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Canada



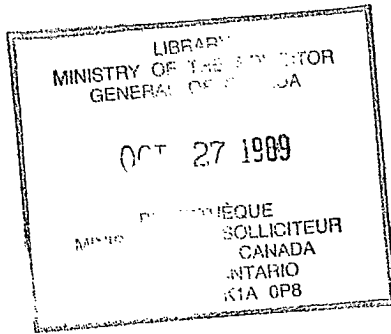
Annual Report
of the
Correctional
Investigator

1986 - 1987



The Correctional Investigator
Canada

Annual Report
of the
Correctional
Investigator



1986-1987

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Canada

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L'Enquêteur correctionnel
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December 30, 1987

Mr. James Kelleher
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 fourteenth annual report on the activities of this office covering the period June 1, 1986 to May 31, 1987.

Yours respectfully,

R.L. Stewart
Correctional Investigator

Canada

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APPOINTMENT AND TERMS OF REFERENCE

The Correctional Investigator has been in office since June 1973. This is the fourteenth Annual Report and is for the period from June 1, 1986 to May 31, 1987.

The Correctional Investigator is appointed as a Commissioner under the Inquiries Act to investigate problems of inmates that come within the responsibility of the Solicitor General, with certain exceptions.

For the full text of the mandate of the Correctional Investigator, please refer to Appendix "A".

ORGANIZATION AND OPERATION

The staff of the Office of the Correctional Investigator has increased by two, bringing that total to nine persons. This has allowed us to designate an investigator to each of the five Correctional Service Regions. Each of these five investigators, in addition to his other duties, is to acquaint himself with his region and to keep abreast of any special circumstances or regional policies as well as being able to respond to any situation or incident which may occur. The investigators report initially to the Director of Investigations, a new position very capably filled by Mr. Edward McIsaac. An Administrative Assistant and two secretaries round out a very competent staff and I thank them for their dedication and assistance over the past twelve months.

Our operation this year was marked by a 39% increase in the number of complaints we received and processed. This in turn necessitated an increase in the number of interviews conducted. While our visits decreased from 169 to 156, our interviews almost doubled, going from 770 the previous year to 1329 which is indicative of a better use of our time while at the institutions. Our resolution rate improved, rising to 13%, while we were able to assist another 57% of the complainants who contacted our office.

When giving statistics on resolution rates, it is important to indicate that inmates are initially required to take all reasonable steps to exhaust available legal or administrative remedies. This of course means going through the internal grievance procedure before approaching our office. As most complainants have already aired their problems with the Correctional Service it is not then surprising to see a complaint-handling agency such as ours with a resolution rate in the 10 to 15 percent area.

STATISTICS

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

<u>Category</u>	<u>1985-86</u>	<u>1986-87</u>
Canteen	0	7
Cell Effects	5	61
Claims	6	66
Diet/Food	2	43
Discipline	12	120
Dissociation	7	87
Education	0	13
Financial Matter	7	108
Grievance Procedure	4	53
Hobbycraft	0	5
Information on File	6	80
Medical	11	202
Request for Information	0	41
Programs	4	64
Sentence Administration	0	83
Staff	5	155
Temporary Absence	5	82
Transfer	37	406
Use of Force	2	24
Visits and Correspondence	12	241
Work Placement	0	31
Cell Placement	0	13
Discrimination	1	16
Other	10	202
<u>Outside Terms of Reference</u>		
Court Procedures	0	3
Parole	4	85
Provincial Matter	0	26
Court Decision	0	12
Sub-total	140	2,329
Total		<u>2,469</u>

TABLE B
COMPLAINTS — BY MONTH

Pending from previous year 140

1986

June 162
July 136
August 103
September 188
October 227
November 327
December 132

1987

January 222
February 181
March 207
April 252
May 192

2,469

TABLE C
COMPLAINTS — BY REGION

	<u>Pacific Region</u>								<u>Prairie Region</u>							
	Ferndale	Kent	Matsqui	Mission	Mountain	Psychiatric Centre	William Head	Other	Bowden	Drumheller	Edmonton	Saskatchewan	Saskatchewan Farm Annex	Psychiatric Centre	Stony Mountain	Other
1986																
June					1	4	1		32	5	1	53	1			1
July		3	2	2			2		27	16	10	8			6	
August		1	4			1	2		7	5	4	10			5	
September		15	21		2	1	1		10	11	24	16		3		
October		3	4				1		15	1	2	11			24	1
November		7		16	11	26	14	1	36	1	8	6		1	3	4
December				3	5	3	4		10	1		18			19	1
1987																
January		32		1	10	2	2		15	14	6	15		2	1	1
February	3	7	16	3	1	5			3		3	13	4	3	1	
March		2	4	1		3	1	2	9	1	13	10		4	7	1
April	7	5	7	13	1	10	4	1	9	5	4	17	1	6	3	1
May		8	1	2	2	4	1		6	1	3	2		4	2	
Sub-total	10	83	59	41	33	59	33	4	179	61	78	179	6	23	71	10
Total	2329															

**Ontario
Region**

**Quebec
Region**

**Atlantic
Region**

	Bath	Beaver Creek	Collins Bay	Frontenac	Joyceville	Kingston	Millhaven	Pittsburg	Prison for women	Warkworth	Other	Archambault	Cowansville	Donnacona	Drummond	Federal Training Centre	Laval	La Macaza	Leclerc	Montée St-François	Ste-Anne-des-Plaines	Other	Dorchester	Springhill	Westmorland	Renous	Other
			4		2	5	12		3	2	1	11	1		1		12				6	1	2				
	1	2	7		8	6	6	6	6	6	5		1		1		5		1		7		3	1			
	1	6	16		8	6	4	2	1	4		4			2	3		3	5	1	2		3	3			
		13	7		9	9	5	8	2	1	6		6		3	2	3	3	1	2	4		3	1	2		
	4	4	3		9	13	8	5	4	7	1	1		10	9	15	15	3	39	2	4	3	21	8	2		1
		5	2	7	9	1	6	7	1	2	3	4	3	1	2	5	10		12	4	1	2	15	33			
					17	3	4	10	3	4	4	3			1	8			4		1	7	2	2			
			9	13	21	14	4	17	1	1	2	4	8	3	9		9		3		4		6	2			
1		5	1		16	2		11		19	6		18	5	6	9		9		4		12	4				
	1	3	4		12	2	9	7		1	1	9	7	6	2	1	1	5	3	3	2	4	2	1			
	1	2	3	2	3	13	13	22	20	45	6	2	13	2	1	1	1	1	1	1	1	1	4	1			
	1	3	4	11	39	4	3	2	12	2	3		1	3	13	9	1	15	1	23	1	3	1				
	3	9	48	21	69	156	85	3	60	239	22	74	70	21	56	57	84	18	85	7	55	10	79	61	5	1	1

TABLE D
COMPLAINTS AND INMATE POPULATION—BY REGION

<u>Region</u>	<u>Complaints</u>	<u>Inmate Population⁽¹⁾</u>
Pacific	322	1 766
Prairie	607	2 200
Ontario	715	3 409
Quebec	537	3 539
Maritimes	<u>148</u>	<u>1 086</u>
TOTAL	2,329	12,000

⁽¹⁾The inmate population figures were provided by The Correctional Service of Canada and are those for the period ending 19 May, 1987

TABLE E
INSTITUTIONAL VISITS

<u>Multi-level</u>	<u>NUMBER OF VISITS</u>
Kingston Penitentiary	13
Prison for Women	7
Regional Psychiatric Centre, Prairies	5
Regional Psychiatric Centre, Pacific	4
Saskatchewan Penitentiary	<u>13</u>
Sub-total	42
<u>S6 and S7</u>	
Archambault	10
Donnacona	3
Dorchester	7
Edmonton	4
Kent	3
Laval	10
Millhaven	14
Renous	<u>1</u>
Sub-total	52
<u>S3, S4 and S5</u>	
Bowden	8
Collins Bay	8
Cowansville	4
Drumheller	4
Drummond	4
Federal Training Centre	8
Joyceville	8
La Macaza	1
Leclerc	10
Matsqui	6
Mission	3
Mountain	2
Springhill	4
Stony Mountain	7
Warkworth	14
William Head	<u>1</u>
Sub-total	92

TABLE E (continued)
INSTITUTIONAL VISITS

<u>MONTH</u>	<u>NUMBER OF VISITS</u>
S1 and S2	
Bath	1
Beaver Creek	2
Ferndale	1
Frontenac	3
Montée St-François	3
Pittsburgh	1
Saskatchewan Farm	2
Ste-Anne-des-Plaines	7
Sand River	1
Westmorland	<u>1</u>
Sub-total	<u>22</u>
Total	<u>156</u>

TABLE F
INMATE INTERVIEWS

<u>MONTH</u>	<u>NUMBER OF INTERVIEWS</u>
June	98
July	66
August	48
September	108
October	137
November	221
December	95
January	106
February	131
March	112
April	126
May	<u>81</u>
Total	1,329

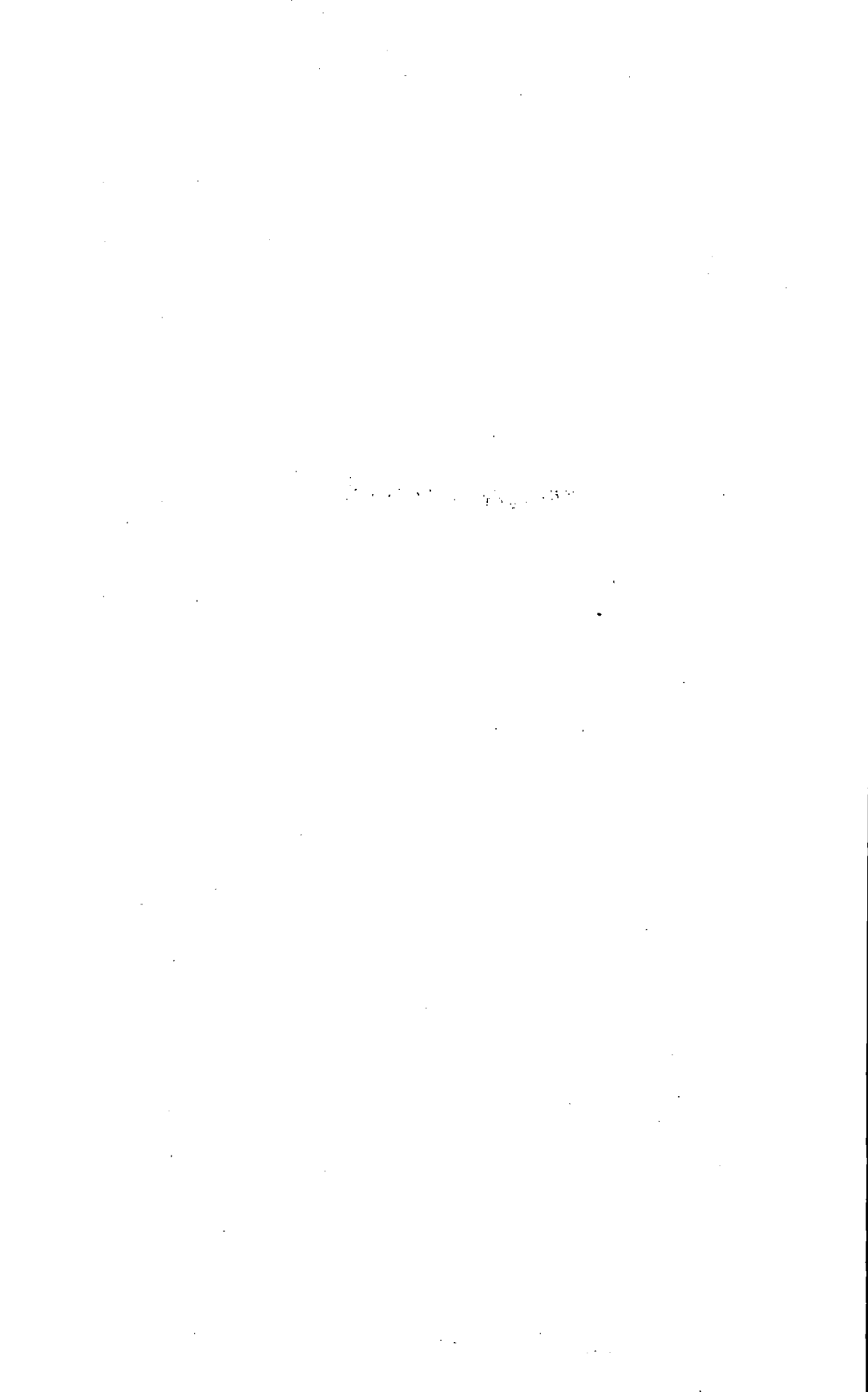
TABLE G
DISPOSITION OF COMPLAINTS

<u>Action</u>	<u>NUMBER</u>
Pending	257
Declined	
a) Not within mandate	111
b) Premature	566
c) Not justified	418
Withdrawn	295
Assistance, advice or referral given	621
Resolved	143
Unable to resolve	58
Total	<u>2,469</u>

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

<u>CATEGORY</u>	<u>RESOLVED</u>	<u>ASSISTANCE GIVEN</u>
Cell Effects	8	17
Claims	7	17
Diet / Food	5	16
Discipline	5	19
Dissociation	5	30
Education	1	4
Financial Matter	12	32
Grievance Procedure	2	27
Hobbycraft	1	0
Information on File	18	13
Medical	6	58
Request for Information	3	30
Programs	5	19
Sentence Administration	1	23
Staff	3	24
Temporary Absence	3	23
Transfer	23	106
Use of Force	0	3
Visits and Correspondence	20	60
Work Placement	4	4
Cell Placement	0	5
Discrimination	1	3
Other	<u>9</u>	<u>65</u>
<u>Outside terms of reference</u>		
Court Procedures	0	0
Parole	1	21
Provincial Matter	<u>0</u>	<u>2</u>
Total	143	621

RECOMMENDATIONS



RECOMMENDATIONS FOR 1986-87

The addressing of issues referred to the office of the Commissioner of Corrections this year has been in my opinion characterized by excessive delays, an absence of thorough objective review and a reluctance to make decisions. This is in contrast generally to the response received from the institutional and regional authorities and I take this opportunity to express my appreciation to the Wardens, Regional Deputy Commissioners and their staff for their cooperation during this reporting year.

The following are those areas of concern brought to the attention of the Commissioner's office during this reporting year. Although all the details might not be given in this report, the Commissioner of Corrections has been supplied with all relevant documentation and the specifics of each issue.

1. Transfers

Administrative decisions with respect to transfers continue to generate, as is shown in Table A, a large number of complaints. The vast majority of these concerns are dealt with at the institutional and Regional Headquarters level. Briefly outlined are those transfer issues referred to the Commissioner's office.

A) *Involuntary Transfer From the Pacific Region*

In September of 1986 a decision had been taken to involuntarily transfer some 30 inmates from British Columbia to the Ontario region to aid in alleviating the overcrowding within the protective custody units at Kent and Matsqui institutions. An investigation was initiated prior to the proposed transfer date which clearly indicated that:

- i) the inmates scheduled for transfer were, in the majority of cases, British Columbia residents who would have been adversely affected by a move away from their families, and
- ii) the relevant documentation relating to these transfers, including the offenders' rebuttal, was not reviewed by the appropriate decision-making authority in advance of the final decision being made.

The results of our investigation were communicated to the Commissioner by telephone due to the time frames involved and followed up with a letter dated *September 23, 1986* detailing again the results of our investigation and recommending:

- a) **That the Correctional Service cease the practice of involuntary inter-regional transfers to compensate for overcrowding, and**
- b) **That all involuntary inter-regional transfers be reviewed by the Commissioner's office prior to implementation.**

These transfers were subsequently withdrawn by the Correctional Service as a result of a court injunction.

The Commissioner in a letter dated *November 25, 1986* rejected my recommendation stating that "Given our decentralization of authority, and given the existing procedures for transfer, I am confident that the Deputy Commissioners will manage the necessary transfers effectively and humanely."

In November 1986 seventeen offenders were transferred involuntarily from Archambault Institution, many of them inter-regionally. Our investigation again indicated that the Service's duty to act fairly was at question in a number of these cases.

I remain of the opinion that involuntary inter-regional transfers should be reviewed by the office of the Commissioner in advance of their implementation to ensure fairness, and that such transfers for the purpose of alleviating overcrowding should cease.

B) *Transfers to Special Handling Units*

I wrote to the Commissioner on *September 23, 1986* following our review of a Special Handling Unit placement decision which I found lacking in fairness, and recommended that he review the decision taken by the Regional Deputy Commissioner.

The Commissioner's reply, received *November 28, 1986*, stated:

"In response to your recommendation that a review of the Deputy Commissioner's decision be undertaken the case was reviewed by the Regional S-7 Committee on October 29, 1986. The recommendation that (the inmate) remain in S-7 was approved by the Deputy Commissioner..."

The Commissioner's office was contacted following receipt of this response and informed that in our opinion the referral of this case back to the initial decision-maker for review did not constitute an adequate, independent review of the decision in question. This position was reinforced during my meeting with the Commissioner *January 30, 1987* with a further request for a thorough, independent review of the Special Handling Unit placement decision.

On *March 30, 1987* a memorandum was received from the Director of Inmate Affairs stating,

"It was conceded at the January meeting that the Commissioner's letter to Mr. Stewart of 86-11-20 should have more clearly established that the Commissioner personally reviewed the decision, which in fact was the case."

The handling of this case does not leave me confident that independent, thorough and timely reviews are being undertaken by the Commissioner on matters referred to his attention.

C) *Special Handling Unit Decision-Making*

The Correctional Service's decentralization process included the dissolving of the National Special Handling Unit Review Committee in early 1986. Part of this Committee's mandate, to establish tentative dates for SHU inmate transfers to maximum security institutions, was taken over by the five Regional Deputy Commissioners.

In May and June of 1986 our office was approached by both staff and inmates at the SHU facility at Saskatchewan Penitentiary expressing concern over the apparent ineffectiveness of the current decentralized decision-making process in responding to the tentative dates previously established by the National Committee.

Following a review of the matter I wrote the Commissioner on *June 10, 1986* detailing the cases of those inmates whose tentative transfer dates had passed and recommended:

- a) That immediate action be taken by the Commissioner of Corrections to review the delays and denials that have occurred in the case of each inmate so named and that previous commitments made by the Correctional Service be honored without delay, and**

b) That an immediate review be undertaken of the decentralized decision-making process for Phase IV placements (transfers out of SHU to maximum security institutions) to ensure that decisions are made in a fair and timely manner.

The Commissioner responded in a letter dated *July 16, 1986* addressing the individual cases identified, stating:

"That in terms of the decision-making process, the policy and associated mechanisms were reviewed at the recent Senior Management Committee meeting and further input is expected over the next two weeks. Changes to the process in order to ensure fair and equitable decisions, while maintaining the security of our maximum security institutions, will be implemented as expeditiously as possible."

A memorandum dated *October 1, 1986* was received from the office of the Commissioner stating in part:

"In order to alleviate problems experienced in the recent past in terms of Phase IV placements, following consultation with regional Deputy Commissioners, the attached document will be discussed at the November SMC."

On *November 12, 1986* I wrote to the Commissioner saying:

"With respect to the issue of the S-7 decision-making process, the policy and associated mechanisms, I look forward to being informed of the changes to ensure fair and equitable decisions."

I received a response from the Commissioner dated *January 8, 1987* saying:

"With respect to the general issue of the S-7 decision-making process, once consultation with the field has taken place and SMC has reviewed recommendations, I will be pleased to discuss this topic with you. This should take place after the March SMC."

The matter was reviewed with the Commissioner during our *January 30, 1987* meeting, and on *March 30, 1987* a memorandum was received from the Director of Inmate Affairs stating that:

"It is my understanding that, further to the January SMC, the former SHU policy will be abolished and replaced by amendments to Commissioner's Directives on Classification of Institutions and Transfer of Inmates, effective May 1, 1987."

The SHU's or High Maximum Security Institutions have to be seen as a national program directed by clear national policy and operational guidelines. The existing Commissioner's Directives referred to by the Director of Inmate Affairs provide no national direction for the operation of these units or assurance of fair and equitable decision-making in relation to offender placements.

As of the end of this reporting period it has been nearly a year since my recommendation of *June 1986*, and the Correctional Service has no identifiable national policy relating to the operation of their High Maximum Security Institutions.

D) Exchange of Service Agreement (Alberta)

The Government of Canada and the Government of the Province of Alberta entered into an agreement allowing for the transfer of offenders between the two jurisdictions.

Within the Agreement at page 5, section 3, entitled *Notification of Offender Covered by the Present Agreement*, it states:

"Canada and Alberta agree to notify, at least forty-eight (48) hours in advance, all offenders in their respective custody who are subject to transfer, of the date, destination and reasons for transfer."

The Commissioner's Directive No. 540 on transfers in paragraph 24 further states:

"In developing guidelines and procedures related to inter-jurisdictional transfers, regions should ensure that the 'duty to act fairly' is adhered to, such as prior notification to an inmate who is being transferred between jurisdictions, noting in writing an inmate's concerns and taking appropriate action."

This office received a complaint from an offender who was transferred from the provincial to the federal jurisdiction claiming that no notification as to the reasons for the transfer were provided. A review of the documentation used to facilitate this transfer was undertaken resulting in no evidence being found that notification had been provided. It was noted as well that there were eight inmates presently housed in federal institutions within the Prairie Region who had been transferred from provincial jurisdiction.

The matter was referred to the office of the Commissioner *April 23, 1987* with copies of the transfer documentation relevant to the case at question, noting that seven other inmates appeared to be in a similar situation, and requesting that a review be undertaken of present practices with respect to inter-jurisdictional transfers to ensure that the notification procedures of the Agreement were being met.

A response was received *May 14, 1987* saying that it was the responsibility of the Alberta Solicitor General to notify the inmates in question and as such the Correctional Service was not prepared to take any action.

Under the terms of the Agreement there is a responsibility that prior to an inter-jurisdictional transfer, the inmate be informed of the reasons for the transfer. Given that the Correctional Service of Canada is a party to this Agreement and is accepting inmates transferred from the province, I find its position on this matter totally deficient. The issue is being pursued.

E) *Involuntary Transfer Notification*

I received a complaint from an offender who had been involuntarily transferred from a security level 3 institution to a security level 6 institution. The area of concern centered on the fact that prior to the transfer decision, as called for by the Directive, the offender had been provided with notification recommending him for a transfer to a security level 4 institution. The offender in this case chose not to enter a rebuttal to that recommendation. However, a subsequent decision was taken that he be transferred to a security level 6 institution.

Following my review of this case with the Regional Deputy Commissioner involved, I referred the matter to the Commissioner *May 21, 1987* with a recommendation that in those instances where the decision-making authority at Regional Headquarters is considering an institution of a higher security level than the one identified on the inmate notification, that a further notification should be issued. To do otherwise is to effectively negate the purpose of the notification and to place at question the fairness of the decision taken. As of this reporting date a response has not yet been received. Again, the matter will be pursued.

F) *Identification of Incompatibles*

My office received a number of complaints from offenders segregated for their own protection concerning the Correctional Service's practice of not acting on transfer requests until the offender identified his or her incompatibles.

My concern with this practice was two fold:

- 1) the offender, by divulging the names of his incompatibles, could well be placing himself in greater danger, and
- 2) the veracity of the information received under these circumstances has to be seen as open to question.

This issue was reviewed with the Commissioner during our *January 30, 1987* meeting and followed by a letter *February 4, 1987* recommending that the practice of requiring incompatibles to be named as a prerequisite for transfer be reviewed and a national direction on this matter be issued.

The Commissioner responded *April 9, 1987* rejecting my recommendation and stating:

"It is conceded that the issue is difficult and that insistence on the disclosure policy does have the potential for an increased threat against the victim; however, I believe that in the long run it is more effective to insist on disclosure at the first instance of conflict. We may then take such measures as deemed appropriate to deal with both the victim and the assailant. The nature of this action must be carefully judged in each instance. I agree with you that the need to assess the veracity of all information brought forward through disclosure is of the utmost importance."

The issue was further discussed with the Commissioner at our meeting in *May 1987*. At that time I pointed out to him that our concern was not with requesting disclosure "at first instance", but rather with those inmates who continued to refuse to identify their incompatibles which resulted in their long term segregation placement due to the Service's no transfer policy.

I will continue to entertain individual complaints against this policy and in those instances where I find the application of the policy unreasonable, referral will be made to the appropriate decision-making authority for review.

Involuntary transfers have a significant impact upon the individual inmate's period of incarceration. In making these decisions it is imperative that the decision-maker ensure that the information upon which the decision is based is accurate and that it is given due consideration. I have noted through my review of transfer decision-making within the Correctional Service that in far too many instances the summary reports considered by the authority are less than accurate and there is often scant evidence that the offender's rebuttal has been given reasonable consideration. As such, I am recommending for your consideration, Mr. Minister:

That a national directive be issued emphasizing the importance of addressing the offender's rebuttal in reaching a decision and that source documentation, rather than summary documentation, be reviewed by the decision-making authority in reaching a decision.

2. Correctional Service Internal Investigations

Two major inquiries were undertaken by this office into incidents involving the use of force in August and November of 1986. During the course of these inquiries, the Correctional Service's internal investigation reports were thoroughly reviewed. In both instances the internal investigations were found to be incomplete and lacking in objectivity, and the subsequent reviews of the investigation reports conducted by Regional Headquarters and National Headquarters authorities were in my opinion nothing more than a rubber stamping process.

The results of our inquiries, along with the fact that the Correctional Service had no clear national policy concerning internal investigations, was brought to the attention of the Commissioner. The Commissioner acknowledged the inadequacies of the Correctional Service's internal investigations and indicated that a national direction on investigations would be forthcoming. Further investigations incorporating the results of our inquiries were subsequently initiated into the two incidents by the Correctional Service resulting in findings and recommendations considerably more reflective of the incidents in question.

The absence of a national policy in this area was again reviewed with the Commissioner at a meeting *January 30, 1987* and followed up with a letter *February 7, 1987* noting that the revised policy documents, including Commissioner's Directive issued *January 1, 1987*, are silent on the issue of internal investigations. In a letter dated *March 30, 1987* from the Director of Inmate Affairs we were informed that there will be a Commissioner's Directive on investigations and that the matter is presently under review. As of this reporting date there is no national policy on internal investigations.

3. Correctional Service Internal Audits

As with the above noted issue concerning the absence of a national policy on investigations, the revised policy documentation issued *January 1, 1987*, is silent on the matter of internal audits, although it is listed in the Subject Classification Index to the Commissioner's Directives.

The absence of a national direction in this area was reviewed with the Commissioner at a meeting *January 30, 1987* and followed up with a letter to his office *February 7, 1987*.

As of this reporting date, there remains no national policy to ensure the timely, systematic, independent review and appraisal of Correctional Service operations.

4. Correctional Service Guidelines and Manuals

I was provided in June of 1986 with a "policy directives completion schedule" which indicated that the appropriate manuals and operational guidelines necessary to supplement the revised policy documents would be published in advance of *January 1, 1987*.

I discussed with the Commissioner *January 30, 1987* the absence of these supplementary documents and followed this up with correspondence to his office *February 7, 1987*. On *March 30, 1987* we received correspondence from the Director of Inmate Affairs stating that the issue was too broad to summarize in a memorandum and offering to brief us on the issue. A subsequent meeting was held with my Director of Investigations with little concrete information being received as to the status of this material. On *May 8, 1987* further correspondence was received from the Director of Inmate Affairs saying the "desired status of Guidelines and Operational Manuals is being reviewed." As of this reporting date no further information has been received.

In my last Annual Report I expressed concern, not with the concept of decentralization, but with the rather laissez-faire manner in which the Correctional Service was approaching its implementation. It was my feeling at the time that for decentralization to be effective there was a need for clear national direction against which to balance and measure regional diversities. I was not at that time, and I am not now, advocating a return to the over-regulation of the past but I do believe that without national direction on issues such as programming requirements and decision-making processes there is a very real risk of unreasonable inconsistencies developing in areas which directly impact upon individual inmates.

A review of the Subject Classification Index for the Commissioner's Directives issued January 1, 1987 indicates that nearly half of the subject areas have no corresponding Commissioner's Directive. I also have concerns that at the same time as national regulations are being loosened, the two bodies at National Headquarters which held over all responsibility for the reviewing of inmate complaints and field operations have been measurably reduced in size and scope of mandate.

5. Health Care and Use of Force

As a result of the inquiries noted in item two of this report, I recommended to the Commissioner on *November 12, 1986*:

- a) That health care staff attend immediately following the use of force on an inmate,**
- b) That a report be submitted to the Warden, and**
- c) That there be appropriate follow up attendance when deemed appropriate by health care staff.**

The Commissioner responded by letter *January 15, 1987* rejecting my recommendation, saying that he could not "agree with the principle of having health care staff monitor and supervise the activities of custodial staff." The Commissioner went on to say that in his view existing policies and practices are adequate. During the course of our inquiries we had noted incidents where force, including gas, restraint equipment and a fire hose, had been used on inmates with no evidence of health care attendance following its use. All of these incidents took place in the segregation/dissociation areas of the institutions where inmate access to staff, other than custodial staff, is severely limited.

I reviewed this matter with the Commissioner during our *January 30, 1987* meeting pointing out that I could not accept the rationale put forth in rejecting my recommendation. I received a commitment from the Commissioner at that time that a further review of the matter would be undertaken.

We received correspondence from the Director of Inmate Affairs *March 30, 1987* saying that the whole issue was being re-examined and a further memorandum *May 8, 1987* stated that the matter was still under review.

I find the Service's position on this matter indefensible. I did not recommend as suggested by the Commissioner in his rejection of my recommendation that health care staff monitor and supervise the activities of the security staff. I recommended that health care staff attend following the use of force as health care professionals for the purposes of ensuring that either the force used did not cause any injury to the inmate or if there was injury, that first aid be administered. If the attendance of health care staff in that capacity causes concern to security or a reluctance on the part of health care staff, then there is clearly a problem which should be rectified by specific directives.

As of this reporting date I have yet to see the results of the Commissioner's review on this matter, although it is interesting to note that one of the investigations directed by the Commissioner following our inquiry came forth with a similar recommendation regarding health care and the use of force. I would urge you, Mr. Minister, to review this most pressing issue in order to alleviate the present denial of basic rights.

6. Claims Against the Crown

I commented in my last annual report on the excessive delays in the processing of claims appeals at National Headquarters and my concern with the thoroughness and objectivity of the reviews undertaken in reaching these decisions. Unfortunately these concerns remain.

a) I received a complaint from an inmate in *August of 1986* saying that it had taken more than a year from the filing of his claim to receive a response on his appeal. The subsequent inquiry revealed the following:

—the claim was submitted in *February, 1985* and an investigation was initiated by the Correctional Service. The claim was denied by the Regional Deputy Commissioner in *April, 1985*.

—an appeal against the claim decision was filed with the Commissioner *May 28, 1985*.

—a memorandum was sent to the Regional Deputy Commissioner *July 5, 1985* stating, "Please find attached a copy of the Commissioner's decision on an inmate appeal." The attached decision sheet dated *July 4, 1985* upheld the inmate's appeal of the Deputy Commissioner's decision.

—on *July 10, 1985* the Regional Deputy Commissioner wrote back to National Headquarters saying he did not agree with the decision and requesting a further review. The Commissioner's decision of *July 4, 1985* was never forwarded to the inmate.

—between *July of 1985* and *March of 1986* there was a series of communications between the Inspector General, Inmate Affairs, Legal Services and the Regional Deputy Commissioner attempting to reach a resolution.

—this eight months of internal haggling culminated in a memorandum from the Commissioner to the Regional Deputy Commissioner *March 26, 1986* stating, "I wish to state at the outset that the final disposition of this case rests with you."

—as the final disposition of this case did not rest with the Regional Deputy Commissioner since it was his decision which was under appeal, the case was referred back to National Headquarters. The Commissioner on *April 28, 1986*, fourteen months after the submission of the claim, denied the appeal.

As an initial follow up to our inquiry the Executive Secretary to the Commissioner was asked why the case had been referred by the Commissioner back to the Regional Deputy Commissioner for a decision. In response to this query we were informed:

"These cases were dealt with at a time when the Carson Report recommending decentralization and delegation of authority to the operational level had recently been issued, and every effort was being made to comply with its recommendations. It is on that basis that the Commissioner on *March 26, 1986*, asked the Deputy Commissioner to review and make the decision. However, it was found that policy on grievances and appeals against the denial of claims against the Crown required a NHQ signature at the third level. Consequently, the Commissioner responded to the appeals on *April 28, 1986*."

The above sequence of events indicates not only a clear disregard on the part of the Correctional Service for their own time frames in processing claims and appeals but as well places in question their perception of fairness in the decision-making process.

Our inquiry into this case also indicated that:

- i) the initial investigation into the claim failed to address the information provided by the offender in support of his claim,
- ii) the information in the investigation indicated a clear violation by Correctional Service staff of their own internal directives, and
- iii) the Commissioner's denial of the appeal failed to address either of the above.

I wrote the Commissioner *December 21, 1986* specifically detailing the results of our inquiry, recommending that a further review be undertaken. The Commissioner responded *January 16, 1987* saying he saw no reason to change his initial decision. However he failed to address any of the issues raised in my letter of *December 21, 1986*.

During my meeting with the Commissioner *January 30, 1987* this matter was raised and a commitment received from the Commissioner to further review the case and respond to the points raised by my inquiry.

As of the reporting date no further information has been received from the Commissioner on this matter.

- b) I was contacted by another offender in *December of 1986* saying that he had submitted a claim against the Crown in *May of 1985* and had yet to receive a response.

Our inquiry confirmed his statement and as well, indicated that his claim had never shown up on the *Commissioner's Quarterly Report; Inmate Claims Which Remain Unsettled After 90 Days*, which was to be the vehicle through which excessive delays were to be curtailed.

A letter was sent to the office of the Commissioner *February 7, 1987* asking why the subject's claim had not been recorded on the Quarterly Report and requesting action on settling the subject's *May 1985* claim. A memorandum was received *March 30, 1987* from the Director of Inmate Affairs saying that the subject's claim was settled *February 25, 1987*, nineteen months after its filing. It was as well acknowledged that the monitoring process for unsettled claims was less than reliable and the control aspect for claims was under review. A further memorandum was received from the Director of Inmate Affairs *May 8, 1987* again indicating that the control framework for claims was still under review. As of this reporting date no further information has been received.

The above cases certainly highlight the reasons for the continuing concerns this office has for the management of the claims process and the fairness of the decisions being rendered.

7. Access to and Correction of File Information

This office received, as is indicated in Table A of this report, a significant number of complaints concerning file misinformation. The review of these complaints indicated that in the majority of cases the information in question was contained in a document that the offender had access to generally through the co-signing of Case Management Reports. The position of the Service in responding to these complaints was to have the offender formally request the document under the provisions of the Privacy Act and if corrections were needed, to again formally make such a request.

It seemed less than reasonable to require an offender to formally request access to a document already seen and as such the matter was reviewed with the office of the Commissioner in *October, 1986*. In correspondence back to this office on *November 28, 1986* we were advised that:

"A verification with both the Privacy Co-ordinator and our Legal Services has confirmed that CSC's position in having the inmate request the documents, even though he co-signed them, through Access to Information is sound."

I felt that the Service's position on the matter was considerably less than sound and referred the issue to the Privacy Commissioner for his comments. A letter was received from that official *December 23, 1986* indicating support for the providing of informal access to these documents and his position was formally restated in his Annual Report.

The issue, including the position of the Privacy Commissioner, was reviewed with the Commissioner during our meeting of *January 30, 1987*. Following this meeting a letter was forwarded to the Commissioner's office *February 17, 1987* recommending:

- a) That the Correctional Service establish procedures which afford inmates reasonable access to file material already seen, and**
- b) Provide an avenue through which they can request corrections of such file information.**

Although correspondence related to this matter has been received from the Director of Inmate Affairs, as of this reporting date the substance of the above recommendation has not been addressed.

The Correctional Service, like all agencies of the Federal Government, has a responsibility enunciated in Section 6(2) of the Privacy Act to ensure that personal information used for administrative purposes is as accurate, up-to-date and complete as possible. The Correctional Service cannot meet this responsibility if it fails to afford inmates reasonable access to file material already seen and provide an avenue through which requested corrections to this material can be addressed. I will continue to pursue this matter.

8. Commissioner's Directive 575: Interception of Conversations of Inmates

I noted during the course of our review of Commissioner's Directive 575, issued *January 1, 1987*, a number of errors with respect to Criminal Code references relating to judicial authorization and the delegation of authority to intercept communications.

These errors were reviewed with the Correctional Service's senior counsel *February 4, 1987*. Subsequent to this review a memorandum was sent from Legal Services to Offender Policy Program and Development dated *February 6, 1987* stating in part:

"I am bringing these matters to your attention so that you can take appropriate action to amend the Commissioner's Directive."

The matter was followed up with a letter to the Commissioner's office *February 16, 1987* requesting that we be advised when the appropriate amendments had been made. Correspondence was received from the Director of Inmate Affairs *March 30, 1987* saying:

"That CSC's policy on the interception of conversations was in need of major revisions...the new CD is supposed to be ready for promulgation and we will inform you as soon as it is out."

To assist in this "major revision" my Director of Investigations agreed to meet with Correctional Service officials. Further correspondence was received from the Director of Inmate Affairs *May 5, 1987* indicating that such a meeting would be useful.

As of this reporting date no meeting has taken place and more importantly, Commissioner's Directive 575 remains unamended.

9. Visitor Application Decision Form

A number of complaints during the course of the reporting year have been received from relatives and friends of offenders who have been denied visiting privileges at Correctional Service institutions.

In one case the information upon which the denial was based was claimed by the applicant to be in error. An inquiry was undertaken, the individual's claim was confirmed and eventually, following our intervention, visiting privileges were extended.

A review of these complaints indicated two problem areas within Correctional Service's Visitor Application Decision Form. First, there is no identified avenue of redress offered the applicant and second, the reasons provided are insufficient in detail to afford the applicant the opportunity for reasonable comment. As such, denied applicants are contacting this office requesting specifics as to the reasons for the denial and a review of the decision taken.

The matter was referred to the Commissioner of Corrections for his review on *February 7, 1987* with a recommendation that the form be amended. The matter was further reviewed at a meeting *April 8, 1987* between his Executive Secretary and my Director of Investigations. Correspondence was received from the Director of Inmate Affairs *May 8, 1987* informing us that amendments to the form were being proposed to Offender Management staff and that field staff would also be consulted.

I seriously question, in a matter such as this, the need for formal proposals and consultations within Correctional Service prior to action being taken. I would expect, if there are no identified concerns with a legitimate recommendation, that the Commissioner's office should take immediate action. As of this reporting date the form in question remains unamended.

10. Inmate Access to Disciplinary Tapes

The office received complaints from two inmates in separate institutions claiming that their requests for access to the tape recording of their disciplinary hearing had been denied. Both inmates were in the process of appealing their disciplinary convictions to the Federal Court.

The issue was directed to the attention of the Commissioner's Executive Secretary *February 16, 1987* requesting a clarification of the Service's policy on this matter. Correspondence was received from the Director of Inmate Affairs *March 30, 1987* stating that the Correctional Service's position was that inmates are entitled to have access to the tapes and more specific information on the subject was being processed. Further correspondence was received on *May 11, 1987* restating the position enunciated by the Director of Inmate Affairs and saying that consultation was presently underway with the Director General, Correctional Operations to determine the feasibility of including the informal access to disciplinary tapes in the Guidelines on Information Sharing.

The Information Sharing Guidelines have been published and there is no reference to the issue of inmate access to disciplinary tapes. An informal check with a number of institutions indicated quite clearly that line staff are not aware of the inmate's right to access and I suggest the Service would be well advised to issue a direction on this matter.

The two inmates who registered complaints with this office received access to their disciplinary tapes as a result of our follow up on the matter.

ISSUES OUTSTANDING FROM PREVIOUS ANNUAL REPORT

A number of issues identified in my last annual report have not been resolved to the satisfaction of the complainants. Below is a brief detailing of these issues and I bring them to your attention, Mr. Minister, to indicate their present status.

1. National Prison Justice Day

Annually some inmates and human rights organizations observe a day called National Prison Justice Day in memory of those offenders who have died while in prison. Within the institutions the day is characterized by work stoppages and the refusal of meals and is supported in varying degrees at penitentiaries across the country.

Correctional Service's response to this day has been inconsistent. In some institutions the inmates are simply not paid if they refuse to work while at others the inmates are issued Performance Notices affecting their earned remission, or charged with refusing to work.

As a result of this inconsistency and the significance of the day to the inmate population I recommended on *March 6, 1986*:

- a) That the Correctional Service review its policy with respect to National Prison Justice Day; and**
- b) That regulations pertaining to the failure to report to place of work, other than pay, be waived for this day.**

Following the publication of my last Annual Report the Commissioner indicated "that the matter would be discussed by the Senior Management Committee with a view to establishing a Service-wide procedure in handling work stoppages on National Prison Justice Day."

As of this reporting date, no national policy has been forthcoming.

2. Purchase of Computers

This office's involvement in the computer issue dates back to 1984. Prior to *November of 1984* inmates were allowed to purchase computers. Commencing in *November of 1984* the Correctional Service began a review of its policy in this area and refused to authorize any further inmate purchases of computers. This change of direction created an obvious discrepancy in terms of inmate access to computers and as well, impacted upon those inmates who had computers because additions or replacements to existing equipment were not being allowed.

I wrote the Inspector General *February 14, 1985* asking if the Correctional Service was now in a position, as a result of their *November 1984* review, to issue a clear policy statement on this matter. No such statement was forthcoming. I met with the Commissioner in *September, 1985* and was informed that a new draft policy had been circulated and that a final directive would be issued shortly. A further six months passed with no evidence of a directive although further assurance was received that the draft directive was still being circulated.

The issuing of the revised Commissioner's Directives *January 1, 1987*, rather than identifying a national policy in this area, has delegated the decision with respect to inmate-owned computers to the five Regional Deputy Commissioners. The Service's position on this matter has done nothing to alleviate the above noted discrepancies and in fact, has compounded the situation in that some regions have placed a ban on inmate-owned computers, while another region is authorizing such purchases.

I have further reviewed this matter with the Commissioner and I will be formally recommending that the decision taken with respect to inmate-owned computers be based on the individual needs of the inmate and the accessibility to computers at the institution in question. This is basically what the Service's policy was prior to November of 1984.

4. Inmate Access to Telephones

On *April 1, 1985* I recommended:

That the Correctional Service review its inmate access to telephones policy in all institutions to ensure reasonable and equitable access as called for by the Commissioner's Directive.

Subsequent to the issuing of my 1984/85 Annual Report the Commissioner wrote to the Regional Deputy Commissioners requesting that Institutional Standing Orders be developed which reflected the Service's policy of reasonable and equitable access; no such development occurred.

In a letter dated *February 21, 1986* the Commissioner stated, "I am satisfied that inmates generally have access to telephones as per policy." The difficulty with this position is that the Commissioner's Directive in effect at the time stated only that inmates were to be afforded reasonable and equitable access to telephones. There was no indication within the Directive as to what constitutes reasonable and equitable access and as such there was really no national policy in this area. Without a national policy I fail to see what the Commissioner measured present operations against to conclude that inmates had reasonable and equitable access to telephones.

On January 1, 1987 CD 600-4-04.2 entitled *Telephone Communication by Inmates* was revoked and the new directives system put in place with the issue of inmate telephone communication being addressed by a single paragraph in CD 085 which reads:

"Institutions shall provide inmates with reasonable access to telephones while giving due consideration to the privacy of the inmate's conversation."

I do not believe that such a generic statement can be seen as a policy and suggest that the Correctional Service develop a national policy inclusive of a definition of what constitutes reasonable access and ensure that present institutional operations conform to that policy.

3. Double Bunking in Segregation

I recommended *June 21, 1984*:

That the Correctional Service cease immediately the practice of double bunking in segregation and dissociation areas.

In my 1984/85 Annual Report I detailed the reasons for this recommendation and noted that at the time of the recommendation 124 inmates were double-bunked in segregation areas and that the number had increased to 198 by January, 1985.

In my 1985/86 Annual Report I noted that the practice of double bunking in segregation and dissociation areas continued and that as of the end of May 1986 the numbers had doubled since my recommendation, to 248. During this same time period total double bunked figures went from 944 in May of 1984 to 764 in May 1986, a decrease of 180. During the course of this reporting year the Correctional Service stopped, in their Monthly Accommodation Reports, identifying the cell locations of those inmates double bunked. I do know that in April of this year there were in excess of 60 administrative segregation protective custody inmates double bunked at Kent Institution, while the general population area at the same institution showed 26 vacant cells.

The continued double bunking of an inmate population which has limited access to the privileges, amenities and programming available to the general population and is confined for the majority of the day is, to my mind, inhumane and I again put forth my recommendation that CSC cease the practice of double bunking in Administrative Segregation, protective custody areas.

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 on 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 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 has previously been investigated, or
- (e) in the opinion of the Commissioner, a person 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 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

