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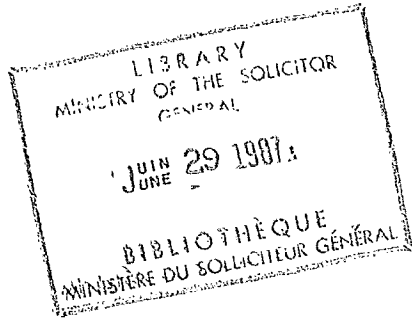
Annual Report
of the
Correctional
Investigator

1980 · 1981



The Correctional Investigator
Canada

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of the
Correctional
Investigator



1980-1981

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The Correctional Investigator
Canada

L'Enquêteur correctionnel
Canada

March 29, 1982

The Honourable Robert Kaplan
Solicitor General of Canada
House of Commons
Wellington Street
Ottawa, Ontario

Dear Sir:

As Correctional Investigator appointed to investigate and report upon complaints and problems of inmates in Canadian penitentiaries, I have the honour of submitting to you the eighth annual report on the activities of this office covering the period June 1, 1980 to May 31, 1981.

Yours respectfully,

R.L. Stewart
Correctional Investigator

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Table of Contents

	Page
Appointment and Terms of Reference	1
Organization and Operation	1
Statistics	
Table A – Complaints received – by category	4
Table B – Complaints received – by month	5
Table C – Complaints received – by institution	6
Table D – Complaints received – by region	8
Table E – Institutional Visits	9
Table F – Inmate Interviews	10
Table G – Disposition of Complaints	10
Table H – Complaints Resolved or Assisted With	11
Outstanding Recommendation Responses 1979-80	12
Recommendations 1980-81	13
Conclusion	21
Appendices	
Appendix A – Order in Council	23
Appendix B – Summary of Recommendations to the Correctional Service of Canada	25

Appointment and Terms of Reference

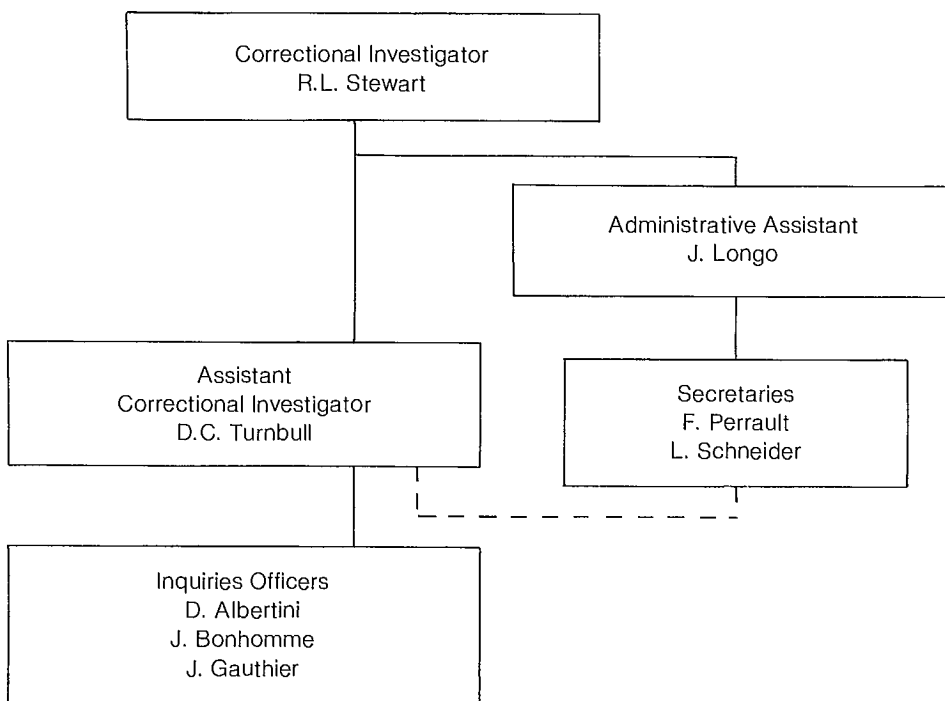
On June 1, 1973 pursuant to Part II of the Inquiries Act a Commissioner was appointed to be known as the Correctional Investigator and the office was thereby established and has been in continuous operation since that date. My appointment to the position was on November 15, 1977 and a copy of Order in Council, P.C. 1977-3209 describing that appointment and the terms of reference is fully reproduced and appears as Appendix "A" hereto.

Organization and Operation

The office of the Correctional Investigator is located in Ottawa and has a staff of seven persons including an Assistant Correctional Investigator, three inquiries officers, an administrative assistant, and two secretaries.

During the past twelve months we processed 1375 complaints and in so doing made 248 visits to institutions. It is interesting to note that 144 of these visits were to maximum security institutions, 83 to medium institutions and 21 to minimum facilities, which follows the pattern of previous years work loads. The number of interviews with inmates was up somewhat to 771 and although statistics are not kept it would be fair to estimate that the number of interviews with staff would be three times this figure.

Organizational Chart



I should perhaps make mention of the fact that complainants are communicated with in the official language of their choice but that on occasion it has been necessary for us to deal with inmates more comfortable in other tongues.

The question is raised from time to time on the effectiveness of the office and my response is that the resolution percentage should not be viewed as the sole indicator of effectiveness. For this reporting year of the 1375 complaints handled, one must subtract from that total those for which we have no mandate, those that were premature or withdrawn, as well as those that are still pending. Such a calculation will show our rectification rate at 9.7% and our assistance-given rate at 19.0%, which is a marked increase from last year.

However, it is the feeling of most Ombudsmen that the existence of their office by itself creates a halo effect in that it may prompt more care in making administrative decisions. As another example, often an in depth explanation to a complainant as to why his complaint has been declined will serve to bring about a better relationship with the administration. Of course neither of these phenomena can be measured statistically.

STATISTICS

TABLE A**COMPLAINTS RECEIVED AND PENDING – BY CATEGORY**

	<u>1980-81</u>	<u>1979-80</u>
Transfer	221	20
Medical	127	4
Visits and Correspondence	103	4
Dissociation	88	2
Claims	88	13
Sentence Administration	78	4
Temporary Absence	57	2
Staff	56	0
Discipline	44	2
Programs	40	4
Grievance Procedure	30	1
Diet	26	1
Work Placement	21	0
Financial Matter	17	1
Cell Change	14	0
Cell Effects	13	1
Request for Interview	10	1
Information on File	10	0
Use of Force	8	1
Canteen	8	0
Education	6	0
Grading	5	0
Hobbycraft	5	1
Harassment	5	1
Discrimination	2	0
Other	108	3
<u>Outside Terms of Reference</u>		
Parole	74	2
Provincial Matter	28	1
Court Procedure	7	1
Court Decision	6	0
Sub-total	<u>1305</u>	<u>70</u>
Total		<u>1375</u>

TABLE B
COMPLAINTS – BY MONTH

Pending from previous year	70
<u>1980</u>	
June	157
July	115
August	80
September	171
October	120
November	83
December	65
<u>1981</u>	
January	86
February	181
March	95
April	83
May	<u>69</u>
Total	1375

TABLE C
COMPLAINTS – BY INSTITUTION

	Psychiatric Centre William Head	Mountain	Matsqui	Ferndale	Mission	Kent	Other	Stony Mountain	Saskatchewan	Drumheller	Bowden	Psychiatric Centre Edmonton	Other	Reception Centre	Psychiatric Centre Warkworth	Joyceville			
1980																			
June	3	15	27	9				3	2	12	8	1	1	7	14	4			
July		4	1	4	1			1	2	3				7	6	10			
August	3	14	1		1				7	2	2	1	1	5	1	3			
September					1				63	1	1			10	11	13			
October	2	4						2	6	5	1	1		7	3	5			
November					6				6			4		22	6	3			
December				1	3			1	3	5	12	8	2	5		2			
1981																			
January			2	4					8	4	3	17		2	7	1			
February								12	47		4	3	1	7	3	4			
March	5	2		27					10	2	6	2		7	2	4			
April		2	1	2					14	1	1			2	6	2			
May	1	1	4					1	7	2	1		1	1	15	4			
SUB-TOTAL	8	6	22	22	2	37	54	0	20	175	37	34	32	12	3	82	16	59	55
TOTAL	1305																		

⁽¹⁾ Correctional Development Centre

⁽²⁾ Federal Training Centre

Pittsburg	Collins Bay	Frontenac	Beaver Creek	Millhaven	Bath	Prison for Women	Other	Reception Centre	C.D.C. ⁽¹⁾	Cowansville	Montée St. François	Archambault	Ste. Anne des Plaines	F.T.C. ⁽²⁾	Leclerc	Laval	La Macaza	Other	Dorchester	Springhill	Westmorland	Other
2	7		1	8					2			5			5	12			7	1	1	
	2	1		5		2	3	4	5	2		3			6	9	24	1	8	1		
			2	6			1	1	1	1		9	1			9	2	1	4			
1	5		17	5				2			1	2		2	3	6	1		25	2		
	7			13			1	1				6	1		3	9			40	1	1	2
	1				2	1	1		1	1		3				14	1		9		2	
	1			2	1		1				1	2				12	1		3			
				11			1	2		2					1	9			11			1
	1		2	17				2	4		7	14			1	10	1	2	39			
	1		2	6			1			2					2	6	1	1	3	1	2	
				4			4		1		1	1			1	15			7	5	10	1
	1			3		1	4		2			3		7	2	7						1
3	26	1	24	80	3	4	17	12	16	8	10	48	2	9	24	118	31	5	156	11	16	5

TABLE D
COMPLAINTS — BY REGION

INMATE POPULATION BY CLASSIFICATION AT 26 May, 1981	PACIFIC REGION				PRAIRIE REGION				ONTARIO REGION				QUEBEC REGION				MARITIMES REGION			
	1256				1941				2298				2815				934			
	Max	Med	Min	Other	Max	Med	Min	Other	Max	Med	Min	Other	Max	Med	Min	Other	Max	Med	Min	Other
	268	812	176		639	970	332		741	1229	328		1218	1177	420		352	419	163	

1980

June	9	45			3	23		1	15	25	3		19	5			7	1	1	
July	1	9			2	4			20	12	1	3	21	32		1	8	1		
August	4	15			9	4			12	4	2	1	20	3	1	1	4			
September	1				64	1			14	29	18		10	6	1		25	2		
October		6			6	8			20	15		1	16	3	1		40	1	1	2
November	6				10				23	10	2	1	18	2			9			2
December	3	1			13	18			7	3	1	1	14	1	1		2			

1981

January	4		2		25	7			13	8		1	11	3			11			1
February					54	12		1	24	8	2		30	9		2	39			
March	32	2			12	8			13	7	2	1	6	5		1	3	1	2	
April	2	3		2	14	2			6	8		4	17	2			7	5	10	1
May		6			7	4		1	20	5		4	12	9						1

Sub-Total	62	87	2	2	219	91	0	3	187	134	31	17	194	80	4	5	155	11	16	5
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Total 1305

TABLE E
INSTITUTIONAL VISITS

<u>MAXIMUM</u>	<u>NUMBER OF VISITS</u>
Saskatchewan	13
Psychiatric Centre (Pacific)	6
Psychiatric Centre (Prairie)	2
Psychiatric Centre (Ontario)	3
Reception Centre (Ontario)	12
Reception Centre (Quebec)	4
Correctional Development Centre	11
Dorchester	14
Millhaven	21
Prison For Women	7
Archambault	11
Laval	25
Edmonton	8
Kent	7
	<u>144</u>
	Sub-total
<u>MEDIUM</u>	
Stony Mountain	4
Drumheller	7
William Head	2
Mountain	4
Matsqui	5
Bowden	6
Springhill	3
Warkworth	13
Joyceville	10
Collins Bay	10
Cowansville	2
Federal Training Centre	6
Leclerc	6
Mission	5
	<u>83</u>
	Sub-total
<u>MINIMUM</u>	
Pittsburg	3
Frontenac	3
Bath	4
Ste. Anne des Plaines	2
La Macaza	4
Rockwood	1
Ferndale	1
Westmorland	3
	<u>21</u>
	Sub-total
	<u>248</u>
	Total

TABLE F
INMATE INTERVIEWS

<u>MONTH</u>	<u>NUMBER OF INTERVIEWS</u>
June	90
July	57
August	29
September	98
October	87
November	28
December	48
January	60
February	121
March	44
April	40
May	<u>69</u>
Total	771

TABLE G
DISPOSITION OF COMPLAINTS

<u>ACTION</u>	<u>NUMBER</u>
Pending	75
Declined	
a) Not within mandate	106
b) Premature	351
c) Not justified	485
Withdrawn	88 ⁽¹⁾
Assistance, advice or referral given	140
Resolved	72
Unable to resolve	58
Total	<u>1375</u>

⁽¹⁾ Occasionally complaints are withdrawn by inmates especially on release, however if such a complaint has general implications the investigation may continue.

TABLE H**COMPLAINTS RESOLVED OR ASSISTED WITH—BY CATEGORY**

<u>CATEGORY</u>	<u>RESOLVED</u>	<u>ASSISTANCE GIVEN</u>
Cell Change	1	2
Cell Effects	0	2
Claim Against the Crown	19	17
Diet	0	6
Discipline	3	4
Dissociation	3	2
Education	1	1
Financial Procedure	2	3
Grievance Procedure	1	1
Harassment	0	1
Information on File	0	2
Medical	2	10
Programs	1	7
Sentence Administration	27	15
Staff	1	8
Temporary Absence	0	7
Transfer	2	9
Use of Force	0	1
Visits and Correspondence	4	8
Work Placement	1	5
Other	4	11
<u>Outside Terms of Reference</u>		
Parole	0	11
Provincial Matter	0	6
Court Procedure	0	1
Total	<u>72</u>	<u>140</u>

Outstanding Recommendation Responses 1979/80

Before dealing with the recommendations made during the reporting year June 1, 1980 to May 31, 1981, there were four recommendations made the previous year which required some follow-up before we could close our files.

The first of these was recommendation number 12 concerning the lack of adequate dental care at Warkworth Institution. I have since been informed by the Inspector General that a second dentist has been engaged but that the increased workload arising from the Penitentiary Placement system had exacerbated the situation. I was however further informed that the dental services were to be closely monitored by the Director General Medical Services and that an update would be provided within two months.

Within that time period I received a copy of a memorandum from him indicating that as a result of a review by the Regional Manager Health Care Services, Ontario he was able to confirm that there had been a considerable reduction in the backlog and that there was no backlog of urgent cases. Also that due to efforts of two part time dentists, the dental care at Warkworth Institution is now comparable to other institutions in the region and that further audits will continue to examine the situation.

The matter would appear to be under control and I should note that we have not had a complaint about the dental care at that institution since.

Another recommendation, number 15, was in response to complaints that inmates at the Prison for Women were being indiscriminately subjected to internal body cavity searches where no reasonable grounds for such searches existed. The Penitentiary Service Regulation on the subject clearly stated that where the institution head suspects, on reasonable grounds, that an inmate is in possession of contraband he may order that person to be searched.

I noted in my last report that because of the very delicate and difficult circumstances surrounding this matter that I did feel extraordinary action was justified even though it was my personal opinion that the regulation was being breached. I also noted that the same issue was before the courts in another case and that consequently any further action on my recommendation should await that verdict.

The case at bar was Gunn vs Donald Yeomans (in his capacity as Commissioner of Corrections) and Nicholas Caros (in his capacity as Institutional Head of Matsqui Institution and Chairman of the Matsqui Institution Inmate Disciplinary Board).

In this case the issue important to my recommendation was whether or not the regulation in question gave the Service the authority to indiscriminately do a body cavity search of the plaintiff on leaving and entering the institution.

The Judge indicated that the regulation provided that the Director must suspect on reasonable grounds that the inmate to be searched is in possession of contraband as a condition precedent to ordering the search. While he might be justified in holding that suspicion for each and every inmate leaving and returning on a Temporary Absence the court did not think that such suspicion is held on reasonable grounds with respect to a particular inmate. The suspicion must be specific and not generally held.

The Judge went on to state that stronger wording would be required to justify a general body search of all inmates on entering or leaving an institution.

The Judge further stated that if greater powers of search are necessary, as they may well be, then the Regulation should be amended to provide for this. As a result the court enjoined the defendants from ordering any further searches of the plaintiff's person except those in accordance with the regulation.

The judgement was pronounced on June 11, 1980 following which on June 19, 1980 the regulation was amended giving authority to search where it is considered that such action is reasonable to detect the presence of contraband or to maintain the good order of an institution.

My recommendation number 16, directing that inmates not be transferred to a Special Handling Unit on the grounds of suspicion alone, although rejected, prompted the response that the wording of the pertinent Divisional Instruction on the subject should be clarified. As an initial measure Commissioner's Directive 174 was revoked in December 1980 and replaced by Commissioner's Directive 274, Section 8 of which states *inter alia* that "Inmates shall not be transferred to an S.H.U. on suspicion alone. Reasonable and probable grounds for believing an inmate intends or is likely to commit a violent or dangerous act must be supported by documentation".

I have also been advised that a draft of an amended Divisional Instruction 718 clarifying the situation is before the Senior Management Committee.

The last recommendation requiring further response by the Correctional Service of Canada was number 18 where I requested that action be taken to improve substandard living conditions presently being experienced by protective custody inmates at Kent Institution.

Because Kent was not designated to house both protective custody and regular population inmates the plan is to move the protection cases out to other institutions as soon as is practical. Efforts to improve conditions in the short term have resulted in a marked reduction in the number of complaints from Protective Custody inmates at the institution.

Recommendations 1980/81

During this reporting year, fifteen formal recommendations were made to Headquarters of the Correctional Service of Canada in response to complaints concerning issues which for the most part required final resolution at the national level. Of that number eleven were accepted in total with three partially accepted and one rejected.

I believe it worth repeating in this report that throughout the year the Correctional Investigator makes a great many formal and informal recommendations and that these are directed to the level of the Service that is deemed most appropriate. Our action may be in respect to an individual's personal problem or to a more general issue affecting more than one inmate. It may be that an informal recommendation to a Classification Officer or to a Food Services Officer about a specific complaint can resolve the matter then and there. More often a recommendation is made to an Assistant Warden or to the Warden himself depending where the decision making authority in regard to the complaint lies. There are times of course when a matter should more properly be brought to the attention of the Regional Director General.

The recommendations which follow, however, are in response to issues that for the most part have national significance and consequently must be decided in Ottawa.

Disciplinary Court

I received a complaint from an inmate at Bowden Institution questioning a punishment award he received in disciplinary court. A reading of the Inmate Offence Report showed that the inmate was assessed among other things a loss of "three demerit points" and "no Temporary Absence for 90 days".

According to the Penitentiary Service Regulations, the only punishments that may be ordered for a flagrant or serious disciplinary offence, which by the way this was, shall consist of one or more of forfeiture of statutory or earned remission or both, dissociation for a period not exceeding thirty days or loss of privileges.

My position on the first item was that the loss of demerit points or more accurately the award of demerit points was clearly outside the regulation and that its use as a punishment be discontinued. On the matter of the denial of temporary absences, although these are privileges the argument could be made that because the inmate was doing a prison term in excess of five years, the National Parole Board had sole jurisdiction with respect to unescorted temporary absences.

I referred the matter to the Inspector General by recommending:

That the Correctional Service review the question of whether or not the punishments of demerit points and suspension of Temporary Absence being awarded in disciplinary court at Bowden Institution are in accordance with the Penitentiary Service Regulations.

The Inspector General sent the matter to the Legal Advisor who expressed doubt that the disciplinary court could or should award either type of punishment and memos were subsequently issued to the field to ensure that proper procedures were followed and that Chairpersons not exceed their authority in making disciplinary decisions.

Claim Against the Crown

An inmate complained to me alleging the loss of personal effects as a result of a massive search at Drumheller Institution in June 1979. I should point out the fact that he delayed contacting our office for approximately nineteen months which made our job of investigating much more difficult.

Preliminary inquiries revealed that the inmate had submitted a claim for a watch and a jacket but it had been denied because those particular articles could not be located among the thousands of items confiscated during this particular search. We next located a copy of the inmate's effects card indicating the watch in question had been confiscated. We also reviewed a copy of a report done by regional officials, listing the individual claims resulting from the search including one from our complainant.

We next received a copy of a memorandum denying the claim on two grounds. One, because there was no record of a written grievance or a written claim and secondly because neither the watch nor the jacket could be located.

I was unable to accept either of the reasons given and in a letter to the Inspector General enclosed a copy of the reply to the inmate's grievance stating "you have made a formal claim against the Crown in this connection and this matter will be handled accordingly." As added support I was informed and agreed that the interviews done by region personnel were certainly regarded by those interviewed as constituting a valid claim against the Crown. With respect to the second reason for denial I was able to find another claim arising out of the same incident, with similar circumstances where the claimant was reimbursed. Consequently, my letter ended with a strong recommendation:

That the Correctional Service review the reasons for denial of this claim against the Crown and that the inmate be reimbursed for his lost property.

Within 30 days I received a reply which not only denied the claim but failed to deal with the points I had raised and the information in the documentation submitted. I immediately questioned the response and was informed that the matter had not been finalized but would be discussed with the Commissioner as soon as possible. A short time later I was advised that my recommendation had been accepted and that the Commissioner had ordered the claim paid.

Compensation Eligibility

The office received a complaint from an inmate who felt he was being discriminated against. He had suffered an injury in the industrial shop and a claim for compensation was made. The issue centered around the question of when compensation would commence to be paid.

In a brochure prepared by Labour Canada entitled "Inmates Compensation" which was supplied to him by the institution, it stated that "benefits commence after the inmate's release from penitentiary on full parole, mandatory supervision, or on expiration of sentence." However, in a reply from an official of that department he was advised that compensation was not payable to a person while under mandatory supervision. The inmate questioned the reply and was further advised that payments would only go to "ex-inmates" which meant a person who had been legally discharged. He was also advised that the brochure was under revision.

Our investigation of the matter involved a review of the Order in Council establishing the terms and conditions for Penitentiary Inmates Accident Compensation and in the interpretation section "ex-inmate" is defined as "a person who was an inmate of a penitentiary and who has completed his sentence and has been legally discharged."

We then ran a check on other claims settled previously and found two cases where the claimants received compensation prior to the completion of their mandatory supervision.

Copies of all the pertinent documentation were sent to the Inspector General with the recommendation:

That in light of inaccurate information and inconsistent procedures concerning the question of when do inmate accident compensation payments commence, that the Correctional Service broaden the definition of ex-inmate to include a person on mandatory supervision.

My submission was accepted and I was advised that the matter had been the subject of considerable consultation. It was decided that for the moment the compensation terms and

conditions would have to be respected but that Legal Services would be attempting to amend these in the near future to allow compensation benefits to be paid to inmates on mandatory supervision.

Food Service Irregularities

During a visit to La Macaza Institution in July 1980 several inmates complained about the level of food services there. We heard allegations about a Food Services Officer ordering an inmate to use rancid food and about spoiled meat being trimmed and served. On discussing the matter with the officials we were advised that there were personality conflicts in the kitchen and that little could be done to resolve the problems.

We also heard allegations of the misappropriation of foodstuffs by staff personnel but our review could not substantiate these because inmates in such situations do not want their names mentioned and refuse to make specific identifications of those involved.

The numbers of complaints concerning these matters did however warrant some action and consequently, I recommended:

That the Correctional Service do a full investigation of the food service operation at La Macaza Institution.

Almost immediately such an investigation was ordered by the Commissioner and a copy of the audit report prepared in response thereto was forwarded to my office. While direct evidence of fraud and misappropriation were not found there were strong suspicions that these had occurred. The report found the management procedures in this area to be lax and the Regional Director General was directed to take prompt action to rectify the deficiencies found and to tighten up the management of the Institution generally.

The action in response to the recommendation would appear to have resolved the problems as follow-up visits to the institution have not encountered further complaints.

Transfer

In my last report I made a recommendation that the Correctional Service give consideration to moving certain English speaking inmates out of the Quebec Region. The inmates in question had all been sent to maximums in that Region but complained that they were unable to communicate in what were basically French speaking institutions. The Commissioner made a commitment to move these inmates and they were eventually transferred. Two of the inmates declined the opportunity to leave the Quebec Region as they felt such a move might adversely affect certain pending court actions. Some time later however, they reversed their decision and wrote to my office for assistance.

Due to the Commissioner's earlier commitment I recommended:

That the inmates now be transferred from the Quebec Region without going through the normal transfer procedure.

I was advised that the inmates would have to make application and follow normal procedures however, they were both transferred within a relatively short period of time and the matter was resolved.

Security Related Problems at Dorchester Penitentiary

On Thursday October 23, 1980 I met with the Solicitor General to discuss the contents of a letter that had been read on C.B.C. radio and at his request conducted an investigation into the allegations contained therein.

A special report on my findings was subsequently submitted to the Minister but the exercise raised a number of concerns about security related matters.

We experienced some difficulty in obtaining reports of incidents where force had been used and in some cases none were available at the institution. As well, often the quality of reports that were available was questionable as all pertinent information was not included.

In using restraint equipment it appeared that Divisional Instructions indicating that it not be used as a punishment were not always followed. As well, accurate records of the use of this equipment were not always kept.

There was evidence of indiscriminate use of chemical mace with little or no inventory control and we found that at least one officer on the dissociation range carried a can of the gas on his belt at all times.

It was our observation that some procedures set out in the pertinent Commissioner's Directives and Divisional Instructions concerning health care services were not always being followed such as required daily visits by the Health Care Officer to dissociated inmates. I also questioned whether all incidents involving the use of force were being reported to the Health Care Centre immediately, as required. And also it did not appear that health care staff were taking any initiative in so far as health standards were concerned.

Finally I inspected the Phase I or "chinese cells" as they are referred to, situated in B-4 building D-1 range, and found them to be totally unacceptable. They were absolutely filthy and the human excrement smeared on the walls was a definite health hazard. They were unlit, unventilated, with only a hole in the floor for toilet purposes. I recommended:

That immediate action be taken to ensure that the procedures set out in the Commissioner's Directives and Divisional Instructions concerning the reporting of incidents involving force be strictly adhered to.

That immediate action be taken to ensure that the procedures set out in the Commissioner's Directives and Divisional Instructions concerning health care services to dissociated inmates be strictly adhered to.

That the use in their present condition of the three Phase I cells in B-4 building on D-1 range be terminated.

That a proper inventory control be kept on chemical mace and any issue of gas or restraint equipment be properly recorded.

A memorandum was sent to the responsible National Headquarters functional managers from the Senior Deputy Commissioner requesting that the recommendations be implemented. This was done not only at Dorchester but subsequent memorandums were sent to all regional managers asking for a review of existing conditions and procedures in all institutions to ensure implementation. I was also advised that the pertinent Divisional Instruction would be amended to ensure recording of circumstances where restraint equipment is used as a control measure. Even though our recommendations were accepted we will continue to monitor the situation at Dorchester Penitentiary.

Time Limits on Processing Claims

The office has been receiving a great many complaints from inmates concerning loss of personal effects and the interminable delay in processing subsequent claims against the Crown.

In most instances our investigations have been able to substantiate the allegations and it is not uncommon for an inmate to wait a year before receiving a final decision. Delays seem to occur at all phases of the claim procedure and as such we were unable to pinpoint any one cause. When questioning staff about delays we received replies such as the claim form was misplaced, the staff person responsible was too busy with other assigned work, or was new at the job or was away on leave of some sort. At that time the Claims Administrator in Ottawa had a three month backlog of claims awaiting a final decision.

In order to speed up the process and prevent these enormous delays I recommended:

That reasonable time limits be put in place on each phase of the claims procedure.

Although there was really no question that delays or a backlog existed, it was felt that rather than go to time limits, which I understand has not been rejected, that effective April 1, 1981 authority to settle and pay inmate claims would be decentralized to the institution and regions with authority at \$100.00 and \$500.00 respectively. This plan would see most claims settled in the regions and while it may help to speed up the settlement of some of these I am not convinced it will really resolve the problem. Time will tell.

Access to Information

We were flooded with complaints from inmates concerning the long delays being experienced in obtaining access to information under the Canadian Human Rights Act.

One area which appeared to cause unnecessary delay was where after a file had been signed off by the Deputy Minister completing the exemptions, it was subsequently re-examined at the institution and returned to National Headquarters with a request for further exemptions. A reading of part 2 of the "Administrative Review of Records" reveals no authorization for this practice but rather that the file go directly to the inmate.

Quite apart from this issue, long delays were still being experienced for other reasons so I recommended:

That action be taken by the Correctional Service to remedy delays being experienced by inmates in obtaining access to information in accordance with the Canadian Human Rights Act.

The matter was referred to the Deputy Commissioner Security who informed me that the delays in the release of information had virtually been eliminated. I was advised that special attention had been given to the problem and that the backlog had been reduced significantly; further, that current requests were also being responded to within the time requirements of the Act.

In answer to my concern regarding the return of files to Ottawa for further exemptions I was informed that this rarely caused much delay and was done in no more than one per cent of

the cases. I was further advised that the authority for this re-examination was contained in chapter 420 of the "Administrative Policy Manual" which allows an agency of government to further expand on procedures related to that agency's particular requirements.

The bottom line to all this however, is that there was a problem and action has been taken to resolve it.

Inmate Diets

Four inmates of a religious sect complained to our office that they were not receiving a diet in line with the teaching of their faith. They were advised of the provisions of Divisional Instruction 665 setting out the position of the Correctional Service of Canada that basically there is no legal obligation to provide a diet to comply with religious dietary laws.

In following the practice of our office the inmates were advised to grieve the matter which they did resulting in a rejection at all levels. I should add however, that the food service staff at the institution housing these men were attempting to comply where possible with the diet requirements.

It is important here to note that in the same Divisional Instruction there are dietary considerations for inmates of the Jewish faith and consequently I was concerned that the present policy on religious diets might not stand up to the scrutiny of the Canadian Human Rights Commission and so I recommended:

That the Correctional Service review Divisional Instruction 665 with a view to amending the present policy on religious diets.

The matter was forwarded to the Technical Services Branch which in turn contacted the Canadian Human Rights Commission which assigned one of their officers to investigate and report on religious diets as they apply to the Correctional Service of Canada.

At the close of our reporting year the Correctional Service was awaiting the results of the Human Rights study before determining the "quality of compliance". I was assured however, that once the results of the study are released that further action will be taken by the Service. The final outcome of the matter will have to be dealt with in the next annual report.

Suspension of Inmate Rights

As a result of the shutdown of Dorchester Penitentiary in October, 1980 a great many complaints were received from inmates alleging suspension of their rights, privileges and programs. When an administration takes drastic measures in time of a hostage-taking as in this case or in dealing with other serious incidents, naturally privileges and programs may be curtailed. However, I am greatly concerned when inmate rights are denied in such circumstances.

During the course of our investigation into these complaints we found instances of a disregard for the safety of inmate personal property when cells were searched for contraband. Allegations of the loss or destruction of such allowable effects as photographs, letters and other oft times irreplaceable items led us to believe that greater care should be taken by staff during such massive searches to protect the property rights of inmates.

Of even greater concern was the absolute denial of the inmates' right to grieve, as the grievance procedure was virtually suspended for a period of time. This action I found to be totally unacceptable and recommended:

That basic rights of inmates must be respected and that they not be denied even though an institution is shut down as the result of a hostage-taking or other emergency situation.

The matter was referred to the Security Branch and I received a copy of a memorandum to the effect that "these complaints are not necessarily well founded in most respects".

On the subject of cell searches I was advised that this was done in the presence of the inmate concerned and consequently "it is difficult to comprehend inmates' complaints of the loss of effects." Unfortunately I was not present during the search but I suggest that it would be naive to suggest that there was full supervision in every case especially as there were still several claims against the Crown pending six months after the searches.

With respect to the cessation of the grievance procedure the reply I received was that this could not be avoided when you have a total shutdown.

A meeting was then arranged with the Inspector General in which I expressed my dissatisfaction with the responses from security and requested that the issue be reconsidered. This was done. The comments from the Assistant Deputy Commissioner Offender Programs on the matter were very supportive as he stated that to suspend rights in situations such as existed at Dorchester is an open invitation to abuse because staff are no longer accountable for their actions. He further stated that general searches often generate a number of claims as happened in this particular incident and that there were still some claims pending. He noted that while a senior CX usually supervises the search, he cannot always control the situation fully.

With regard to the denial of grievances he stated that any restrictions of rights makes it all the more imperative to allow redress and the inmate grievance procedure must be allowed to continue and must not be suspended under any circumstances.

The recommendation was accepted and action taken included approval of Commissioner's Directive 249 outlining policy regarding searches and requiring details of cell and activity area searches to be held at the institution and Regional Headquarters. Further, amendments were made to existing directives which will assure the continuation of inmates' right to grieve during institutional shutdowns.

Claims Notification Procedures

This office has been concerned for some time with procedures concerning the processing of inmate claims for lost or damaged property and in particular the delays being experienced before a final decision is received.

In one particular case an inmate submitted a claim after being unlawfully at large and from that time until a final decision was reached on the matter he had been transferred four times. The decision made in April 1980 was transmitted to the institution where the inmate was located when the claim was initiated however, six months later in October the result had still not been forwarded to the inmate's attention.

In order to prevent unwarranted delay it seemed reasonable to suggest that correspondence concerning a claim decision be sent directly to the claimant wherever he was located with copies to other parties. The present procedure where a decision goes to Region, the institution and then the inmate obviously did not work in the case cited. My request to Financial Services for comments on the proposal brought a reply that the policy was "to respect the established chain of command when dealing with situations occurring in the regions and that the established procedures would continue to be followed." I recommended:

That the Correctional Service amend the present procedure concerning the notification to inmates of claim decisions.

I was advised that several policy alternatives to decrease the processing period were presently being studied and that revisions were underway to a draft directive.

Meal Hours

During a visit to Pittsburg Institution one of my inquiries officers met with the Inmate Committee and one complaint put forward was the fact that the evening meal was presently being served at 1600 hours. The committee felt that this was too early since most inmates did not finish work until that time and really did not have sufficient time to wash or relax prior to eating. It was suggested that 1700 would be a more suitable time for supper.

Following that meeting, institutional staff were consulted and we were advised that because of the limited number of steward positions and the policy that a steward must be present during the serving of each meal that it was not possible to serve the evening meal at a later hour. Our investigation of the situation revealed that there were only two steward positions allocated to the institution and that a number of requests over the years for an additional one had not been accepted.

As the request was a reasonable one and the reason for denial did not appear to be insurmountable I recommended:

That the evening meal at Pittsburg Institution presently being served at 1600 hours, be re-scheduled to a later more suitable time.

The matter was referred to the Regional Director General (Ontario) and a copy of his telex was forwarded to me indicating that meal time arrangements had been amended at Pittsburg Institution such that breakfast would be served without supervision of a Food Services Officer. Also that the evening meal would now be served at 1700 hours.

Conclusion

I would like to express my thanks to my staff for their support and for their sense of purpose in dealing with a task that is often tedious and seldom rewarding. At the same time, I also wish to acknowledge the cooperation of Correctional Service of Canada staff at all levels and to publicly thank the Inspector General for the courteous and helpful manner in which he deals with the recommendations presented.

This office has been in existence for almost nine years now during which time we have reported annually to the Solicitor General of Canada. It was pointed out in the Report to

Parliament by the Sub-Committee on the Penitentiary System in Canada, that an ombudsman by any acceptable standard, should report to Parliament and that independence both in fact and in theory, is an essential condition of his office's effectiveness.

Some reservations have been expressed about the credibility of the office of the Correctional Investigator reporting to the same Minister who is also responsible for the Correctional Service of Canada. It has been mentioned in previous reports from this office that no interference has been encountered and that none is contemplated but it is not so much whether there is actual direction by a Minister but rather how the office is perceived, especially by inmates.

Recommendation no. 37 of that Sub-Committee Report states:

“That the position of Correctional Investigator should be continued for the present subject to review of the role in two years. The Investigator should report directly to Parliament rather than to the Solicitor General.”

Perhaps it is now time to give consideration to implementing that recommendation in order to enhance our credibility and to further assist us in carrying out our mandate.

Appendix A

P.C. 1977-3209

Certified to
be a true copy of a Meeting of the Committee
of the Privy Council, approved by His Excellency the Governor
General on the 15 November, 1977

WHEREAS the Solicitor General of Canada reports as follows:

That, as a result of the resignation of Miss Inger Hansen from the position of Correctional Investigator as of October 1, 1977, the temporary appointment of Mr. Brian McNally of Ottawa to the position of Correctional Investigator was made by Order in Council P.C. 1977-2801 of 29th September, 1977; and

That, in order to meet the demands of the Office of the Correctional Investigator, it is advisable to proceed to make a permanent appointment to the position as quickly as possible.

Therefore, the Committee of the Privy Council, on the recommendation of the Solicitor General of Canada advise that the temporary appointment of Mr. Brian McNally to the position of Correctional Investigator be terminated and pursuant to Part II of the Inquiries Act, Mr. Ronald L. Stewart of the City of Ottawa be appointed as a Commissioner, to be known as the Correctional Investigator to investigate, on his own initiative, on request from the Solicitor General of Canada, or on complaint from or on behalf of inmates as defined in the Penitentiary Act, and report upon problems of inmates that come within the responsibility of the Solicitor General of Canada, other than problems raised on complaint

- (a) concerning any subject matter or condition that ceased to exist or to be the subject of complaint more than one year before the lodging of the complaint with the Commissioner,
- (b) where the person complaining has not, in the opinion of the Commissioner, taken all reasonable steps to exhaust available legal or administrative remedies, or
- (c) concerning any subject matters or conditions falling under the responsibility of the Solicitor General of Canada that extend to and encompass the preparation of material for consideration of the National Parole Board,

and the Commissioner need not investigate if

- (d) the subject matter of a complaint has previously been investigated, or
- (e) in the opinion of the Commissioner, a person complaining has no valid interest in the matter.

The Committee further advise that a Commission do issue to the said Commissioner, and

1. that the Commissioner be appointed at pleasure;

2. that the Commissioner be paid at the salary set out in the schedule hereto;
3. that the Commissioner be authorized to engage, with the concurrence of the Solicitor General of Canada, the services of such experts and other persons as are referred to in section 11 of the Inquiries Act, who shall receive such remuneration and reimbursement as may be approved by the Treasury Board; and
4. that the Commissioner shall submit an annual report to the Solicitor General of Canada regarding problems investigated and action taken.

Certified to be a true copy

Clerk of the Privy Council

Appendix B

SUMMARY OF RECOMMENDATIONS TO THE CORRECTIONAL SERVICE OF CANADA

The Correctional Investigator recommended:

1. That the Correctional Service review the question of whether or not the punishments of demerit points and suspension of Temporary Absence being awarded in disciplinary court at Bowden Institution are in accordance with the Penitentiary Service Regulations.

Issued: 15-7-80

Response: 18-7-80 – acknowledged

Response: 23-10-80 – accepted – instructions issued to the effect that Chairpersons not exceed their authority in making disciplinary decisions

2. That the Correctional Service review the reasons for denial of a certain claim against the Crown and that the inmate in question be reimbursed for his lost property.

Issued: 16-7-80

Response: 25-7-80 – acknowledged

Response: 27-8-80 – reasons for denial upheld

Re-issued: 28-8-80 – failed to deal with the points raised in support of the claim

Response: 29-8-80 – to be re-considered

Response: 29-10-80 – accepted — Commissioner of Corrections ordered the claim paid

3. That in light of inaccurate information and inconsistent procedure concerning the question of when an inmate's accident compensation payments commence that the Correctional Service broaden the definition of "ex-inmate" to include a person on mandatory supervision.

Issued: 28-7-80

Response: 8-8-80 – acknowledged

Response: 29-9-80 – interim reply

Response: 26-11-80 – accepted — Legal Services will attempt to amend the present regulations

4. That the Correctional Service do a full investigation of the food service operation at La Macaza Institution.

Issued: 8-8-80

Response: 8-10-80 – accepted — an investigation was completed into the operation of the food services and found the management procedures there to be lax — the Regional Director General was directed to take prompt action to rectify the deficiencies found

5. That certain inmates be transferred from the Quebec Region without going through the normal transfer procedure.

Issued: 28-10-80

Response: 10-11-80 – acknowledged

Response: 26-11-80 – rejected — inmates should apply through existing procedures

Response: 5-1-81 – status report

Response: 23-1-81 – inmates have now been transferred

6. That immediate action be taken to ensure that the procedures set out in the Commissioner's Directives and Divisional Instructions concerning the reporting of incidents involving force be strictly adhered to at Dorchester Penitentiary.

Issued: 28-11-80

Response: 15-12-80 – acknowledged

Response: 10-2-81 – accepted — a new standing order has been issued which sets out more detailed procedures

7. That immediate action be taken to ensure that the procedures set out in the Commissioner's Directives and Divisional Instructions concerning health care services to dissociated inmates be strictly adhered to at Dorchester Penitentiary.

Issued: 28-11-80

Response: 15-12-80 – acknowledged

Response: 10-2-81 – accepted — standing order to be reviewed and is to include appropriate reporting forms for consistent follow-up

8. That the use in their present condition of the three Phase I cells in B-4 building on D-1 range at Dorchester Penitentiary be terminated.

Issued: 28-11-80

Response: 15-12-80 – acknowledged

Response: 10-2-81 – accepted — cells to be renovated to meet or exceed health care standards

9. That at Dorchester Penitentiary, a proper inventory control be kept on chemical mace and that any issue of gas or restraint equipment be properly recorded.
- Issued: 28-11-80
- Response: 15-12-80 – acknowledged
- Response: 10-2-81 – accepted — proper inventory control is now being kept and issue of all equipment now being properly recorded
10. That reasonable time limits be put in place on each phase of the claim procedure.
- Issued: 5-12-80
- Response: 15-12-80 – acknowledged
- Response: 12-1-81 – interim reply
- Response: 11-3-81 – partial acceptance — interim action taken to decentralize authority to settle claims
11. That action be taken by the Correctional Service to remedy delays being experienced by inmates in obtaining access to information in accordance with the Canadian Human Rights Act.
- Issued: 5-12-80
- Response: 15-12-80 – acknowledged
- Response: 23-12-80 – partial acceptance — special attention has been given to this problem and the backlog has been reduced considerably
12. That the Correctional Service review Divisional Instruction 665 with a view to amending the present policy on religious diets.
- Issued: 9-12-80
- Response: 23-12-80 – acknowledged
- Response: 3-3-81 – interim reply
- Response: 15-4-81 – accepted — presently being reviewed by Canadian Human Rights Commission
13. That basic rights of inmates must be respected and that they not be denied even though an institution is shut down as the result of a hostage taking or other emergency situation.
- Issued: 10-12-80
- Response: 23-12-80 – acknowledged
- Response: 15-1-81 – rejected
- Re-issued: 23-2-81 – response not acceptable
- Response: 25-2-81 – referred for further consideration
- Response: 11-3-81 – accepted — revised national policies regarding searches
- Response: 23-3-81 – amended directive which will now assure the right to grieve during institutional shutdowns

14. That the Correctional Service amend the present procedure concerning the notification to inmates of claim decisions.

Issued: 22-12-80

Response: 30-12-80 – acknowledged

Response: 12-2-81 – interim reply

Response: 13-5-81 – partial acceptance — several policy alternatives to decrease the processing period were presently being studied

15. That the evening meal at Pittsburg Institution presently being served at 1600 hours be re-scheduled to a later more suitable time.

Issued: 16-4-81

Response: 21-4-81 – acknowledged

Response: 14-5-81 – accepted — the evening meal is now being served at 1700 hours

