Canada

Annual Report of the Correctional Investigator

1989 - 1990

The Correctional Investigator
Canada

Annual Report of the Correctional Investigator

1989 - 1990

Cat. No. JA 1-1990

ISBN 0-662-58395-7

The Correctional Investigator
Canada

P.O. Box 2324, Station D
Ottawa, Ontario
K1P 5W5

L'Enquêteur correctionnel
Canada

C.P. 2324, Station D
Ottawa (Ontario)
K1P 5W5

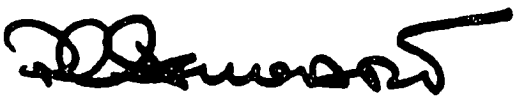
15 February, 1991

The Honourable Pierre H. Cadieux
Solicitor General of Canada
House of Commons
307 Confederation Building
Ottawa, Ontario
K1A 0A6

Dear Mr. Minister:

As Correctional Investigator appointed to investigate and report upon problems of inmates in Canadian penitentiaries, I have the honour of submitting to you the seventeenth annual report on the activities of this office covering the period 1 June, 1989 to May 31, 1990.

Yours respectfully,



R.L. Stewart
Correctional Investigator

Table of Contents

INTRODUCTION

The Office of the Correctional Investigator provides an impartial avenue for the review and resolution of complaints from federal offenders. The office was established pursuant to Part II of the Inquiries Act, independent of the Correctional Service of Canada. Its mandate is to investigate complaints from offenders concerning problems which relate to their confinement in a penitentiary or their supervision upon release from penitentiary that come within the responsibility of the Solicitor General of Canada.

The observations and recommendations emanating from our investigations are initially reviewed with the line manager responsible for the area of concern raised by the offender's complaint and in a position to take corrective action, if necessary, to resolve the issue. In those cases where resolution is not reached or the area of concern relates to a policy matter beyond the authority of the line manager, the issue is referred to an appropriate level within the Service for further review in an attempt to reach a resolution.

The vast majority of this exchange takes place at the institutional level between my investigative staff and the Service's senior line management. The resolution process at this level, although at times not as responsive as I would like to see it, has over the past year shown measurable signs of improvement. I attribute this progress in part to the increased presence of my investigative staff within the institutions. This has aided in the development of a more effective communication link between the Correctional Service of Canada's line management and this office. I am encouraged by this and hopeful that continued improvement in this area will result in a resolution process that is more responsive to both the needs of the offender and the Service.

The observations and recommendations that are referred to the Commissioner's Office and detailed in my Annual Reports relate to those issues which I consider to have national implications in terms of the Service's policies and operations or those individual areas of complaint raised as a result of decisions previously taken at the Commissioner's level. The resolution process for some of these issues has been slow but we continue to press for a continued commitment to streamline that process.

The Service claims publicly that it is committed to dealing with offender grievances in a timely manner. The Commissioner has stated on a number of occasions that "the timeliness of the Service's response to offender concerns will be perceived quite correctly as a concrete indication of the importance being placed on resolving offender problems." In using the Commissioner's own barometer, I would suggest that the level of importance currently placed on the resolution of offender concerns at the national level could generally be improved upon because, despite the good intentions, timeliness is still a concern.

This year, the third level of the Service's internal grievance process, the Commissioner's level, became less relied on by complainants as a reasonable avenue of redress due to its inability to respond in a timely fashion. It has as well been a year which has seen the observations and recommendations from previous years on key policy areas such as handicapped offenders, warning shots, officer identification, the delegation of authority, internal investigations, access to mental health programming and delayed case preparation remain under continuing review.

Despite the fact that decisions taken by the Service which have significant policy and operational implications cannot be taken in haste, it is difficult to convince complainants for example that it takes in excess of twenty months for the Service to develop and implement

a reasonable policy in the area of Humanitarian Escorted Temporary Absences or take a decision on whether or not there is a requirement for a record to be maintained of Minor Disciplinary Court Hearings. The Correctional Service of Canada is a direct service agency whose policies and decisions impact directly and immediately on the offender population. There is a need, and an urgent need, for the Service to take steps to ensure that its review and decision making processes, especially at the national level, are capable of responding to and resolving issues in a timely fashion. There is also a need for the Service to ensure that the information upon which it is basing its decisions reflects the reality of its own operations.

The approach taken by this office, as previously mentioned in addressing offender initiated complaints, has been to review our observations and recommendations with the Correctional Service of Canada management in an attempt to resolve the area of concern. The effectiveness of this resolution process is, in large part, dependent upon the Service ensuring:

a) that its own ongoing audit and review processes provide relevant and timely information;

b) that at all levels within the organization, its internal investigations are conducted in a thorough and objective fashion;

c) that policy and operational changes are communicated in a concise and timely fashion to the operational units; and

d) that its approach to addressing individual offender concerns is consistently open and responsive at all levels within the organization.

Although there has been measurable progress in some areas and the Service's Mission document gives a commitment to its values, principles and objectives, I suggest that the current bureaucratic and operational realities speak to the need for the Service to be measurably more responsive in addressing those areas of concern raised by or on behalf of offenders.

STATISTICS

TABLE A

COMPLAINTS RECEIVED AND PENDING — BY CATEGORY

Category	
Administrative Segregation	
a) Placement	115
b) Conditions	17
Canteen	11
Case Preparation	274
Cell Effects	78
Cell Placement	20
Claims	
a) Decisions	35
b) Processing	28
Correspondence	43
Diet	
a) Medical	12
b) Religious	13
Discipline	
a) Procedures	47
b) ICP Decisions	31
c) Minor Court Decisions	5
Discrimination	9
Earned Remission	15
Education	14
File Information	
a) Access	27
b) Correction	63
Financial Matters	
a) Access	15
b) Pay	62
Food Service	12
Grievance Procedure	71
Health Care	303
Hobbycraft	15
Mental Health	
a) Access	72
b) Programs	5
Private Family Visits	64
Programs	38
Request for Information	30
Sentence Administration	69
Staff	122
Telephone	42
Temporary Absence	
a) Denial	72
b) Processing	84

TABLE A (*cont'd*)

COMPLAINTS RECEIVED AND PENDING — BY CATEGORY

Transfers	
a) Denial	127
b) Involuntary	132
c) Processing	238
Use of force	18
Visits	115
Work Placement	93
Other	33
Outside Terms of Reference	
Parole Board Decisions	269
Court Decisions	6
Court Procedures	6
Provincial Matters	27
	2,997
Pending from 1988-1989	429
	3,426

TABLE B

COMPLAINTS — BY MONTH

Pending from previous year	429
1989	
June	236
July	196
August	279
September	303
October	203
November	275
December	207
1990	
January	324
February	199
March	257
April	236
May	282
Total	3,426

TABLE C

COMPLAINTS — BY REGION

	1989 June	July	August	September	October	November	December	1990 January	February	March	April	May
Maritimes												
Atlantic	13	4	3	12	1	5	2	16	7	8	5	5
Dorchester	2	2	6	8	4	9	4	12	3	16	4	4
Springhill	3	2	5	4	3	8	2	8	1	6	0	5
Westmorland	0	0	1	1	2	6	0	4	2	6	0	1
Other	0	1	1	1	0	1	0	0	3	1	1	1
Quebec												
Archambault	3	4	7	1	9	5	29	7	4	3	11	5
Cowansville	19	6	4	21	9	7	2	7	3	6	17	16
Donnacona	4	4	2	2	4	4	1	9	4	9	5	6
Drummond	4	5	8	0	22	7	3	8	4	5	9	16
Fed. Training Ctr.	12	8	15	13	12	10	2	26	4	9	10	4
La Macaza	10	5	10	3	7	12	4	14	2	2	5	4
Leclerc	6	5	3	9	7	17	7	7	6	5	3	6
Montée St-François	9	3	2	2	4	4	1	0	0	3	6	0
Port-Cartier	14	5	6	12	12	24	1	10	2	8	10	8
Reception Centre	3	0	0	7	0	3	1	3	1	1	7	1
Ste-Anne-des-Plaines	3	5	12	4	4	13	6	9	10	14	4	6
Other	1	0	1	4	0	2	1	5	2	1	2	0
Ontario												
Bath	3	4	1	0	3	0	2	3	2	1	0	0
Beaver Creek	5	2	0	4	1	6	5	3	1	17	5	3
Collins Bay	3	3	2	0	2	6	6	0	4	2	2	1
Frontenac	1	4	22	1	0	1	2	0	2	2	1	1
Joyceville	18	1	4	6	3	8	5	5	6	4	17	4
Kingston	9	2	6	16	4	8	18	13	12	15	13	13
Millhaven	7	4	3	2	16	7	0	5	6	3	6	2
Pittsburgh	0	0	0	1	1	0	0	1	0	2	0	0
Portsmouth	0	0	0	0	0	1	0	0	0	0	0	0
Prison for Women	5	1	1	29	1	2	4	3	1	4	2	1
Warkworth	20	7	39	19	7	34	6	23	19	26	23	26
Other	2	2	2	2	1	1	3	3	2	1	1	3
Prairies												
Bowden	13	33	19	51	15	22	32	47	41	25	20	39
Drumheller	4	7	6	14	7	5	6	10	16	8	6	22
Edmonton	0	4	47	8	1	4	11	1	2	7	6	5
Psychiatric Centre	0	3	0	1	1	3	0	6	0	1	0	0
Rockwood	0	0	1	0	1	3	0	0	0	0	0	1
Stony Mountain	10	11	2	0	3	0	1	0	6	0	0	0
Saskatchewan	3	36	10	11	5	8	3	28	3	1	8	17
Saskatchewan Farm	4	0	0	1	1	0	1	0	3	0	0	2
Other	0	1	3	2	1	0	0	3	0	2	1	2

TABLE C (*cont'd*)

COMPLAINTS — BY REGION

	1989 June	July	August	September	October	November	December	1990 January	February	March	April	May
Pacific												
Ferndale	1	0	1	0	0	0	3	2	4	3	1	4
Kent	9	1	8	8	11	8	14	10	4	11	8	16
Matsqui	4	6	0	8	10	7	8	1	4	12	2	5
Mountain	2	0	0	5	3	0	4	7	1	2	9	15
Mission	4	1	7	5	2	0	1	2	1	1	4	2
Psychiatric Centre	1	0	0	3	1	3	5	0	1	2	2	7
William Head	0	0	7	1	1	0	1	2	0	1	0	1
Other	2	4	2	1	1	1	0	1	0	1	0	2
Total	236	196	279	303	203	275	207	324	199	257	236	282

TABLE D

COMPLAINTS AND INMATE POPULATION — BY REGION

Region	Complaints	Inmate Population[1]
Pacific	326	1,671
Prairie	778	2,366
Ontario	742	3,212
Quebec	916	3,381
Maritimes	235	1,043
Total	2,997	11,673

[1] The inmate population figures were provided by the Correctional Service of Canada and are those for the period ending May, 1990.

TABLE E

INSTITUTIONAL VISITS

Institution	Number of visits
Archambault	7
Atlantic	4
Bath	3
Beaver Creek	1
Bowden	11
Collins Bay	7
Cowansville	3
Donnacona	12
Dorchester	4
Drumheller	5
Drummond	2
Edmonton	4
Federal Training Centre	6
Frontenac	6
Joyceville	8
Kent	5
Kingston Penitentiary	18
La Macaza	1
Leclerc	5
Matsqui	1
Millhaven	5
Mission	5
Montée St-François	1
Mountain	5
Pittsburgh	2
Port-Cartier	5
Prison for Women	2
Psychiatric Centre, Pacific	4
Psychiatric Centre, Prairies	2
Reception Centre, Quebec	0
Saskatchewan Penitentiary	12
Saskatchewan Farm Annex	5
Springhill	3
Ste-Anne-des-Plaines	8
Stony Mountain	4
Warkworth	17
Westmorland	2
William Head	2
Total	197

TABLE F

INMATE INTERVIEWS

Month	Number of Interviews
1989	
June	118
July	103
August	133
September	114
October	46
November	99
December	129
1990	
January	102
February	75
March	148
April	69
May	201
Total	1,337

TABLE G

DISPOSITION OF COMPLAINTS

Action	Number
Pending	474
Declined	
a) Not within mandate	75
b) Premature	916
c) Not justified	417
Withdrawn	416
Assistance, advice or referral given	915
Resolved	153
Unable to resolve	56
Total	3,422

TABLE H

COMPLAINTS RESOLVED OR ASSISTED WITH — BY CATEGORY

Category	Resolved	Assistance given
Administrative Segregation		
a) Placement	5	16
b) Conditions	1	4
Canteen	1	3
Case Preparation	2	29
Cell Effects	16	23
Cell Placement	2	5
Claims		
a) Decisions	5	3
b) Processing	1	10
Correspondence	1	7
Diet		
a) Medical	0	3
b) Religious	1	2
Discipline		
a) Procedures	1	11
b) ICP Decisions	2	3
c) Minor Court Decisions	0	0
Discrimination	0	0
Earned Remission	1	5
Education	2	1
File Information		
a) Access	3	14
b) Correction	6	32
Financial Matters		
a) Access	1	6
b) Pay	7	18
Food Service	0	0
Grievance Procedure	6	29
Health Care	12	103
Hobbycraft	0	4
Mental Health		
a) Access	2	35
b) Programs	0	0
Other	13	69
Penitentiary Placement	0	3
Private Family Visits	8	18
Programs	2	18
Requests for Information	0	32
Sentence Administration	3	15
Staff	4	24
Telephone	8	6

TABLE H *(cont'd)*

COMPLAINTS RESOLVED OR ASSISTED WITH — BY CATEGORY

Temporary Absence		
a) Denial	6	13
b) Processing	3	38
Transfers		
a) Denial	6	22
b) Involuntary	2	19
c) Processing	10	92
Use of Force	1	5
Visits	6	20
Work Placement	3	15
Outside Terms of Reference		
Parole Board Decisions	0	136
Court Decisions	0	0
Court Procedures	0	2
Provincial Matters	0	2
Total	153	915

COMPLAINT ISSUES

The following section provides a brief overview of the key areas reviewed with the Commissioner's Office over the past year.

1. TRANSFERS

Transfer decisions again this year comprised the single largest area of complaint received by this office.

As indicated in the previous report, the individual offender's security classification, generally represented by their institutional placement, impacts significantly on not only the offender's immediate access to programming, privileges and amenities, but as well on the offender's potential for favourable conditional release consideration. Therefore, it is not at all surprising that decisions taken with respect to transfers are viewed by the offender population as central to their period of incarceration.

The Service over the past year has introduced a number of policy changes designed to make the transfer process more fair and more responsive to the needs of the individual offender. These policy changes have included:

— the introduction of time-frame standards within which decisions have to be taken;

— the requirement that the notification provided to the offender in cases of proposed involuntary transfer contains sufficient information so as to allow the offender to know the case against him and be provided with the opportunity to respond in advance of the decision being taken;

— the clearly stated requirement that the decision-maker thoroughly review all source documentation, including the offender's response and that the offender be provided with written, and detailed reasons in support of the decision taken; and

— the identification of a clear avenue of redress designed to ensure that an objective review of the decision at question is undertaken at an appropriate level within the organization.

I concluded the section in last year's Annual Report on transfers by stating that the Service now has in place a reasonable policy with respect to transfers and the challenge now to the Service was to ensure that this policy is in fact reflected in practice.

The Service conducted an internal audit on its involuntary transfer process between September and December of 1989. The audit concluded that although there were "some areas where there is room for improvement in the quality of the procedures and practices", that "the majority of policies and procedures and their application by the various individuals involved at the regional and institutional level, generally comply with the requirement" of the policy.

The areas where room for improvements were noted by the audit team parallel closely those areas of concern identified by this office and relate to the quality and detail of the information being provided to the offender, the need for a clear, comprehensive definition of what constitutes an involuntary transfer to ensure that similar situations are treated fairly and uniformly throughout the Service, more awareness on the part of both staff and offender as to the avenue of redress on transfer decisions and the need for more effective

quality control mechanisms at the regional and national levels to ensure that the process complies with the established procedures and time-frames for decision-making.

Two further areas of concern raised through our review of transfer complaints relate to the role of the decision-making authority and the effectiveness of the redress process.

Although the policy clearly identifies who has the authority to make transfer decisions and further identifies which documentation has to be reviewed by the decision making authority, in far too many instances there is no clear evidence that the identified authority has in fact reviewed the documentation or taken the decision.

The policy with respect to the right of appeal on transfer decisions states:

> Inmates have the right to appeal a transfer decision using the inmate grievance procedure. Inmates grieving inter-regional transfer decisions shall have their grievances referred directly to the National Headquarters level. Inmates grieving intra-regional transfer decisions shall have their grievances referred directly to the Regional Headquarters level except in those cases where the original decision was made by the Regional Deputy Commissioner. In such instances, the grievances shall be referred directly to the National Headquarters level.

We have noted through our review of individual cases referred to this office, as did the Service's Audit, that there was a significant degree of confusion on the part of both offenders and staff as to where to refer the appeal. We as well noted that, in those cases where the appeal eventually made it to the appropriate level of the grievance process, a decision was not being made in a timely manner.

Given the significance of transfer decisions, I feel it is imperative that the Service ensure that the initial decision is taken by the identified decision maker, following a thorough and objective review by that authority, and that the appropriate level of the grievance process is capable of responding on appeal in a timely fashion.

2. SPECIAL HANDLING UNITS

I feel it is important, given the issues associated with the operation of Special Handling Units, that prior to passing comment on the Service's current policy initiatives in this area, I provide a brief detailing of this office's position on the evolution of these Units.

My predecessor, Ms Inger Hansen, reviewed of the Service's dissociation areas, and commented in her 1973-74 Annual Report that the conditions of those prisons within a prison were appalling. She recommended that a special study be undertaken on the use of long term segregation. In response to this recommendation, a Commission was established by the Solicitor General. The "Report of the Study Group on Dissociation" acknowledged the need for long-term segregation facilities to confine dangerous offenders but as well identified the requirement for appropriate review procedures and programming within the facility to ensure a timely re-integration of offenders into the normal maximum security population. Recommendation 57 of the Study Group stated "one new maximum security institution per region should be used in part for the custody and *treatment* of inmates who may require long-term segregation."

In 1975, Ms Hansen, in responding to a proposal from the Ministry that dangerous offenders be housed in separate super maximum security institutions, stated:

> I am extremely concerned that by the creation of one or more super maximum institutions one would draw attention to those inmates in a manner that would be detrimental to their possible

re-integration in normal penitentiary society, and of course their eventual release into society ... I am not suggesting segregation is unnecessary, but I doubt the benefits of separate, super maximum institutions.

In the summer of 1976, a Special Handling Unit at Millhaven Institution was unofficially opened and offenders from across the country, whose death sentences had been commuted, were transferred to this Unit. These offenders were advised that they had been segregated on their admission to Millhaven as "a matter of policy". They were as well advised that they were considered to be a "special category of offender" which prohibited their association with other offenders and as such, their access to privileges, amenities and programming would be severely limited. A similar unit was later opened at the Correctional Development Centre, Laval, and the Service's working definition of a "dangerous offender" was expanded.

The "Report to Parliament by the Sub-Committee on the Penitentiary System in Canada" (1977) recommended that a limited number of special correctional units should exist and that "these institutions should have all the programs and services of other maximum institutions, including the therapeutic community."

By 1978, the Service had two Special Handling Units in operation at Laval and Millhaven. Offenders were assigned to these units in an arbitrary fashion and were basically confined to their cells for 23 hours a day. The situation which lead to Ms Hansen's 1974 observation that the "conditions of these prisons within a prison are appalling" and her subsequent recommendation concerning long-term dissociation were, within the Special Handling Units, being perpetuated and compounded by the imposition of yet further oppressive security measures. These units from the outset never came close to conforming to the recommendations of either the Report of the Study Group on Dissociation or the Parliamentary Sub-Committee Report.

Following my initial review of Special Handling Unit operations, I commented in my 1977-78 Annual Report on the serious concerns I had about the whole concept of special handling units and the lumping together of what the system described as dangerous offenders. I as well recommended at that time that if the Service insisted as a matter of policy on operating such units, that immediate attention be given to:

a) the establishment of specific criteria and procedures to ensure fairness and consistency in the decision making process; and

b) the implementation of suitable programs and activities to assist re-integration.

The Service, through 1979-80, issued a series of directives which established procedures for the transferring of offenders into and out of these units, including the role to be played by the National Review Committee in this process, and as well outlined the programs which were to be implemented at the Special Handling Units.

Over the next five years, this office took a very active role in the monitoring of both individual decisions on offenders recommended for placement in or transfer from these units and the general operation of the Special Handling Units themselves. My investigative staff attended at the Units on a regular basis and we maintained open files on all offenders housed in these Units. I as well assigned one of my senior staff to sit as an observer at the meetings of the National Committee and through this body made numerous representations on behalf of offenders concerning decisions on their placement in or transfer from the Special Handling Units. Our review of the general operation during this time period clearly

indicated that little if any progress had been made in terms of program implementation consistent with the recommendations of the Parliamentary Sub-Committee or the Ministry's own Study Group on Dissociation. Employment opportunities were basically non-existent, there were no training programs, physical contact between offenders and staff was minimal and controlled through the use of restraint equipment, all visits and interviews were conducted through security glass and the "to be implemented" treatment programs remained under study rather than a reality.

In 1986, the Correctional Service, as part of its rush towards decentralization, dissolved the National Special Handling Unit Review Committee and in so doing placed the decision making authority with respect to transfers into and out of the Units with the Deputy Commissioner of the offender's home region. Although this shift of authority did not measurably affect decisions on transfers into the Units, it did, not unexpectedly, significantly delay positive decisions on transfers from the Units. As such, I recommended to the Commissioner in June of 1986:

> **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.**

In conjunction with the dissolving of the National Committee, the Correctional Service in January of 1987 revoked the Commissioner's Directive and Divisional Instructions related to both the Special Handling Unit decision making process and the operation of the units themselves. When queried as to the absence of national direction in this area, I was advised by the Service that their position was consistent with their "decentralized management philosophy" and their efforts to "normalize" the Special Handling Unit process. I commented at the time that the absence of national policy and direction in this area was an abdication of responsibility and a failure on the part of the Service to appreciate the significance that a placement in these units had on the offender's period of incarceration. I as well re-submitted my June, 1986 recommendation to the Commissioner concerning the decision making process with a further request that their review include not only the decision making process but as well the actual operation of the units themselves.

In May of 1988, I was informed by the current Commissioner that my recommendation of 1986 had been accepted and that a review of the decision-making process for Special Handling Units and the operation of such units would be undertaken.

In April of 1989, I received a copy of the Report of the High Maximum Security Review Committee and was asked for my comments. I responded to the Commissioner in May of 1989, prefacing my comments on the specific details of the Report by stating that "this office was not in support of the creation of super maximum security institutions in 1975 and does not in 1989 support their continued existence and that any comments provided were not to be taken as an endorsement of the Service's proposed policy but rather viewed as a further attempt to bring an element of reason, fairness and humanity to an ill fated policy." As I indicated last year, I concluded, following my review of the Service's proposals, that the Committee had failed to meet its stated mandate which was: to define a specific purpose for high maximum security, to develop policy and standards designed to govern the operations and programming of the Units, and to establish an operational reporting system to allow for the monitoring and evaluation of the program.

The Commissioner responded promptly in July of 1989 to my comments, indicating that he as well had concerns with the Report and that a further review of the matter would be undertaken "once a philosophical direction, consistent with the Service's Mission was accepted by their Senior Management Committee." The Commissioner concluded his response by stating that he was "determined to provide suitable treatment and programming and a humane environment, for violent inmates."

A submission on proposed changes to the policy on Special Handling Units was reviewed and approved by the Service's Senior Management Committee in November of 1989. A revised Commissioner's Directive was subsequently reviewed by the Senior Management Committee in January of 1990 and an Implementation Committee consisting of five Assistant Regional Deputy Commissioners was established in February of 1990 to oversee the introduction of the revised policy. I received a copy of this policy in March of 1990 and was advised that it would be applied immediately to Special Handling Unit operations.

The stated objective of the policy is "to create an environment in which dangerous inmates are motivated and assisted to behave in a responsible manner so as to facilitate their integration into a maximum security institution."

In defining dangerous inmates, the policy states: "An inmate may be considered as dangerous if his behaviour is such that it causes serious harm or death or seriously jeopardizes the safety of others."

A National Review Committee has been re-established comprised of the five regional Assistant Deputy Commissioners (Operations) and the Director General, Community and Institutional Operations, plus a legal advisor. This Committee is authorized to:

a) decide which inmates shall be admitted to the Special Handling Unit, based on the assessment that the inmate can be most effectively managed in that unit; and

b) decide when and to where an inmate should be transferred from the Special Handling Unit, either at the completion of the assessment period or at any time subsequent. Normally, the inmate shall return to his region of origin.

The National Committee has as well been charged with the responsibility of overseeing and monitoring the operations of the Special Handling Units and to recommend any changes to those operations that it sees as appropriate. In this regard, the Committee is to present its observations and recommendations to the Commissioner in an annual report at the end of every fiscal year.

The stated objective of programming within the Units is "the safe return of the inmate to a maximum security institution at the earliest reasonable time." The policy identifies the following as "essential programming components" for Special Handling Unit operations:

— treatment programs;

— psychiatric and psychological intervention;

— employment opportunities;

— personal development opportunities;

— recreational opportunities; and

— pastoral counselling.

The policy as well calls for the establishment of an Assessment and Program Committee at each of the units which would be responsible for monitoring the progress of offenders and forwarding every four months their recommendations to the National Review Committee for their consideration.

Although I continue to have concerns about the usefulness of the Special Handling Unit concept, I find the current policy as written a positive first step towards meeting the Commissioner's commitment to providing "suitable treatment and programming and a humane environment for violent offenders". I caution that the development of a reasonable policy is a number of steps removed from the implementation of a reasonable program. It must be remembered that the 1979 policy statement on Special Handling Units spoke in terms of establishing facilities and programs for offenders who had been identified as particularly dangerous for the purpose of assisting their re-integration with the main inmate population of maximum security institutions.

In the 1990s, the Service must not only be willing to objectively evaluate the compliance of the Unit's operations against its stated policy but as well must be willing to objectively evaluate the effectiveness of those operations in meeting its stated objective. The first step in this process will be the Annual Report of the National Review Committee. I look forward to the issuing of this Report and the opportunity to review with the Commissioner its findings and recommendations.

3. EXCHANGE OF SERVICE AGREEMENT

This matter was initially raised with CSC in April of 1987. As I indicated last year, our central area of concern is the processing of offender transfers under the various Exchange of Service Agreements with provincial authorities.

The Commissioner's Directive issued in 1987 called for each region to develop guidelines and procedures related to inter-jurisdictional transfers so as to ensure that the duty to act fairly is adhered to. These guidelines and procedures were never developed.

I was informed in May of 1989 that a "working group had been formed at National Headquarters to establish federal-provincial policy and standards." I was later advised that the issue had been referred to the Service's Federal-Provincial Policy Review Committee and a draft report, completed in March of 1990, was to be reviewed by the Service's Executive Committee in April of 1990.

The May 1990 Progress Summary from CSC on this issue stated that "the final report of the Federal-Provincial Policy Review includes recommendations to promulgate a Commissioner's Directive which deals specifically with CSC's responsibility to monitor and ensure that procedures followed by provincial jurisdictions in transferring cases to CSC are in compliance with the "duty to act fairly." The report goes on to say that all regions are currently awaiting the recommendations of the Review Committee prior to proceeding further.

As can be seen, the regional guidelines and procedures called for in 1987 remain undeveloped although I have been advised that given "the delay", an interim instruction will be issued to the regions asking that the duty to act fairly be applied in all inter-jurisdictional transfers.

4. CORRECTIONAL SERVICE INTERNAL INVESTIGATIONS

This office's concerns with respect to the Service's internal investigation process were initially raised with the former Commissioner in February of 1987. I stated at the time that it was my opinion that the Service's investigations were far too often incomplete and lacking in objectivity, with the subsequent reviews of the investigative reports conducted by Regional and National Headquarters authorities being nothing more than a rubber stamp. I was informed at that time that a Commissioner's Directive on Investigations ensuring objectivity, thoroughness and clear direction to the field would be issued.

In the fall of 1988, following discussions with the current Commissioner, the Service created a Task Force on Investigations with a mandate "to design a comprehensive inquiry system that could be applied within the Correctional Service by management to any major or minor occurrence or incident." The tentative date for the final report of this Task Force, as I reported last year, was set at October of 1989.

I was advised in November of 1989 that the Task Force Report on Investigations was presented to CSC's Senior Management Committee in October and that a draft policy was in the process of being produced. I was further advised in January of 1990 that the Commissioner's Directive and Guidelines were being drafted and would be presented to the Senior Management Committee in February. A copy of the draft Directive was received in March of 1990 with a request for our comments. Following our review of the draft, our comments were provided to the Assistant Commissioner Audit and Investigations.

In May of 1990, I received a further draft of the Directive and the proposed Guidelines on Investigations. This latest version had incorporated our earlier comments and put forth as its policy objective:

> To ensure that investigations into any aspect of CSC operations are carried out with integrity in a timely, fair and equitable way and that they are independent, credible and reliable.

Although it has been a long time coming, I feel the Service's proposed Directive and Guidelines meet from a policy perspective the initial concerns raised by this office in the area of internal investigation. As with the policy on Special Handling Units, it will be the application of the policy at the operational and regional level which will finalize the chapter on this issue.

5. CORRECTIONAL SERVICE INTERNAL AUDITS

In my 1986-87 Annual Report, I put forward the observation that there was no national policy or direction to ensure that the Service's operations were reviewed in a timely, objective and systematic fashion. I concluded in last year's Report that the revised internal audit process, in conjunction with a revitalized program evaluation section, had established a framework within which the Correctional Service was potentially in a better position to review both the effectiveness of its policies and the compliance of its operations with those policies.

Over the past year, members of the Service's audit section have met regularly with my staff during the course of their preparation for audits about areas where we have raised concerns, such as the transfer process, controlled custody and the grievance process. This consultation process at the national level, I believe, has been useful to all concerned and I look forward to its continuation.

I have been generally impressed with the observations and recommendations of the audits completed during this reporting year and will be most interested to see the follow-up action taken by the Service on these reports.

During the course of the next reporting year, I intend to focus more on the regional responsibility in this area with the hope that a similar consultation process as that established at the national level can evolve.

6. CORPORATE POLICY FRAMEWORK AND INTERNAL REGULATORY DOCUMENTS

The Service instituted, as mentioned earlier, a new Directives System on January 1, 1987. Our review of this system over the first ten months of 1987 raised the following concerns which were discussed with the Commissioner in September of that year:

a) the called for operational guidelines and manuals, which were to supplement the new Directives System, did not exist;

b) a number of key areas covered by the previous Directives System such as Offender Conferred Rights, Investigations, Inmate Committees, Special Handling Units, although identified in the index of the new Directives System, were without Directives;

c) the policy documents issued at the regional and institutional levels were inconsistent in both the subject areas addressed and their interpretation and application of the national policy enunciated in the Directives.

As a result of these observations in November of 1987 I recommended:

> **That a national review be undertaken to ensure that policy documents issued from the regional and institutional levels of the organization are consistent with the Service's duty to act fairly and the national policy enunciated in the Commissioner's Directives.**

Over the course of the next year, the Service took no action on this recommendation.

I reviewed these concerns with the current Commissioner shortly after his appointment, pointing out again that I felt the addressing of this issue was central to the effective management of the Service. In March of 1989, the Service's Senior Management Committee approved a policy framework for the review of its internal regulatory documents and issued a policy in August of that year designed to establish a consistent and comprehensive framework of internal regulatory documents for the Correctional Service of Canada and to ensure accountability for their development.

I was advised in May of 1989 that the Commissioner would be sending to his Regional Deputy Commissioners a comprehensive action plan with specific direction relating to the review of regulatory documents at both the regional and institutional levels. I was as well advised in January of 1990 that the "National Headquarters Policy Unit was in the process of conducting a review of all Commissioner's Directives to ensure that they conformed to the Service's Mission Document." The results of this review, as I understand it, were to be followed sometime in 1990 with a similar review by the regions of their respective Regional Instructions and Institutional Standing Orders.

In conjunction with the above, the Service conducted an audit on its Internal Regulatory Documents. This Audit Report, which was in draft form at the writing of this report, found that although some problems existed, generally speaking the Institutional Standing Orders which they reviewed met the requirements of the Commissioner's Directives. The problem areas identified by the audit centred on the effectiveness of the communication of national policies to institutional staff and offenders and the procedures in place for maintaining and updating Institutional Standing Orders in response to regional and national policy changes. A review of Appendix A to the audit indicates that, in those institutions reviewed, fully 20% of the Institutional Standing Orders required by the Commissioner's Directives did not exist. A similar chart is not available for Regional Instructions. I will withhold specific comment on the details of this audit until such time as we have had an opportunity to review the final report.

The Regional Instructions and Institutional Standing Orders, to the best of my knowledge, have as yet not been thoroughly reviewed. I expect, as I indicated earlier, this exercise is awaiting the conclusion of the National Headquarters Policy Unit's review of the Commissioner's Directives. With respect to guidelines and standards, I was advised that action is continuing in order to "identify those critical areas of operations and programs where these may be needed or where directives may need to be expanded." I have been provided with no timetable for completion of any of these various activities.

I concluded last year's Annual Report on this issue by stating that I remained of the opinion that the matter is central to the effective management of the Service and hopeful that the Service's proposed actions will lead to a resolution. That opinion stands.

7. ACCESS TO AND CORRECTION OF FILE INFORMATION

The office received a significant number of complaints from offenders in 1986 concerning access to and the correction of file documentation. Our review of these complaints indicated that in the vast majority of cases, the information at question was contained in documentation that the offender had already had access to through the co-signing process for case management reports. The position of the Service at this time was that despite the fact that the offender had already seen the documentation, they were required to re-access it under the provisions of the Privacy Act and then formally under the provisions of the same Act request corrections.

As such, I recommended in February of 1987 that the Correctional Service establish procedures which:

a) afford inmates reasonable access to file material already seen; and

b) provide an avenue through which they can request corrections of such file information.

By the end of 1987, the Service was providing offenders with access to file material already seen and the issue of file corrections was "under study".

The issue remained under study until November of 1988 at which time I was provided with a copy of a draft memorandum detailing a proposed process for the correction of file inaccuracies and advised that as soon as a consultation on the draft was completed, I would be informed.

I was told in March of 1989 that the review of options was completed and amendments had been proposed to address the issue of correcting file inaccuracies. In May of 1989, after 20 months of internal study, I was provided with a copy of the Commissioner's memorandum to his Regional Deputy Commissioners, entitled "Procedures for Requesting Correction of Offender File Information". The memorandum detailed the procedures as follows:

1) If an offender believes that the facts on his file are inaccurate, he should tell his case management officer.

2) The case management officer will review the information which was reported to be inaccurate, and attempt to determine if the offender is correct, through discussion with the offender and verification of the offender's version using other sources of information if they are available.

3) When the case management officer and the offender agree that a correction is needed, then the case management officer will ask the originator of the information to make the correction. The case management officer will ensure that the correction is made in all documents in the file.

   When the case management officer does not agree with the offender that a change is needed, the case management officer will attach a note to the file stating which facts the offender believes to be inaccurate, and the reasons why he/she feels the information should not be changed.

   This review will normally be completed within 30 days of the offender's request.

4) If the offender is not satisfied with the response to the request, the offender may raise the issue with the Coordinator of Case Management, who will discuss the issue with the case management officer. The Coordinator of Case Management may conduct another review, as described in 2, if it is felt to be required.

   The Coordinator of Case Management will attach a memo to the offender's file describing his/her conclusions. If changes are required, the case management officer will ensure they are made as described in 3 above.

   The Coordinator of Case Management will normally respond within 15 days of being asked by the offender to review the request.

5) If the offender is still not satisfied with the results of his request, he/she may submit a formal request for file access and correction as allowed by the *Privacy Act*.

Our review of this policy raised concerns with respect to the possible interpretation of section 5. The draft memorandum of November 1988 had stated that if the offender was not satisfied with the decision taken by the Coordinator of Case Management, he could appeal to the Warden or District Director as appropriate. The above May 1989 policy left the final decision at a much lower level within the organization and section 5 appeared to negate the offender's option of having the decision reviewed through the grievance process by directing him "to submit a formal request for file access and corrections as allowed by the Privacy Act."

Our concerns were soon confirmed as we were contacted by an offender whose grievance on the decision taken by the Coordinator of Case Management was rejected because the identified avenue of redress on such decisions is the Privacy Commissioner. The matter was reviewed with the Commissioner's office and a further memorandum was issued in November of 1989 stating:

> Notwithstanding the fact that offenders retain the right to submit a formal request under the Privacy Act, it must be clearly understood that the informal procedure described in paragraph 4 of the May 11, 1989 memo is grievable should the offender not be satisfied with the results obtained: he therefore has the right to initiate a grievance at the Director's level.

I am advised that this procedure will be incorporated into the Case Management Manual scheduled for publication in late 1990.

8. INMATE ACCESS TO TELEPHONES

The Commissioner's Directive on Correspondence and Telephone Communication was amended in May of 1989 in response to my 1985 recommendation:

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

As I indicated in last year's report, the amended Directive did not establish a national standard, which was the original commitment, so as to ensure a common understanding of what constituted reasonable and equitable access. Rather, it left the determination on the number of calls to be allowed with the individual regions and the determination on the hours of access and the level of authority for approval with the individual institutions.

The intent of my 1985 recommendation was that the Service review its practice with respect to telephone access within its institutions and establish a common standard against which to measure "reasonable and equitable access." Our concerns with the absence of clear direction in this area was again reviewed with the Commissioner's Office in the Fall of 1989.

The Service undertook a further review of their policy and provided this office with a copy of a draft Commissioner's Directive in May of 1990 which had moved the authority on determining the number of calls to be allowed from the regional to the institutional level. It as well established a national minimum of two calls per month for all offenders.

Although I acknowledged that the general policy direction enunciated in the draft Directive is a measurable improvement, the Service's efforts to date have done little in either producing a clear picture of what its present operations are in this area nor has it established a reasonable standard against which to measure those operations. Although the Service considers this issue closed, I propose, once the Commissioner's Directive is issued, to review both the Institutional Standing Orders issued pursuant to the new Directive and the procedures put in place at the operational level to see if the policy direction of encouraging "inmates to maintain and develop family and community ties through written correspondence and telephone communication" has in fact been actioned.

9. DOUBLE BUNKING

It has become a tradition that in each Annual Report, there is a restatement of our 21 June 1984 recommendation:

> **That the Correctional Service of Canada cease immediately the practice of double bunking in segregation and dissociation area,**

as well as a report on the current situation at Kent Institution:

— number of protective custody inmates administratively segregated and double bunked; 74

— number of general population inmates double bunked; 0

— number of vacant cells in general population; 31

I accept the fact that there is a serious overcrowding problem within federal institutions, with in excess of 1000 offenders currently double bunked. It is more difficult to accept the fact that the Correctional Service of Canada, as a matter of policy, has opted to double bunk non-general population offenders who by virtue of their status have limited access to programming opportunities and restricted movement within the institution, while maintaining vacant cell capacity within the general population.

It has as well become a tradition to record each year CSC's latest response to this issue: "Efforts are currently under way to reduce the number of double bunked Protective Custody inmates at Kent Institution."

10. WARNING SHOTS

In 1987, following our review of a number of incidents where staff and offenders were injured by warning shots, I noted that the Service's policy on firearms contained no definition of or identified purpose for warning shots. Furthermore, the staff training program provided no practical instruction in the area. In October of 1987, following a number of discussions with the previous Commissioner, I recommended that the Service undertake a comprehensive review of its current practice in this area including an assessment of existing training methods to ensure the safe use of firearms.

In September of 1989, the Service commissioned a national study by outside consultants with a mandate to:

- research and analyze all situations where warning shots were fired;
- review regional training programs; and
- compare general practices with the policy and propose, as required, the necessary changes to national policies and training programs.

The *Study of Incidents Requiring Warning Shots Within the Correctional Service of Canada* was completed in November of 1989. The conclusions and findings of the study did not paint an encouraging picture of the Service's current practices in this area and indicated that immediate action should be taken.

I was advised in February of 1990 that the report was in the process of being reviewed and that a number of "general principles" regarding the use of warning shots were expected to be presented to the Service's Executive Committee in March of 1990. In May of 1990, I received a copy of a Memorandum to Executive Committee Members requesting their comments on the recommendations of the study by July of 1990.

As of the end of this reporting year, I have not been advised of any decision taken by the Executive Committee of the Service on this issue. The Service's policies, procedures and training programs to the best of my knowledge remain as they were in 1987 when I made the recommendation on warning shots.

11. OFFENDER PAY RATES

I commented in last year's Annual Report on what I viewed as a measurable eroding of the offender's financial situation. The Service initially responded by saying that "the inmate pay policy must continue to be tied to the federal minimum wage" and as there had been no

increase in the minimum wage since 1986, they were "unable to make immediate adjustments to the current pay levels." The Service did undertake a review of their offender pay policy with a view to identifying those areas where policy changes could be implemented to assist in alleviating the current difficulties.

As a result of this review, a number of policy changes were initiated in late 1989 which have positively affected the earning power of the vast majority of federal offenders.

I concluded last year's Annual Report by applauding the Service's efforts in addressing this area of concern and recommended to the Minister that a real problem did exist with respect to pay rates. I also stated that steps were necessary to ensure that an across-the-board adjustment to existing pay rates for offenders be acted upon as expeditiously as possible. I have since been advised by the Commissioner that the possibility of developing an indexing system for offender pay rates based on canteen prices instead of the federal minimum wage is being reviewed. I welcome the information and look forward to the results of this review.

12. OFFICER IDENTIFICATION

As I indicated in last year's Annual Report, I received in April of 1989 a copy of a letter addressed to the Commissioner of Corrections expressing concern that "many staff members were neglecting or refusing to wear their identification badges while on duty." A letter was forwarded to the Commissioner on April 20, 1989 from this office requesting that we be advised of the Service's position with respect to this issue.

Although this matter has been discussed with the Commissioner, I am not aware of any action being directed at this problem.

13. DELEGATION OF AUTHORITY

This issue, which was initially raised with the Service in April of 1989, centres on the interpretation of Section 5 of the Penitentiary Service Regulations which states:

Institutional Heads

5.(1) The institutional head is responsible for the direction of his staff, the organization, safety and security of his institution and the correctional training of all inmates confined therein.

(2) Except where otherwise provided by the Act, the institutional head may delegate to members who are the immediate subordinates of the institutional head authority to deal with all routing or minor administrative matters, but the institutional head shall give personal attention to:

(a) matters of general organization and policy of the institution;

(b) important matters requiring the personal attention and decision of the institutional head; and

(c) the general control and supervision of the duties allocated to subordinates by the institutional head.

Our position has been and remains that those decisions which directly impact on the conditions of the offender's incarceration or the offender's access to privileges and programming should be taken by the Warden. I do not believe that such decisions can be

seen as routine or minor administrative matters. The Service's current policies, which not only allow for the delegation of such decisions but allow for their delegation below the level of the Warden's immediate subordinate, are in direct conflict with the provisions of the Penitentiary Service Regulations.

In May of 1989, the Service agreed to undertake a review of its current position with respect to the issue of delegation and provide this office with further comment. In March of 1990, we were advised that a "strict literal interpretation of this (PSR) could seriously be seen as conflicting with CSC's Mission which calls for the resolution of problems at the lowest possible level." To date, no further comment has been received from the Service with respect to their current policies, although I was advised in May of 1990 that a request had been made at the Service's Executive Committee meeting in April that appropriate amendment to the PSR be introduced as a priority.

This matter has now been before the Service for more than a year. The issue as I see it is not the amendment of the Penitentiary Service Regulations to fit current CSC policy and practice. The issue is the need for a review and adjustment of current CSC policy and practice so as to comply with the existing Penitentiary Service Regulations.

I further believe that the current provisions with respect to the delegation of authority enunciated in the PSRs are reasonable and defensible given the significance such administrative decisions have on the offenders' conditions of incarceration.

14. POLICY ON HANDICAPPED OFFENDERS

The issue was initially raised with the Service in 1988. Following a number of meetings with senior officials from CSC, I was provided in November of 1988 with a copy of a project action plan designed to develop a national policy for handicapped offenders with a tentative completion date of June 1989. I was further advised in February of 1989 that:

> An interdepartmental committee has been established to determine the services required by handicapped inmates. The committee has been given a mandate to determine the needs of all handicapped inmates including those with physical handicaps. The committee is in the process of identifying services presently provided and areas in which services should be provided and is awaiting regional feedback on specific questions regarding the need for service and the amount of resources provided to handicapped inmates.
>
> It is anticipated that a final policy will be ready for implementation in June of 1989.

As I reported last year, I was subsequently told in May of 1989 that the policy development on handicapped offenders had fallen behind schedule but the issue was being actively pursued.

In August of 1989, a memorandum signed by the Acting Commissioner to the Wardens and District Directors indicated that a national policy on disabled offenders was in the process of being developed for consideration later that year. The memorandum went on to say: "In the interim, I would ask you to be especially sensitive to the needs of disabled offenders in your care and that you make every effort to ensure that disabled offenders have access to all programs and services available to non-disabled offenders."

We were advised that, over the course of the next nine months, the services currently available to handicapped offenders were being inventoried, consultations with regional authorities were ongoing and that a national policy with accompanying guidelines was in the final draft stages.

In October of 1989, an offender confined to a wheelchair filed a grievance requesting that a wheelchair ramp be installed to provide him access to the recreation and programs area of the institution. The institutional Warden, in responding to the grievance, agreed that a ramp should be constructed and established a tentative installation date of December 15, 1989. In January of 1990, as no ramp had been constructed, the offender forwarded his grievance to the regional level. The Assistant Regional Deputy Commissioner responded on February 19, 1990, saying that the original solution was more complex than initially thought and that a design report for the eventual construction had been requested. We were later informed that the expected completion date for the construction of this ramp would be sometime in 1991.

As of the end of this reporting year, neither the above noted wheelchair ramp or the national policy with accompanying guidelines for handicapped offenders have been produced.

I would suggest that the time has long past on this issue for general statements of principle and good intent. The Service must clearly identify what standard of service it will provide and what it is going to do in specific terms to ensure that those standards are met and maintained.

15. GRIEVANCE PROCESS

The effectiveness and credibility of any levelled redress mechanism is dependent upon a combined front-end process which is capable, in a participative fashion, of thoroughly and objectively reviewing the issue at question. It also requires a final level within the process which has the courage to take definitive and timely decisions on those issues which are referred to its attention for resolution. At the present time, the Service has a grievance process which at the front end does very little to encourage offender participation. This in turn seriously compromises both the objectivity and thoroughness of its review. In addition, the final level of the process sometimes has shown itself to be unable to take timely and definitive decisions.

I feel the difficulties with the current grievance process are not directly related to its structure or its existing procedures but rather to the lack of commitment and acceptance of responsibility on the part of CSC's senior management for its operation. An improvement in the effectiveness and credibility of the process will only happen when those responsible for its operation decide to make it work.

16. CRITERIA FOR HUMANITARIAN ESCORTED TEMPORARY ABSENCES

The office initiated a number of investigations into complaints from offenders who had been denied escorted temporary absences for the purpose of attending the funeral of a family member. The results of our investigations into these complaints indicated quite clearly that the overriding criterion in reaching a decision on such humanitarian absences was cost to the Service in terms of transportation and overtime. We as well note that the Service on occasion, in order to offset these costs, had requested money from offenders and their families.

I felt this practice was without reasonable justification and totally inconsistent with the Service's Mission document. It created a situation within which a definite conflict of interest was certain to develop and as well established an inequity of access for offenders to this

form of temporary absence programming based on geography and finances. We wrote to the Commissioner's office in April of 1988 detailing our observations, and recommended that:

a) decisions with respect to humanitarian temporary absences should not be based on cost; and

b) the Service cease the practice of requiring offenders to supplement the financing of such absences.

I was informed in March of 1989 that a draft of the proposed criteria for humanitarian escorted temporary absences had been completed and was scheduled for Senior Management consideration in April of 1989. I was subsequently informed in May of 1989 that an amended Senior Management Committee proposal was to be discussed in September of 1989. The Commissioner's Directive addressing this issue was finally promulgated in January of 1990 and reads in part:

> Escorted temporary absences for humanitarian reasons shall be granted in the following instances unless significant security or case management information exists that is unfavourable to such an absence.
>
> a) to attend the funeral of a parent, a foster parent, a relative who has acted as a foster parent, a child, a spouse or other person, if the inmate has had a meaningful relationship with the person;
>
> b) to visit a person, as described above, who has been declared by a medical practitioner to be in an advanced stage of a terminal condition resulting from illness or injury.
>
> The costs for escorting officers or transportation shall not be a factor in the decision.

17. INMATE COMMITTEE SOLICITATION OF FUNDS

This issue emerged in early 1988 as a result of a request from the Inmate Committee at Cowansville Institution to solicit funds through the inmate welfare fund from Inmate Committees at other institutions. The funds were to be used by the Committee at Cowansville to assist with the payment of legal expenses associated with their court challenge of the Service's urinalysis program. The Service denied this request in May of 1988, stating in part that the Commissioner's Directives did not authorize the use of the inmate welfare fund for such purposes. Our initial position with respect to this matter was that despite the Service's policy on the use of inmate welfare funds, a blanket prohibition on the solicitation of funds by offenders was unreasonably limiting on the offender's legitimate right of access to the courts.

At a meeting with CSC officials in August of 1988, it was agreed that although the inmate welfare fund was not an appropriate vehicle for such funding, the blanket prohibition against the solicitation of funds by Inmate Committees which was initially adopted by the Service was in fact unreasonable. The Service at this time undertook to investigate what alternatives were available to allow for the direct solicitation of funds by offenders from other offenders in support of legal and/or administrative actions.

As no further word was received from the Service on this matter, I raised the issue with the Commissioner again at a meeting in January of 1989. In February of 1989, we received correspondence from the Commissioner's office stating in part: "inmates can establish their own funds, administered within the institution, or they may contribute to a fund established on their behalf by individuals or organizations outside the institution."

As the February correspondence provided no details as to how these funds were to be established or administered, we wrote back to the Commissioner's office in March requesting further details and as well asking when this decision was going to be shared with the field. In May of 1989, we were advised that the issue was still outstanding and that an update would be provided to us by the middle of June 1989. Finally, the Commissioner issued a memorandum to his Regional Deputy Commissioners dated 30 April 1990 detailing the following process:

> It is the position of the Correctional Service of Canada that monies from the Inmate Welfare Fund cannot be utilized for the purpose of legal actions. This is reflected in Commissioner's Directive 861. On the other hand, given certain limitations, inmates should have the right to collect money from inmates from other institutions on a voluntary basis for this purpose. In fact, it is appropriate that they have the opportunity to collect money for other "non-legal" issues that they may wish to pursue.
>
> If an inmate or a group of inmates wishes to initiate the collection of funds from other inmates, the first step to be taken would be to identify a person, who must be independent of the Correctional Service of Canada, to administer the fund. In many cases, this person would be a lawyer. The normal procedure, utilizing Form 532 for the collection of monies from inmates in an institution would be followed, and the money collected would be forwarded to the lawyer(s) or other person(s) identified on behalf of the inmates. In those cases where the inmates wish to solicit funds from inmates in other institutions, it would be their responsibility to instruct this person(s) to write directly to the Wardens of the other institutions to make this request. If monies are collected at other institutions, they would be instructed to forward the funds to the person(s) making the request. Finally, it would be the responsibility of the lawyer or other person identified to set up and maintain accounts, and to distribute the monies gathered.

It should be noted that it took from August of 1988, when initial agreement was reached that alternatives would be investigated, until April of 1990 for the Service to issue a detailed direction on this issue.

18. RECORD OF MINOR DISCIPLINARY HEARINGS

I recommended in November of 1988 that the Service maintain a record of minor disciplinary court hearings. In correspondence received in March of 1989, the Service rejected this recommendation, stating:

> One of the primary reasons for recording disciplinary court proceedings is the possibility that the conviction may be reviewed by the Federal Court. Minor court decisions are grievable. Therefore, it would seem unlikely that an inmate would want to bring an application for certiorari to the Federal Court to quash a minor court decision or that the Court would be inclined to hear the application if the inmate has not used the grievance system. Furthermore, the minor court hearing is intended to be less formal than other hearings. Therefore, there seems to be little reason to extend the requirement of recording to such proceedings.

As I indicated in last year's report, this response was not at all convincing. First, we did not suggest that the proceedings needed to be tape recorded, although taping would certainly appear to be the most efficient method of obtaining a record of the proceedings. Second, without some record of the proceedings, how did the Service intend to thoroughly review offender grievances on minor court hearings? Third, what would the position of the Service be on this matter if the Federal Court was inclined to hear an application to quash a minor court decision? Finally, how would the maintenance of an accurate record of the hearing significantly affect the formality of the hearing?

In May of 1989, I received a commitment from the Service that a further review of the issue would be undertaken. In January of 1990, fourteen months after the recommendation and

eight months after the Service's commitment to further review the issue, a memorandum from the Acting Deputy Commissioner, Correctional Programs and Operations, to the Regional Deputy Commissioners entitled "Recording of Minor Court Proceedings" stated in part:

> ... I am requesting that the following basic information respecting minor court proceedings be recorded via electronic or any other means, and retained in accordance with the established procedures for federal government records.
>
> a. the date, time, place of the minor court hearing;
>
> b. the principles involved, including witnesses, if called, or an indication of why witnesses were not called;
>
> c. the charge(s);
>
> d. the "gist" of the proceedings;
>
> e. the finding(s); and
>
> f. the punishment awarded.
>
> The Commissioner's Directive #580 on *Discipline of Inmates* will include this direction when it is re-published.
>
> Your assistance is requested in communicating this requirement to all institutions in your respective regions. Thank you in advance for your attention to this matter.

The Commissioner's Directive on Discipline of Inmates, inclusive of the requirements for maintaining a summary of minor disciplinary court hearings, was scheduled for publication in August of 1990. Our review of offender complaints concerning minor disciplinary findings between the issuing of the January 1990 memorandum and the end of this reporting year indicated quite clearly that communication of the policy change to the institutional level as requested by the National Headquarters was considerably less than universal.

19. CASE PREPARATION AND ACCESS TO MENTAL HEALTH PROGRAMMING

The number of complaints received by this office concerning delayed case preparation and access to mental health programming continue to increase. I indicated last year that our investigations into these complaints made it quite evident that CSC in far too many instances was unable to prepare cases in a thorough and timely fashion, and a significant number of these delays were directly related to the Service's inability to provide the required mental health assessments and treatment in advance of the offender's scheduled National Parole Board hearing dates.

I concluded last year's report by stating that the implication of the existing situation impacted measurably on the viability of the system's decision-making process, the efficiency and effectiveness of its existing programs and the ability of the Service to provide equitable and just treatment to the offender population. I strongly recommended at that time that immediate action be taken by the Service to ensure that the following Strategic Objectives, detailed in its Mission Document, were met:

> To ensure that the needs of individual offenders are identified at admission, and that special attention is given to addressing mental disorders;
>
> To provide programs to assist offenders in meeting their individual needs, in order to enhance their potential for reintegration as law-abiding citizens; and

To ensure the timely preparation of cases for submission to the National Parole Board, consistent with the criteria contained in the decision-making policies of the Board.

Although the Service has been very active in streamlining its case management process, developing a new Case Management Manual, completing a Task Force on Mental Health and implementing recommendations from the earlier Task Force on Community and Institutional Programs, I have noted no significant change in the situation as detailed last year.

During this reporting year, our inquiries indicated that nearly 6,000 National Parole Board scheduled hearings or reviews were waived by offenders.

While the Service maintains data on waivers inclusive of the "Reasons Reported" for the individual cases being waived, its current categorization of reasons does not accurately identify or reflect the actual causes of the delay in presenting the case to the National Parole Board for decision. For example, of the 3,000 waivers reported during the first half of the fiscal year 1989/90 under "Reason Reported" for the waiver, 410 are shown as "Other"; 238 are shown as "Inmates not interested in an early release"; 414 as "Inmates wishing to continue programming"; 437 as "Inmate waived to avoid a negative recommendation/decision"; and 430 as "Inmate has incomplete release plans" while only 272 are shown as having been waived as a result of "Outstanding case preparation".

During the course of our review of individual complaints raised in relation to delayed case preparation, we have noted the following:

— cases where there has been evidence of unreasonable delay on the part of the Service in referring offenders for assessment or treatment resulting in a waiver being categorized as "inmate wishing to continue programming" or "to avoid a negative recommendation or decision";

— cases where the Service has failed in a timely fashion to request a Community Assessment or the completion of the Community Assessment is delayed resulting in a waiver being categorized as "inmate has incomplete release plans";

— cases where due to large caseloads, transfer or oversight, the case management team has not initiated the preparation of the case in time to get it before the Board on the scheduled date resulting in a waiver being categorized as "inmate has incomplete release plans" or "inmate not interested in early release" (at this time);

— cases where due to the excessive backlog within the Service's assessment and treatment programs, the offender is not able to participate prior to the scheduled hearing date resulting in a waiver being categorized as "inmate wishing to continue programming" or "to avoid a negative recommendation/decision" or "inmate not interested in an early release";

— cases encompassing elements of all of the above being categorized as "other".

I have presented the foregoing in support of both of my earlier assertions that the Service's current information on waivers neither identifies or reflects the actual causes of the delays and my ongoing concern that without a sound knowledge base as to the actual causes of the delays, the Service is not in a position to reasonably address the problem.

"The Final Report: Task Force on Aboriginal Peoples In Federal Corrections" released in March of 1989 noted quite clearly the confusion which existed amongst staff and offenders

concerning the waiver process and noted again the ill-advised encouragement of offenders to sign waivers. The Task Force made the following recommendations:

> It is recommended that clear and concise information be made available to both correctional staff and inmates as to the available options regarding waivers.
>
> It is recommended that waivers be closely monitored and in a detailed fashion.
>
> It is recommended that the National Parole Board and CSC develop a clear national policy concerning waivers and ensure that the policy is understood by all decision-makers.

It has now been well over a year since the release of the task force report and these recommendations have yet to be actioned. What as well has yet to be actioned is a comprehensive strategy by CSC to address these excessively high waiver rates.

On the related issue of timely access to mental health programming in relation to legislated review dates, I have seen very little positive movement. I know that the Service has approved in principle the recommendations of the Task Force on Mental Health. I know as well that money and person years have been assigned to the mental health area, but I also know from the individual cases investigated this year, especially in the Ontario Region, that offenders are not gaining access to treatment programs in advance of their parole review dates.

A report produced by the Regional Treatment Centre in Ontario on the "Assessment and Treatment of Sex Offenders Prior to Parole Eligibility" in March of 1990 stated that "if we were fully staffed according to the November 1987 proposal, the projected number that could be treated between the programs at the Regional Treatment Centre and Kingston Penitentiary would be 80 to 85 per year. Without this additional staff, we can continue to treat about 70 per year, significantly fewer than the 122 which had been projected in the proposal of November 1987." This Report went on to say that for "the first time in the history of the program, there are inmates who want treatment but who are reaching mandatory supervision date without having completed treatment. This situation has come about because we are unable to treat the numbers we would need to treat to keep up with demand."

This office's concern with the capacity of the Service's mental health treatment programs was first addressed in my 1984/85 Annual Report. In 1987, following a number of meetings with the then Deputy Commissioner of Ontario, we received a commitment that the treatment program in Ontario would establish as a reachable objective, "assessment by day parole eligibility and treatment if required by full parole eligibility." We were then advised in May of 1988 that authorization for the expansion of the treatment program had been given and that the Service's "ultimate goal is that in the near future, offenders who are assessed and require treatment will have this need addressed prior to their parole eligibility date." In March of 1989, I was advised that the increased treatment capacity within the Ontario Region "will help to alleviate the current backlog and enable us to move towards our goal of providing treatment prior to full parole eligibility." The March 1990 report from the Regional Treatment Centre clearly indicates that this movement has not occurred and as well places in serious question the Service's commitment to addressing this issue.

Recommendation #30 of the Pepino Inquiry in March of 1988 called for "a comprehensive evaluation of the effectiveness of all present sexual offender treatment programs. If such evaluation indicates that there are no effective programs at present, further consideration should be given to ending ineffective programs and concentrating funds and human resources in those areas where some promise is shown." The "comprehensive evaluation"

of existing programs as recommended was not done. Rather, a Working Group was established with a mandate to "examine existing sex offender treatment programs in Canada, review the evidence concerning the effectiveness of various programs, identify promising strategies for research and development and make recommendations concerning further program development." The Working Group's Report on the Management and Treatment of Sex Offenders was released in March of 1990. The report contained a series of recommendations centering on program continuity; coordination and development; risk assessment; training and standards; and the future focus and direction of management strategies. The report as well noted that at the current time, there was "no CSC national strategy for the management and treatment of sex offenders, nor is there a single office in National Headquarters which is responsible for the direction, policy and programs for sex offenders."

The Committee reviewing the implementation of the Pepino Inquiry recommendations in April of 1990, saw the Working Group's report as a first step in a process which would hopefully lead to the improved treatment and management of sexual offenders. I suggest that the process towards improvement in this area has taken a very small and hesitant first step. I as well suggest that until such time as a clear national direction is provided, we can expect to see very little tangible movement in the management and treatment of sex offenders.

20. OFFENDER RIGHTS AND PRIVILEGES

A study on Offender Rights and Privileges was initiated by the Service in July of 1989 with a mandate in part to clarify "the relationship between inmate rights, programs, activities and privileges" en route to the "development of a general strategy for the application of incentives and disincentives within an institutional setting." The time frame established was for a final document to be produced for November of 1989 and presented to the Senior Management Committee in December of 1989.

As the Study had been referred to by the Service as the avenue of resolution on a number of issues referred for their review, we requested in November of 1989 to be advised of the status of the study. We were advised in December of 1989 that consultation with the field on the "discussion paper" was under way and the presentation of the report was now scheduled for February of 1990. In April of 1990, we received a copy of a "draft paper regarding offender rights and privileges" and advised that scheduled presentation at Senior Management Committee was now May of 1990. I was subsequently advised that the issue had been removed from the Senior Management Committee agenda for May and that further review of the paper would be undertaken, which would include consultation with this office.

I feel that it is imperative that the relationship between rights, programs, activities and privileges be clarified and published for the benefit of both staff and offenders.

21. OFFENDER ACCESS TO DISCIPLINARY TAPES

As a result of our investigation into complaints received from offenders regarding access to their disciplinary tapes, I recommended in my 1987-88 Annual Report that the Service clarify their policy in this area. I was advised in May of 1987 that the position of the Correctional Service of Canada "has been to make these tapes available to inmates." The

correspondence went on to say that the offender could either request a copy through the formal process, the *Privacy Act*, or "as is more likely, they can request access to the tape from their institutional authorities, who will provide it without delay." In June of 1988, a subsequent memorandum from the Deputy Commissioner, Offender Policy and Program Development, was forwarded to the Regional Deputy Commissioners entitled "Inmate Access to Disciplinary Tapes". It stated in part: "I wish to re-emphasize that reasonable access by inmates to disciplinary hearing recordings *must* be provided."

The issue resurfaced in March of 1990 as a result of a memorandum from Regional Headquarters Ontario entitled "Independent Hearings - Access to Tape" which states in part: "Unless an inmate makes a request for the tape under the *Privacy Act*, there is no legal requirement to provide the tape at CSC's expense and time." As this appeared to be a retreating from the Service's initial position on reasonable access, the issue was referred to the Commissioner's Office in April of 1990 with a request for their further review and comment. On May 17, 1990, correspondence was received from the Deputy Commissioner, Correctional Programs and Operations, saying that "reasonable access to disciplinary tapes does not necessarily demand that a copy of the tape be provided. Reasonable access could expect to include the provision of a suitable room where the inmate is able to listen to the recording and to take notes."

Given that the Service had acknowledged, that it was "a widespread practice" within CSC to provide offenders with copies of their disciplinary hearing tapes and that, if the offender requested a copy under the provisions of the *Privacy Act*, they would "be under a legal obligation to provide a copy", I could not understand their position on this matter.

A follow-up letter was sent to the Commissioner's Office requesting a further review and an issuing of a policy clarification to ensure that offenders are provided with both reasonable and equitable access to disciplinary tapes. The matter remains under review.

22. INDEPENDENT CHAIRPERSONS

This office has traditionally received a significant number of complaints concerning the decisions of Independent Chairpersons on major disciplinary charges.

In 1987, the *Correctional Law Review Working Paper on Correctional Authority and Inmate Rights* had recommended the appointment of a Regional Chief Independent Chairperson to:

a) hear appeals on matters of process and substance for both conviction and sentence; and

b) monitor and promote consistency in disposition.

At the present time, the avenue of redress available on Independent Chairperson decisions is the Federal Court of Canada. Given the time involved in bringing a case before the Federal Court and the potential impact carried by these decisions on institutional charges, I feel there is a need for an interim avenue of redress to ensure that, where necessary, corrective action can be taken in a timely fashion.

Following our review of the Service's proposed changes to the Directive on Offender Discipline in April of 1990, we wrote to the Commissioner's Office noting that the issue of timely redress and consistency with respect to Independent Chairperson decisions was not

addressed. We requested of the Service a detailing of their position on the proposal put forth by the Correctional Law Review. This issue will be pursued with the Commissioner's Office over the course of the coming year.

23. NATIONAL PAROLE BOARD APPEALS

This year saw a significant increase in the number of complaints received concerning delays in decisions coming from the National Parole Board's Appeal Division. The National Parole Board's pamphlet entitled "The Rights of Appeal", which is provided to offenders on entry into the system, states that an answer to a request for a re-examination of a Board decision should be received within forty-five days.

It is our information that currently, it is taking three to four months for decisions to be rendered by the Appeal Division. Given the significance of the decisions at question, I believe immediate steps should be taken to ensure that decisions on appeal are taken in a timely fashion.

24. APPLICATION OF OFFENDER PAY POLICY FOR SEGREGATED OFFENDERS

The office was approached in July of 1989 by an offender who had been administratively segregated pending the disposition of his institutional disciplinary charge. The subject was subsequently found not guilty by the Independent Chairperson. As his pay level had been reduced from level 3 to level 1 during his time in segregation, he filed a grievance requesting compensation for the lost wages.

The grievance was denied by the Regional Deputy Commissioner who stated in part:

> The "Not Guilty" finding does not have any bearing on the issue of pay.
>
> Commissioner's Directive 865 on Inmate Pay provides for a daily rate of $1.60 for inmates in Segregation who do not hold a work placement in that Unit. Since you did not hold such a placement, the institution cannot pay you at a greater rate than the $1.60 provided for in the Directive.

Following our review of the case, correspondence was forwarded to the Commissioner's office in August of 1989 saying that in terms of fairness, it would seem only reasonable that in those cases where an offender is placed in Administrative Segregation pending the results of either a disciplinary hearing or an administrative inquiry and is subsequently cleared, the pay policy should be flexible enough to allow for equitable compensation. A request was made at that time for both a review of the individual offender's case and the policy itself.

We were advised in December of 1989 that a review of the existing Directive was under way and that the notion of flexibility in applying the pay policy for segregated offenders would be incorporated into the revised Directive. We were as well informed in January of 1990 that a further review of the subject's grievance had resulted in his being back payed for the 23 days he spent in segregation.

In March of 1990, we were further advised that the Commissioner's Directive was in the process of being amended to "emphasize the Director's prerogative to consider, where warranted, adjusting the individual's pay." As of the end of this reporting year, the Directive has yet to be amended although I am told a tentative completion date for the exercise of June 1990 has been established.

Although this issue appears to be moving towards a resolution, its processing is evidence to my earlier comments on the timeliness of the Service's action on matters brought to their attention and the impact of excessive delay on the offender population. During the ten month period between our referral and the writing of this report, no interim instruction or direction has been provided by the Service to its institutional staff on this matter despite the final decision taken on the grievance review. I can only speculate on how many offenders have been adversely affected during this time period by this non-communication but I do know that my staff have intervened in a number of cases of a similar nature and in each instance, the institutional Warden was unaware of the fact that a policy review was under way or that an offender's grievance on the issue had been upheld. As well, in each case, on the basis of the information we provided, the Wardens were willing to favourably reconsider their initial decisions.

If it is going to take the Service two years to finalize and publish policy changes in areas where the changes impact upon the offender population, there is a need for the development of a process capable of issuing interim directions in a timely fashion with a follow-up mechanism to ensure application at the operational level.

CONCLUSION

The preceding scenario, in terms of excessive delay on the part of the Service in taking an initial decision and the subsequent communication of that decision to the field, has been played out through its processing of the issues associated with Special Handling Units, transfers, access to file information, handicapped offender policy, humanitarian ETA criteria, the solicitation of funds, case preparation and mental health programming, the grievance process and minor disciplinary court records.

As I indicated earlier, the Correctional Service of Canada is a direct service agency and its policies, procedures and decisions impact directly and immediately on the offender population. Our communications with the inmate population suggest that the current level of responsiveness displayed by the Service, particularly at the national level, to the addressing of a number of offender related concerns has in the past been unacceptable and is in need of change.

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 II of the *Inquiries Act*, who shall receive such renumeration 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

P.C. 1988-2739

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 7 December, 1988

The Committee of the Privy Council, on the recommendation of the Solicitor General of Canada, pursuant to Part II of the Inquiries Act, advise that:

(a) a commission be issued to amend the English version of the commission appointing Mr. Ronald L. Stewart to be Correctional Investigator, issued pursuant to Order in Council P.C. 1977-3209 of November 15, 1977, as follows:

(i) the first paragraph of the commission is amended by revoking the following words:

"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"

and substituting therefor the following words:

"to conduct investigations, 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 Parole Act, concerning problems that relate to the confinement of inmates in penitentiaries or the supervision of inmates upon their release from penitentiaries on temporary absence, day parole, parole or mandatory supervision and that come within the responsibility of the Solicitor General of Canada, and to report thereon, with the exclusion of problems", and

(ii) paragraph (c) of the said commission is revoked and the following substituted therefor:

"(c) that relate to the exercise by the National parole Board of any power to duty that falls within its exclusive jurisdiction under the Parole Act,"; and

(b) the annexed French version of the commission, issued pursuant to Order in Council P.C. 1977-3209 of November 15, 1977, as amended, be issued.

Certified to be a True Copy

Clerk of the Privy Council