reviews mention the [redacted] incident without acknowledging my comment that the [redacted] incident report likely inaccurately reports what happened.

7.3. Mental health support

[103] CSC information shows there were some mental health interventions during the period reviewed, some of which were not recorded in the SIU activity log.

[104] In a [REDACTED] meeting with a clinician, arranged after

[105] In his letter and in our interview on [REDACTED], [REDACTED] said he had repeatedly been asking to talk to someone from psychology or psychiatry. He expressed concerns regarding the quality of support as well as the lack of privacy for Mental Health meetings, as they occur in the rooms just off the range, where people are often walking by. [REDACTED] has previously told CSC staff that he feels uncomfortable discussing his mental health needs where everyone can hear and see.³⁷

[106] Overall, the information shows there have been punctual crisis interventions with [REDACTED] during the period reviewed, as well as assessments, but there have not been regular counselling opportunities for him. I find [REDACTED]'s request for confidentiality for mental health interventions reasonable; the SIU program rooms do not provide a good, private setting for mental health meetings.

VI. CONCLUSION AND RECOMMENDATIONS

[107] I find CSC did not respect of ss. 37.7, 37.8, and 37.4 of the CCRA in [REDACTED]'s case. CSC did not provide all relevant information for my s. 37.8 decision, including information I specifically requested as an IEDM. Then, CSC did not follow the decision under s. 37.8. CSC chose instead to reassess the situation. I believe CSC's reassessment has not fairly taken into account all relevant details. Finally, CSC did not issue a subsequent decision on [REDACTED]'s SIU placement under s. 37.4, despite [REDACTED] still being in the SIU.

[108] These legal compliance issues had a negative impact on [REDACTED]'s well-being and conditions of confinement, notably leading to his isolation in an observation cell. There were also some additional issues related to lawyer communication, ability to have meaningful interaction with other inmates in the SIU, and mental health support. I cannot conclude under s. 37.83(1) of the CCRA that CSC took all reasonable steps to provide [REDACTED] adequate opportunities for time out of cell and meaningful human contact.

[109] Under s. 37.83(2) of the CCRA, which gives IEDMs a broad power to make recommendations, I recommend to CSC to:

- Continue to issue decisions under s. 37.4 of the CCRA as long as any inmate remains in the SIU;
- Take measures to ensure all CSC staff both understand and fulfill their obligation to share information with IEDMs;
- Proactively ensure IEDMs are provided all relevant information, including relevant protected C information, before each IEDM decision;

³⁴ Mental health clinical notes, [REDACTED].

³⁵ Mental health clinical notes, [REDACTED].

³⁶ Health entry, SIU activity log, [REDACTED].

³⁷ See, e.g.: Referral for Health Services, [REDACTED].

- Respect IEDM reasoning and conclusions, and otherwise file for judicial review of IEDM decisions CSC does not agree with;
- Explore solutions for providing more regular and confidential mental health support to
- Ensure [redacted] can finish the Maintenance program he has been doing in the SIU;
- Ensure [redacted] can have regular contact with his lawyer, as well as facilitate document-sharing with his legal team;
- Not prevent [redacted] from having recreation with inmates who have resided on [redacted] at MAX1, if he remains in the SIU and loses his current recreation group for any reason (for example, transfers out of the SIU); and
- Ensure any steps taken to end [redacted]'s SIU placement are non-coercive and respect his views and preferences regarding his best interests.

Janine Lespérance
Independent External Decision-Maker

Date: [redacted]

Inmate Name:
FPS Number: ██████
Correctional Institution: Maximum-security institution
Date of Notification: ██████
Date of Decision: ██████
Independent External Decision-Maker: Janine Lespérance

**DECISION UNDER SUBSECTION 37.83(1) OF THE
 CORRECTIONS AND CONDITIONAL RELEASE ACT,
 S.C. 1992, C.20**

SUMMARY

became less isolated during the period reviewed. ██████ had the regular opportunity to participate in a significant variety of activities in the SIU. This included a private family visit and some support relevant for ██████. Offering shorter yard outings may increase his participation. He feels he is in a good place now and is motivated to obtain a medium-security classification. Under s. 37.83(1) of the CCRA, I find CSC took all reasonable steps to provide ██████ opportunities to leave his cell and interact with others in the SIU.

I. INTRODUCTION

- [1] On ██████, Correctional Service Canada (“CSC”) notified the Independent External Decision-Makers (“IEDMs”) that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act* (“CCRA”) concerning ██████ is necessary. He is incarcerated in the Structured Intervention Unit (“SIU”) at [maximum-security institution, “MAX1”] in ██████.
- [2] If I have a legal basis to review ██████’s situation, I must answer this question: did CSC take all reasonable steps to provide ██████ at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?¹

II. BACKGROUND

- [3] ██████ is ██████ years old. Since ██████, he has been serving ██████ sentence. He has an ██████. CSC has classified him at the maximum-security level.
- [4] His transfer to the SIU was authorized ██████, under para. 34(1)(b) of the CCRA, after ██████’ requested to leave ██████. CSC is reviewing ██████.
- [5] The SIU transfer was approved in the “5-day” Acting Warden decision of ██████, and the “30-day” decision of ██████.
- [6] This is ██████’s first SIU placement.

III. SOURCES OF INFORMATION

- [7] I have considered CSC documentary information, notably the SIU daily activity log (“the log”), and ██████’s ██████ oral comments (see annex for details).

¹ CCRA, s. 37.83(1).

IV. ANALYSIS

1. Do I have a legal basis to review [REDACTED]'s time-out-of-cell opportunities?

[8] Yes, I do.

[9] IEDMs only do reviews in specific situations. If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.²

[10] CSC's log shows [REDACTED] was isolated from [REDACTED] to [REDACTED], triggering a review. I do not have reason to believe he spent more time out of cell than the log shows. My jurisdiction is uncontroversial.

2. What is the relevant period of review?

[11] This review focuses on [REDACTED] to [REDACTED] ("the period reviewed"), a period of 56 full days in the SIU (excluding the days when he was away).

[12] An IEDM is not limited to only examining the days that triggered the review. The IEDM decides the period to review based on legal and practical factors. Considering the human rights at stake, the need to avoid gaps in oversight, and the importance of fully understanding a situation to make recommendations, it is appropriate for an IEDM to examine a longer period, especially if many days have passed since the review was triggered.

[13] The analysis below focuses on the period since [REDACTED]'s SIU transfer. Since a few days passed after this decision was partially drafted but before it was completed, I have also examined log entries since [REDACTED]. They are generally consistent with the previous days.

3. How much time did [REDACTED] spend out of his cell and interacting with others each day?

[14] According to CSC's log, [REDACTED] spent four hours or more out of his cell on three days during the period reviewed (about 5% of all days). He had two hours or more of social interaction on 21 days (about 38% of all days). The average for time out of cell was about one hour and 29 minutes daily. The average for interaction was about one hour and 44 minutes.

[15] The daily totals varied from day to day, but [REDACTED] became less isolated as the period continued, especially as of around [REDACTED].

[16] Various factors may explain why an inmate is isolated. Daily totals for time out of cell and social interaction show whether CSC's efforts to reduce isolation were successful.

4. Were the quantity and timing of offers adequate?

[17] Yes, I find there were sufficient opportunities.

[18] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates daily, between 7AM and 10PM.³ Showers do not count towards time out of cell.⁴ Offers should generally be adequately spread throughout the day.

[19] According to the log, CSC provided the required minimum quantity of [REDACTED] opportunities each day [REDACTED] was in the SIU for the full day. On the days where the

² CCRA, s. 37.83(1).

³ CCRA, s. 36(1) – (2).

⁴ CCRA, s. 36(3).

log totals seem to show he was not offered the required minimums, he was out of the SIU (█████ to █████, for a █████, and █████ to █████, at the hospital). He usually had five or more chances to get out of his cell each day, often for an hour or two. Offers were at different times of day.

[20] █████ thought he was only offered two or three hours out of cell some days. However, he also said the conditions are fine and he would not spend more than four hours on the range in a mainstream unit; he has “no complaints.”⁵

5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[21] Yes: staffing issues affected opportunities, but no legal exception applied.

[22] Contextual situations or circumstances can affect activities in the SIU. There are legal exceptions for some specific situations, including epidemics and staff work refusals.⁶ However, if those specific situations do not exist, CSC must provide the regular opportunities. Moreover, even if an exception applies, CSC must continue efforts.

[23] CSC did not provide any information about special circumstances affecting opportunities, nor invoke an exception. However, the log shows a staffing shortage for Correctional Program Officers (“CPOs”) affected the quantity of opportunities for

6. What type of opportunities did █████ have?

[24] Recreation was the most frequent type of opportunity, but a significant variety of activities was offered to him.

[25] Apart from leisure time, SIUs are meant to provide inmates access to programs, interventions, and services that reflect their needs and interests.⁷ Activities may aim to help them achieve their correctional plan goals or reintegrate a mainstream population.⁸ I must consider whether there was a reasonable variety of activities for █████ in light of his profile.

6.1. Profile information

[26] █████ is a █████ from the █████ area.

█████ He has family support in the █████ region.

6.2. Types of opportunities during the period reviewed

[27] █████ had the chance to participate in:

- indoor and outdoor recreation
- social programs
- staff interactions
- the motivational module (“MM-SIU”) program with a CPO
- behavioural counselling
- inmate committee meetings with a unit 1 representative
- religious support from a Muslim Chaplain
- meeting with the █████
- █████ phone program
- periodic mental health assessments
- work as a range/cell cleaner
- a private family visit (“PFV”)

⁵ IEDM interview with I █████.

⁶ CCRA, para. 37(1)(c); CCRR, s. 19(1).

⁷ CCRA, para. 32(1)(b).

⁸ CCRA, para. 36(1)(b).

- personal phone calls

[28] He had some type of program opportunity (including religious support) on 31 days (about 55% of all days). There were a few times when he had more than one type of program opportunity on the same day. However, only four CPO meetings were offered. He was offered a cleaner job on [REDACTED]. After that, he went out regularly to clean on most days. He used the phone regularly. He had a three-day PFV. There is no record of him being able to go to the gym.

[29] [REDACTED] said he gets out two to three times per day for 20-30 minutes for his cleaner job. He said the gym was actually offered, [REDACTED]. He has not had issues accessing the phone to stay in touch with his family. He was surprised by the program opportunities he has gotten in the SIU.⁹

[30] I note some support was relevant to [REDACTED]. It is significant he was able to have a PFV – an obvious source of meaningful human contact – despite his SIU status. His participation in activities increased soon after the visit, so it seems to have contributed to his well-being and motivation.

7. Did CSC make efforts to facilitate [REDACTED] s interaction with other inmates?

[31] I find the efforts were sufficient in the circumstances.

[32] Having a recreation group often reduces someone's isolation in the SIU a lot. Having a group provides a person with more chances for interaction and often encourages their participation in activities.

[33] Records show there were efforts to meet with [REDACTED] as of his transfer to the SIU. On [REDACTED], he was asked about a group and mentioned he was aware of the process.¹⁰ The log shows he mentioned a group with someone to a CM on [REDACTED], but there is no record about CSC following-up to that. In response to my request for information, a Security Intelligence Officer indicated they never received a request. Other than being in a group, he would have had interactions with others during his job. He also had several chances to meet with a [REDACTED] representative.

[34] [REDACTED] said where he is at now, he does not want to be around inmates with a maximum-security mindset. He prefers his own company.¹¹

8. Did CSC encourage [REDACTED] to participate in time-out-of-cell and interaction opportunities?

[35] Yes, I find efforts were sufficient.

[36] An inmate may turn down opportunities in the SIU; there is a legal exception for "refusals."¹² Even so, IEDMs must assess whether CSC encouraged them to participate in activities.¹³ Encouragement can take various forms. An IEDM may also assess whether CSC discouraged a person's participation in activities.

8.1. [REDACTED] s participation

[37] The log shows [REDACTED] occasionally took recreation time. There were several days on which he did not take any indoor or outdoor recreation, despite multiple daily opportunities.

⁹ IEDM interview with [REDACTED].

¹⁰ Case management entry, SIU activity log, [REDACTED].

¹¹ IEDM interview with [REDACTED].

¹² CCRA, para. 37(1)(a).

¹³ CCRA, s. 37.83(1).

[38] said it is cold outside and he does not want to get stuck outside for an hour or two. He said it is “on [him]” that he did not go out; he prefers to spend time in his cell and watch TV.

[39] CSC’s log shows I accepted: 5 of 19 social programs opportunities, 1 of 4 correctional programs opportunities, 3 of 5 religious support opportunities, 9 of 10 behavioural counselling opportunities, and 4 of 5 opportunities (for one of the times he accepted, his calls went to voicemail so he did not actually get to do the session). There were a few instances when he turned down work opportunities.

[40] The log shows he participated in 1 of 5 periodic mental health assessments offered.

[41] There were no recorded incidents involving during the period reviewed, and the use of secure rooms was not required. The log shows meetings with him were barrier-free, so this is not a factor that affected his participation.

8.2. Encouragement

[42] His participation for all types of activities seems to have improved during the period reviewed, which suggests successful encouragement.

[43] The log shows CSC staff made efforts to encourage by measures such as: offering materials, offering a variety of sessions, and encouraging him verbally. When he participated in a session [REDACTED], the CPO discussed the low number of offers for him, his refusals, and the timing he would prefer for offers. He reportedly said he “prefers afternoons, but is willing to come out in the morning so long as he is permitted a few minutes to get himself ready.”¹⁴ Offering him a job led him to spend more time out of cell. He appears to have had positive sessions with different staff members. He was reportedly actively engaged in behavioural counselling opportunities.

[44] himself appreciated the program opportunities and particularly the behavioural counsellor’s teaching. He said he is in a good place now, and expressed his intent to go out more. He is motivated to obtain a medium-security classification.¹⁵

[45] As noted above, had few correctional programming opportunities during the period reviewed. On the day of my own interview with [REDACTED], our interview started extremely late due to issues at MAX1. The delay caused to miss the chance to have a session with a CPO after the interview,¹⁶ which is unfortunate. The delay suggests a need for additional activity coordination and respect for scheduled times. I urge CSC to address this issue.

8.3. Potential encouragement

[46] Offering the chance to go to the outside yard for agreed-upon shorter periods of time may encourage him to take recreation time.

V. CONCLUSION

[47] Under s. 37.83(1) of the CCRA, I conclude overall that CSC took all reasonable steps to provide the required opportunities in the SIU.

Janine Lespérance

Date: [REDACTED]

¹⁴ Correctional programs entry, SIU activity log, [REDACTED].

¹⁵ IEDM interview with [REDACTED].

¹⁶ Correctional programs entry, SIU activity log, [REDACTED].

Independent External Decision-Maker

**ANNEX: SOURCES OF INFORMATION AND
PROVIDE COMMENTS**

S OPPORTUNITY TO

[48] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of [REDACTED]
- Threat risk assessments (“TRAs”), for the period as of [REDACTED]
- Casework record (“CWR”) log, for the period from [REDACTED] to [REDACTED]
- Out-of-facility information, for the periods of [REDACTED] to [REDACTED] and [REDACTED] to [REDACTED]
- Regional review, dated [REDACTED]
- Memorandums – recreation group, dated [REDACTED], [REDACTED], and [REDACTED]
- Correctional plan update – SIU (“CPU-SIU”), dated [REDACTED]
- Institutional head “30-day” SIU transfer decision, dated [REDACTED]
- Correctional plan – updated (“CPU”), dated [REDACTED]
- Institutional head “5-day” SIU transfer decision, dated [REDACTED]
- Memorandum – integration options, dated [REDACTED]
- SIU transfer conformation, dated [REDACTED]
- SIU transfer authorization, dated [REDACTED]
- Assessment for decision – offender security level, dated [REDACTED]
- Criminal profile report (“CPR”) – original, dated [REDACTED]

[49] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[50] On [REDACTED], I learned [REDACTED] would share his views. We spoke by videoconference on [REDACTED], for approximately 30 minutes.

[51] The meeting with [REDACTED] started about one hour and five minutes late due to unknown circumstances at MAX1. I urge MAX1 to take measures to ensure respect of planned IEDM interview times, and ensure inmates are aware well ahead of time of the planned time of an IEDM interview.

Inmate Name:
FPS Number:
Correctional Institution: MAX1
Date of CSC SDC Decision under s. 37.4, CCRA:
Date of Initial decision (CCRA, s. 37.83(1)):
Date of the Present Decision:
Independent External Decision-Maker: J. Lespérance

**DECISIONS UNDER SUBSECTION 37.83(3)
AND SECTION 37.8
OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, c. 20**

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¹ This decision is being issued late. This is mainly due to wanting his lawyer involved in the process but his lawyer being unavailable. Eventually, decided to go forward without his lawyer.

SUMMARY

CSC did not provide the required minimum quantity of opportunities on several days. CSC's efforts to address longstanding systemic issues with SIU overpopulation and staffing were inadequate. got in a recreation group, but the timing of group opportunities discouraged him from staying in it. More frequent meaningful program opportunities would be beneficial. Under s. 37.83(3) of the CCRA, I am not satisfied CSC took all reasonable steps to provide the required opportunities in the SIU. Consequently, the law requires me to order CSC to remove from the SIU.

CSC provided undetailed, contradictory, or unsupported statements regarding s potential SIU alternatives at MAX1. There were reasons to transfer him to the SIU, but he now wants to integrate. CSC did not adequately explore mediation. He has shown behavioural problems and integration difficulties. Due to an increase of self-harm incidents lately, I am concerned about his SIU stay's impact on his mental health. CSC should consider his proposed institutional transfer to MAX2 in light of Indigenous Social History factors. He prefers to stay at MAX1. Under s. 37.8 of the CCRA, I find | should not remain in the SIU.

1. INTRODUCTION

[1] On █████, I issued a decision under subsection 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA"). I concluded Correctional Service Canada ("CSC") had not taken sufficient steps to provide time out of cell and meaningful human contact in the Structured Intervention Unit ("SIU") at MAX1 in █████. I made recommendations.

[2] In addition, on █████, the CSC Senior Deputy Commissioner ("SDC") decided should remain in the SIU.

[3] As an Independent External Decision-Maker ("IEDM"), I must answer the following questions:

- did CSC take all reasonable steps to provide at least four hours outside his cell and two hours of meaningful human contact each day in the SIU?²
- should remain in the SIU?³

2. INFORMATION SOURCES

[4] I have consulted CSC documentary information and 's oral comments of █████ (see annex for details).

3. BACKGROUND

[5]) is █████ years old and grew up in the █████, area. He is █████ and a member of █████.

[6] Since █████, he has been serving █████ sentence. His █████ is in █████.

[7] 's SIU placement has been authorized three times in total.

4. ANALYSIS – SUBSECTION 37.83(3), CCRA

4.1. Do I have a legal basis to review 's SIU opportunities?

² CCRA, s. 37.83(3).

³ CCRA, s. 37.8.

[8] Yes. My jurisdiction is uncontroversial.

[9] I made recommendations with my [REDACTED] decision,⁴ so a follow-up decision is required.⁵

4.2. What is the relevant period of review?

[10] This review focuses on [REDACTED] to [REDACTED] (“the period reviewed”), a period of 52 days.

[11] After receiving IEDM recommendations, CSC should show CSC has taken all reasonable steps within a period of seven days.⁶ However, the law does not specify the IEDM must issue their decision within that period. When there is delay, as in this case, I consider it appropriate to examine a longer period.

4.3. How much time did [REDACTED] spend out of his cell and interacting with others each day?

[12] According to CSC’s log, [REDACTED] spent four hours or more out of his cell on 12 days during the period reviewed (about 23% of all days). He had two hours or more of social interaction on 16 days (about 31% of all days). The average for time out of cell was about two hours and 23 minutes daily. The average for interaction was about one hour and 17 minutes.

[13] CSC’s overall statistics for [REDACTED] are better than those for the previous review period. Improvement in daily totals for time out of cell and interaction may suggest CSC has made positive changes since the previous decision.

[14] However, [REDACTED] said there had been a lot of days when he got zero time out of cell. He believed the last time that was the case had been two to three weeks earlier, in [REDACTED].⁷

4.4. Were the quantity and timing of offers adequate?

[15] No. CSC did not meet its obligations on several days.

[16] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates daily.⁸

[17] CSC’s log shows CSC did not meet this standard on [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] to [REDACTED], [REDACTED] to [REDACTED], and [REDACTED].

[18] CSC also did not meet the requirements on [REDACTED] to [REDACTED], [REDACTED] to [REDACTED], and [REDACTED] to [REDACTED]. [REDACTED] was marked “out of facility” for all or part of the day on these days.

[19] [REDACTED] said some days he was not offered anything, when he was “single” status. He believes sometimes staff may say they knock but not actually do it. Sometimes staff will say all the time slots are taken and will put you down as “secondary” if there is a cancellation, or as a priority for the next day.⁹

[20] CSC records show he raised his frustration with a lack of range time, and his feeling correctional officers were not doing an adequate rotation of offers, in a mental health meeting on [REDACTED]; in that meeting, he also spoke of self-harming.¹⁰

⁴ Under CCRA, s. 37.83(2).

⁵ CCRA, s. 37.83(3).

⁶ CCRA, s. 37.83(3).

⁷ IEDM interview with [REDACTED].

⁸ CCRA, s. 36(1) – (2).

⁹ IEDM interview with [REDACTED].

¹⁰ Mental health clinical notes, [REDACTED].

4.5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[21] It appears the staffing levels, infrastructure, and high number of inmates in the SIU have had a significant impact on [redacted] s ability to get time out of cell and interaction opportunities.

[22] In my previous decision, I recommended CSC address these issues. CSC's [redacted] response indicates there were [redacted] inmates in the SIU at the time. In terms of measures being taken, CSC indicated: "we have received temporary Regional support to staff 1 additional SIU Correctional Program Officer and 1 additional SIU Social Program Officer."¹¹ CSC also indicated they try to keep the SIU population low, without explaining how. Otherwise, CSC has provided no information regarding any broader, long-term strategy or efforts.

[23] I am not convinced CSC is doing enough to address the problem. There have consistently been over [redacted] inmates in the MAX1 SIU. The issues have been ongoing for a long time. They likely require a solution going beyond MAX1, involving CSC's regional and national levels.

4.6. What type of opportunities did [redacted] have?

[24] [redacted] had the chance for indoor and outdoor recreation, social programs, staff interactions, the Indigenous motivational module ("MM-SIU-I") program, behavioural counselling, and Indigenous cultural support.

[25] Social programs sessions were offered frequently.

[26] Other types of programming support were not frequent. I had made a recommendation to improve this. CSC's response referenced [redacted] s refusal to work with [redacted], and staffing levels in relation to [redacted] inmates. MAX1 referred to the high SIU population and indicated [redacted] s opportunities were consistent with other inmates' opportunities.

[27] CSC's log shows [redacted] had seven chances to see the [redacted] (three of which apparently conflicted with recreation time) in the 52-day review period, four chances for Indigenous support, and six chances for the MM-SIU-I. There were gaps of a week or more when he did not get any of these kinds of opportunities.

[28]

[29] With that said, [redacted] himself feels there is support and he gets help, though he was referring primarily to interactions in programs; he prefers getting to talk in less formal sessions.

[30] [redacted] O also mentioned he did not have the chance to go to the gym, although he had access to a room with exercise equipment. He said he will get a job soon.¹²

4.7. Did CSC make efforts to facilitate [redacted] s interaction with other inmates?

[31] There were some efforts, but CSC documentation of them was inadequate, and the timing of group opportunities discourages [redacted] from wanting to stay in his new group.

¹¹ CSC's response to the IEDM decision, [redacted].

¹² IEDM interview with [redacted].

- [32] I made a recommendation about this issue. CSC's response indicates [redacted] was resistant to joining a group and knows the process for requesting group placements. It also indicates steps would continue to be taken and documented.¹³
- [33] Despite this answer, there is no log record of staff making efforts to encourage [redacted] to join a group during the period reviewed, or showing he was refusing to join a group.
- [34] In the [redacted] SIU Review Committee ("SIURC") meeting, he was reportedly encouraged to submit a request, after he said he would like to be in a group.¹⁴ The log shows that as of [redacted], he had recreation time with others. There appears to have been a big delay before a group was approved for him.
- [35] In my interview with him, [redacted] said he recently got in a group, after he asked for it. He said they encourage you to join a group. However, he is thinking about returning to single status because when you are in a group you get less offers for programs, and the time out of cell is only at night. This timing makes it difficult for him to reach his lawyer, unless he submits a special request. It makes it hard to get phone time. He also mentioned there were now [redacted] groups, which means his group would be getting less time out of cell. He noted his group had been the last group to be asked that morning.¹⁵

4.8. Did CSC encourage [redacted] to participate in time-out-of-cell and interaction opportunities?

- [36] There is limited evidence of encouragement. More frequent meaningful program opportunities would likely result in him spending more time out of cell.
- [37] Unlike for decisions under s. 37.83(1) of the CCRA, s. 37.83(3) does not explicitly ask the IEDM to evaluate encouragement. However, the expression "all reasonable steps" implies CSC should make proactive efforts. These should continue regardless of the stage of the IEDM review process.
- [38] I recommended CSC provide [redacted] more opportunities to meet with a Social Programs Officer ("SPO") he seemed to get along more with. CSC's response indicated SPOs are not assigned to specific inmates and that efforts to implement the recommendation will be made "where feasible" within the operational routine and limitations.¹⁶ Such efforts are not clear from the log.¹⁷
- [39] CSC's log shows [redacted] accepted only 10 of 48 social programs offers. There was an occasion when an SPO followed up with him later in the day after he wanted a later social programs opportunity, and there is some indication of efforts to allow him to access a room to make phone calls if it was free.
- [40] [redacted]'s use of the phone in the common room was recorded under the "social programs" log category several times; these entries should have been logged as personal phone calls.
- [41] In my interview with [redacted] he said he was trying to work with all SPOs, and the BSC. He said programs are a "big help" for him. He seemed happy to show a book he had read, given to him by a programs officer.¹⁸
- [42] CSC's log confirms a high participation rate for programs other than social programs. He accepted 6 of 6 MM-SIU-I offers, 4 of 4 [redacted] support offers, and 4 of 7 [redacted] counselling offers (all of these were in [redacted]; the three offers he turned down were at the start of [redacted] and conflicted with recreation periods; he had

¹³ CSC's response to the IEDM decision, [redacted], p. 2.

¹⁴ SIURC for IEDM decision. [redacted], p. 2.

¹⁵ IEDM interview with [redacted].

¹⁶ CSC's response to the IEDM decision, [redacted], p. 2.

¹⁷ Log exports do not show which staff member made the offer, although the information could be obtained by clicking each individual day and program entry.

¹⁸ IEDM interview with [redacted].

no opportunities between [REDACTED] and [REDACTED]). It seems more frequent offers of this kind would result in him spending more meaningful time out of cell.

[43] I had recommended to explore the possibility of offering [REDACTED] a job with him. The log indicates [REDACTED] “agreed to start to work on an agreement with [REDACTED] for vacant cleaner position.”¹⁹

[44] [REDACTED] mentioned the atmosphere on his SIU range was quiet. It does not appear the general range environment affected his participation.

4.9. What is the appropriate remedy for the situation?

[45] The CCRA states that if an IEDM concludes under s. 37.83(3) that CSC has not taken all reasonable steps, the IEDM must order CSC to remove the inmate from the SIU.²⁰ This is the only outcome identified. The CCRA does not seem to give the IEDM any choice.

[46] In this case, I am not satisfied CSC took all reasonable steps, so I must direct CSC to move [REDACTED] out of the SIU.

5. ANALYSIS – SECTION 37.8, CCRA

5.1. Do I have a legal basis to review [REDACTED]’s SIU placement?

[47] Yes, my jurisdiction is uncontroversial.

[48] An IEDM decision under s. 37.8 follows CSC decisions concluding that the inmate should stay in the SIU, specifically: the institutional head’s “5-day”²¹ and “30-day”²² decisions, and the SDC decision.²³ If the SDC decides a person should remain in the SIU, an IEDM decision is necessary. It is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.

[49] [REDACTED]’s SIU transfer was approved in the “5-day” Acting Warden decision of [REDACTED], the “30-day” decision of [REDACTED], and the SDC decision of [REDACTED]. Due to the SDC decision, an IEDM decision under s. 37.8 of the CCRA is necessary.

[50] Because of my above conclusion under s. 37.83(3) of the CCRA, a decision under s. 37.8 could be seen as redundant and unnecessary. However, s. 37.8 decisions have a different focus, and require the IEDM to comment on different factors. A s. 37.8 decision has additional value.

5.2. What is the context of [REDACTED]’s SIU placement?

[51] [REDACTED]’s transfer to the SIU was authorized [REDACTED], under para. 34(1)(a) of the CCRA. According to the authorization, he assaulted someone on his range, [REDACTED] in [unit], and said he would do so again if left there. He was transferred out of the SIU on [REDACTED], to the [REDACTED] range. However, his SIU placement was re-authorized [REDACTED], under para. 34(1)(b) of the CCRA. The authorization reports [REDACTED]

¹⁹ Indigenous activities entry, SIU activity log, [REDACTED].

²⁰ CCRA, s. 37.83(3).

²¹ Under CCRA, s. 29.02(2).

²² Under CCRA, para. 37.3(1)(b).

²³ Under CCRA, s. 37.4.

²⁴ SIU transfer authorization, [REDACTED].

[52] In my interview with [REDACTED] he said he had been trying to ask for help when on [REDACTED], from the keeper and from health care, and was warning CSC of the risk he would do something. He did not get help.

[53] Regarding the [REDACTED] incident,

5.3. Is [REDACTED] s security classification appropriate?

[54] Yes, his maximum-security classification is appropriate.

[55] I must consider the appropriateness of [REDACTED] s security classification in my decision on his SIU placement.²⁶

[56] CSC has classified him at the maximum-security level. The last decision on his security classification was issued [REDACTED], less than a year ago. CSC information shows that while he has done programming in the SIU, there have been numerous incidents reported for him since then.

[57] [REDACTED] mentioned he feels he should be able to go to a medium-security population from the SIU, and that joining a group in the SIU shows he can associate with others. He has been told that his time is at a standstill in the SIU, in that it would not count towards a security reclassification.²⁷

[58] I find lowering his security classification would not be appropriate at this time. A maximum-security population is the alternative to his SIU placement.

5.4. Can [REDACTED] integrate a population at [REDACTED] ?

[59] Yes. I find CSC has not adequately demonstrated [REDACTED] cannot be managed in a mainstream population nor shown sufficient efforts were taken to facilitate his return.

5.4.1. Legal framework

[60] SIU stays are meant to “end as soon as possible.”²⁸ The presumption in a s. 37.8 decision is that the inmate should be released from the SIU. I can only decide an inmate should stay in the SIU if information makes me believe their release “would jeopardize” safety, including their personal safety; or “would interfere” with a serious investigation.²⁹ The risk must be higher than just a possibility of incidents. There is always some danger in the penitentiary context. If the standard used were too low, there would always be a reason for keeping an inmate in the SIU. This outcome would be at odds with the legislation.

[61] I also must consider [REDACTED] s specific [REDACTED] and the systemic factors that have resulted in him incarceration.³⁰

5.4.2. Analysis

5.4.2.1. Range options at MAX1

[62] CSC’s SDC decision refers to [REDACTED] having “experienced integration issues.”³¹

²⁵ IEDM interview with [REDACTED].

²⁶ CCRA, s. 37.82(2).

²⁷ IEDM interview with [REDACTED].

²⁸ CCRA, s. 33.

²⁹ CCRA, s. 37.82(1).

³⁰ CCRA, s. 79.1(1); CCRR, s. 23.03.

³¹ SDC decision, [REDACTED], p. 4.

[63] I am not satisfied with the information CSC has provided to justify not being able to return to a MAX1 range; CSC's explanations are vague, contradictory, and not backed up with documentation. Ultimately, if CSC believes an inmate must stay in the SIU, CSC should provide the IEDM a clear rationale, supported by evidence.

Range

[64] The SIURC indicates MAX1's " " is "not appropriate" for M² without explanation. As noted above, the SIU transfer authorization refers to " " as being in " ". However, the incident reports f

[65] told me he would be willing to go to " ", as a second option after " ".³⁴

range

[66] Regarding the " " range, CSC has clarified that lived there from " ", to " ".

[67] For the " " incident, CSC indicated "no information [was] provided after the incident" that would explain the motives.³⁵ The SDC decision states, "Mediation was attempted and was unsuccessful as | threatened violence if [he] remained in the mainstream population at MAX1."³⁶ It is not clear when this "mediation" was done, nor what conflict was being mediated.

[68] I believe the "mediation" referred to is likely a Correctional Manager ("CM") speaking to on " ". CSC decision documents do not clearly identify what was said then. I asked CSC for records of this conversation. CSC indicated there were no records to provide.³⁷

[69] To improve clarity in decision documents, CSC should use precise language when describing mediation efforts. CSC should also keep records of dates and important statements made.

[70] remembers the " " meeting. He recalls he told the keeper he wanted to "come down here" (i.e. to the SIU). He now says he has changed his mind. He believes he would be safe to go back.³⁸

[71] There is reason to believe his SIU transfer was appropriate. One CSC report contains excerpts from an inmate request from I dated " ", in which " ".³⁹ As CSC was unable to provide it, I cannot examine the threat in its context.

[72] In his written comments for this review, wrote that

[73]

³² SIURC recommendation to the IEDM, " ", p. 3.

³³ According to CSC's SIU-LTE database, as of " ".

³⁴ IEDM interview with " ".

³⁵ CSC's response to the IEDM's request for information, " ".

³⁶ SDC decision, " ", p. 4.

³⁷ CSC's response to the IEDM's request for information, " ", " ".

³⁸ IEDM interview with " ".

³⁹ SOR " ", " ".

⁴⁰ Mr. O's written comments to the IEDM, " ", citing request form.

[74] Regarding mediation opportunities, I said he has had no opportunity to participate in mediation. He said they (CSC) should use a camcorder to record when mediation is offered. He has seen the inmate committee go by, but has not had the chance to see a range representative. He believes mediation would smooth things over, allowing him to reintegrate the [redacted] range.

1

[75]

[76] The SIURC and SDC do not clearly identify whether there would be risks for [redacted]'s safety at MAX1, or how the population feels about him returning to [redacted] or another range.

[77] In response to my written request for information, CSC made vague comments about consultation with range representatives. CSC indicated, he "was not welcomed back" on [redacted];⁴⁴ "the [redacted] range is a range that does not tolerate violence and or assaults;"⁴⁵ and during his current SIU stay, he "has not been offered the opportunity to return as there are ongoing safety concerns which had been verified by the range representative."⁴⁶ CSC did not clearly indicate when the population was consulted, and by which staff member. I asked CSC when the population was consulted and whether [redacted] had had the chance to meet the inmate committee himself in the SIU. CSC did not answer these questions. I find it odd that risks for his safety in the population were not clearly stated in CSC decision documents, if they truly exist.

[redacted] range

[78] For the [redacted] range, [redacted] resided there on [redacted], and again from [redacted] to [redacted], before going to [redacted]. I asked CSC whether there was any information on why he left, as there is no recorded incident involving him while on the [redacted] range. CSC was not able to provide any information, though CSC explained,

[79] Based on my interview with [redacted], this is not his preferred option for reintegration.

Range

[80] Finally, CSC decision documents indicate [redacted]'s placement on [redacted] "range" is "not appropriate," without specifying why.

41 PO entry, CWR, [redacted].

42 IEDM interview with [redacted].

43 IEDM interview with [redacted].

44 CSC's response to the IEDM's request for information, [redacted].

45 CSC's response to the IEDM's request for information, [redacted].

46 CSC's response to the IEDM's request for information, [redacted].

47 CSC's response to the IEDM's request for information, [redacted].

48 CSC's response to the IEDM's request for information, [redacted].

5.4.2.2. Ongoing behavioural concerns

[81]

[82] CSC's incident log is consistent with this statement. CSC's incident summaries for s current SIU stay,

(
|
:
|
)

[83] I asked about the incidents reported for him.

[84] I am unable to investigate all the incidents from the period reviewed.

[85] I am concerned s SIU placement may be

[86] In addition, CSC has not identified why CSC believes his institutional transfer, as discussed below, would resolve behavioural concerns. CSC's plan to transfer to a mainstream population elsewhere suggests he should also be able to integrate at MAX1,

5.4.2.3. Supports in the population

[87] I believe a higher frequency of supportive interventions in the mainstream population could help |

[88] In my interview with , he said when in a mainstream population, he "hardly got anything"; there was a lack of programs. Movement was sometimes cancelled

⁴⁹ CSC's response to the IEDM's request for information, [REDACTED].

⁵⁰ SIURC, [REDACTED], p. 3.

⁵¹ IEDM interview with [REDACTED].

⁵² SIURC, [REDACTED], p. 3.

for opportunities for cultural support. The main plus was getting to go to the gym every day.⁵³

5.5. Is there another suitable transfer option for [REDACTED] ?

[89] Yes. His transfer to [maximum-security institution, "MAX2"] has been approved. However, [REDACTED] prefers to stay at MAX1.

5.5.1. Legal framework

[90] In my decision on [REDACTED]'s SIU placement, I must consider the appropriateness of his penitentiary placement.⁵⁴ The legal criteria for penitentiary placement include safety, proximity to home, language, culture, and program and service availability.⁵⁵ These should be considered in all institution selection decisions.

5.5.2. Analysis

[91] [REDACTED]'s transfer to MAX2 has been approved since [REDACTED], almost three months ago. In response to my question regarding delay, CSC indicated [REDACTED] had not been transferred due to [REDACTED] in [REDACTED], and lack of confirmation of bedspace at MAX2.⁵⁶

[92] [REDACTED] originally rebutted the transfer, indicating a preference to remain in the SIU.⁵⁷ He has since confirmed he will integrate at MAX2,

[93] However, in my interview with [REDACTED] he clarified he would rather stay at MAX1 than be transferred to MAX2. I

[94] CSC should consider his proposed transfer in light of [REDACTED] factors.

[95] CSC information shows [REDACTED] and difficulty developing trust, including with SIU Indigenous staff. He appears to

[96] CSC should make efforts to maintain stability in his institutional placement. This would avoid replicating the history of displacement [REDACTED]

[REDACTED] : CSC has not provided information on program access at MAX1 and MAX2, so I am unaware which institution would be better for [REDACTED] in terms of access to the core programming recommended for him.

⁵³ IEDM interview with [REDACTED].

⁵⁴ CCRA, s. 37.82(2).

⁵⁵ CCRA, s. 28.

⁵⁶ CSC's response to the IEDM's request for information, [REDACTED].

⁵⁷ MAI entry, CWR, [REDACTED].

⁵⁸ [REDACTED]'s written comments to the IEDM, [REDACTED].

⁵⁹ IEDM interview with [REDACTED].

⁶⁰ Elder review – progress, [REDACTED], p. 2.

[97] Additional consultation may help to confirm the integration option that is most likely to contribute to his well-being; progress; and safe, long-term integration.

6. CONCLUSION

[98] Under s. 37.83(3) of the CCRA, I am not satisfied that CSC took all reasonable steps to provide [redacted] the required opportunities in the SIU. Thus, I direct CSC to remove [redacted] from the SIU.

[99] Under s. 37.8 of the CCRA, I find [redacted] should not remain in the SIU. CSC has not adequately proven he could not return to a population at MAX1, I am concerned about mental health impacts of his ongoing SIU stay, and he has MAX2 as a potential integration option.

[100] While [redacted] has shown a willingness to integrate at MAX1 and MAX2, it is worth mentioning that CSC should not force him to integrate or transfer against his will.

Janine Lespérance
Independent External Decision-Maker

Date: [redacted]

ANNEX: INFORMATION CONSIDERED AND [REDACTED]'S OPPORTUNITY TO COMMENT

[101] I have considered the following sources of information from CSC:

- SIU daily activity log, for the period as of [REDACTED]
- Threat risk assessments ("TRAs"), for the period as of [REDACTED]
- Casework record ("CWR") log, for the period from [REDACTED] to [REDACTED]
- CSC's responses to the IEDM's request for information, received on [REDACTED], [REDACTED], and [REDACTED]
- Incident reports, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] (X2), [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] (X2), [REDACTED] (X2), [REDACTED], [REDACTED], [REDACTED], [REDACTED] (X2), [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Mental health monitoring form, dated [REDACTED]
- Modified watch observation form, dated [REDACTED]
- Out-of-facility information, for the periods of [REDACTED]; [REDACTED] to [REDACTED]; [REDACTED]; [REDACTED] to [REDACTED]; [REDACTED] to [REDACTED]; [REDACTED] to [REDACTED]; [REDACTED] to [REDACTED]
- Mental health clinical notes, dated [REDACTED] and [REDACTED]
- SIU Review Committee ("SIURC") recommendation, dated [REDACTED]
- Mental health form, dated [REDACTED]
- Referrals for health services, dated [REDACTED] and [REDACTED]
- Regional reviews, dated [REDACTED] and [REDACTED]
- Psychological - psychiatric assessment report, dated [REDACTED]
- Institutional charges report, generated on [REDACTED]
- Incident history log report, generated on [REDACTED]
- Correctional plan updates – SIU ("CPU-SIU"), dated [REDACTED], [REDACTED], and [REDACTED]
- Statement/observation reports ("SORs"), numbered: [41 reports]
- Senior Deputy Commissioner ("SDC") decision, dated [REDACTED]
- CSC's response to the IEDM's decision, dated [REDACTED]
- Memorandum – interventions, dated [REDACTED]
- Institutional head "30-day" SIU transfer decisions, dated [REDACTED] and [REDACTED]
- Correctional plan – updates ("CPU"), dated [REDACTED] and [REDACTED]
- Memorandums - correctional interventions board("CIB"), dated [REDACTED] and [REDACTED]
- Institutional head "5-day" SIU transfer decisions, dated [REDACTED] and [REDACTED]
- Memorandum – interview with IAP, dated [REDACTED]
- SIU transfer authorizations, dated [REDACTED] and [REDACTED]
- Referral decision sheet – institutional transfer, dated [REDACTED]
- Institutional head ad hoc SIU decision, dated [REDACTED]
- Assessment for decision – institutional transfer, dated [REDACTED]
- Referral decision sheet – offender security level, dated [REDACTED]
- Security reclassification scale, dated [REDACTED]
- Assessment for decision – institutional transfer – offender security level, dated [REDACTED]
- Elder review – progress, dated [REDACTED]
- Criminal profile report ("CPR") – amendment #2, dated [REDACTED]
- review – initial, dated [REDACTED]
- Gladue report, dated [REDACTED]

[102] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.

[103] On [REDACTED], I learned [REDACTED] would share his views. On [REDACTED], I received written comments from him and learned he wanted his lawyer to participate in the review process.

[104] An interview had been scheduled for [REDACTED], but his lawyer's participation had not been confirmed and movement was delayed at MAX1. The meeting was postponed. [REDACTED]'s lawyer, [REDACTED], had limited availability until the week of [REDACTED]. Eventually, I was informed [REDACTED] would proceed without his lawyer's participation. This situation is the main reason the s. 37.8 decision was delayed.

[105] An additional source of delay was that I submitted a request for information to CSC on [REDACTED], requesting a response by [REDACTED]. I received initial responses to my questions on [REDACTED] and [REDACTED]. However, I was unsatisfied with some answers. I submitted follow-up questions for clarification, on [REDACTED]. I did not receive a further response until [REDACTED], after following-up with CSC to point out there had been no acknowledgment or response.

[106] I spoke to [REDACTED] by videoconference in the morning of [REDACTED], for approximately one hour and ten minutes. The meeting started 28 minutes late due to delays at MAX1. It was interrupted by officers; [REDACTED] was required to return to his cell for count time. MAX1 was able to reschedule a brief video call that afternoon. It lasted about 11 minutes. It was again interrupted by [REDACTED] having to return to his cell, but we mutually decided it would not be necessary to reschedule again as we had sufficiently completed the interview.

Inmate Name: s.19(1)
FPS Number: [REDACTED]
Correctional Institution: MAX1
Date of Notification (S. 37.83(1), CCRA): [REDACTED]
Date of CSC SDC decision (s. 37.4, CCRA): [REDACTED]
Date of Decisions: [REDACTED]
Independent External Decision-Maker: Janine Lespérance

**DECISIONS UNDER SUBSECTION 37.83(1) AND SECTION 37.8
OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, C.20**

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SUMMARY

was initially placed at [MED1] due to population pressures in [REDACTED], his home region. He was placed in restricted movement and his security level was increased to maximum-security after he [REDACTED]. The security reclassification decision was reasonable.

[REDACTED] cannot safely integrate at MAX1, but there is not enough information to [REDACTED]. MAX2 refused to take him due to misunderstanding the reason why he was initially sent to MED1. There is no corroborated information to show he has had issues [REDACTED]. Under s. 37.8 of the CCRA, I find he should not remain in the SIU.

[REDACTED] had a long stay on [REDACTED] before going to the SIU, which is problematic because it is not a mainstream population. In the SIU, [REDACTED] was provided the required minimum opportunities. He had a recreation group part of the time. He has had program opportunities,

A [REDACTED], which he has received [REDACTED] for. He did not participate in almost all mental health evaluations, but he has requested mental health services. Under s. 37.83(1) of the CCRA, I find CSC took all reasonable steps to provide [REDACTED] opportunities to leave his cell and interact with others in the SIU.

I. INTRODUCTION

- [1] On [REDACTED], Correctional Service Canada (“CSC”) notified the Independent External Decision-Makers (“IEDMs”) that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act* (“CCRA”) concerning [REDACTED] is necessary. He is incarcerated in the Structured Intervention Unit (“SIU”) at MAX1 in [REDACTED].
- [2] In addition, CSC notified the IEDMs that on [REDACTED], the CSC Senior Deputy Commissioner (“SDC”) decided, under section 37.4 of the CCRA, [REDACTED] should remain in the MAX1 SIU.
- [3] If I have a legal basis to review [REDACTED]’s situation under each provision, I must answer these questions:
- Should [REDACTED] remain in the SIU?¹
 - Did CSC take all reasonable steps to provide [REDACTED] at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?²

II. BACKGROUND

- [4] [REDACTED] is [REDACTED] years old and is from the [REDACTED] area. He was born in [REDACTED]. He has [REDACTED].³ Since [REDACTED], he has been serving a [REDACTED] sentence. His [REDACTED] is [REDACTED].
- [5] His transfer to the SIU was authorized [REDACTED], under para. 34(1)(a) of the CCRA. This is [REDACTED]’s first SIU stay, but there is a previous SIU authorization dated [REDACTED]. At that time, he was transferred to the restricted movement unit (“RMU”) at MED1.

III. SOURCES OF INFORMATION

- [6] I have considered CSC documentary information, Security Intelligence Officer (“SIO”) oral comments, and [REDACTED]’s [REDACTED] and [REDACTED] oral comments and written notes from [REDACTED] (see annex for details). His comments are mainly relevant for the decision under s. 37.8 of the CCRA.

¹ CCRA, s. 37.8.

² CCRA, s. 37.83(1).

³ CPU, [REDACTED], p. 3.

[7] While I have reviewed several sources of information, they will not all be discussed in detail below for security reasons.

IV. ANALYSIS UNDER S. 37.8 OF THE CCRA

1. Do I have a legal basis to review [REDACTED]'s SIU placement?

[8] Yes, my jurisdiction is uncontroversial.

[9] IEDMs only issue decisions in certain situations. An IEDM decision under s. 37.8 follows CSC decisions concluding that the inmate should stay in the SIU, specifically: the institutional head's "5-day"⁴ and "30-day"⁵ decisions, and the SDC decision.⁶ If the SDC decides a person should remain in the SIU, an IEDM decision is triggered. It is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.

[10] [REDACTED]'s SIU transfer was approved in the "5-day" Warden decision of [REDACTED], the "30-day" decision of [REDACTED], and the Senior Deputy Commissioner decision of [REDACTED].

2. What is the context of [REDACTED]'s SIU transfer?

[11] According to the SIU transfer authorization [REDACTED] was involved in a [REDACTED] inmate assault at MED1.

[12] [REDACTED]'s current SIU stay is essentially the continuation of a previous placement in the MED1 F [REDACTED]. He was in the [REDACTED] from [REDACTED] to [REDACTED]. He was then emergency transferred to MAX1. He was in MAX1's [REDACTED] range, which is not a mainstream population, until [REDACTED], roughly 19 days. There were incidents on [REDACTED] and [REDACTED] when [REDACTED] and [REDACTED] allegedly [REDACTED]. The first incident was because they wanted to see the inmate committee, the second incident was after they were advised of an SIU transfer.

[13] CSC considered MAX1's [REDACTED] was unsafe for him. [REDACTED] did not want to integrate [REDACTED] or [REDACTED] due to them being "integrated" units. The [REDACTED] SIU authorization also refers to "ongoing investigation."

[14] As an aside, I find keeping an inmate on [REDACTED] range for an extended period is not a satisfactory alternative, considering the conditions are likely more restrictive than in the SIU. [REDACTED] said there were no programs on [REDACTED] and SIU conditions are "way better" than in [REDACTED].⁷

3. Is [REDACTED]'s security classification appropriate?

[15] Yes, his current maximum-security classification seems appropriate.

[16] According to law, I must consider the appropriateness of [REDACTED]'s security classification in my decision on his SIU placement.⁸

[17] [REDACTED] had a medium-security classification when he was at MED1. However, CSC reclassified him to maximum-security, in a decision issued [REDACTED]. His security reclassification score was [REDACTED], in the maximum-security range. The relevant assessment for decision ("AFD") found ratings of high for institutional adjustment, moderate for escape risk, and high for public safety. The decision to reclassify him was based on incidents and issues other than the incident leading to his [REDACTED] and [REDACTED].

⁴ Under CCRA, s. 29.02(2).

⁵ Under CCRA, para. 37.3(1)(b).

⁶ Under CCRA, s. 37.4.

⁷ IEDM interview with [REDACTED].

⁸ CCRA, s. 37.82(2).

SIU stays.

[18] There are two documented incidents from his time in the SIU. On [REDACTED], there was an issue when [REDACTED] allegedly suggested

[19] I have not investigated all the incidents and reports for the purpose of this review.

[20] I do note some mitigating factors with respect to [REDACTED]'s responsibility. Notably, for the [REDACTED] incident, CSC has not established [REDACTED]. There is also no information to show [REDACTED]. [REDACTED].

[21] I also note a positive development since [REDACTED] has been in the SIU: he has been

[22] Nevertheless, based on the information I have, the decision to increase his security classification appears reasonable, and his maximum-security classification appears appropriate at this time. Thus, ending his SIU stay requires that an appropriate maximum-security population be identified for him.

4. Can I integrate a population at the institution where he is?

[23] I find there are grounds to believe a transfer is a better way to end his SIU stay than an integration of MAX1's population.

4.1. Relevant legal framework

[24] SIU stays are meant to "end as soon as possible."¹⁰ I can only decide an inmate should stay in the SIU if I have information that makes me believe their release "would jeopardize" safety, including their personal safety; or "would interfere" with a serious investigation.¹¹ The risk must be higher than just a possibility of incidents. There is always some danger in the penitentiary context. If the standard used were too low, there would always be a reason for keeping an inmate in the SIU. This outcome would be at odds with the legislation.

[25] In my decision on [REDACTED]'s SIU placement, I must consider the appropriateness of his penitentiary placement.¹² The legal criteria for penitentiary placement include safety, proximity to home, language, culture, and program and service availability.¹³

4.2. Context information

[26] It is relevant to note that [REDACTED] is from [REDACTED], this is his [REDACTED] federal sentence, and he has [REDACTED].

[27] CSC considers him, and he considers himself, a "general population" inmate. As a result, [REDACTED] is [REDACTED] could be appropriate for his profile, and he would require a "GP" population at another institution.

⁹ Incident report for incident number [REDACTED], [REDACTED].

¹⁰ CCRA, s. 33.

¹¹ CCRA, s. 37.82(1).

¹² CCRA, s. 37.82(2).

¹³ CCRA, s. 28.

4.3. CSC and [REDACTED]'s positions

[28] In sum, CSC is preventing [REDACTED] from integrating MAX1 [REDACTED] because he has said

[29] At the same time, CSC has found it is not appropriate to

[30] [REDACTED] has met with the [REDACTED] inmate committee. According to CSC records, they met on [REDACTED] and [REDACTED]. According to MAX1's SIO [REDACTED], [REDACTED] inmates have not advocated for [REDACTED]'s move to [REDACTED], as would often be done if someone is welcome. They have not submitted any petitions on his behalf.

[31] :

4.4. IEDM Comments

[32] I do not find [REDACTED]'s comments overly helpful for determining a safe placement option for him. His statements in interviews with me, and with CSC staff, as documented in CSC records, have shown inconsistencies. I have reason to believe some past statements may have been made to avoid or get certain placements, or have been influenced by where he thinks CSC will be more likely to allow him to integrate to end his SIU stay.

[33] CSC may have given too much weight to certain of his statements, without considering them in light of other information. When asked about them in recent meetings

[34] I have concerns about the comments regarding

[35] I am satisfied that there would be an undue risk for

At the same time, I am not convinced [REDACTED] inmates have advocated for [REDACTED]'s integration of the unit, which could suggest he may not be welcome. All facts considered, I believe caution is appropriate.

5. Is there another suitable transfer option for [REDACTED]?

[36] Yes. I do not find the reasons for MAX2's refusal to accept [REDACTED] sufficient to justify that he remain in the SIU.

[37] In my view, CSC as a whole is responsible for finding alternatives to avoid lengthy SIU stays, to fulfill the objectives for the correctional system and SIUs that are set out in the CCRA. This is particularly important in more complex cases. In decisions under s. 37.8 of the CCRA, it is often relevant for an IEDM to evaluate transfer options and consider whether the reasons given by other institutions than

¹⁴ Assessment of [REDACTED].

¹⁵ IEDM interviews with [REDACTED], [REDACTED].

¹⁶ According to [REDACTED] compatibility chart provided to me by SIO [REDACTED] on [REDACTED].

the one where the inmate is in the SIU are sufficient to justify that they remain in the SIU.

[38] As detailed in a memorandum dated [REDACTED], MAX1 contacted other maximum-security institutions for transfer comments. The responses show institutions are essentially treating him as though [REDACTED], [REDACTED], MAX3, MAX4, and MAX2 refused to take him.

[39] Of these institutions, [REDACTED] and [REDACTED] are closest to his home community and family support. Both institutions have inmates from [REDACTED].

5.1. MAX3

[40] I discussed [REDACTED]'s case with a MAX3 SIO on [REDACTED]. There are security concerns related to the statements in his paperwork. Additional verification may show whether [REDACTED] is otherwise able to integrate there. It appears that correcting shared documentation would facilitate his integration of this institution.

5.2. MAX2 refusal reasons

[41] The transfer comments memorandum indicates MAX2 would not take

[42] However, in a call on [REDACTED], a MAX2 SIO clarified that that was not the main reason for refusing [REDACTED]. MAX2 is refusing because of the reason [REDACTED] was transferred from [REDACTED] to MED1 at the start of his sentence.¹⁸ They referenced the [REDACTED], AFD.¹⁹ Similarly, an email they sent to MAX1 [REDACTED] claims [REDACTED] was placed at MED1 "because [REDACTED]."

5.3. Reasons for initial placement to MED1

[43] CSC documentation on the decision to transfer [REDACTED] to MED1 indicates he was actually initially sent [REDACTED], to MED1, due to "[REDACTED]" and "population management" (i.e. due to [REDACTED]) [REDACTED] has claimed,²¹ and his former Parole Officer ("PO") from [REDACTED] has confirmed, that at the time, inmates with sentences [REDACTED] were being placed [REDACTED].²²

[44] The [REDACTED] SIO who had examined his file at the time considers [REDACTED] could have integrated [REDACTED]; there were no known security issues preventing him from integrating there.²³ He was a medium-security inmate then.

5.4. IEDM comments

[45] Regarding [REDACTED] involved in the [REDACTED] incident, even if they were still at MAX2, I find this reason too weak to justify that [REDACTED] remain in the SIU rather than integrate at MAX2. Moreover, [REDACTED] no longer at MAX2, and did not integrate a population there.

[46] Regarding the potential STG issue, it is not clear why MAX2 would choose to place significant weight in an older comment that has been verified as

¹⁷ Memorandum – transfer comments, [REDACTED]. The comment was received on [REDACTED], according to the memorandum.

¹⁸ IEDM interview with SIO [REDACTED], [REDACTED].

¹⁹ AFD – OSL and ITI, [REDACTED] (second paragraph on the page). I requested CSC provide me the original record of the meeting the comment referred to was made. It appears there is no such record, or it could not be located.

²⁰ AFD – OSL and ITI, [REDACTED]; referral decision sheet – ITI, [REDACTED].

²¹ IEDM interview with [REDACTED].

²² IEDM interview with PO [REDACTED].

²³ IEDM interview with SIO [REDACTED].

²⁴ IEDM interview with SIO [REDACTED].

unsubstantiated, but no weight in a more recent contradictory comment. [REDACTED] has said he knows and gets along with [REDACTED] MAX2 is saying he cannot integrate with.²⁵

[47] Based on the information I have, I find there are insufficient reasons to prevent his transfer to MAX2 as an alternative to him remaining in the SIU.

V. ANALYSIS UNDER S. 37.83(1) OF THE CCRA

1. Do I have a legal basis to review [REDACTED] s time-out-of-cell opportunities?

[48] Yes, I do. My jurisdiction is uncontroversial.

[49] If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.²⁶

[50] CSC's SIU daily activity log ("the log") shows [REDACTED] was isolated from [REDACTED] to [REDACTED], triggering a review. I do not have reasons to believe he spent a lot more time out of cell than the log shows.

2. What is the relevant period of review?

[51] This review focuses on [REDACTED] to [REDACTED] ("the period reviewed"), a period of 78 days.

[52] An IEDM is not limited to only examining the days that triggered the review. The IEDM decides the appropriate period to review, based on legal and practical factors. Considering the human rights at stake, the need to avoid gaps in oversight, and the importance of fully understanding a situation to make recommendations, it is appropriate for an IEDM to examine a longer period, especially if many days have passed since the review was triggered.

[53] In this case, the period reviewed is lengthy due to the unfortunate delay in this case. IEDM understaffing contributed significantly to the delay.

3. How much time did [REDACTED] spend out of his cell and interacting with others each day?

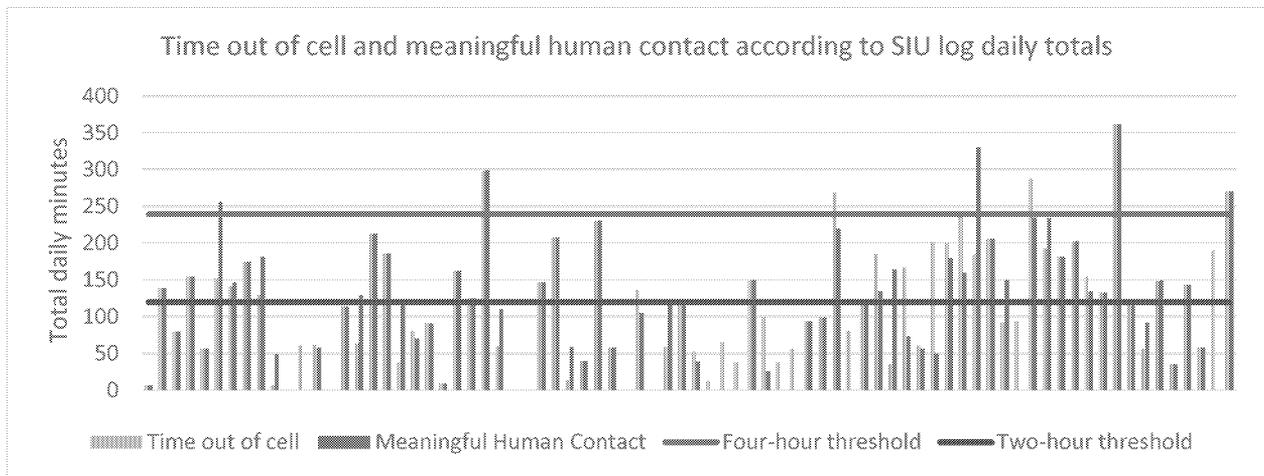
[54] According to CSC's log, [REDACTED] spent four hours or more out of his cell on six days during the period reviewed (about 7% of all days). He had two hours or more of social interaction on 38 days (about 49% of all days). The average for time out of cell was about one hour and 56 minutes daily. The average for interaction was about one hour and 51 minutes.

[55] As shown by the graphic below,²⁷ the daily totals seem to have been more consistently higher since [REDACTED].

²⁵ SOR [REDACTED].

²⁶ CCRA, s. 37.83(1).

²⁷ Dates removed for public release.



[56] did not comment specifically on the log totals, but he said he is locked up most of the day.²⁸

[57] Various factors may explain why an inmate is isolated. Total daily hours for time out of cell and social interaction show whether CSC's efforts to reduce isolation were successful. If a person has been very isolated for a long time, CSC should be making great efforts to improve the situation.

4. Were the quantity and timing of offers adequate?

[58] Yes, I find there were sufficient opportunities to meet the established standard.

[59] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates daily, between 7AM and 10PM.²⁹ Showers do not count towards time out of cell.³⁰ Offers should generally be adequately spread throughout the day.

[60] According to CSC's log, CSC met its minimum requirements on all days during the period reviewed. The log shows usually had multiple (usually six or more) opportunities to get out of his cell each day. These opportunities were spread out throughout the day.

[61] s comments implied the log may exaggerate the number of offers. He noted that staff are busy and sometimes you have to ask or yell to go out. He said the "bubble" could maybe be more focused. He did say, however, that you usually get to go out.³¹

5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[62] Contextual situations or circumstances can affect activities in the SIU. There are legal exceptions for some specific situations, including epidemics and staff work refusals.³² However, if those specific situations do not exist, CSC must provide the regular opportunities. Moreover, even if an exception applies, CSC must continue efforts.

[63] CSC did not raise a legal exception for the period reviewed.

6. What type of opportunities did have?

[64] Recreation was the most frequent type of opportunity for him, but he had other types of opportunities as well.

²⁸ IEDM interview with [REDACTED].

²⁹ CCRA, s. 36(1) – (2).

³⁰ CCRA, s. 36(3).

³¹ IEDM interview with [REDACTED].

³² CCRA, para. 37(1)(c); CCRR, s. 19(1).

[65] Apart from leisure time, SIUs are meant to provide inmates access to programs, interventions, and services that reflect their needs and interests.³³ Activities may aim to help them achieve their correctional plan goals or reintegrate a mainstream population.³⁴ I must consider whether there was a reasonable variety of activities for in light of his profile.

6.1. Basic profile information

[66] is [REDACTED]. [REDACTED] is listed as his [REDACTED] language in CSC documents. He [REDACTED] experience. He [REDACTED] employment experience in [REDACTED]. He has community support from [REDACTED]. While at MED1, he was assessed as having a moderate overall level of mental health needs.”³⁵

6.2. Types of opportunities during the period reviewed

[67] had the chance to participate in:

- recreation: indoor common room, indoor gym, and outdoor yard
- staff interactions (especially with his PO and Correctional Managers (“CMs”))
- correctional programs
- social programs
- religious support from the Chaplain
- work as a cleaner
- inmate committee meetings
- periodic mental health evaluations
- medical appointments
- personal phone calls

[68] He had some type of program opportunity on 42 days (about 54% of all days). Correctional programs opportunities were rare at first, but more regular as of [REDACTED]. On [REDACTED] and [REDACTED], he talked to staff (his Correctional Programs Officer (“CPO”) and PO) about doing [REDACTED] program; the CPO discussed this with him [REDACTED]. I understand this will help [REDACTED] progress towards his correctional plan objectives. [REDACTED] and go back to a medium security institution.

[69] did not have the opportunity to do behavioural counselling, despite this being offered to some MAX1 SIU inmates. He reportedly asked about this kind of programming on [REDACTED],³⁶ but it does not appear there was any follow-up with him.

[70] He also did not have the chance to do school sessions, but I note that is not considered a necessary intervention area for him.

[71] He was offered the [REDACTED] job on [REDACTED], and told to help with [REDACTED].

[72] On [REDACTED], his PO spoke to him about meeting with the [REDACTED], and he expressed interest.³⁷ While this shows an effort to provide him some additional support [REDACTED], is not [REDACTED].

[73] Regarding religious support, Chaplaincy appeared to try to cater to his [REDACTED] faith, but it appears discussions were mostly offered by non-[REDACTED] chaplains. CSC has not provided detailed information about this issue.

7. Did CSC make efforts to facilitate [REDACTED] s interaction with other inmates?

[74] Yes, I find efforts were adequate in the context.

³³ CCRA, para. 32(1)(b).

³⁴ CCRA, para. 36(1)(b).

³⁵ CPU, [REDACTED], p. 5.

³⁶ Social programs entry, SIU activity log, [REDACTED].

³⁷ PO entry, CWR, [REDACTED].

[75] Having a recreation group often reduces someone's isolation in the SIU a lot. Having a group provides a person with more chances for interaction and often encourages their participation in activities.

[76] had a recreation group for some of the period reviewed, between [REDACTED] and around [REDACTED]. His group was separated. After that, he was considered to have no recreation group options in the SIU, as the only "general population" inmate in the SIU. In my [REDACTED] interview with [REDACTED] he said he had been in a group again for a "couple" of days. A CSC memorandum confirms he was placed in a new group when another "GP" inmate was transferred to the SIU.

[77] I have some information to suggest the decision to end his original group was reasonable, although it perhaps could have continued without any immediate issues.

8. Did CSC encourage [REDACTED] to participate in time-out-of-cell and interaction opportunities?

[78] I find there was adequate encouragement.

[79] An inmate may turn down opportunities in the SIU; there is a legal exception for "refusals."³⁸ Even so, IEDMs must assess whether CSC encouraged them to participate in activities.³⁹ Encouragement can take various forms. An IEDM may also assess whether CSC discouraged a person's participation in activities, such as by using security barriers during meetings.

8.1. Participation rates

[80] CSC's log shows [REDACTED] took some recreation time on most days (64/78, or about 82% of all days), almost always for indoor recreation. However, there were many opportunities he did not take advantage of. [REDACTED] mentioned that it is cold, so he does not go out.⁴⁰

[81] CSC's log shows [REDACTED] accepted: 10 of 28 social programs opportunities, 18 of 19 correctional programs opportunities, and 3 of 5 religious support opportunities (there was also an occasion when he had a brief discussion with the Chaplain at his door, and another when he was provided a book on grief as he had requested).

[82] For social programs, his participation was more consistent in the first weeks he was in the SIU. He seems to have had positive and productive discussions with programs staff, particularly in the Primer program sessions.

[83] He went out to clean often according to the log, although not consistently on every day.

8.2. Mental health needs and support

[84] CSC information shows [REDACTED] accepted the [REDACTED] "24-hour" mental health assessment, but not participate in any of the "14-day" or "28-day" assessments.

[85] In my interview with [REDACTED], he acknowledged he had not done these evaluations, but he said they come in the morning, which is a bad time. He listed mental health symptoms he has experienced, and said he has put in requests to see a mental health nurse. He acknowledged that he missed a chance to see a psychologist, and said he wanted another chance, but staff never got back to him.⁴¹

[86] CSC records show in [REDACTED], he was not interested in clinician services, preferring medical intervention, but [REDACTED], a referral had been placed because he was open to counselling. While there does not appear to have been specific follow-up after that, mental health assessments were subsequently offered, and as noted, he did not participate. It may be useful for mental health staff to see him later in the day.

³⁸ CCRA, para. 37(1)(a).

³⁹ CCRA, s. 37.83(1).

⁴⁰ IEDM interview with [REDACTED].

⁴¹ IEDM interview with [REDACTED].

8.3. Encouragement

[87] appears to have had good interactions with program staff and I find offering him the chance to do to be a significant form of encouragement. While the lack of behavioural counselling opportunities was a shortcoming, I find the opportunity to do does compensate for it.

[88] A significant factor that affected s well-being and participation in SIU activities was causing him; he turned down several program opportunities because of it, and talked about it on several other occasions. He also turned down some gym opportunities because of it.⁴² There appears to have been some effort to accommodate this issue, such as by providing. Unfortunately, .⁴³, when I asked about the impact of this issue on his ability to do, on, he did say.⁴⁴ Program officers seem to have provided some support about this issue, in listening to him speak about it.

6. CONCLUSIONS

[89] Under s. 37.8 of the CCRA, I conclude should not remain in the SIU.

[90] Although I have identified some shortcomings, overall, under s. 37.83(1) of the CCRA, I find that CSC took all reasonable steps to provide the required opportunities for time out of cell and interaction in the SIU.

Janine Lespérance
Independent External Decision-Maker

Date:

⁴² Correctional programs entry, SIU activity log, .

⁴³ Correctional programs entry, SIU activity log, .

⁴⁴ IEDM interview with .

ANNEX: SOURCES OF INFORMATION AND I [REDACTED]'S OPPORTUNITY TO PROVIDE COMMENTS

[91] I have consulted the following sources of information from CSC:

- SIU activity log, for the period from [REDACTED]
- Threat risk assessments (“TRAs”), for the period as of [REDACTED]
- Casework record log, for the period from [REDACTED] to [REDACTED]
- IEDM interview with MAX1 SIO [REDACTED], [REDACTED]
- Chart of [REDACTED] STG compatibilities, received [REDACTED]
- IEDM interview with [REDACTED] SIO [REDACTED], [REDACTED]
- Mental health checklist, dated [REDACTED]
- IEDM interview with MAX3 SIO [REDACTED], [REDACTED]
- IEDM interview with MAX2 SIO [REDACTED], [REDACTED]
- IEDM interview with [REDACTED] SIO [REDACTED], [REDACTED]
- Health encounter notes, for the period of [REDACTED] to [REDACTED]
- Memorandums – recreation group, dated [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- CSC’s responses to IEDM request for information, received [REDACTED] and [REDACTED]
- Regional reviews, dated [REDACTED] and [REDACTED]
- Mental health forms, dated [REDACTED], [REDACTED], [REDACTED] (X2), [REDACTED], [REDACTED] and [REDACTED]
- Correctional plan updates – SIU (“CPU-SIU”), dated [REDACTED] and [REDACTED]
- Incident history log report, generated on [REDACTED]
- Institutional charges report, generated on [REDACTED]
- Senior Deputy Commissioner (“SDC”) decision, dated [REDACTED]
- Assessment of [REDACTED], [REDACTED]
- Correctional plan – updated (“CPU”), dated [REDACTED]
- Incident reports, dated [REDACTED], and [REDACTED]
- Institutional head “30-day” SIU transfer decision, dated [REDACTED]
- Mental health clinical notes, dated [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Referrals for health services, dated [REDACTED], [REDACTED], [REDACTED] and [REDACTED]
- Psychological/psychiatric assessment report, dated [REDACTED]
- Institutional head “5-day” SIU transfer decision, dated [REDACTED]
- Statement/observation reports (“SORs”), dated [REDACTED] (X3), [REDACTED], [REDACTED], [REDACTED], [REDACTED] (X2), [REDACTED], [REDACTED] (X2), and [REDACTED]
- SIU transfer authorizations, dated [REDACTED] and [REDACTED]
- Referral decision sheet – institutional transfer, dated [REDACTED]
- Referral decision sheet – offender security level, dated [REDACTED]
- Assessment for decision – institutional transfer – offender security level, dated [REDACTED]
- Security reclassification scale, dated [REDACTED]
- Criminal profile report – original, dated [REDACTED]

[92] I sent [REDACTED], via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[93] I learned [REDACTED] would share his views. I interviewed [REDACTED] in-person at MAX1 on [REDACTED], for approximately 37 minutes. [REDACTED] also provided some written comments [REDACTED], which were his personal notes he had prepared for the interview.

[94] After reviewing additional information, I again interviewed [REDACTED] on [REDACTED], for about 23 minutes. That interview took place via telephone. It began on time without issue.

Inmate name:
FPS Number: ██████
Correctional Institution: MAX1
Notification date: ██████
Date of the Present Notice: ██████
Independent External Decision-Maker: J. Lespérance

**NOTICE OF END OF IEDM REVIEW PROCESS:
 NON-ISSUANCE OF DECISION UNDER SS. 37.83(1) and (2) OF THE
 CORRECTIONS AND CONDITIONAL RELEASE ACT**

- [1] On ██████, the independent external decision-makers (“IEDMs”) were notified that for five consecutive days, ██████ had not spent a minimum of four hours out of his cell or had not interacted with others for a minimum of two hours per day, in the Structured Intervention Unit (“SIU”) in ██████. Subsection 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) normally requires an IEDM to determine if Correctional Service Canada (“CSC”) took all reasonable steps to provide ██████ at least four hours out of his cell and two hours of meaningful human contact per day. If not, the IEDM may make recommendations under s. 37.83(2) of the CCRA.
- [2] My last decisions concerning ██████ were issued on ██████, under s. 37.83(1) and s. 37.8 of the CCRA (combined into one document). Under s. 37.83(1) of the CCRA, I concluded that CSC took all reasonable steps. Under s. 37.8 of the CCRA, I concluded that ██████ should not remain in the SIU, and that he should be transferred to a medium-security institution in the ██████ region. On ██████, I issued an end of review process notice regarding a determination under s. 23.06(1) the *Corrections and Conditional Release Regulations*, SOR/92-620 (“CCRR”), due to redundancy with the s. 37.8 decision of ██████.
- [3] CSC issued a brief memorandum response to the combined decision, signed by the MAX1 Warden and dated ██████. The memorandum acknowledged the determination under s. 37.83(1) of the CCRA but ignored the analysis and conclusion under s. 37.8 of the CCRA. I can find information in the SIU database alleging that ██████ exhibited problematic behaviour in the days following the decision (incidents were recorded on ██████, ██████, and ██████). However, CSC made no efforts to share factual or legal reasons for its non-compliance with the s. 37.8 decision. This does not demonstrate respect for the IEDM oversight process nor respect for the law.
- [4] Nevertheless, ██████ was transferred out of the SIU on [17 days after decision date]. Despite previous refusals to do so, he agreed to integrate ██████ at MAX1. Given that he is no longer in the SIU, I will not make another determination under s. 37.83(1) of the CCRA at this time. I consider that this decision has been rendered moot.

Janine Lespérance
 Independent External Decision-Maker

Inmate Name:
FPS Number: ██████
Correctional Institution: Maximum-security institution
Date of Notification: ██████
Date of Decision: ██████
Independent External Decision-Maker: Janine Lespérance

**DECISION UNDER SUBSECTION 37.83(1) OF THE
 CORRECTIONS AND CONDITIONAL RELEASE ACT,
 S.C. 1992, C.20**

SUMMARY

was very isolated in the SIU. CSC did not provide the required quantity of opportunities for time out of cell and meaningful human contact on at least a few days. Log entries for yard offers do not seem reliable. The variety and timing of activities was reasonable. However, activities sometimes overlapped for the same time slot. CSC placed ██████ on a “singles” range and did not let him go out with a group member on that range. He was not allowed to go out for a program session because he did not yet have institutional clothing. ██████ spoke of the difficulty of obtaining basic supplies in the SIU. Under s. 37.83(1) of the CCRA, I conclude CSC did not take all reasonable steps to provide ██████ opportunities to leave his cell and interact with others in the SIU.

I. INTRODUCTION

- [1] On ██████ Correctional Service Canada (“CSC”) notified the Independent External Decision-Makers (“IEDMs”) that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act* (“CCRA”) concerning ██████ is necessary. He is incarcerated in the Structured Intervention Unit (“SIU”) at [maximum-security institution, “MAX1”] in ██████.
- [2] If I do have a legal basis to review ██████’s situation, I must answer this question: Did CSC take all reasonable steps to provide ██████ at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?¹

II. BACKGROUND

- [3] I ██████ is ██████ years old and is from ██████.
- [4] Since ██████, he has been serving a ██████ sentence for which his warrant expiry date is in ██████. CSC has classified him at the maximum-security level.
- [5] His transfer to the SIU was authorized ██████, under para. 34(1)(b) of the CCRA.

According to the SIU transfer authorization, he refused to integrate a population at MAX1. The SIU transfer was approved in the “5-day” Acting Warden decision of ██████, but not in the “30-day” decision of ██████.

- [6] ██████’s SIU placement has now been authorized four times.

¹ CCRA, s. 37.83(1).

III. SOURCES OF INFORMATION

[7] I have considered CSC documentary information, notably the SIU daily activity log (“the log”), and s. [REDACTED] oral comments (see annex for details).

IV. ANALYSIS

1. Do I have a legal basis to review s. [REDACTED]’s time-out-of-cell opportunities?

[8] Yes, I do. My jurisdiction is uncontroversial.

[9] IEDMs only do reviews in specific situations. If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.²

[10] Based on CSC’s data, s. [REDACTED]’s isolation from [REDACTED] to [REDACTED] triggered a review. Although [REDACTED] was transferred to the SIU on [REDACTED], he was only transferred into the SIU in the late afternoon, so he was not in the SIU for a full day. If that day is excluded from the five-day period, a review was triggered the day after. Either way, I currently have jurisdiction under s. 37.83(1) of the CCRA.

2. What is the relevant period of review?

[11] The period reviewed is [REDACTED] to [REDACTED], a period of 41 days.

[12] An IEDM is not limited to only examining the days that triggered the review. The IEDM decides the appropriate period to review, based on legal and practical factors. Considering the human rights at stake, the need to avoid gaps in oversight, and the importance of fully understanding a situation to make recommendations, it is appropriate for an IEDM to examine a longer period, especially if many days have passed since the review was triggered.

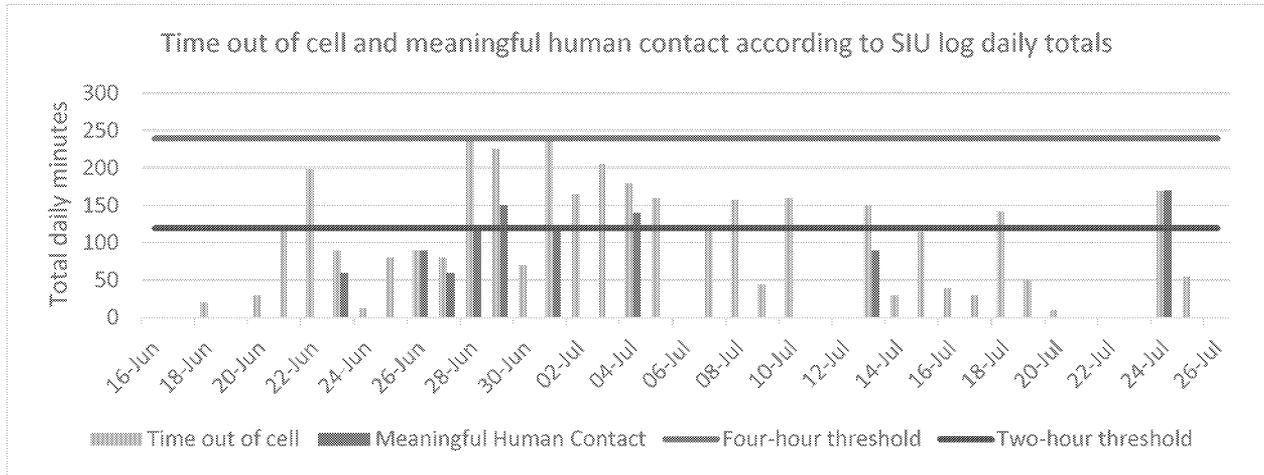
[13] Given the time passed between when this decision was partially drafted and the issuing date, I have verified log information for more recent days as well.

3. How much time did s. [REDACTED] spend out of his cell and interacting with others each day?

[14] s. [REDACTED] spent most of his time alone in his cell during the period reviewed.

[15] According to CSC’s log, s. [REDACTED] spent four hours or more out of his cell on two days during the period reviewed (about 5% of all days); the log indicates he spent exactly four hours out of his cell on [REDACTED] and [REDACTED]. The average for time out of cell was about one hour and 25 minutes daily. He had at least two hours of social interaction on five days (about 12% of all days). The daily average for interaction time was about 24 minutes. As shown by the graphic below, there were several days on which he did not leave his cell at all, and even more days on which he did not have any meaningful interaction.

² CCRA, s. 37.83(1).



[16] The log totals may be somewhat inaccurate. For █████, the log total was exaggerated by at least one hour, because the log indicates █████ was out during the lockdown time from 6 to 7PM. There are many even numbers in the log, which implies entries are rounded estimates.

[17] █████ had examined CSC's SIU activity log closely. He does not think he spent more than four hours outside his cell on any day.

[18] Various factors may explain why an inmate is isolated. Total daily hours for time out of cell and social interaction show whether CSC's efforts were successful. If a person has been very isolated for a long time, as in █████'s case, CSC should be making great efforts to reduce their isolation.

4. Were the quantity and timing of offers adequate?

[19] No. CSC did not meet its minimum legal obligations on several days.

[20] CSC must provide a minimum of four hours out of cell and two hours of meaningful human contact to SIU inmates, between 7AM and 10PM.³ Offers should generally be timed so they are spread throughout the day. Showers do not count towards time out of cell.⁴ CSC's obligation applies daily.

Quantity of opportunities according to CSC information

[21] According to the SIU log, █████ usually had four chances to get out of his cell each day. The majority (over 60%) of offers appearing in the log are outside yard offers.

[22] On █████, the log shows █████ only had two early morning opportunities for time out of cell, meaning he was unable to spend four hours out of his cell. The log states the SIU application was down that day so offers were tracked manually. However, CSC has not provided evidence of the actual number of offers to

[23] On █████ was unable to spend four hours out of his cell. According to the log, he only had an outside yard opportunity at 7:15AM, and had an evening phone call.

[24] █████ had no opportunity for meaningful human contact on: █████ and █████; and █████, █████, and █████.

[25] On █████, the log suggests he had an opportunity for meaningful human contact, but I find it was not an actual opportunity. █████ had accepted to participate in a social programs session, but he could not attend because he did not have institutional clothes.⁵ █████ had refused program sessions in the days before █████. However, it appears CSC would not have allowed him to go out due to his clothes in

³ CCRA, s. 36(1) – (2).

⁴ CCRA, s. 36(3).

⁵ Social programs entry, SIU activity log, █████.

any event, so he did not have any actual opportunity for in-person social interaction from [REDACTED] to [REDACTED]. On [REDACTED], phone time was his only interaction time.

's comments

- [26] [REDACTED] said the log is very inaccurate. He was not able to spend four hours outside his cell, even on days when he tried to take as much time out of his cell as possible. Regarding opportunities for the yard, he said you usually have to ask at breakfast, and "you're lucky if you get to go *once*" during the day. If you say no in the morning, you are often "shut out" for the day. He said there have been times when he signed up in the morning but was not allowed to go when the time came; he has been told the yard is already full.⁶ He said for a time he tried to go to the yard or weight room once a day and got to go three times per week if "lucky."
- [27] [REDACTED] said the inaccuracy of the log for multiple supposed offers was the biggest issue for him.
- [28] He said the conditions during the period reviewed were worse than some time he has done in segregation.

Problems with CSC's documentation

- [29] I find CSC's documentation of opportunities unreliable. As an IEDM, I cannot presume CSC provided opportunities if they are not documented, as on [REDACTED].
- [30] Moreover, I have serious concerns about the accuracy of CSC log information. This issue has arisen in numerous previous IEDM reviews over a long period of time. [REDACTED]'s comments about yard opportunities are consistent with those of numerous inmates I have interviewed. There is reason to believe CSC's log contains incorrect entries, and inflates the number of offers for the outdoor yard, as well as inmates' refusals. Descriptive notes for yard offers are generic and often copy-pasted, so they do not add to the credibility of entries.
- [31] An example of an inconsistency in the log is that for [REDACTED], a note suggests regular activities were not happening due to the presence of the Emergency Response Team ("ERT") to deal with an incident, from 1PM to 4:30PM. Contradicting that, the log indicates [REDACTED] had an outdoor yard opportunity at 1PM.
- [32] Due to these issues, it is difficult to determine how much time [REDACTED] actually could have spent outside his cell. In addition to the days identified above, it seems likely that there were additional days on which he would not have been able to spend four hours or more out of his cell.

Timing of offers

- [33] I find the timing and coordination of offers could have been better, although program offers were satisfactorily offered in both the morning and the afternoon.
- [34] CSC's data shows there were several timing conflicts between different types of activities during the period reviewed. It appears [REDACTED] was sometimes forced to choose between range time (providing access to showers, laundry, and phone) and programs, his only source of in-person meaningful social interaction.
- [35] In my interview with [REDACTED], he mentioned a specific example of a time when he had told a program officer he had a lawyer call, but he wanted to do a session if the call did not happen. He said neither the call nor the program session took place; when the officer came to his door, it was to offer range time.⁷ According to the log, on [REDACTED], he refused social programs at 1PM due to a lawyer call, but there is no indication he had a call.⁸ It appears there was a miscommunication that day.

⁶ IEDM interview with [REDACTED].

⁷ IEDM interview with [REDACTED].

⁸ Social programs entry, SIU activity log, [REDACTED].

[36] raised another issue regarding the timing of offers. He had the impression that after he told staff he is unlikely to come out for programs in the morning, staff started to make even more program offers in the morning.

[37] The log shows almost all morning offers were early, at 8:30AM. However, 60% of program offers were in the afternoon. It appears there were more afternoon program opportunities as of around [REDACTED].

[38] I do not have the same concerns about the credibility of programs log entries as for yard opportunities. The timing of programs offers was reasonably varied throughout the days; [REDACTED]'s perception of this issue does not appear accurate.

5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[39] Yes. Issues involving other inmates had an impact on opportunities, but there was no applicable legislative exception for these challenges.

[40] Contextual situations or circumstances can affect activities in the SIU. There are legal exceptions for some specific situations, including epidemics and staff work refusals.⁹ However, if those specific situations do not exist, CSC must provide the regular opportunities. Moreover, even if an exception applies, CSC must continue efforts.

[41] As noted, there was a disruption on [REDACTED] due to the ERT. The log also indicates operations were disrupted on:

- [REDACTED], for seven hours, due to multiple security incidents in the SIU
- [REDACTED], for two hours and 45 minutes, due to a medical emergency
- [REDACTED], for over six hours, due to a security incident
- [REDACTED], because only one Social Programs Officer ("SPO") was on site and multiple inmates were on "alone status"

[42] Such situations would understandably make it more difficult for staff to continue to provide opportunities. However, this reality is not considered in the legislation; there is no exception for these kinds of situations.

6. What types of opportunities did [REDACTED] have?

[43] [REDACTED] could participate in recreation, work, and programs.

[44] Apart from leisure time, SIUs are meant to provide inmates access to programs, interventions, and services that reflect their needs and interests.¹⁰ Activities may aim to help the inmate achieve their correctional plan goals or reintegrate a mainstream population.¹¹ I must consider whether there was a reasonable variety of activities for [REDACTED], adapted to his profile.

[45]

[46] [REDACTED] had the following types of opportunities during the period reviewed:

- recreation: range, common room (involving access to weights), and outdoor yard
- meeting with his Parole Officer ("PO") (once)

⁹ CCRA, para. 37(1)(c); CCRR, s. 19(1).

¹⁰ CCRA, para. 32(1)(b).

¹¹ CCRA, para. 36(1)(b).

¹² CPU, [REDACTED], p. 5.

- correctional programs (the SIU Motivational Module (“MM-SIU”) program)
- behavioural skills sessions
- social programs
- work as a range cleaner
- periodic mental health evaluations
- personal phone calls

Programs and interventions

[47] According to the log, [REDACTED] had at least one kind of program opportunity on 35 days (about 85% of all days), which shows a decent frequency of program offers. However, programs were essentially his only source of in-person barrier-free interaction. Moreover, while social programs and behavioural skills sessions were fairly regular, [REDACTED] only had four chances for the MM-SIU.

[48] The programs offered could be beneficial to [REDACTED] but I note that he was not offered specialized substance abuse programming or support. In addition, he told the behavioural counsellor on [REDACTED] that he was interested in micro credentials offered in the SIU,¹³ but it does not appear he has had any education opportunity.

Work

[49] The log does not show [REDACTED] had a job. However, [REDACTED] said he has a range cleaner position. He said it does not add to his time out of cell; rather, it takes away from his range time. If he does not do it during his range time, the range gets filthy.¹⁴

[50] I consider this a timing conflict. [REDACTED] should not have to lose range time to work.

7. Did CSC make efforts to allow [REDACTED] to interact with other inmates?

[51] No. CSC discouraged him from having interactions with other inmates.

[52] Having a recreation group often reduces someone’s isolation in the SIU a lot. Having a group provides a person with more chances for interaction and often encourages their participation in activities, resulting in more time out of cell and meaningful human contact.

[53] From CSC’s information for the period reviewed, the only indication of efforts to place [REDACTED] in a recreation group and encourage him to be in a group is in the [REDACTED] SIURC, which states: “He was also encouraged to consider being in a recreation group and is giving it consideration at this time.”¹⁵ However, [REDACTED] did not participate in the SIURC, so it is unclear whether a conversation with him took place.

[54] [REDACTED] said he has been placed on a range that has been designated a “singles” range. He said his placement on that range made it harder to get on a group, because most of the people on that range do not want a group and there are no pre-existing groups to join. Nevertheless, he and another person were both willing to be in a group together, and it was approved. However, they were told they would both need to move to another range to be allowed out together. He said moving creates complications. For example, he would likely lose his job if he changed ranges.¹⁶

[55] [REDACTED]’s comments regarding his range and potential group are consistent with those of another individual I interviewed recently. CSC has not explained why MAX1 divided ranges on that basis; nor why [REDACTED] was placed on that range, even though he had been in a recreation group during his last SIU stay at MAX1, from [REDACTED] to [REDACTED].¹⁷

[56] More, CSC has not explained why it is preventing inmates on a certain range ([REDACTED]) from having meaningful interactions with each other. CSC’s decisions seem

¹³ CWR, [REDACTED].

¹⁴ IEDM interview with [REDACTED].

¹⁵ Institutional head “30-day” SIU transfer decision, [REDACTED], p. 3.

¹⁶ IEDM interview with [REDACTED].

¹⁷ See IEDM decision under s. 37.83(1) of the CCRA concerning [REDACTED], paras. 57 to 61.

illogical and contrary to the purpose of SIUs. CSC should be encouraging opportunities for interaction, not discouraging them. I do not find writing “I encourage you...” in the text of a decision to be adequate encouragement.

8. Did CSC encourage [redacted] to participate in time-out-of-cell and interaction opportunities?

[57] No. I find CSC discouraged [redacted] s participation in activities.

[58] An inmate may turn down opportunities in the SIU; there is a legal exception for “refusals.”¹⁸ Even so, IEDMs must assess whether CSC encouraged them to participate in activities.¹⁹ Encouragement can take various forms. An IEDM may also assess whether CSC discouraged a person’s participation in activities, such as by unjustifiably using security barriers during meetings.

[59] The log shows [redacted] had a low rate of participation in programs. He took part in 3/4 MM-SIU sessions, 2/11 behavioural skills sessions, 2/24 social programs sessions. He met with his PO once and used the phone three times. He took all opportunities for range time, and went to the outdoor yard on 13 different days.

[60] [redacted] s non-participation in several opportunities was a major reason for which the daily totals were so low. However, I can identify areas where encouragement efforts could have been better, or there was discouragement.

[61] Regarding programs offers, there were only four days on which he had more than one opportunity for programs in a day. Moreover, [redacted] ’s participation was the highest for the MM-SIU, but it was the type of program offered to him the least frequently. The activity timing conflict issue discussed above discouraged [redacted] ’s participation in other types of programs on a few occasions.

[62] Outside of program offers, the log shows staff hardly interacted with [redacted] to verbally encourage him or check in with him. His PO met with him once, and he could have met with the SIU Review Committee (“SIURC”) once. Otherwise, no interactions are recorded in the log.

[63] Apart from providing more recreation time and access to a group, some encouragement strategies that could result in him spending more time out of cell are:

- More program offers, especially later in the day
- More frequent MM-SIU opportunities
- Better scheduling and coordination of activities
- Staff discussions with him outside of programs offers

Institutional clothing issue

[64] As noted above, [redacted] ’s lack of institutional clothing prevented him from participating in programs. He did not have the clothing after being in the SIU for about ten days. [redacted] said staff followed up after the problem was discovered on [redacted]

[redacted].²⁰

[65] I have identified this problem in prior decisions for MAX1, including one concerning [redacted]. Despite recommendations dating to at least [two years earlier], MAX1 seems to have not improved practices on this relatively simple issue.

[66] On [redacted], CSC stated:

“[...] We provide institutional clothing to SIU inmates as soon as possible following their transfer into to the SIU. We will ensure that the requirement for the wearing of institutional clothing does not present as a barrier for SIU inmates to attend programming sessions.

¹⁸ CCRA, para. 37(1)(a).

¹⁹ CCRA, s. 37.83(1).

²⁰ IEDM interview with [redacted].

We will reinforce with SIU staff to exercise some flexibility and discretion in situations where an SIU inmate may not yet have been provided with institutional clothing [emphasis added].”²¹

[67] After a prior decision concerning [redacted] ²² CSC responded, in [redacted]:

“During the intake interview with the SIU Correctional Manger [sic] upon admission, an inmate’s clothing sizes are taken, and an e-mail is submitted to the Institutional Services (SIS) department requesting an institutional clothing issue for new comers [sic] to the SIU. In addition, the SIU Correctional Managers maintain a limited stock of institutional clothing to be issued in the interim for delivery delays and after business hours admissions. We will ensure that SIU staff exercise discretion and flexibility in situations where inmates have not yet been provided with institutional clothing so as not to preclude their participation in activities [emphasis added].”²³

[68] In a very recent response to a decision concerning another inmate, CSC stated,

“During the intake interview with the SIU Correctional Manger [sic] following arrival, an inmate’s clothing sizes are taken, and an e-mail is submitted to the Institutional Services (SIS) department requesting an institutional clothing issue for newcomers to the SIU. In addition, the SIU Correctional Managers maintain a limited stock of institutional clothing to be issued in the interim for delivery delays and after business hours admissions. We will ensure that SIU staff exercise discretion and flexibility in situations where inmates have not yet been provided with institutional clothing so as not to preclude their participation in activities.”²⁴

[69] Evidently, CSC has simply copy-pasted the response. Even a “typo” was copied. CSC has not adequately addressed the issue, despite previous promises.

[70] CSC’s response refers to an “intake interview.” There is no record of a CM having an “intake interview” with [redacted] during the period reviewed. [redacted]’s “intake interview” with his PO took place on [redacted], after he had already been in the SIU for about 12 days.

9. Was mental health a significant factor during the period reviewed?

[71] Yes. there are reasons to be concerned about [redacted]’s mental health, both due to his level of isolation and his comments.

[72] The log shows he did not participate in the three periodic mental health evaluations offered during the period reviewed. There were no reports of self-harming behaviour, but he reportedly became “suddenly agitated” in a meeting with his PO on [redacted].²⁵ He reportedly told the PO he did not need a mental health services referral that day.²⁶

[73] In my interview with [redacted] he came across as [redacted]. He made some statements that raise my concerns about his health, [redacted].

²¹ CSC’s response to IEDM decision under s. 37.83(1) of the CCRA concerning (name omitted) of [redacted], [redacted].

²² IEDM decision under s. 37.83(1) of the CCRA concerning [redacted], paras. 75, 86.

²³ CSC’s response to IEDM decision under s. 37.83(1) of the CCRA concerning [redacted] (the response is dated both [redacted] and [redacted]).

²⁴ CSC’s response to IEDM decision under s. 37.83(1) of the CCRA concerning (name omitted) of [redacted], [redacted].

²⁵ Case management entry, SIU activity log, [redacted]; incident report, [redacted]. He reportedly became “emotionally elevated and verbally abusive.”

²⁶ PO entry, CWR, [redacted].

[74]

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10. Did any other issues affect [redacted] in the SIU?

[75] Yes. [redacted] raised issues about the general living conditions.

[76] Specifically, [redacted] described that it had been particularly hard to get things from MAX1's SIS department, including basic products like clothing, soap, and dish soap. According to him, this issue affects him and others. He said he was wearing the same socks for a month, and inmates are sharing things like soap with each other because they are not getting any.

[77] He has encountered difficulties doing his job due to lack of supplies. He did not have a mop for a week and is constantly asking for garbage bags. There is only one set of cleaning supplies for him and the other cleaner, who cleans outside the range, to use. When they are both out at the same time, this creates an issue because they do not each have cleaning supplies.²⁹

V. CONCLUSION AND RECOMMENDATIONS

[78] I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide [redacted] the required time out of his cell and meaningful human contact in the SIU, and to encourage him to take advantage of opportunities.

[79] I have a broad power to make any appropriate recommendation to remedy the situation.³⁰ I recommend to CSC to:

- Concentrate programming offers on the MM-SIU program (i.e. provide MM-SIU opportunities more often)
- Ensure a person is not prevented from doing programs due to not having institutional clothing after being transferred
- Ensure [redacted] is not blocked from having interactions with other individuals during recreation time as part of a group, and remove the condition that he must move ranges to be in a group
- Ensure [redacted] has the supplies to do his job and does not have to use his range time to clean
- Provide education opportunities
- Provide [redacted] the opportunity for appointments with a doctor and psychiatrist

[80] I also urge MAX1, once again, to ensure all documentation is accurate and complete. In particular, log entries for recreation should reflect actual offers and notes should accurately describe what happened.

[81] Because I have made recommendations, a follow-up decision under s. 37.83(3) is necessary.

²⁷ [redacted] spoke of this to his PO. See: PO entry, CWR, [redacted].

²⁸ IEDM interview with [redacted].

²⁹ IEDM interview with [redacted].

³⁰ CCRA, s. 37.83(2).

Janine Lespérance
Independent External Decision-Maker

Date: [REDACTED]

VI. ANNEX: SOURCES OF INFORMATION AND S OPPORTUNITY TO PROVIDE COMMENTS

[82] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of [REDACTED]
- Threat risk assessments (“TRAs”), for the period as of [REDACTED]
- Casework record (“CWR”) log, for the period from [REDACTED] to [REDACTED]
- Institutional head “30-day” SIU transfer decision, [REDACTED]
- Correctional plan updates – SIU (“CPU-SIU”), dated [REDACTED]
- Incident report, dated [REDACTED]
- Correctional plan – updated (“CPU”), dated [REDACTED]
- Memorandum – SIU-LTE application outage, [REDACTED]
- Institutional head “5-day” SIU transfer decision, dated [REDACTED]
- Memorandum – correctional interventions board (CIB), dated [REDACTED]
- SIU transfer authorization, dated [REDACTED]
- Assessment for decision – statutory release, dated [REDACTED]
- Criminal profile report (“CPR”) – original, dated [REDACTED]

[83] I had considered additional information concerning [REDACTED] in a previous review.

[84] I sent [REDACTED], via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[85] On [REDACTED], I learned [REDACTED] would share his views. We spoke by videoconference on [REDACTED], for approximately one hour and 17 minutes.

Inmate Name:
FPS Number: ██████████
Correctional Institution(s): MAX1, MAX2
Date of CSC SDC Decision under s. 37.4, CCRA: ██████████
Date of the Present Decision: ██████████
Independent External Decision-Maker: J. Lespérance

**DECISION UNDER SECTION 37.8 OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, c. 20**

SUMMARY

was involved in a ██████ incident at MAX1 when ██████. There are concerns about ██████ but not enough proof to show it. |

This information is insufficient to justify a long-term SIU stay. In the SIU, ██████ has been involved in some incidents but has consistently participated in correctional programming. MAX3 refused him ██████. CSC did not provide a factual basis to justify it. Under s. 37.8 of the CCRA, I conclude ██████ should not remain in the SIU.

1. INTRODUCTION

[1] On ██████, the Senior Deputy Commissioner (“SDC”) of Correctional Service Canada (“CSC”) determined, under section 37.4 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) that ██████ should remain in the Structured Intervention Unit (“SIU”) at [maximum-security institution, “MAX2”] in ██████.

[2] As an Independent External Decision-Maker (“IEDM”), I must answer the following question: should ██████ remain in the SIU?

2. SOURCES OF INFORMATION

[3] I have considered documentary information from CSC, oral comments of I ██████’s SIU Correctional Programs Officer (“CPO”), video (CCTV) footage of ██████ from ██████, an oral summary of information and some additional comments by a MAX1 Security Intelligence Officer (“SIO”), and ██████’s oral comments of ██████ (see annex for details). I also spoke briefly to a MAX3 SIO and a MAX2 SIO.

[4] There were challenges obtaining all relevant information from CSC in this case, despite CSC’s clear legal obligations.¹ This decision is two days late due to incomplete information disclosure from CSC, despite multiple requests, well before the decision was due (see annex); I decided to delay the decision to receive more information, which I recognize interferes with ██████’s right to oversight in accordance with legal timelines.²

3. CONTEXT

[5] ██████ is a ██████-year-old ██████ from ██████.

¹ CCRA, s. 37.7(1).

² In the ██████ interview, I discussed with ██████ that I had not yet received video from CSC. He wished for me to review video footage, and was favourable to the decision being delayed until then.

- [6] He is serving [REDACTED] sentence. He was [REDACTED]. He was [REDACTED]. He has been in federal custody since [REDACTED]. He is [REDACTED].
- [7] His transfer to the SIU was authorized [REDACTED], under para. [REDACTED] of the CCRA. He was not [REDACTED]; he was sent directly to MAX2's SIU.
- [8] [REDACTED]'s SIU placement has been authorized [REDACTED] times, at [REDACTED], [REDACTED] (X3), and MAX1.

4. ANALYSIS

4.1. Do I have a legal basis to review [REDACTED]'s SIU placement?

- [9] Yes, my jurisdiction is uncontroversial.
- [10] IEDMs only issue decisions in certain situations. An IEDM decision under s. 37.8 follows CSC decisions concluding that the inmate should stay in the SIU, specifically: the institutional head's "5-day"³ and "30-day"⁴ decisions, and the SDC decision.⁵ If the SDC decides a person should remain in the SIU, an IEDM decision is triggered. It is due 30 days after the SDC decision. By then, the inmate has usually been in the SIU around 90 days.
- [11] Mr. P's SIU transfer was approved in the "5-day" Acting Warden decision of [REDACTED], the "30-day" decision of [REDACTED], and the SDC decision of [REDACTED]. The SDC decision means an IEDM must issue a decision under s. 37.8 of the CCRA.

4.2. What is the rationale for [REDACTED]'s SIU transfer?

- [12] The [REDACTED] SIU transfer authorization describes the context of his SIU transfer as follows:

- [13] The date in the authorization is an error: the incident referred to took place [REDACTED], not [REDACTED].

- [14] The institutional head 5-day decision adds:

- [15] Other CSC sources of information indicate a large amount of OC gas was used during these events.⁷

- [16] CSC's assessment of the situation has not evolved since [REDACTED]: [REDACTED] has been "unsupported" to return to MAX1 in decisions on his SIU placement.

³ Under CCRA, s. 29.02(2).

⁴ Under CCRA, para. 37.3(1)(b).

⁵ Under CCRA, s. 37.4.

⁶ SIU transfer authorization, [REDACTED], p. 3.

⁷ See, e.g., [REDACTED]; SOR [REDACTED].

4.3. Is [redacted] s security classification appropriate?

- [17] Yes, I find his maximum-security classification appropriate.
- [18] According to law, I must consider the appropriateness of [redacted] s security classification in my decision on his SIU placement.⁸
- [19] CSC's last decision on his security classification was issued on [redacted]. The basis for the decision is reasonable and there have been several incidents involving [redacted] since then. [redacted] wishes to cascade to medium-security, from MAX1; but his comments did not focus on his security classification.
- [20] Ending his SIU stay at this time requires that an appropriate maximum-security population be identified for him.

4.4. Is [redacted] s confinement at MAX2 appropriate?

- [21] No, it is not.
- [22] In my decision on [redacted] s SIU placement, I must consider the appropriateness of his penitentiary placement.⁹ The legal criteria for penitentiary placement include safety, proximity to home, language, culture, and program and service availability.¹⁰
- [23] [redacted] is at MAX2 because [redacted].
- [24] [redacted] is from [redacted]. His [redacted].¹¹ A placement in [redacted] allows him to be close to his community support.
- [25] [redacted], MAX2 is not an appropriate penitentiary for him. [redacted].
- [26] [redacted] seems to have been consistent in saying he wants to return to MAX1. On [redacted] [redacted], he reportedly told his PO that he wanted to get back to MAX1 and did "not understand why he was transferred out."¹² In my [redacted] interview with him, he reiterated his preference to go to MAX1. Apart from [redacted], he feels the most "comfortable" there and that he will be able to cascade to medium-security.

4.5. Can [redacted] integrate a mainstream population?

- [27] Yes, I find [redacted] should be able to integrate a mainstream population.

4.5.1. Legal framework

- [28] SIU stays are meant to "end as soon as possible."¹³ I can only decide an inmate should stay in the SIU if I have information that makes me believe their release "would jeopardize" safety, including their personal safety; or "would interfere" with a serious investigation.¹⁴ The risk must be higher than just a possibility of incidents. There is always some danger in the penitentiary context. If the standard used were too low, there would always be a reason for keeping an inmate in the SIU. This outcome would be at odds with the legislation.
- [29] Since there is a presumption that an inmate should be released from the SIU, CSC must present evidence to justify that someone remain in the SIU. CSC is legally obligated to provide the IEDM all relevant information for each case.¹⁵
- [30] I can consider any relevant factors in this decision.¹⁶

⁸ CCRA, s. 37.82(2).

⁹ CCRA, s. 37.82(2).

¹⁰ CCRA, s. 28.

¹¹ IEDM interview with [redacted].

¹² PO entry, CWR, [redacted].

¹³ CCRA, s. 33.

¹⁴ CCRA, s. 37.82(1).

¹⁵ CCRA, s. 37.7(1).

¹⁶ CCRA, s. 37.82(2).

4.5.2. 's alleged role and influence in the [REDACTED] incident

[31] CSC has not established, and does not seem to allege, that [REDACTED] was involved in [REDACTED] on [REDACTED]. CSC did not present information showing that.

[32] I am not convinced [REDACTED] was [REDACTED].

[33] Explaining the context, [REDACTED] said [REDACTED]. In such situations, which are frequent, usually only the affected range is locked down. Moreover, [REDACTED].¹⁷

[34] The videos provided to me do not clearly show [REDACTED] at [REDACTED] which limits the videos' usefulness.

[35] [REDACTED].

[36] [REDACTED].

[37] [REDACTED].

[38] [REDACTED] may have [REDACTED]. However, I find the evidence does not establish [REDACTED].

[39] Moreover, [REDACTED].¹⁸

[40] [REDACTED].

[41] Finally, as shown above, CSC alleges [REDACTED].

4.5.3. 's alleged [REDACTED] during the [REDACTED] incident

[42] I find it likely [REDACTED] made [REDACTED]. However, I am not convinced the current risk from these comments is high enough to make him unmanageable at the maximum-security level.

[43] [REDACTED].¹⁹

[44] Regarding [REDACTED] alleges there was a "back and forth" at the time; [REDACTED].²⁰

[45] I am unable to objectively verify any of the comments made. CSC did not provide any hand-held video recording for the incidents, which would include audio, even though CSC policy requires a hand-held video camera to be used when there is a planned use of force, as there was in this case.²¹ I find the lack of video problematic.

[46] Regarding the alleged [REDACTED].

[47] Overall, I accept his comments were made in the heat of the moment, [REDACTED].

4.5.4. [REDACTED] towards staff

[48] CSC refers to a history of abusive behaviour towards staff as a reason for maintaining [REDACTED] in the SIU. I find there is a risk of [REDACTED].

¹⁷ IEDM interview with [REDACTED].

¹⁸ IEDM interview with [REDACTED].

¹⁹ [REDACTED]'s written comments to the SIURC, [REDACTED], p. 3. There is no SOR from that individual.

²⁰ IEDM interview with [REDACTED].

²¹ Commissioner's Directive 567-1, para. 22. [REDACTED] indicates the Correctional Manager had authorized CX staff to lock up the unit and "use force if necessary and appropriate." This may have been after the initial negotiations at the unit barrier.

²² IEDM interview with [REDACTED], [REDACTED].

does not appear so unmanageable that it justifies a long-term SIU placement.

[49]

[50] CSC's incident history log lists numerous incidents

[51] argues incident reports are one-sided:

4.5.5. Other incidents during SIU stay

[52] As reported by CSC (██████), admits he ██████.

[53]

[54] No incident has been reported for him since ██████, which is almost ago. This could suggest some progress.

4.5.6. Participation in SIU activities and programming

[55] In contrast to the incidents reported, s participation in SIU activities shows motivation to comply with his correctional plan and supports his return to a mainstream population. He is "considered engaged" in his CPU.²⁵

[56] had expressed not wanting to participate in anything soon after his SIU transfer,²⁶ but he changed his mind and began to engage.

[57] He regularly ██████ in a group, and worked as a ██████. He had several visits. Up until ██████, he participated in all 13 "██████" sessions offered.

[58] He only had three behavioural counselling opportunities, which is a shortcoming on CSC's side. He did not participate those three times; a timing conflict with planned phone use was a factor once, and a lack of institutional clothing was an issue twice.

[59] In relation, the ██████ Regional Review indicates has "access to ██████" in the SIU,²⁷ but it is unclear what this refers to. There is no record in the SIU log of him having the chance to receive any ██████ supports.

[60] Of 13 correctional programs opportunities for the SIU Motivational Module ("MM-SIU"), he participated ten times. Of the three times he did not participate, one was because he wanted to make calls, and another was because he had a planned visit. The third refusal was for a morning offer, and he requested to be seen in the afternoon. Casework records indicate was respectful and engaged during MM-SIU sessions. s CPO confirmed he has been actively and consistently

²³

²⁴ IEDM interview with ██████.

²⁵ CPU-SIU, ██████, p. 6.

²⁶ PO entry, CWR, ██████.

²⁷ Regional Review, ██████, p. 5.

[61]

[62] As an aside, CSC did not send a notification for a decision on SIU conditions of confinement under s. 37.83(1) of the CCRA in [redacted] s case. CSC's log shows he often spends from five to eight hours outside his cell. In contrast, [redacted] himself estimates he often spends two to four hours out of his cell. His comments suggest the log totals are significantly exaggerated, and he has been much more isolated than the log shows. I am concerned about the accuracy of the log.

4.5.7.

[63]

[64]

[65]

;
|
(
|
(
|
;

4.5.8. Integration options

[66] Institutional transfer comments have been sought, which implies CSC believes [redacted] can be managed in a maximum-security population generally.

[67] The following institutions did not accept him: [redacted], [redacted], [redacted], MAX3, [redacted], and [redacted]. Consequently, CSC considers his case [redacted]. For most institutions, his STG affiliation was the refusal reason.

4.5.9. The possibility of [redacted] integrating at MAX3

[68] MAX3 provided transfer comments on [redacted].

[69] As noted, [redacted] wishes to return to MAX1. His second choice is MAX3. He knows [redacted] "friends" from [redacted] are in [redacted].

[70] Following my interview with [redacted] I asked CSC for information about [redacted]

²⁸ IEDM call with CPO [redacted], [redacted].

²⁹ As of [redacted].

³⁰ IEDM interview with [redacted].

³¹ CPU, [redacted], p. 11.

³² IEDM interview with [redacted].

³³ Regional Review, [redacted], pp. 3-4.

³⁴ IEDM interview with [redacted].

³⁵ Based on verification of incident history logs [redacted].

As of the time of issuing this decision, I have not received any information regarding the reason for the listing at the time, or any information to show whether it is still valid.

[71] It appears that before my request, there was no previous effort within CSC to verify whether the incompatibility is still valid or to mediate the situation. According to CSC's policy, "Conflict resolution will be considered, where appropriate, to allow the incompatible offenders to resolve the reasons for their incompatibilities."³⁶ Policy also establishes that "incompatible" listings can be inactivated when information shows it is no longer valid or relevant.

[72] There was presumably some reason for the original incompatibility listing. However, without documentation to explain it and show that it is currently valid, I do not find the existence of that "incompatible" on his file sufficient to find [redacted] should remain in the SIU under s. 37.8 of the CCRA. The time elapsed since it was listed and the lack of incidents seem to suggest risks should be manageable.

5. CONCLUSION

[73] Under s. 37.8 of the CCRA, I conclude [redacted] should not remain in the SIU. It appears there are two viable mainstream population options for him, at MAX1 and MAX3.

Janine Lespérance, Independent External Decision-Maker [redacted]

³⁶ Commissioner's Directive 568-7, [redacted], p. 3, para. 16.

- [79] A late specific request for more information regarding the MAX3 incompatibility was made in the morning of [REDACTED]. As of the time of issuing this decision, I do not have full information on this issue, but this may be due to the lack of prior verification within CSC.
- [80] Two relevant protected C reports were only communicated to me [REDACTED], two days after the decision due date. The reports could not be shared with [REDACTED] for security reasons.

Communication with

- [81] I sent [REDACTED] via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in a call or meeting, and to have his lawyer involved in the process.
- [82] I learned [REDACTED] would share his views. We spoke by videoconference on [REDACTED]. The interview lasted likely around 1.5 hours.
- [83] [REDACTED] also provided written submissions, provided to me via email from CSC on [REDACTED]. There is a two-page letter dated [REDACTED], and a five-page letter, which is undated but which he provided to CSC previously, likely [REDACTED] (see CWR).

Interview coordination issues

- [84] My interview date had been requested weeks in advance.
- [85] My interview with [REDACTED] began late (likely around 15 minutes late, although I failed to note the precise time [REDACTED] arrived) due to unexplained circumstances at MAX2.
- [86] The interview was interrupted mid-way through when a judge and courtroom, looking for another inmate, signed in to the video call. I had not been warned this would occur. Following the conclusion of the other inmate's court hearing, MAX2 was able to return [REDACTED] to the room to resume the interview.
- [87] Delays and interruptions of IEDM interviews of this kind are problematic.

Inmate Name:
FPS Number: [REDACTED]
Correctional Institution(s): MED1, MAX1, MAX2, MAX3
Date of Initial Decision (s. 37.83(1), CCRA): [REDACTED]
Subsequent notification dates (s. 37.83(1), CCRA): [REDACTED], [REDACTED]
Date of the Present Decision: [REDACTED]
Independent External Decision-Maker: J. Lespérance

**NOTICE OF END OF IEDM REVIEW PROCESS:
 DECISION UNDER S. 37.83(3)
 OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT
 AND
 PRELIMINARY DECISION UNDER S. 37.83(1)
 OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT**

1. Decision history

[1] As an Independent External Decision-Maker ("IEDM"), I issued a decision under s. 37.83(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA") concerning [REDACTED] on [REDACTED], following on a notification received [REDACTED]. I concluded Correctional Service Canada ("CSC") had not taken all reasonable steps to ensure [REDACTED] had a minimum of four hours out of his cell and two hours of meaningful human contact per day in the [REDACTED] at MED1 and the Structured Intervention Unit ("SIU") in MAX1. I made recommendations under s. 37.83(2) of the CCRA. A follow-up decision under s. 37.83(3) of the CCRA is normally necessary. MAX1's Acting Warden provided a response to the decision on [REDACTED].

[2] In addition, I issued a decision under s. 37.8 of the CCRA on [REDACTED]. I found there were security grounds to justify that Mr. S remain in the SIU. The decision noted [REDACTED]'s expressed opposition to a transfer to MAX2, and his concern about upcoming medical appointments.

2. [REDACTED]'s various transfers

[3] CSC transferred [REDACTED] to MAX2, on [REDACTED]. On [REDACTED], his SIU transfer was re-authorized at MAX2, because he did not want to integrate. His SIU stay at MAX2 was essentially a continuation of his SIU stay at MAX1.

[4] [REDACTED] was in the MAX2 SIU for less than a month. He was then transferred back to MAX1, on [REDACTED].

[5] I do not have reasons to believe the security situation at MAX1 changed. However, [REDACTED] was not placed back in the SIU upon his return. [REDACTED] was placed on MAX1's [REDACTED], [REDACTED] not designated as an SIU range.

[6] After about 22 days on [REDACTED], CSC transferred [REDACTED] back to MAX2, where his SIU transfer was re-authorized on [REDACTED].

[7] He remained in the MAX2 SIU until [REDACTED], when he was transferred to MAX3. In response to my inquiry as to his location, I was informed by CSC that he has been under mental health observation since being at MAX3, initially in [REDACTED], and then in [REDACTED] as of [REDACTED].

3. [REDACTED]'s [REDACTED] comments

[8] I sent a notice letter to [REDACTED] regarding the pending s. 37.83(3) decision, and interviewed him [REDACTED] at MAX1, on [REDACTED].

[9] Regarding his conditions of confinement while at MAX2, [REDACTED] said guards walk you around everywhere “like a dog.” [REDACTED] believes contact with other inmates is not meaningful human contact; he was forced into a group when he arrived at MAX2’s SIU, which he did not agree to. He was “pretty much in [his] cell the whole time.”¹

[10] When asked about his transfer back to MAX1, he said he was back at MAX1 for a medical appointment. He said he got recreation time on [REDACTED], but no programs, and he did not get to talk to anyone.

According to him, there were three inmates, including him, on [REDACTED].

4. Decision under s. 37.83(3), CCRA

[11] The CCRA seems to presume there are two essential types of populations within penitentiaries: RMU/SIU-designated areas, and mainstream populations.³ IEDM jurisdiction clearly applies to SIUs, but I do not find it obvious how an IEDM should determine their jurisdiction when an inmate is on a range that does not appear to be a mainstream population, but is not officially designated an SIU range.

[12] At the current time, [REDACTED] is no longer on the MAX1 [REDACTED], and has not been in an SIU for over a week. He may be in isolated conditions while on mental health watch, but I do not have information on the subject.

[13] For a decision under s. 37.83(3) of the CCRA, if the IEDM is not satisfied with the measures taken by CSC, the IEDM must order CSC to remove the inmate from the SIU. The law does not set out any other option when the IEDM is unsatisfied with CSC’s response to a first-stage decision with recommendations. This is a limitation of the legislation. In [REDACTED]’s case, I find ordering him out of the SIU would have been inappropriate previously, and would have no value now, considering he is not in an SIU.

[14] For these reasons, I will not make a determination under s. 37.83(3) of the CCRA.

5. Preliminary decision on jurisdiction under s. 37.83(1), CCRA

[15] While the decision under s. 37.83(3) of the CCRA was pending, CSC sent notifications for additional IEDM reviews under s. 37.83(1) of the CCRA, on [REDACTED] and [REDACTED]. CSC sent these notifications when [REDACTED] was in the MAX2 SIU.

[16] I do acknowledge that lengthy delays like the one in this case, which is largely due to IEDM caseload and understaffing, is not foreseen by the law.

[17] Still, I find IEDM jurisdiction under s. 37.83(1) cannot be triggered when there is a s. 37.83(3) decision pending. Both types of decisions focus on SIU conditions of confinement, and s. 37.83(3) decisions are clearly meant to follow 37.83(1) decisions. An inmate’s transfer out of the SIU does not automatically cancel an IEDM review. When an SIU stay at one institution immediately follows an SIU stay at another institution, I find it appropriate to approach the situation as a continuous SIU stay for conditions of confinement reviews. This approach prevents gaps in oversight.

¹ IEDM interview with [REDACTED].

² IEDM interview with [REDACTED].

³ E.g., see CCRA, para. 32(1)(a) (“The purpose of a structured intervention unit is to provide an appropriate living environment for an inmate who cannot be maintained in the mainstream inmate population for security or other reasons [...]”). Health care units can also be designated (CCRA, s. 86.2).

[18] In sum, I find my jurisdiction under s. 37.83(1) of the CCRA was not triggered again in this case. I will not issue another decision or decisions under s. 37.83(1) of the CCRA following the [REDACTED] and [REDACTED] notifications.

[19] If [REDACTED] is transferred to the SIU again, another IEDM review could be triggered.

6. Additional observations

[20] CSC should consider how repeated institutional transfers and incarceration in unduly isolated conditions may have harmful impacts, including on mental health, continuity of healthcare, and access to programming.

[21] In relation, my [REDACTED] decision discussed allegations of serious staff mistreatment, [REDACTED] at the time of [REDACTED] (see paras. [REDACTED]). CSC's response to the decision did not acknowledge that. I urge CSC to fully investigate those events and address any ongoing impacts on him in mental health interventions.

[22] Finally, CSC should avoid practicing *de facto* administrative segregation by housing inmates on ranges that do not have the same conditions as truly mainstream populations or that do not meet constitutional and international standards for access to meaningful human contact.

Janine Lespérance
Independent External Decision-Maker

Name:
FPS Number: ██████
Correctional Institution: MAX1
Date of previous IEDM decision (CCRA, s. 37.8): ██████
Date of the present notice: ██████
Independent External Decision-Maker: J. Lespérance

**NOTICE REGARDING NON-IMPLEMENTATION OF IEDM DECISION
 UNDER S. 37.8 OF THE
 CORRECTIONS AND CONDITIONAL RELEASE ACT
 AND
 REQUEST FOR INFORMATION**

1. IEDM removal decision issued concerning ██████ and subsequent review triggered

- [1] On ██████, Independent External Decision-Maker (“IEDM”) ██████ issued a decision under s. 37.8 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”), regarding ██████. He was incarcerated in the Structured Intervention Unit (“SIU”) at MAX1. They concluded that ██████ could not safely integrate MAX1’s mainstream population, but he should not remain in the SIU.
- [2] Despite that decision, ██████ has remained in the SIU. Approximately 62 days have passed since the decision.
- [3] I consider that an IEDM has the implicit power to remain seized of a situation following a non-implemented removal decision, even if CSC does not notify the IEDMs of a new review. Through the present notice, I am asserting jurisdiction with respect to the implementation of ██████’s prior decision under s. 37.8 of the CCRA, and outlining concerns with regard to compliance, based on the information before me at this stage. ██████. In addition, another review of ██████’s situation was triggered. On ██████, CSC notified the IEDMs that a conditions of confinement review under s. 37.83(1) of the CCRA was necessary. A Senior IEDM assigned me this file. Reviews under s. 37.83(1) of the CCRA focus on opportunities for time out of cell and meaningful human contact in the SIU. Nevertheless, the best way of ensuring that an inmate has adequate time out of cell opportunities, and of supporting their health and well-being, is often to end their SIU stay as quickly as possible.

2. Summary of IEDM ██████ findings concerning

- [4] In their decision under s. 37.8 of the CCRA, IEDM ██████ made several findings and identified numerous issues regarding the handling of ██████’s case. In summary, she found:
- ██████’s SIU stays at MAX2 and MAX1 amount to one *de facto* continuous SIU stay¹
 - MED1 staff statement/observation reports (“SORs”) about key events (on ██████ and ██████), which led MED1 to increase ██████’s security classification and reject his return to MED1, were written or amended several days after the events in question; this delay is not in line with CSC policy, and lends believability to ██████’s concerns about the SORs;²

¹ IEDM decision under s. 37.8 of the CCRA concerning ██████

² IEDM decision under s. 37.8 of the CCRA concerning ██████

██████, at para. 45.

██████, at paras. 50 - 51.

- CSC's use of force to remove inmates from the SIU at MAX2 has become somewhat "routine"; this approach is highly problematic and does not reflect the spirit and intent of the CCRA;³
- CSC did not produce video footage of [REDACTED]; MAX2 cell extraction by the Institutional Emergency Response Team ("IERT") for the IEDM, despite her requests; CSC claimed that no video footage was maintained because no force was used, despite CSC's own incident report indicating that the IERT used force, and [REDACTED] alleging that the IERT assaulted him;⁴
- The forcible removal of [REDACTED] from his MAX2 cell had [REDACTED];
- [REDACTED] is engaged in his correctional plan and described by program officers as "articulate, mostly polite, and well-versed in correctional policies and his rights as an inmate;"⁶
- [REDACTED]
- [REDACTED] s classification as a maximum-security inmate is not appropriate;⁸
- MED1 and MAX3 are the most appropriate institutions for [REDACTED] in light of his family's location in [REDACTED]; his family is very important to him;⁹
- [REDACTED] was willing to integrate MAX3's [REDACTED] population;¹⁰
- [REDACTED]; there was no explanation as to why CSC did not transfer [REDACTED] to MAX3, instead of MAX1; nothing showed MAX3 had even been consulted;¹¹
- [REDACTED]; transfer from MAX2 to MAX1 was clearly an error by CSC; CSC decision-makers should never have approved it; the security reasons preventing [REDACTED] from safely integrating at MAX1 preceded his transfer;¹²
- [REDACTED] cannot safely integrate the [REDACTED] population at MAX1;
- [REDACTED] never refused to integrate the [REDACTED] population at MAX1;¹³
- [REDACTED] s transfer to MAX5 is not necessarily appropriate and will likely result in his return to an SIU.¹⁴

[5] She concluded that he could be transferred to MAX4 or MAX3, but encouraged CSC to consider [REDACTED] s security reclassification and transfer to a medium-security site in [REDACTED] or [REDACTED].

3. [REDACTED] s comments and materials provided

[6] I met with [REDACTED] in-person at MAX1 on [REDACTED] for a lengthy interview.¹⁵ [REDACTED] pointed to multiple documents during the meeting and also gave me documents to take with me (105 pages). He subsequently provided additional documents. CSC staff scanned and sent me them by email on his behalf, on four dates (documents received [REDACTED], [REDACTED], [REDACTED]; and [REDACTED]; 286 scanned pages total).

[7] I have reviewed the written material provided by [REDACTED]. Among other documents, it includes handwritten letters and inmate requests directed at various individuals,

³ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at para. 28.

⁴ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at paras. 20 to 26.

⁵ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at para. 27.

⁶ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at para. 32.

⁷ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at para. 40.

⁸ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at para. 43.

⁹ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at para. 46.

¹⁰ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at paras. 55.

¹¹ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at paras. 56 - 57.

¹² IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at paras. 54.

¹³ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at para. 60.

¹⁴ IEDM decision under s. 37.8 of the CCRA concerning [REDACTED], at para. 58.

¹⁵ I failed to precisely note the length of the meeting although I estimated it was roughly one hour and 45 minutes; in CSC's SIU activity log, the meeting was entered as lasting from 2:15PM to 4:26PM.

including requests to staff to confirm or deny whether certain events or conversations occurred.

[8] In the documents provided and orally, [REDACTED] made various allegations of CSC wrongdoing, including MED1 staff falsifying allegations against him and manipulating information to blame him for events there; collusion and fraud in CSC reports; systemic discrimination having affected him as a [REDACTED] man; delayed disclosure of key information to him; and MED1 providing false information that put his safety at risk. [REDACTED] CSC officials can write and do whatever they want with no accountability, and that CSC decision-makers willfully placed him in danger.

[REDACTED] .” He wants information on his case released to the public.

[9] His comments and materials focused on the circumstances of his SIU stays and his security reclassification. Many of his concerns regard events that occurred before the [REDACTED] decision [REDACTED] argued that there were gaps in [REDACTED]’s [REDACTED] decision, and requested that I go further on some issues, although he did not take issue with the main conclusions.

[10]

4. CSC’s non-implementation of the IEDM decision

[11] I have no reason to believe that CSC has meaningfully responded to [REDACTED]’s findings as summarized above, by taking remedial steps or providing information, nor taken any steps toward implementation.

[12] CSC’s most recent regional review of [REDACTED], issued by Acting Assistant Deputy Commissioner, Correctional Operations (“ADCCO”) [REDACTED], contains insight into CSC’s interpretation and implementation of the [REDACTED] decision. It explains,

“IEDM [REDACTED] concluded there are reasonable ground [sic] to believe [REDACTED] is not able to safely integrate MAX1’s mainstream population. IEDM [REDACTED] concluded [REDACTED] should be released from the SIU and transferred back to MAX3 or MAX4, stating he is prepared to integrate either site.

Neither MAX3 nor MAX4 accepted [REDACTED] at their respective sites. As there are no viable integration options at MAX1, an inter-regional transfer was finalized for MAX5 on [REDACTED]. MAX5 confirmed his intervention and security needs could be met at this site. [REDACTED] was scheduled for the [REDACTED] inter-regional flight;

[13] It adds:

“MAX1 is unable to action IEDM [REDACTED]’s decision under s37.8 of the CCRA that [REDACTED] should be removed from the SIU at this time. [REDACTED] is unable to move to an alternate site until [REDACTED]

[REDACTED], CSC will be in a position to action [REDACTED]

¹⁶ Regional review, [REDACTED], at p. 2.

[14] In a letter to me dated [REDACTED] [REDACTED] disputes CSC's comments regarding [REDACTED].

I do not have original information to verify these claims.

[15] In the same letter [REDACTED] critiques the [REDACTED] regional review.

[16] The regional review does not show meaningful engagement with [REDACTED]'s findings.

[17] There is no description of any additional consultations with MED1 or MAX3 following the decision. Rather, the regional review indicates CSC's plan to proceed with a transfer to MAX5. This was CSC's plan before the [REDACTED] IEDM decision, which the regional review does not mention.

[18] The regional review makes an incorrect statement about [REDACTED] that contradicts a finding in [REDACTED]'s decision, and could put [REDACTED]'s security at risk in a "GP" population.

[19] Finally, regarding [REDACTED]'s security classification, the regional review only mentions the [REDACTED] increase from medium to maximum security. The lack of even any simple acknowledgement of [REDACTED]'s analysis and conclusion regarding [REDACTED]'s security classification appears disingenuous.

[20] In relation, I note that [REDACTED] has continued to engage in SIU interventions and there are no recorded incidents in about [REDACTED].

5. CSC's violation of [REDACTED]'s right to oversight

[21] Section 37.4 of the CCRA requires CSC's Commissioner to make a determination on whether an inmate should remain in an SIU "every 60 days after the Commissioner's last determination under this section that the inmate should remain in the unit." In practice, decisions under s. 37.4 of the CCRA are typically issued by the Senior Deputy Commissioner ("SDC").

[22] In this case, the [REDACTED] decision under s. 37.4 of the CCRA concerning [REDACTED] was actually issued by an alternate, the same Warden who had previously reviewed his SIU placement. I find this problematic from a procedural fairness perspective.

[23] Moreover, since that decision was issued [REDACTED] and [REDACTED] remains in the SIU, the SDC should have issued a subsequent decision under s. 37.4 of the CCRA on [REDACTED]. This could have triggered a subsequent s. 37.8 IEDM decision.

[24] Of course, the legislation does not consider a situation where an inmate remains in the SIU despite an IEDM removal decision; the legislation appears to presume CSC will comply.

[25] In my view, CSC has violated [REDACTED]'s legislated right to oversight. The CCRA mandates ongoing decisions for an inmate who remains in the SIU long-term. I do not consider the ADCCO's review to be an acceptable substitute.

6. The binding nature of IEDM decisions

[26] In a decision on the constitutionality of the former administrative segregation system, Justice Leask of the Supreme Court of British Columbia stated: "an independent reviewer must have the authority to release an inmate from segregation, not simply make recommendations that the warden may override or

¹⁷ Regional review, [REDACTED], at p. 3.

disregard.”¹⁸ On appeal, the Court of Appeal for British Columbia found that procedural fairness required external review, to ensure independence and impartiality.¹⁹

[27] The CCRA contains clear language that shows the legislative intent to give IEDMs the authority to make legally binding decisions about inmates in SIUs. Hansard suggests the same.²⁰ CSC Commissioner Anne Kelly has publicly stated that IEDM decisions are binding.²¹

[28] IEDM oversight becomes meaningless if CSC simply ignores IEDM reasoning and conclusions. In my view, if CSC’s plan to end an SIU stay does not reflect the IEDM’s reasons and involves additional delay, it is not legally compliant.

[29] In decisions under s. 37.8, the CCRA explicitly requires IEDMs to take into account “the appropriateness of” an inmate’s security classification and their penitentiary placement. The CCRA does not contain clear guidance on how CSC should treat IEDM findings on these matters. However, I find it cannot have been the intent of the legislature to allow CSC to simply ignore IEDM analysis and findings on security classification and penitentiary placement. In my view, IEDMs’ legal obligation to consider these matters strongly implies that CSC has the corresponding duty to give IEDM findings substantial weight, and to treat IEDM analysis seriously. CSC should demonstrate engagement in good faith with external oversight.

[30] Finally, CSC is responsible for implementation, not one institution alone. On a practical level, complex cases may require the involvement of different levels and areas of CSC.

7. Requests for information regarding implementation

[31] Given that remains in the SIU two months after IEDM ██████’s decision under s. 37.8 of the CCRA, I have no reason to believe CSC has taken any steps toward implementation, I consider that I have jurisdiction regarding implementation, and a subsequent decision under s. 37.83(1) of the CCRA has been triggered, I am requesting that CSC:

- 1) State whether CSC has filed for judicial review of the ██████ decision;
- 2) Provide information regarding
- 3) Provide clarification as to whether any additional verifications or consultations have been done since the ██████ decision, considering IEDM ██████’s findings summarized above, including with regard to’s security classification and transfer options; and information on any such steps taken, including relevant factual and legal considerations; and
- 4) Provide information on steps taken to remedy the issues identified in the ██████ decision.

[32] Considering ██████’s findings, and in the circumstances, I believe it would be appropriate for CSC to halt the plan to transfer to MAX5.

[33] Finally, I request that the present notice be provided to without delay, and written confirmation of this sharing be provided to me.

¹⁸ *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, at para. 410 (cited in *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228, at para. 104).

¹⁹ *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228, at para. 173 to 198. The Court also noted in the analysis, at para. 173, that the “Attorney General acknowledge[d] that the legislation [was] procedurally unfair because it require[d] institutional heads to review their own segregation decisions.”

²⁰ See, e.g.: House of Commons Debates, 42nd Parl, 1st sess, 2019/03/01 (statements by the Hon. Ralph Goodale).

²¹ See, e.g.: ██████.

Janine Lespérance
Independent External Decision-Maker

Date: ██████

Inmate Name:
FPS Number: ██████
Correctional Institution: Maximum-security institution
Date of Notification: ██████
Date of Decision: ██████
Independent External Decision-Maker: Janine Lespérance

**DECISION UNDER SUBSECTION 37.83(1) OF THE
CORRECTIONS AND CONDITIONAL RELEASE ACT,
S.C. 1992, C.20**

SUMMARY

has been very isolated in the SIU. Opportunities for him were minimal some days. There was a variety of interventions, including mental health support. However, programs were not offered frequently, especially those was interested in, such as school. There was a significant issue with activity coordination; there were timing conflicts between activities. Some log entries appear unreliable. He has security concerns and CSC did not encourage his interaction with other inmates. Placing an inmate in a group is not enough. He regularly did not take recreation time, but participated in programs except for social programs. would have liked an explanation of programs and groups soon after he entered the SIU. He mentioned issues related to participation and well-being, regarding pay, phone access, cell cleanliness, amenities, and isolation outside the SIU. Under s. 37.83(1) of the CCRA, I find CSC did not take all reasonable steps to provide opportunities to leave his cell and interact with others in the SIU and encourage him.

I. INTRODUCTION

- [1] On ██████, Correctional Service Canada (“CSC”) notified the Independent External Decision-Makers (“IEDMs”) that a decision under s. 37.83(1) of the *Corrections and Conditional Release Act* (“CCRA”) concerning ██████ is necessary. He is incarcerated in the Structured Intervention Unit (“SIU”) at [maximum-security institution, “MAX1”] in ██████.
- [2] If I have a legal basis to review ██████’s situation, I must answer this question: did CSC take all reasonable steps to provide ██████ at least four hours outside his cell and two hours of meaningful human contact each day in the SIU, and encourage him to take advantage of those opportunities?¹

II. BACKGROUND

- [3] ██████ is ██████ years old and grew up in ██████ and ██████.
- [4] Since ██████, he has been serving a ██████ sentence for which his statutory release date is set in ██████. It is his ██████ federal sentence. CSC has classified him at the maximum-security level.
- [5] His transfer to the SIU was authorized ██████, under para. 34(1)(b) of the CCRA. According to the authorization,
- [6] The SIU transfer was approved in the “5-day” Acting Warden decision of ██████ and the “30-day” decision of ██████.

¹ CCRA, s. 37.83(1).

[7] 's SIU placement has now been authorized twice. His current SIU stay closely follows an SIU stay at [maximum-security institution, "MAX2"].

III. SOURCES OF INFORMATION

[8] I have considered CSC documentary information, notably the SIU daily activity log ("the log"), and 's oral comments (see annex for details).

IV. ANALYSIS

1. Do I have a legal basis to review 's time-out-of-cell opportunities?

[9] Yes, I do.

[10] IEDMs only do reviews in specific situations. If an SIU inmate has not had at least four hours outside their cell and two hours of interaction daily for five consecutive days, or for a total of 15 days during a 30-day period, an IEDM must review their conditions of confinement.²

[11] CSC's log shows was isolated from to , triggering a review. My jurisdiction is uncontroversial.

2. What is the relevant period of review?

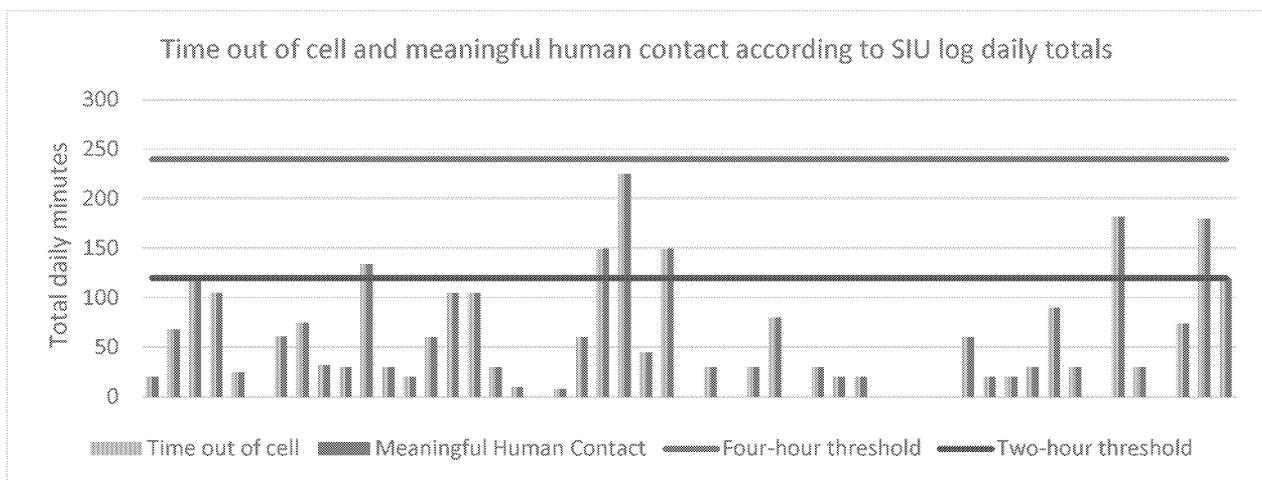
[12] This review focuses on to ("the period reviewed"), a period of 51 days.

[13] An IEDM is not limited to only examining the days that triggered the review. The IEDM decides the appropriate period to review, based on legal and practical factors. Considering the human rights at stake, the need to avoid gaps in oversight, and the importance of fully understanding a situation to make recommendations, it is appropriate for an IEDM to examine a longer period, especially if many days have passed since the review was triggered.

3. How much time did spend out of his cell and interacting with others each day?

[14] According to CSC's log, did not spend four hours or more out of his cell on any day during the period reviewed. He had two hours or more of social interaction on eight days (about 16% of all days). The average for time out-of-cell and interaction was about 53 minutes daily. There were several days on which he only went out of his cell for a short phone call.

[15] As shown by the graphic below,³ the daily totals were consistently low, with not much change in the situation.



² CCRA, s. 37.83(1).

³ dates removed for release.

[16] Various factors may explain why an inmate is isolated. Total daily hours for time out-of-cell and social interaction show whether CSC's efforts to reduce isolation were successful. If a person has been very isolated for a long time, as in [REDACTED]'s case, CSC should be making great efforts to improve the situation.

4. Were the quantity and timing of offers adequate?

[17] The required minimums were usually met, but the quantity of opportunities was sometimes minimal.

[18] CSC must provide a minimum of four hours out-of-cell and two hours of meaningful human contact to SIU inmates daily, between 7AM and 10PM.⁴ Showers do not count towards time out-of-cell.⁵ Offers should generally be adequately spread throughout the day.

[19] According to CSC's log, CSC provided the required minimum opportunities on most days. The exception was [REDACTED]. The number of offers varied from day to day. However, there were many days on which [REDACTED] had only two chances to get out of his cell, or two chances for recreation plus a short phone call.

[20] The offers were varied at different times of day. However, other than phone calls and one volunteer session, [REDACTED] did not have the opportunity to go out after 6PM.

[21] In my interview with [REDACTED] he did not specifically comment on the quantity of hours out of cell offered. He confirmed staff make offers.

5. Did any structural or contextual factors affect SIU activities during the period reviewed?

[22] Yes, but no legal exception applied.

[23] Contextual situations or circumstances can affect activities in the SIU. There are legal exceptions for some specific situations, including epidemics and staff work refusals.⁶ However, if those specific situations do not exist, CSC must provide the regular opportunities. Moreover, even if an exception applies, CSC must continue efforts.

[24] For [REDACTED], the log indicates there was a snowstorm, entailing the absence of interventions staff; the gym was inaccessible due to maintenance work; and there were many new inmates the Social Programs Officer ("SPO," or "APS" in French).⁷ This situation, while understandably difficult, does not seem to fall into any of the categories of legal exceptions. In addition, CSC has not established that it was because of this situation that [REDACTED] had only one opportunity to go to the yard that day.

[25] In addition, operational difficulties (e.g. incident responses, a technical issue with a video connection for a volunteer program) affected opportunities for [REDACTED] a few times.

6. What type of opportunities did [REDACTED] have?

[26] CSC offered a variety of opportunities to [REDACTED] but programming was not consistently offered.

[27] Apart from leisure time, SIUs are meant to provide inmates access to programs, interventions, and services that reflect their needs and interests.⁸ Activities may aim to help them achieve their correctional plan goals or reintegrate a mainstream

⁴ CCRA, s. 36(1) – (2).

⁵ CCRA, s. 36(3).

⁶ CCRA, para. 37(1)(c); CCRR, s. 19(1).

⁷ End of day note, SIU activity log, [REDACTED].

⁸ CCRA, para. 32(1)(b).

population.⁹ I must consider whether there was a reasonable variety of activities for [redacted], in light of his profile.

6.1. Profile information

[28] According to file information,

[29] His CPU indicates he is “encouraged to participate in voluntary programs offered via Mental Health Services ([redacted])”

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[30] He has positive sources of support in the community:

6.2. Types of opportunities during the period reviewed

[31] [redacted] had the chance to participate in:

- indoor and outdoor recreation
- social programs
- staff interactions (especially meetings with his Parole Officer (“PO”))
- correctional programming: the motivational module (“MM-SIU”) program
- chaplaincy support
- school
- mental health support and periodic evaluations
- personal phone calls
- behavioural counselling
- video volunteer program
- \
meeting (once)

[32] He had some type of program opportunity on 27 days (about 53% of all days). Social programs sessions were offered more often than other types of programs.

[33] Regarding work, [redacted] said on [redacted] that he applied for a cleaner job through a request form around [redacted], and he “never heard back.”¹² There is a “vocational programs” log entry for [redacted], but the log does not clarify what this was.

[34] The log shows he used the phone on about half of all days. These were brief calls he was only out for half an hour for. There are no log entries for any visits.

[35] Records show a psychologist met with [redacted] regularly and he saw a psychiatrist once. A mental health need scale completed [redacted] found he had a medium level of need.

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7. Did CSC make efforts to facilitate [redacted] s interaction with other inmates?

⁹ CCRA, para. 36(1)(b).

¹⁰ CPU, [redacted], p. 5.

¹¹ CPU, [redacted], p. 6.

¹² IEDM interview with [redacted].

¹³ Mental health clinical notes, [redacted]; Mental health form – SIU 28-day, [redacted].

¹⁴ IEDM interview with [redacted].

- [36] Yes, but the measures taken were inadequate. CSC assigned a group without much more.
- [37] Having a recreation group often reduces someone's isolation in the SIU a lot. Having an appropriate group provides a person with more chances for interaction and often encourages their participation in activities.
- [38] CSC's log shows had interaction opportunities with other inmates during recreation periods throughout the period reviewed, as of [REDACTED]. There is no indication that staff ever met with him to discuss the choice of group, any concerns he had, or to propose alternatives to increase his sense of security.
- [39] said he was in the SIU a couple of weeks before the groups at MAX1 were explained to him. Someone should have explained to him who was on his group and how many people are in his group. He said it would also be helpful to have range time, to be able to talk to other people at their cell doors and get a sense of who is in the SIU. He mentioned that was the case in the MAX2 SIU, but at MAX1 you are escorted and locked in each time you leave your cell. He is concerned about his safety, so he feels safer in programming on his own. He would also feel better in a smaller group; someone mentioned to him there are 10 to 12 people in his group.¹⁵
- [40] CSC is supposed to ensure inmates in the SIU have meaningful human contact opportunities. Simply letting an inmate out of their cell at the same time as other inmates does not necessarily mean that socialization opportunity is "meaningful." CSC should take 's views into consideration.

8. Did CSC encourage to participate in time-out-of-cell and interaction opportunities?

- [41] I find there were shortcomings in this area.
- [42] An inmate may turn down opportunities in the SIU; there is a legal exception for "refusals."¹⁶ Even so, IEDMs must assess whether CSC encouraged them to participate in activities.¹⁷ Encouragement can take various forms. An IEDM may also assess whether CSC discouraged a person's participation in activities.

8.1. s participation

- [43] 's non-acceptance of several offers contributed to his level of isolation. The log shows ' turned down all but one recreation offer. Log notes are generic, and many are copy-pasted. They indicate he did not provide reasons for refusals most of the time. I believe the factors discussed above regarding his interactions with other inmates deterred his participation.
- [44] regularly participated in most types of interventions except for social programs. According to CSC's log, he accepted: 1 of 17 social programs opportunities, 4 of 6 school opportunities, 8 of 10 MM-SIU opportunities, 5 of 7 behavioural counselling opportunities, 6 of 7 religious support opportunities, 1 of 1 chance to meet via video with a Canadian Families and Corrections Network volunteer, and 0 of 1 meetings.
- [45]
- [46] He said he sees the Chaplain as much as he can. He denied turning down a chance for religious support in the morning of [REDACTED].¹⁹ The log note indicates he did not show up in the Chapel, but the Chaplain did not know why.²⁰ The log does not

¹⁵ IEDM interview with [REDACTED].

¹⁶ CCRA, para. 37(1)(a).

¹⁷ CCRA, s. 37.83(1).

¹⁸ IEDM interview with [REDACTED].

¹⁹ IEDM interview with [REDACTED].

²⁰ Religious or spiritual activities entry, SIU activity log, [REDACTED].

explain what happened, but shows he was in a program session that morning.²¹ I believe I did not refuse. The log shows he accepted another religious support offer that afternoon, but in the end, there was a timing conflict.

8.2. Encouragement

- [47] The log shows CSC staff made efforts to encourage by offering recreation at different times. There were efforts to verbally encourage him at the time of offers.
- [48] I consider the variety of activities a form of encouragement, but programs were not offered frequently – especially the ones showed interest in, such as school. Staff should discuss program with him.
- [49] In my interview with most of his comments related to encouragement and discouragement. said more flexibility with yard offers would likely encourage his participation. He would have liked to be explained the different types of activities for social programs as of his arrival to the SIU. He thought it was just playing cards, but he learned there are other courses available. He is interested in programs, which are by phone. He wishes to be able to begin program in the SIU rather than waiting until being in a mainstream population; this program is important for him to get parole. He would like to go to school more often. He was not asked in a month. He needs the computer to do his coursework, but he would be able to work even if the teacher was not there.²²
- [50] CSC's log shows a Correctional Manager met with him. This was likely a conversation on his SIU placement, not offers in the SIU.²³ His PO tried to meet with him, but he declined. The next PO attempt was. They tried to briefly explain the MAX1 SIU's operations, but it appears the discussion focused on the dynamics of his SIU transfer.²⁴
- [51] Regarding social programs, CSC information shows attended on, and participated well, showing interest for various workshops.²⁵ He did not accept offers after that, which suggests an earlier explanation of social programs would not have made a difference, except for the volunteer programs. Still, I note program officers offered to play games with him or have an informal discussion a few times, which is not what he had actually shown interest in. A couple of times, he did not want to go to social programs because the offer was for a group session.²⁶

8.3. Discouragement factors

[52]

CSC's information does not provide insight into many of these issues.

Need for improved activity coordination

- [53] Timing conflicts affected s opportunities. The log shows:
- The Manager Assessment and Intervention ("MAI," or "GEI") could not meet with him or because he was at other activities.
 - On, three different programs were offered within an hour in the morning. A social programs log entry indicates he "refused" an offer at 9:15AM because he was "not interested," but the log also indicates he was at a behavioural counselling session from 8:45 to 9:45AM. Apart from showing a timing conflict, this incoherence suggests some log entries are unreliable.
 - On, he did not receive religious support, other than a brief chat at his door, because of timing conflicts with other activities, likely a planned phone call and a correctional programs session (see above).

²¹ Correctional programs entry, SIU activity log, .

²² IEDM interview with .

²³ See: SIU transfer authorization, , p. 3 (" was met by Correctional manager on ").

²⁴ See: PO entry, CWR, .

²⁵ Social programs entry, SIU activity log, ; Social programs entry, casework record log, .

²⁶ Social programs entries, SIU activity log, and .

- On [REDACTED], [REDACTED] was offered both social programs and correctional programs in the afternoon (1:15PM and 1:30PM), and went to the latter; it is not clear whether it was an encouragement effort to offer an alternative type of program after he turned down the group social programs session, or simply a timing overlap between the two offers; moreover, the log indicates [REDACTED] was at the nursing clinic from 1PM to 1:29 that day, which suggests the 1:15PM social programs offer was not actually made, or was not made at the time indicated in the log.
- On [REDACTED], both an MM-SIU session and social programs were offered at 9:15AM, with no explanation of the overlap.
- On [REDACTED], he supposedly refused a social programs session at 9:15AM, during the time he was at an MM-SIU session. Again, the social program entry seems unreliable.
- Both times he did not participate in behavioural counselling ([REDACTED] and [REDACTED]), it was because of timing conflicts with other activities (the volunteer phone program, and my own interview with him).

Considering the number of conflicts, and how isolated [REDACTED] was, this activity coordination issue is significant. It contributed to his isolation.

[54] Moreover, several social programs log entries appear unreliable, given the inconsistencies identified. CSC must ensure the log accurately represents SIU activities.

Pay for participation

[55] [REDACTED] described a pay issue: according to him, he is supposed to be getting full-time pay for participation in programs and school, but is only getting half-pay. This is an incentive for participation.²⁷ I do not have information from CSC about this issue, but I understand it is important to

Limited access to phone calls

[56] [REDACTED] said phone call use is limited to one call per day. With greater access, he would try calling at different times.²⁸ In addition, [REDACTED] said the time he requests for the phone is sometimes not available, and staff choose another time for him without talking to him. It would be helpful if they simply asked him for his second choice if the time he wanted is not available.

[57] [REDACTED] also said he would like to get video visits set up. He has been thinking about this a long time. His time talking to family is encouraging for him.²⁹

[58] While the SIU model focuses on in-person interactions, family contact – even at a distance – can be very meaningful.

Dirty cell

[59] [REDACTED] said his cell condition was “horrendous” when he arrived in the SIU. He said it would be nice if the cell were at least “mildly clean.”³⁰

Lack of in-cell amenities

[60] [REDACTED] said he did not have anything in his cell but a Bible for a long time, so he had nothing to do in his cell except read it. He said he was asking for another book for a week; eventually, a psychologist got books for him. He had no TV for two weeks. When his TV was brought to him, there was no remote, and after he got upset, staff provided him a loaner TV. He mentioned that a lot of guys do not have a TV and struggle with it; if MAX1 loaned people TVs, it would help to calm people down. He mentioned that in the MAX2 SIU, staff would try to get you a TV.³¹

²⁷ IEDM interview with [REDACTED]

²⁸ IEDM interview with [REDACTED]

²⁹ IEDM interview with [REDACTED]

³⁰ IEDM interview with [REDACTED]

³¹ IEDM interview with [REDACTED]

Limited canteen items and food storage

[61] said the SIU canteen items are more limited than outside the SIU. There is also no fridge in the SIU. There is a microwave in the common room but using it forces him to socialize with other inmates.

Isolation outside the SIU

[62] mentioned that after arriving at MAX1 at the start of [REDACTED], he was in the [REDACTED] for a week and a bit. After that, he spent two to three weeks in “segregation,” aside from very brief integration attempts on other ranges. On this segregation range, he would only get out for a shower and call, and sometimes, but not always, the yard. There were no daily mental health checks. The conditions were of extreme isolation.³²

[63] In relation, I note CSC paperwork contains false information: the SIU authorization, Acting Warden “5-day” decision, and the “30-day” decision incorrectly indicate arrived at MAX1 on [REDACTED]. In fact, he left MAX2’s SIU [REDACTED]. As of [REDACTED], CSC’s own database indicatec [REDACTED] was in the [REDACTED] unit,³³ which is consistent with [REDACTED]’s statements. CSC documents are vague about [REDACTED]’s placement history at MAX1.

[64] I have not fully investigated this situation. This IEDM decision focuses on SIUs. However, [REDACTED]’s statements appeared credible. I am concerned about isolation outside SIUs. SIUs were created to end solitary confinement and the harms it causes. Placing an inmate on a range with conditions more restrictive and isolating than the SIU – and less oversight – is at odds with the intention behind SIUs. It could reinforce patterns of self-isolation and affect well-being. Canadian and international law human rights standards apply to all ranges; CSC must ensure minimum standards for time out-of-cell and meaningful human contact are met outside the SIU as well.

V. CONCLUSION AND RECOMMENDATIONS

[65] I conclude under s. 37.83(1) of the CCRA that CSC did not take all reasonable steps to provide [REDACTED] adequate time out of his cell and meaningful human contact and to encourage him to take advantage of opportunities.

[66] I have a broad power to make any appropriate recommendation to remedy the situation.³⁴ I recommend to CSC to:

- Explore strategies for encouraging [REDACTED] to have meaningful interactions with other inmates, such as providing range time opportunities, more flexible recreation access, security reassurance, information about his group, and mental health strategies
- Provide [REDACTED] the opportunity to do core programming [REDACTED] in the SIU
- Consider [REDACTED] or employment in the SIU
- Provide [REDACTED] more frequent school opportunities, and the possibility of doing his schoolwork on the computer even when the teacher is not available
- Follow-up with [REDACTED] about his completion of the SMART Recovery program and his pay
- Support [REDACTED] in setting up personal video visits
- Provide additional phone opportunities for inmates in the SIU, such as through the installation of a range phone
- Find solutions for improving activity coordination, to avoid timing conflicts between different activities and ensure program offers are dispersed on different days
- Improve amenities in the SIU, ensuring inmates have access to in-cell activities, canteen, and food storage

³² IEDM interview with [REDACTED], [REDACTED].

³³ See: Notice of end of IEDM review process: decision under s. 37.83(1) of the CCRA concerning [REDACTED], para. 3.

³⁴ CCRA, s. 37.83(2).

[67] Because I have made these recommendations, a follow-up decision under s. 37.83(3) is necessary.

Janine Lespérance
Independent External Decision-Maker

Date: [REDACTED]

VI. ANNEX: SOURCES OF INFORMATION AND [REDACTED]'S OPPORTUNITY TO PROVIDE COMMENTS

[68] I have consulted the following sources of information from CSC:

- SIU daily activity log, for the period as of [REDACTED]
- Threat risk assessments (“TRAs”), for the period as of [REDACTED]
- Casework record (“CWR”) log, for the period from [REDACTED] to [REDACTED]
- Mental health forms, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Regional review, dated [REDACTED]
- Mental health clinical notes, dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
- Institutional head “30-day” SIU transfer decision, dated [REDACTED]
- Assessment for decision – institutional transfer, dated [REDACTED]
- Mental health need scale, dated [REDACTED]
- Consent to participate in/receive health services, dated [REDACTED]
- Correctional plan update – SIU (“CPU-SIU”), dated [REDACTED]
- Correctional plan – updated (“CPU”), dated [REDACTED]
- Institutional head “5-day” SIU transfer decision, dated [REDACTED]
- Memorandum – risk assessment – additional information, dated [REDACTED]
- SIU transfer authorization, dated [REDACTED]
- Triage report or mental health evaluation, dated [REDACTED]
- Criminal profile report (“CPR”) – original, dated [REDACTED]

[69] I sent [REDACTED], via CSC, a summary of the information I am considering for this review on [REDACTED]. I offered him the opportunity to provide written comments, to speak to me in an interview, and to have his lawyer involved in the process.

[70] On [REDACTED], I learned [REDACTED] would share his views. We spoke by videoconference on [REDACTED], for approximately 50 minutes.

[71] The interview started about 25 minutes after the planned time, due to unexplained circumstances at MAX1. I urge CSC to respect planned meeting times.