Canada

Annual Report of the Correctional Investigator 1983 - 1984

The Correctional Investigator
Canada

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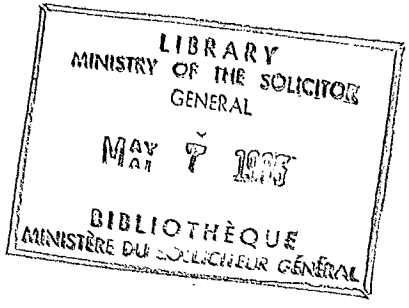

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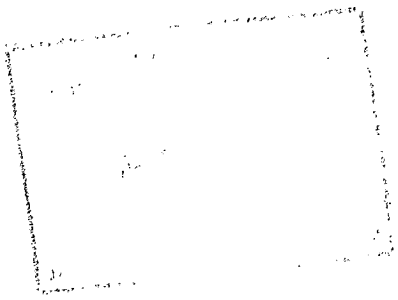

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L'Enquêteur correctionnel
Canada

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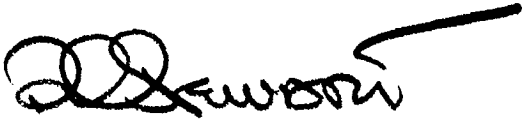
January 31, 1985

The Honourable Elmer MacKay
Solicitor General of Canada
House of Commons
Wellington Street
Ottawa, Ontario

Dear Sir:

As Correctional Investigator appointed to investigate complaints and report upon problems of inmates in Canadian penitentiaries, I have the honour of submitting to you the eleventh annual report on the activities of this office covering the period June 1, 1983 to May 31, 1984.

Yours respectfully,



R. L. Stewart
Correctional Investigator

Canada

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Appointment and Terms of Reference

By way of background on June 1, 1973 pursuant to Part II of the *Inquiries Act* a Commissioner was appointed to be known as the Correctional Investigator thus establishing this office which has been in continuous operation since that date. My appointment to the position was on November 15, 1977.

The present mandate charges the Correctional Investigator with the responsibility 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 to report upon problems of inmates that come within the responsibility of the Solicitor General with certain exceptions. A copy of Order in Council P.C. 1977-3209 describing the mandate is fully reproduced and appears as Appendix "A" hereto.

Organization and Operation

For the reporting year June 1, 1983 to May 31, 1984 there were no changes in staff personnel as again I had seven people assisting me in carrying out the terms of reference outlined in the Order in Council referred to above.

It is however important to note at the outset of this report that on June 23, 1983 the Solicitor General of Canada requested the Correctional Investigator to conduct a full independent and impartial investigation into allegations of mistreatment of certain inmates confined in the Archambault Institution, following incidents which occurred in this prison on July 25, 1982.

Such an investigation was conducted and a report given to the Solicitor General on June 21, 1984 which was almost a year to the day of the request. During that twelve months a considerable part of the resources of the office, especially our manpower, was necessarily diverted to this special investigation. Consequently, as the following statistics will show we made fewer visits to institutions and conducted fewer interviews than in the previous year.

However, coincidentally for the same time period our complaints were down twenty per cent so taking this into account along with the increase in hours worked by the staff I am satisfied that the level of service to our constituents did not suffer appreciably because of this special investigation.

We still managed to consider some 1,315 complaints while making 123 visits to institutions and conducting 603 interviews. Our resolvement rate of 11% was up somewhat while our assistance rate was about the same.

It is still our policy to advise complainants that they should initially take all reasonable steps to exhaust available legal or administrative remedies to resolve their problems before approaching our office. This of course includes the prior use of the complaint/grievance system of The Correctional Service of Canada.

STATISTICS

TABLE A

COMPLAINTS RECEIVED AND PENDING — BY CATEGORY

	1983-1984	1982-1983
Transfer	229	27
Visits and Correspondence	90	9
Medical	89	7
Staff	66	6
Dissociation	65	5
Sentence Administration	60	3
Financial Matter	58	7
Discipline	57	14
Claims	56	7
Temporary Absence	51	3
Cell Effects	36	5
Programs	35	3
Grievance Procedure	33	4
Information on File	25	3
Diet/Food	16	0
Work Placement	14	2
Request for Information	14	1
Use of Force	13	1
Education	8	0
Cell Change	5	0
Hobbycraft	5	1
Discrimination	4	0
Canteen	1	0
Other	81	9
Outside Terms of Reference		
Parole	59	4
Provincial Matter	18	0
Court Decision	4	0
Court Procedure	2	0
Sub-total	1,194	121
Total		1,315

TABLE B

COMPLAINTS — BY MONTH

Pending from previous year		121
1983		
June		129
July		61
August		104
September		78
October		89
November		122
December		35
1984		
January		90
February		70
March		125
April		117
May		174
	Total	1,315

TABLE C

COMPLAINTS — BY INSTITUTION

	Pacific Region							Prairie Region							
1983	Psychiatric Centre	Kent	William Head	Mountain	Matsqui	Mission	Other	Psychiatric Centre	Stony Mountain	Osborne Centre	Saskatchewan	Saskatchewan Farm Annex	Edmonton	Drumheller	Bowden	Other
June		1		8	4	1					8	1		24	3	2
July		4				1		1	1	1	6		5			1
August		5	1			2		1	9		5	2	6	2	2	
September		2			2				1		4		4	2	4	
October		4	2	2		1			8		13		3	2		
November		9		2		1				2			2	14	5	1
December		1		2	3		1		5		11			1		
1984																
January	3		1	3	1	3	1		1		6	3		2	2	2
February					2				2		3				3	
March	3	8		1				17	22		10	1	3	2	3	
April		15	2	1	2				4		3		4	8	1	
May		21							2		8	6			2	
Sub-total	6	70	6	19	14	9	2	19	57	1	77	13	27	57	25	6
Total	1194															

(1) Correctional Development Centre
(2) Federal Training Centre
(3) Regional Reception Centre

Ontario Region												Quebec Region										Atlantic Region			
Kingston	Warkworth	Joyceville	Pittsburg	Collins Bay	Frontenac	Beaver Creek	Millhaven	Bath	Prison for Women	Other		Ste Anne des Plaines	C.D.C. (1)	Cowansville	Montée St. François	Archambault	F.T.C. (2)	Leclerc	Laval	La Macaza	R.R.C. (3)	Other		Dorchester	Westmorland	Springhill	Other
13	2	2		2			4		1	1			1	1		6	2	1	9	1		1		26	1	3	
5		1		1		1	9		2				2	1	1		1	1	5					6	1	4	
10	12	3		1	1	1	2	1	2	2			2	2	1	5	3		9	3				7	2		
8	9	4		4			4	1		1				2	1	2	1	1	3			1		15		2	
7	8	1		2			5			3			1	4		5		5	4	2				5		2	
25	7	3		2			7		2	1		1	1	4		3		1	2						3	24	
		2		1	2									1						5							
6	1	10	1	2	2		13		2	3			2			4		3	7	2				1		3	
15	4	3		2	4		5		1	1			1	3		3			5	1				7		4	
14	5	2		3			7			1		1	1	2		2	1	1	9	1	1			1	1	1	
8	26	6		11	2		4							6		5			3		1	1		3	1	1	
10	6	41	13	5		4	10			2				17		2	2		6			1		5	11	1	
121	80	78	14	36	11	6	70	2	10	15		2	11	43	3	37	10	13	62	15	2	4		76	20	45	0

TABLE D

COMPLAINTS AND INMATE POPULATION[1] BY REGION

REGION	COMPLAINTS	INMATE POPULATION[1]
Pacific	126	1,624
Prairie	282	2,485
Ontario	443	3,168
Quebec	202	3,284
Maritimes	141	1,175
Total	1,194	11,736

[1] The inmate population figures were provided by The Correctional Service of Canada and are those for the period ending May 29, 1984.

TABLE E

INSTITUTIONAL VISITS

Maximum (S6 and S7)		NUMBER OF VISITS
Archambault		4
Correctional Development Centre		3
Dorchester		10
Edmonton		5
Kent		4
Laval		11
Millhaven		8
	Sub-total	45
Medium (S3, S4 and S5)		
Bowden		4
Collins Bay		6
Cowansville		2
Drumheller		4
Federal Training Centre		3
Joyceville		8
La Macaza		2
Leclerc		1
Matsqui		3
Mission		3
Mountain		3
Springhill		5
Stony Mountain		4
Warkworth		7
William Head		1
	Sub-total	56
Minimum (S1 and S2)		
Bath		3
Beaver Creek		1
Frontenac		1
Ferndale		2
Montée St-François		1
Osborne Centre		1
Prince Albert Farm Annex		3
Pittsburg		3
Rockwood		1
Stony Mountain Annex		2
Westmorland		4
	Sub-total	22
	Total	123

TABLE F

INMATE INTERVIEWS

MONTH		NUMBER OF INTERVIEWS
June		73
July		10
August		51
September		49
October		51
November		69
December		24
January		41
February		43
March		48
April		49
May		95
	Total	603

TABLE G

DISPOSITION OF COMPLAINTS

ACTION	NUMBER
Pending	119
Declined	
a) Not within mandate	78
b) Premature	344
c) Not justified	158
Withdrawn	158[1]
Assistance, advice or referral given	350
Resolved	52
Unable to resolve	56
Total	1,315

[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

CATEGORY	RESOLVED	ASSISTANCE GIVEN
Canteen	0	1
Cell Effects	3	10
Claims	4	17
Diet/Food	2	5
Discipline	6	10
Dissociation	3	21
Education	0	1
Financial Matter	2	19
Grievance Procedure	9	10
Hobbycraft	0	3
Information on File	2	3
Medical	0	29
Request for Information	0	8
Programs	2	13
Sentence Administration	5	35
Staff	1	13
Temporary Absence	1	8
Transfer	1	80
Use of Force	0	1
Visits and Correspondence	5	22
Work Placement	1	4
Other	5	23
Outside Terms of Reference		
Court Procedures	0	1
Parole	0	10
Provincial Matter	0	3
Total	52	350

RECOMMENDATIONS

OUTSTANDING RECOMMENDATION RESPONSES FOR 1981-82

A recommendation I made July 21, 1981 requested that male inmates be accorded the same standard of dignity afforded all other individuals liable to be searched which would entail an amendment to the pertinent Commissioner's Directive to prevent a female staff member from "frisk" searching a male inmate and from "strip" searching a male inmate in emergency situations.

I have had no further correspondence on this matter and despite indications of a final report with respect to these two items, the policy with regard to searches has not changed and I can only conclude that The Correctional Service of Canada is not prepared to amend its present policy on searches at this time.

OUTSTANDING RECOMMENDATION RESPONSES FOR 1982-83

From last year's report where nineteen recommendations were made there were a number of issues still outstanding as of May 31, 1983, the end of the reporting year.

One of those recommendations not receiving a complete response had to do with non-compliance with the existing Commissioner's Directives at Regional Psychiatric Centres. The last correspondence we received from the Correctional Service advised that it was hoped the matter could be finalized by June, 1983.

Unfortunately this date was not met and in September we received further information from the Inspector General saying that a new target date was set for December 1983. In a memorandum from the Director General Medical Services dated January 12, 1984 we were advised that the review was still not completed and that an update would be provided February 29, 1984.

It is now 23 months since our recommendation which all parties appeared to agree with and we still do not have confirmation of a review of the Commissioner's Directives or Divisional Instructions as they apply to Regional Psychiatric Centres, nor has a national policy been issued to deal with specific situations at such Centres.

Another of our recommendations had to do with the problem of Independent Chairpersons awarding punishments not authorized by Section 38(4) of the Penitentiary Service Regulations. I requested that the Correctional Service review the disciplinary court records at all institutions and take appropriate corrective action in regard to unauthorized punishments. I also requested that a control system be implemented to monitor future sentences for conformity.

Apparently this particular recommendation caused some difficulty for the Correctional Service as they have no line authority on Independent Chairpersons. They did however, amend the pertinent Commissioner's Directive advising staff not to implement unauthorized punishments. The matter was also broached with the Minister's office and the feeling there was that only a few Independent Chairpersons were involved and that they had already been informed to discontinue the practice.

However, the Inspector General resubmitted the original recommendation and advised me in a letter dated May 8, 1984 of the action taken to date to have Independent Chairpersons comply with the regulations. He also suggested that the time appeared long since past for a review such as I recommended in 1982 and further suggested that new guidelines and awareness by the Independent Chairpersons would rectify this matter.

I agree with the Inspector General on the review and am satisfied with his response and his invitation to bring any new cases I find to his attention.

A recommendation that was rejected during our last reporting year had to do with transfer safeguards and the duty to act fairly. The procedure adopted with respect to a Special Handling Unit required that an inmate be informed in writing of the reasons he is being recommended for transfer; that the reasons are sufficiently clear and explicit so as to enable the inmate to know what allegations are being made; that the inmate be afforded an opportunity to respond to the allegations and that the Wardens ensure that they give their personal attention to any written response made by the inmate before deciding whether or not to continue with the recommendation.

We felt this procedure certainly addressed the question of the duty to act fairly and recommended that it be adopted for all involuntary transfers. Some safeguards were put in place but the Correctional Service was reluctant to go as far as they had for Special Handling Unit transfers. The difference was that the procedures for involuntary transfers did not ensure that reasons prior to a decision be in writing, that they be clear and explicit or that the inmate's response would be given due consideration before proceeding with the transfer.

The matter was referred to Legal Services and the opinion there was that the present Commissioner's Directive complied with the Correctional Services' duty to act fairly. I was advised by the Inspector General that he felt that they had set in place as many safeguard mechanisms as could be considered reasonable and that they had implemented my recommendation to the extent possible.

That appeared to be the end of the matter however in November, 1983 the Federal Court of Canada faced with the validity of an involuntary transfer decision gave judgement for the transferee and quashed the decision finding that the requirements of the duty to act fairly had not been met. Part of the reasons for judgement was because basic safeguards such as we had recommended were not followed.

Although the pertinent Commissioner's Directive was amended in February, 1984 it did not incorporate either our recommendation or the safeguards enunciated by the Court. The Commissioner did however send out a memorandum in March, 1984 in which decisions of the Federal Court on this and other matters were summarized. The conclusion was that the judgements provide reference points for The Correctional Service of Canada and concerned inmates, and that if these guidelines are understood and adhered to there should be fewer actions brought by inmates and fewer judgements against the Service.

What I thought was a fairly basic recommendation dealing with the Special Handling Units in October, 1982 has become a rather complicated mess and nineteen months later is still not resolved.

At that time, according to a section in Commissioner's Directive 274 inmates in Phase I of a Special Handling Unit were considered to be in administrative segregation. That being the case, then section 40(2) of the Penitentiary Service Regulations applies and they are not to be deprived of their privileges or amenities.

Also at the time of the recommendation inmates in Phase I as compared to inmates in Phases II and III were deprived of television sets, were not given the same number of telephone calls and were restricted to level 1 pay.

Legal Services in a memorandum of October 25, 1982 stated *inter alia* that:

> inmates in Phases II and III of the Special Handling Units do have television sets in their individual cells therefore denial of that privilege for Special Handling Unit inmates in Phase I cannot be justified by section 40(2) of the Penitentiary Service Regulations. I think inmates in Phase I should be allowed to have these sets under the same conditions that inmates in Phases II and III are allowed to have them.

Security, on the other hand, opposed television sets in Phase I as it would impede effective operation of the Special Handling Unit phase program. Discrepancies regarding the other items of telephone calls and pay were resolved over a period of time.

The Inspector General in his letter of January 9, 1984 informed me that the Commissioner's Directive and Divisional Instruction on Special Handling Units had been amended and that one of the thrusts of these changes was that Phase I was not now automatically administrative segregation. However, a reading of The Guidelines for Establishing Day to Day Inmate Activities, Annex B to Divisional Instruction 800-4-04.1 allows for no association with staff, other inmates, inmate committees or community groups for Phase I inmates and it was my position that it is not possible to authorize this form of segregation other than under the terms of Penitentiary Service Regulation 40.

As for television in the first Phase, I was also informed that the revised Divisional Instruction did not provide for these for reasons of security and extensive costs, unless exemption is made by the Regional Deputy Commissioner. Obviously The Correctional Service of Canada issued a policy through security contrary to both our recommendation and the advice of Legal Services.

After a meeting with the Inspector General to attempt to resolve this matter, for it was clear to me that Phase I Special Handling Unit was either punitive dissociation or administrative segregation, I was advised that Legal Services in collaboration with Security personnel would be rewriting a policy for consideration by Senior Management.

My final comment for this report is the same as last, that being that the matter is still under review.

The first part of the recommendation I made concerning diets on religious grounds was completed and reported upon in my previous report. However, the second part dealing with the implementation of the terms of settlement proposal reached with the Canadian Human Rights Commission was not completed. In my last report I mistakenly referred to the Commissioner's Directive not being completed on this subject when that had in fact been done. It was the Divisional Instruction that was apparently still causing some problems and had not been issued. It is questionable whether the Commissioner's Directive alone meets the requirements of the Canadian Human Rights Commission's recommendation but it is

not my intention to debate that point here. I would suggest however, that the claim of the Correctional Service that everything is fine since the issuing of the Commissioner's Directive is belied by the continuing difficulty in issuing a Divisional Instruction on the subject. Another reporting year has passed and we still do not have the Divisional Instruction.

Another recommendation having to do with the request for an independent review procedure on questionable decisions to transfer an inmate to a Special Handling Unit was not finalized prior to my last report. Although the Commissioner of Corrections issued a memorandum on November 4, 1983 which set out the procedure for a review and called for the necessary steps to be taken to ensure that the pertinent Commissioner's Directive and Divisional Instruction were modified accordingly, we have had no further information concerning this matter and consequently it will have to be dealt with in a subsequent report.

A further recommendation made on November 17, 1982 to the effect that in order to ensure as much as possible an independent review at the final level of the grievance procedure that such grievances be investigated and responded to by other than a Branch with specific functional responsibility. The reason for the recommendation was to eliminate the conflict of interest potential and to further ensure an independent review. The Commissioner was in agreement and indicated that a Consultant was considering alternatives. Six months later in May, 1983 the recommendation was rejected since it was felt that a real problem did not exist.

Puzzled by this response I requested from the Inspector General a copy of the Consultant's report mentioned by the Commissioner as I felt that the possibility of a conflict of interest was still a valid reason for the recommendation. Two months later I was advised that the review in question concerned itself only with areas that required changes and the subject of my recommendation was not mentioned in the report.

I immediately wrote to the Commissioner of Corrections suggesting that his earlier statement concerning the Consultant would appear to be in error, as evidenced by the correspondence I attached from the Inspector General, and requesting that he provide me with the rationale for rejecting the recommendation. The reply basically dealt with the sincerity and personal integrity of the person with overall responsibility in the area, a fact that was never at issue. At this point in time it did not appear that we would be successful in having this recommendation accepted but, apparently it was reconsidered in the Fall of 1983 and a decision taken in late December to transfer the Inmate Affairs Division to the Inspector General's Branch effective January, 1984. We did not receive official confirmation of this change nor the reasons for it.

Another recommendation from the previous report asked for an amendment to the pertinent Commissioner's Directive having to do with Claims against the Crown for Inmate Personal Effects, which would basically consolidate the whole process for easier reference.

We received several complaints some of which we felt could have been eliminated if the directive in question not only dealt with the claims procedure but also mentioned that there was an appeal from decisions on claims, what the procedure was for such an appeal, and that every notification of a claim decision include notice of the right to appeal.

The recommendation was accepted and a draft Commissioner's Directive was forwarded in June, 1983 but unfortunately it did not adequately address all the points raised. Correspondence was exchanged with the Inspector General and we were subsequently advised by the Deputy Commissioner Offender Programs that the recommendation did present a problem in that the handling of the claim was the responsibility of Finance while the appeal against the denial of claims against the Crown was an Offender Programs Branch responsibility. Since the Directives system is divided in series and the series number indicates the Branch responsibility it was not possible to consolidate the responsibilities of the two Branches under one Commissioner's Directive. We were advised that while our recommendation to consolidate had some merit the approach taken by the Correctional Service was preferable.

We reviewed the matter and on the basis of the argument made withdrew that part of the recommendation. At the same time we reiterated the need for the notice of claim denial to include notice of appeal. We subsequently received a copy of the letter notifying all Regions to adhere to that procedure.

Although our last report indicated that this next recommendation had been accepted and implemented, that turned out not to be the case and is a prime example of the breakdown that can occur in finalizing some of the matters we bring forward.

The recommendation asked that when an inmate is informed of his failure to earn remission, he also be informed of the appeal procedure because many inmates were unaware that the matter was appealable. In May, 1983 five months after the recommendation we were advised by the Deputy Commissioner Offender Programs of its acceptance and sent a copy of the amended Monthly Notice of Earned Remission form showing the addition of the clause to the effect that the matter was a grievable item. We were satisfied and the issue seemed to be resolved.

In September, 1983 I received a letter from the Inspector General advising me that certain amendments had been made to the Case Management Manual which in effect advised inmates of the appeal procedure and that it would not now be necessary to amend the form as previously indicated.

Because the action taken did not meet the intent of the recommendation which was to give the inmate a visual awareness of an appeal on the same form, I resubmitted the matter.

In a further memorandum I was advised that inmates were aware of the grievance system and had access to a variety of information sources including the amended Commissioner's Directive, where the policy on earned remission was clearly spelled out. The memorandum further stated that to amend the form in question would mean that numerous other forms used for a variety of programs and services would require a similar notation and finally that the Service would like to encourage inmates to do their own research in order to enhance the development of a personal sense of responsibility and pride.

Rather than write another letter I met with the Deputy Commissioner Offender Programs and we were able to agree that the initial response to my recommendation was the proper course to follow. He later confirmed to me that he had requested that action as indicated in the initial memorandum be taken. In March, 1984 we heard from the Inspector General to the effect that instructions had gone to the Regions to include the notation we recommended on the earned remission form. Following receipt of that information we did a

random sampling of institutions and found that in every case but one the notation as prescribed was being incorporated on the form. The non-complying institution was so informed and made the correction. It took twenty months to implement this change.

This is a follow up to our recommendation that the present requirement for the address of a visitor on the Visitor Control Register be discontinued. I reported last year that it had been accepted and that we would monitor to ensure that the old forms were replaced by the amended version.

The recommendation was made in December, 1982, accepted in February, 1983 but as late as November, 1983 we had not been advised officially of any changes and an inspection at various institutions found that the column on the Register designated for the visitor's address had not yet been deleted. My correspondence requesting an update on the matter brought the response that the revised form had been issued and that the Regions would be asked by the Assistant Commissioner Security to ensure that all institutions were using the revised form and that all old forms were destroyed. A memorandum to that effect was circulated.

Some four months later we did a random sampling and found that three institutions were still using the old forms. A Visits and Correspondence Officer at one of the institutions advised that they could not get the new forms and that two other institutions not sampled also had not received the new forms.

I once again wrote to the Inspector General informing him that it was now nearly a year and a half since our recommendation on the revision of the form and requested that he advise our office why the old forms were still being used. On May 23, 1984 I received a copy of a further memorandum from the Assistant Commissioner Security to the Deputy Commissioners Region requesting confirmation in no later than fifteen days that only the new form is in use in all institutions in the Region and that all obsolete forms have been destroyed.

It is my opinion that the length of time it took after the form was revised to put it in use in the institutions was unreasonable and certainly suggests some laxness in policy implementation.

On February 21, 1983 we recommended that the decision approving the transfer of an inmate to a Special Handling Unit be deferred until such time as all outstanding charges relating to the Special Handling Unit recommendation have been dealt with.

The initial response from The Correctional Service of Canada was one of non-acceptance but following an incident where an inmate's rebuttal statement given to a Warden in response to a Special Handling Unit recommendation based on an assault charge to be heard in outside court, improperly came into the possession of the Crown Attorney, I resubmitted the matter.

I next received a letter from the Inspector General requesting that I reconsider the recommendation but the arguments he made were not convincing and I responded pointing out the inconsistency of the Service's policy and practice in this regard.

The matter was forwarded to Security for further policy consideration but when the reply finally came, the Inspector General advised me that the response received did not appear to

adequately address my concerns and was returned. That was November 14, 1983 and at reporting year's end, May 31, 1984, we had received no further word on the subject. We will of course continue to pursue the matter and attempt to resolve it.

The issue of inmates being zero paid and failing to earn remission as a result of being placed on non-productive status for a mandatory period of time was first brought to the attention of the Commissioner in September, 1982 as being contrary to directives. In the months that followed we took the matter up with the Inspector General writing to him on several occasions further detailing our position in support of the recommendation. In January, 1984 we received lists of inmates names and the number of days they were back paid. However, we found it necessary to continue to press for implementation of the other half of the recommendation which was the recrediting of earned remission.

Apparently there was some confusion at this point in time because while we were awaiting word on the remission in question we also brought to the attention of the Offender Programs Branch as a separate issue, what we felt was a general misapplication of the earned remission policy. This later issue brought agreement that the Correctional Service would go back six months and recredit remission that inmates failed to earn as a result of the various policy misinterpretations. Unfortunately, the remission referred to in our recommendation was not dealt with and in a memorandum dated March, 1984 it was stated that to do a review at this point in time would certainly raise problems as a result of the time lag. However, the problems mentioned would be not nearly so great had the Service acted on the matter when we made the recommendation a year earlier. It would seem now that the Correctional Service has returned the money they must in all fairness also recredit the remission to those adversely affected.

Our recommendation that a review be conducted and action taken to correct a backlog of overdue Administrative Inquiries concerning inmate claims against the Crown, was accepted in principle but there was not sufficient time to complete the matter before the end of our reporting year.

However, earlier in this year we were advised that the Manager, Planning and Administration Branch was to review the problem respecting the delays in the handling of inmate claims and develop an action plan to correct the ongoing backlog of overdue administrative inquiries.

We were subsequently advised that the backlog had been dealt with and that all outstanding claims had been processed. Also that a new system had been implemented to look at follow up, time frames and quality control and training provided in writing inquiry reports.

This recommendation was handled in a most timely fashion by the Correctional Service and hopefully the action taken will go a long way in improving the claims procedure.

RECOMMENDATIONS FOR 1983-84

This year five recommendations were made to the Correctional Service through the Inspector General's Branch. As has been pointed out in other reports we make recommendations on a regular basis at the Institutions and at the Regions depending on

where the decision making authority rests. There are some matters however which are of national significance or that were not resolved at other levels making it necessary to bring those to the attention of National Headquarters. It is these recommendations that are highlighted in the Annual Report.

1. INVOLUNTARY TRANSFERS DUE TO OVERCROWDING

During the course of our investigation into this matter we found that several administrative transfers were in response to the overcrowding situation facing The Correctional Service of Canada in the Prairie Region. Some of these transfers resulted in inmates being confined in an institution at a higher security level than their security classification called for.

Section 13 of the Penitentiary Service Regulations stipulates that inmates shall be confined in an institution giving regard to their custodial and program requirements while section 23 of Commissioner's Directive 600-2-04.1 states that inmates shall only be transferred to institutions which meet the requirements of the inmate's security classification. However that Directive goes on to provide for the transfer of inmates for reasons of "administrative exigencies".

Our recommendation on the matter was:

> **That the Office of the Correctional Investigator be informed of the reason for the transfers and the steps being taken in responding to the situation and what are the time frames within which inmates adversely affected would be relocated.**

A parallel problem on the issue arose when some inmates volunteering to go to the Ontario Region found that at the time of the transfer that Region was unable to accept them and they were transferred to the Atlantic Region instead.

Our correspondence on the matter was acknowledged and we soon received a copy of a memorandum from the Deputy Commissioner Security advising us that the transfers in this instance "were in accordance with the Commissioner's Directive and were for administrative exigencies of the Service due to the severe overcrowding problem at Drumheller Institution".

We were also advised that the moves to the Atlantic Region were made on the understanding that the inmates involved would be transferred to the Ontario Region when accommodation became available at a suitable institution.

We continued to receive complaints which prompted a further letter some time later to the Inspector General asking for numbers of transferees, action taken to date in relocating these inmates to institutions meeting their security classification, action planned for these inmates and if possible a projection date for alleviating the present situation.

A further response from security on the matter indicated that for the first six months of 1983 sixty-five inmates were transferred to the Atlantic Region; ten were transferred to the Pacific Region medium institutions; and approximately fifteen to Ontario Region medium institutions. Of the sixty-five transferred to the Atlantic Region, forty-three went to Dorchester, twelve to Springhill, seven to Westmorland and three were returned to the Prairie Region.

The reply indicated that there was concern with regard to the S4 inmates being housed in S6 institutions but unfortunately the unexpected increase in inmate population compelled

the Correctional Service to resort to this measure, as well as to double bunking. The memorandum went on to say that the matter was under constant review and that everything possible was being done to house inmates in institutions corresponding to their security classification. Finally that the prognosis was not good and that the overcrowding would continue until the new institutions at Drummondville, Donnacona and Renous come on line.

Obviously the situation concerning available cell space in some Regions is an acute problem and one that we will all have to live with. But we will continue to monitor complaints on the subject and to advise The Correctional Service of Canada of any circumstances that we feel merit special consideration.

2. INACCESSIBILITY OF FUNDS

An inmate, while serving the initial part of a ten year sentence in a provincial facility under an Exchange of Services Agreement, managed to accumulate from pay and sale of hobbycraft, a considerable sum of money. As a result of circumstances the inmate chose to transfer to a federal institution.

The money in question was placed in a savings account according to the directive which basically says all inmates have to earn their way. The complaint arose because the inmate who wanted to buy a television set was only receiving grade 1 pay because of a medical problem. Most of that was used for canteen items and the inmate had not yet qualified to have $100 transferred from savings to the current account. The qualifier was a six month waiting period.

Although the pertinent directive made no provisions for funds earned in provincial institutions there was really no way of knowing whether or not the matter was considered prior to drafting. I recommended:

That the definition of approved earnings be expanded to include money earned while incarcerated in a provincial facility prior to transfer to a federal institution.

I also requested that in order to alleviate the hardship would it be possible to transfer some funds to the inmate's current account while the recommendation was being considered.

I was advised that the matter was being sent to the Deputy Commissioner Offender Programs "with the hope that it can be resolved easily". Two months had passed since the recommendation when I heard back from the Inspector General's office forwarding a copy of a memorandum from Offender Programs which by the way had dealt with the matter in a prompt fashion. Their comment was that the inmate's circumstances with respect to the special request did not warrant an exception being made to the policy as the situation was in no way unique. To give special consideration in this case would be unfair to other inmates. By the time I received this memorandum it really did not matter because the inmate had become eligible for the transfer of the $100 from savings.

On the more important point of the designation of funds earned in a provincial institution it was suggested that although in principle it seemed like a reasonable suggestion that in practice it may be that the records provided by those places would not enable federal authorities to be able to distinguish between what the inmate had earned from pay and what had been received from the outside. I was assured however that the matter would be pursued with Financial Services to determine if there was a way of obtaining accurate financial data with respect to inmates transferred from provincial systems.

In a subsequent memorandum it was confirmed that provincial institutions do not provide breakdowns of the accounts of inmates transferred to the federal system. What they do receive is a lump sum cheque representing the total funds to the inmates' credit. The only feasible alternative suggested was to allow an inmate to place in his current account funds up to a pre-determined limit that would give the inmate immediate access to spending money. While the amount might not reflect what was actually earned in the provincial institution it would at least recognize that something was probably earned. This provision would only apply to federal inmates previously housed in provincial institutions pursuant to federal-provincial exchange of services agreements and a submission to that effect was to be prepared and presented to the Senior Management Committee of The Correctional Service of Canada.

The last correspondence we received on this matter was in January, 1984 forwarding to our office a copy of the draft submission.

3. REVIEW OF SPECIAL HANDLING UNIT TRANSFER PROCESS

In response to one of the recommendations in my last Annual Report the Correctional Service agreed to implement a procedure whereby they would review at the request of the Correctional Investigator, questionable decisions to transfer inmates to a Special Handling Unit.

I made such a request in July, 1983 on behalf of an inmate because of the absence of any documentation establishing an extensive record of serious violence prior to the subject's life sentence without eligibility for parole for twenty-five years as called for by a memorandum issued by the Commissioner of Corrections.

Before my request could be acted upon the inmate in question brought the issue of his Special Handling Unit placement before the Federal Court of Canada. I agreed with the Inspector General that in view of the circumstances it would be inappropriate for the Correctional Service to proceed with such a review while the matter was pending before the courts.

After the proceedings I was provided with a copy of the Reasons for Judgment and in view of the ruling of the Federal Court of Canada my recommendation was withdrawn.

4. PRIVILEGED CORRESPONDENTS

The question of inmates contacting a Justice of the Peace or a police department has been investigated by this office. Because inmates wishing to lay an information cannot normally do so in person, policy dictates that they write to such officials. However, as neither of these parties are included on the list of privileged correspondents, such mail is subject to inspection. It seemed to make sense that for obvious reasons that policy should be changed so I recommended:

That such correspondence should be considered as privileged and that the pertinent Commissioner's Directive be amended accordingly.

The matter was referred to the Deputy Commissioner Offender Programs who while not totally in agreement and therefore not prepared to designate Police and Justices of the Peace as full privileged correspondents, he felt that letters addressed to and received from them could be treated in the same manner as correspondence between inmates and legal counsel. A draft memorandum was to be prepared for the Commissioner's signature.

Although it was not my intention to reject this alternative proposal, I had not received any reason for not accepting the original one so I wrote requesting the Service's rationale for not favouring designations as full privileged correspondents.

The reply received in November, 1983 indicated that the original objection to designating police and Justices of the Peace as privileged correspondents had been simply that it would result in an unwarranted extension of the privilege. As well, there was a general belief that the number of privileged correspondents provided for in the directive was already large enough. However, it went on to say that "we now realize that the extension of privilege would not really be as great as it might at first seem" and that "it might not be unreasonable to specify in policy that correspondence with the police authority or Justice of the Peace should be treated as privileged."

I was informed that it was a fairly major policy recommendation and would have to be cleared by the Senior Management Committee before implementation. A submission was to be prepared.

Four months later I was advised by the Inspector General that my recommendation was not going to be pursued at least for the present time but the reason given was totally unacceptable. I was also advised that the Security Branch had been developing a policy relating to the whole question of how to deal with inmate complaints of wrongdoing on the part of staff. The Inspector General had written to the Assistant Commissioner, Security requesting an update on the status of this policy which he was to forward to our office.

Two months later in a letter from the Inspector General we were informed that a review of the Code of Conduct is being conducted to study the possibility of establishing a Complaint Committee to deal with inmate complaints of this nature. This is certainly an issue which will be pursued in the months to come.

5. RECEIPT AND CUSTODY OF INMATE RECORDS

Complaints were received from several inmates at different institutions concerning access to and retention of copies of their records provided to them under the Privacy legislation. In response we reviewed and compared procedures at several institutions and found that they varied with respect to access but that in most cases inmates were not allowed to maintain custody of these files in their cells after examination.

We next examined the Privacy Manual and were concerned with the provisions concerning the safe-keeping of files. For instance various options are provided to inmates, one being the permanent retention of his copy of the file in his cell however, is not being offered to inmates at the majority of institutions. Staff have provided reasons why such an option could lead to difficulties especially in the case of protective custody inmates and this is understandable.

As a result of our review I am concerned that the procedures governing access and custody of privacy files are not always consistent throughout the Correctional Service thereby causing confusion for inmates transferred from one institution to another. For files obtained under the Privacy Act I recommended:

(a) That following the initial examination of such a file it not be necessary for an officer to be present at subsequent examinations as stated in the procedures;

(b) That such a file when placed in an inmate's personal effects be sealed in a separate package on which the contents are to be noted and that the sealing be witnessed by both the inmate and an Admission and Discharge Officer and that the package not be opened except in the presence of the inmate;

(c) That a review be done concerning the permanent retention of a file in an inmate's cell and that an inmate either is afforded this choice or it be deleted as an option.

Although we received information on this recommendation the year came to a close before any real headway was made so any future action will have to be dealt within in a subsequent report.

CONCLUSION

In our interfacing with the Correctional Service we often see situations from a different perspective but attempt to deal openly yet firmly with the issues we bring forward. Communication problems sometimes exist and we are still experiencing delays as evidenced by the number of unresolved issues some of which are two years old. It is my feeling however, that our office together with the cooperation of the Correctional Service have over the years brought significant improvements to institutional life and to all those dedicated people in the Service with whom we come in contact, may I express my appreciation for their assistance.

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 said 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 who 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
June 1, 1983—May 31, 1984

1. That the Office of the Correctional Investigator be informed of the reason for certain involuntary transfers, the steps being taken in responding to the situation and what are the time frames within which inmates adversely affected would be relocated.

Issued:	6-6-83	
Response:	21-6-83	— acknowledged
Response:	13-7-83	— information provided
Reissued:	2-8-83	
Response:	9-9-83	— information provided

2. That the definition of approved earnings be expanded to include money earned while incarcerated in a provincial facility prior to transfer to a federal institution.

Issued:	20-6-83	
Response:	22-6-83	— acknowledged
Response:	8-7-83	— information provided
Reminder:	2-8-83	
Response:	18-8-83	— information provided
Reissued:	22-8-83	
Response:	7-10-83	— information provided
Response:	18-11-83	— information provided
Response:	27-1-84	— accepted in principle

3. That the decision to place a certain inmate in a Special Handling Unit be reviewed in accordance with the procedure set out in the Commissioner's memorandum on the subject.

Issued:	13-7-83	
Response:	14-7-83	— acknowledged
Response:	2-9-83	— information provided
Response:	27-4-83	— information provided
Withdrawn:	27-4-83	

4. That correspondence to the Police and Justices of the Peace should be privileged and that the pertinent Commissioner's Directive be amended accordingly.

Issued:	24-8-83	
Response:	26-8-83	— acknowledged
Response:	19-9-83	— alternative proposal
Rational Requested:	18-10-83	
Response:	18-11-83	— alternative proposal rejected
Response:	15-3-84	— original proposal rejected
Response:	2-5-84	— information provided

5. For files obtained under the *Privacy Act*

(a) That following the initial examination of such a file it not be necessary for an officer to be present at subsequent examinations as stated in the procedures.

(b) That such a file when placed in an inmate's personal effects be sealed in a separate package on which the contents are to be noted and that the sealing be witnessed by both the inmate and an Admission and Discharge Officer and that the package not be opened except in the presence of the inmate.

(c) That a review be done concerning the permanent retention of a file in an inmate's cell and that an inmate is either afforded this choice or it be deleted as an option.

Issued:	2-11-83	
Response:	14-11-83	— acknowledged
Response:	20-1-84	— information provided
Response:	27-4-84	— information provided