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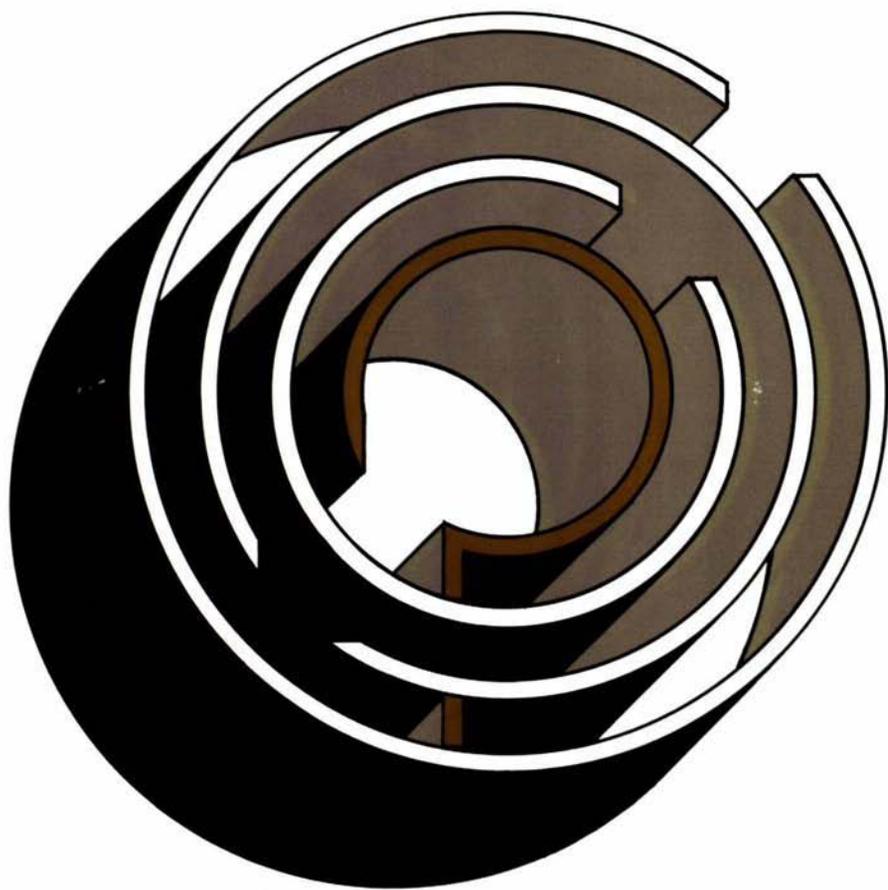
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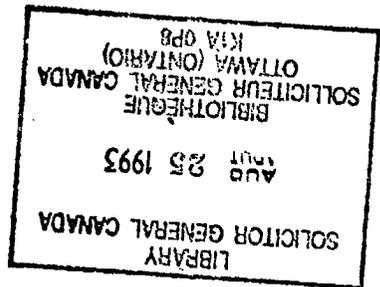
Annual Report  
of the  
Correctional  
Investigator

1991 - 1992

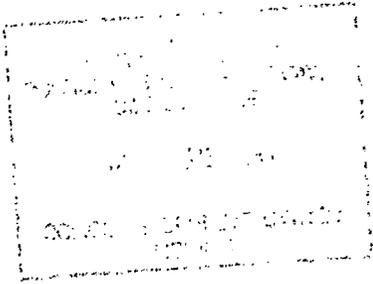


The Correctional Investigator  
Canada

Annual Report  
of the  
Correctional  
Investigator



1991 - 1992



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The Correctional Investigator  
Canada

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23 November 1992

The Honourable Doug Lewis  
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 nineteenth Annual Report on the activities of this office covering the period 1 June, 1991 to 31 May, 1992.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'R.L. Stewart', with a long, sweeping flourish extending to the right.

R.L. Stewart  
Correctional Investigator

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## APPOINTMENT AND TERMS OF REFERENCE

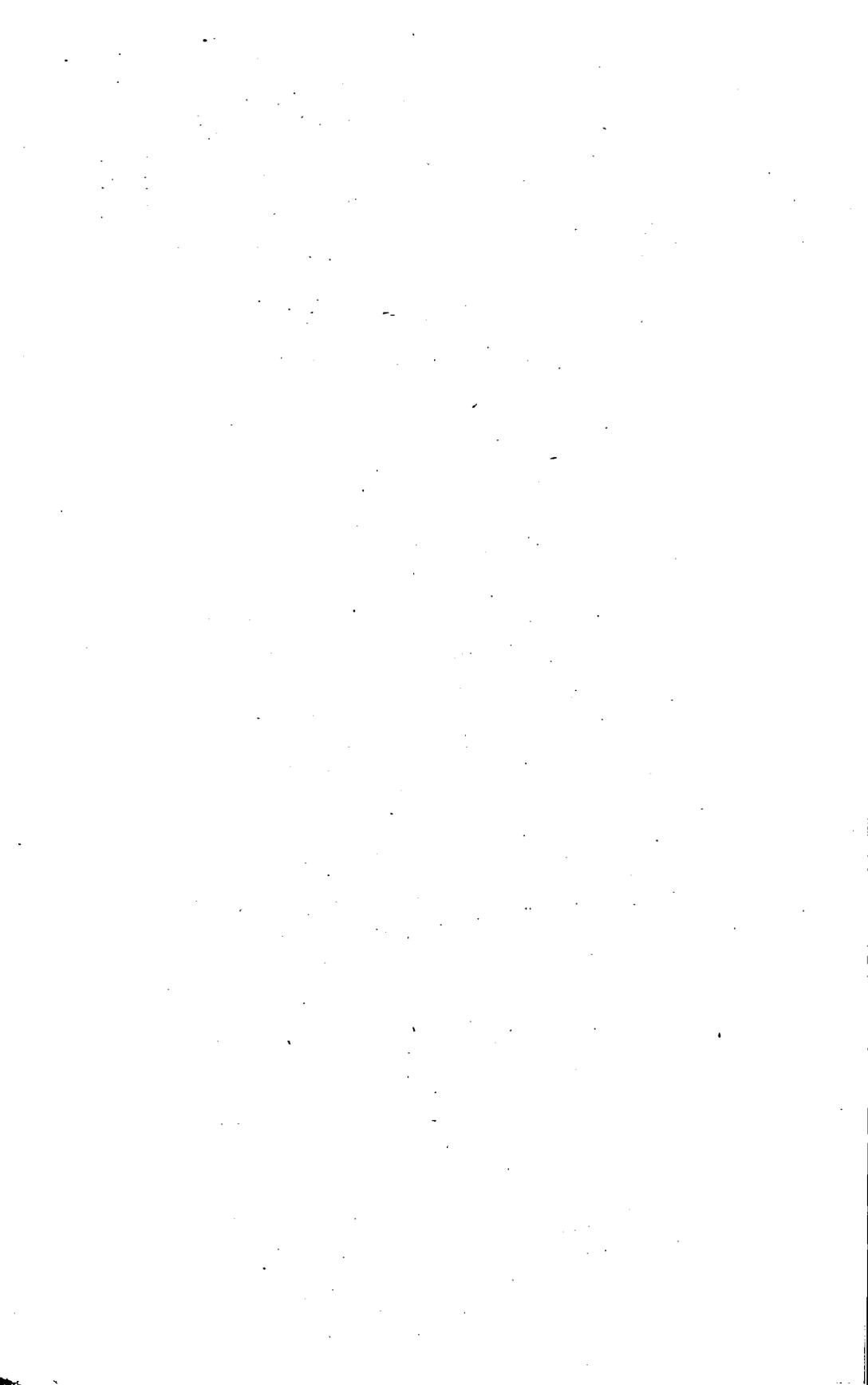
The Office of the Correctional Investigator was established in June, 1973 and it has been my honour to serve in the position since November, 1977. The Order in Council, and amendments thereto, is fully reproduced and appears as Appendix A.

The Correctional Investigator is appointed as a Commissioner pursuant to Part II of the *Inquiries Act* to conduct investigations on his own initiative, or 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 confinement in a penitentiary or supervision upon release from a penitentiary that comes within the responsibility of the Solicitor General of Canada, excluding problems that relate to the exercise by the National Parole Board of any power or duty that falls within its exclusive jurisdiction under the *Parole Act*.

For the purpose of conducting an investigation under the provisions of the *Inquiries Act*, the Correctional Investigator:

- a) may enter into and remain within any public office or institution, and shall have access to every part thereof;
- b) may examine all papers, documents, vouchers, records and books of any kind belonging to the public office or institution; and,
- c) may summon before him any person and require that person to give evidence, orally or in writing, including the authority to subpoena evidence and to take evidence under oath.

The Correctional Investigator does not have the authority to order change. The power of the office, as with traditional legislative Ombudsman operations, lies with its ability to investigate complaints independently, to publish its findings and conclusions relative to complaints, and to make recommendations to the appropriate government authorities to address the area of complaint.

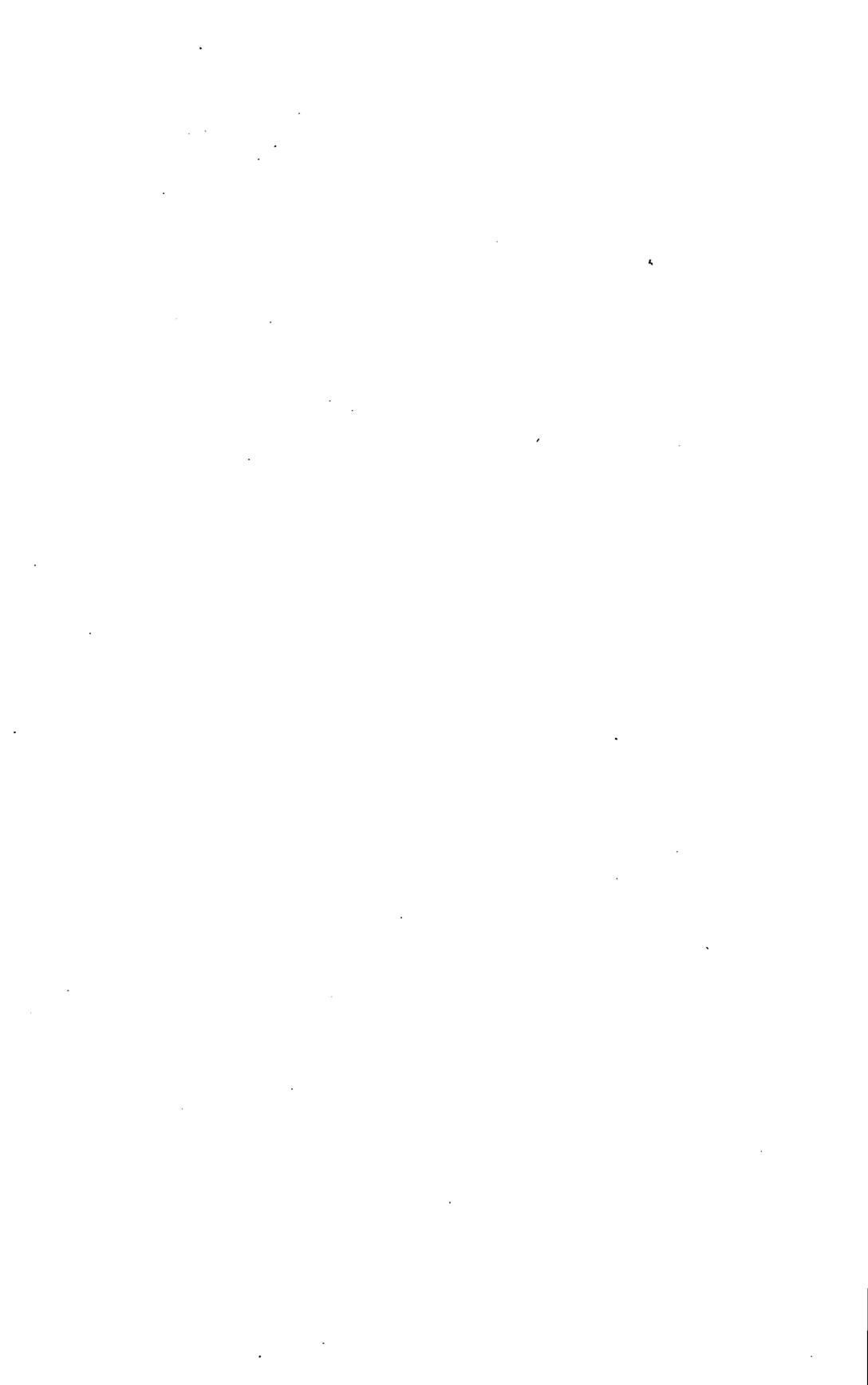


## **ORGANIZATION AND OPERATION**

The Office of the Correctional Investigator is located in Ottawa where a staff of fifteen people carry out the mandate of investigating and attempting to resolve complaints from federal inmates. It is a difficult job and I wish to express my thanks to this dedicated group for their efforts during the year.

While a number of complaints are referred to us by Members of Parliament, lawyers, family members and organizations dealing with prisoner's rights, the bulk come directly from the offenders. During the reporting year we received 5,090 complaints, conducted some 2,068 interviews, and made 267 visits to federal institutions.

A serious effort is made to maintain contact with Inmate Committees and we are grateful for their keeping us informed. As well, it is important in our work to bear in mind that an individual remains a human being after his conviction for a crime and the nature of that crime has no bearing on how the complaint is handled.



## **STATISTICS**

---

**TABLE A**  
**COMPLAINTS RECEIVED — BY CATEGORY**

---

Administrative Segregation	
a) Placement	298
b) Conditions	98
Case Preparation	555
Cell Effects	90
Cell Placement	76
Claims	
a) Decisions	23
b) Processing	76
Correspondence	72
Outside Court	
a) Decisions	16
b) Procedures	7
Diets	
a) Medical	22
b) Religious	8
Discipline	
a) ICP Decisions	47
b) Minor Court Decision	20
c) Procedures	129
Discrimination	6
Earned Remission	41
File Information	
a) Access	28
b) Correction	98
Financial Matter	
a) Access to Funds	40
b) Pay	229
Food Services	22
Grievance Processing	155
Health Care	505
Mental Health	
a) Access	151
b) Programs	11
Other	26
Parole	130
Penitentiary Placement	82
Private Family Visists	97
Programs	114
Provincial Matters	24
Request for Information	89
Sentence Administration	90
Staff	114
Telephone	59
Temporary Absence	
a) Denial	105
b) Processing	178

---

**TABLE A (cont'd)**  
**COMPLAINTS RECEIVED — BY CATEGORY**

---

Transfer	
a) Denial	119
b) Involuntary	219
c) Process	411
Use of Force	42
Visits	209
Work Placement	<u>159</u>
Total	5090

---

**TABLE B**  
**INMATE COMPLAINTS — BY MONTH**

---

<u>1991</u>	<u>Complaints</u>
June	293
July	398
August	498
September	365
October	493
November	337
December	307
<u>1992</u>	
January	591
February	428
March	428
April	473
May	<u>479</u>
Total	5090

**TABLE C  
COMPLAINTS — BY REGION**

	1991												1992		
	June	July	August	September	October	November	December	January	February	March	April	May	Total		
<b><u>Atlantic Region</u></b>															
Atlantic	6	18	37	14	25	22	8	12	62	24	17	5	250		
Dorchester	3	12	24	5	7	8	0	11	0	7	31	8	116		
Springhill	10	7	15	8	4	3	10	24	8	10	10	10	119		
Westmorland	4	2	8	3	1	6	3	4	1	1	8	1	42		
Provincial	0	0	0	0	3	0	2	1	0	1	4	0	11		
<b><u>Ontario Region</u></b>															
Bath	2	3	13	6	13	9	2	5	7	0	2	4	66		
Beaver Creek	5	8	2	4	2	2	1	1	3	2	2	3	35		
Collins Bay	7	12	10	10	8	8	10	5	17	12	18	12	129		
Frontenac	1	4	0	1	2	2	0	0	1	0	0	4	15		
Joyceville	10	20	15	5	23	4	5	13	10	4	11	17	137		
Kingston Pen.	7	23	21	9	39	6	2	5	5	12	25	29	183		
Millhaven	8	10	28	12	21	20	62	14	15	20	20	27	257		
Pittsburgh	0	0	1	0	0	0	0	1	0	1	1	5	9		
Prison for Women	3	5	2	13	5	3	2	4	2	6	15	4	64		
Warkworth	26	28	29	25	48	22	9	28	12	21	18	10	276		
Provincial	0	2	1	1	5	3	0	0	4	4	0	3	23		
<b><u>Pacific Region</u></b>															
Elbow Lake	0	0	0	1	0	0	0	0	1	0	0	0	2		
Ferndale	1	7	2	1	0	2	3	4	4	0	3	2	29		
Kent	7	3	10	7	12	14	16	26	10	9	11	12	137		
Matsqui	3	3	4	6	11	5	6	3	2	0	2	1	46		
Mission	7	6	14	5	27	9	1	5	7	5	5	0	91		
Mountain	4	7	10	7	7	1	3	26	8	7	10	5	95		
RPC Pacific	1	3	3	1	2	0	1	9	1	2	3	2	28		
William Head	1	2	8	6	2	3	4	10	3	0	0	2	41		
Provincial	1	0	1	1	0	0	0	1	1	1	0	1	7		
<b><u>Prairie Region</u></b>															
Bowden	22	12	18	28	17	13	10	66	15	23	20	52	296		
Drumheller	9	3	11	11	8	5	9	15	11	9	5	13	109		
Edmonton	4	3	16	6	4	7	7	55	9	6	2	12	131		
Oskana Centre	0	0	0	0	0	0	0	0	0	0	0	0	0		
RPC Prairie	0	2	2	0	8	0	0	1	0	0	1	1	15		
Rockwood	0	12	14	1	0	7	1	1	0	7	2	0	45		
Saskatchewan Farm	1	1	2	0	1	0	0	0	0	0	0	0	5		
Saskatchewan Penitentiary	5	16	42	10	14	6	8	8	5	48	1	8	171		
Stony Mountain	11	4	9	3	2	19	3	10	0	19	9	5	89		
Provincial	2	3	2	2	1	1	1	1	3	1	3	0	20		

**TABLE C (cont'd)**  
**COMPLAINTS — BY REGION**

	1991												1992		
	June	July	August	September	October	November	December	January	February	March	April	May	Total		
<b>Quebec Region</b>															
Archambault	6	8	4	3	15	7	12	19	22	25	21	66	208		
Cowansville	18	24	28	24	18	26	23	43	37	34	20	35	330		
Donnacona	9	3	2	9	12	8	9	25	12	11	15	15	130		
Drummond	21	19	24	23	31	16	25	27	31	14	13	30	274		
Fed. Training Centre	3	18	3	3	14	8	1	8	6	12	25	12	113		
La Macaza	22	48	29	33	54	24	28	21	28	24	8	8	327		
Leclerc	7	7	2	11	5	5	2	2	8	13	19	16	97		
Montee St. Francois	1	4	5	4	3	6	3	10	0	2	13	8	59		
Ogilvy Centre	0	0	0	0	0	0	0	0	1	0	0	2	3		
Port Cartier	26	9	4	28	6	7	5	45	13	7	45	7	202		
Reception Centre	3	2	0	1	1	2	0	7	21	11	22	2	72		
Ste. Anne	5	14	21	12	12	17	10	12	22	18	12	20	175		
Provincial	1	1	2	2	0	1	0	3	0	0	1	0	11		
<b>TOTAL</b>	<b>293</b>	<b>398</b>	<b>498</b>	<b>365</b>	<b>493</b>	<b>337</b>	<b>307</b>	<b>591</b>	<b>428</b>	<b>428</b>	<b>473</b>	<b>479</b>	<b>5090</b>		

---

**TABLE D**  
**COMPLAINTS AND INMATE POPULATION – BY REGION**

---

<u>Region</u>	<u>Complaints</u>	<u>Inmate Population</u>
Pacific	476	1803
Prairie	881	2565
Ontario	1194	4181
Quebec	2001	4385
Maritimes	<u>538</u>	<u>1253</u>
	5090	14187*

---

\* Figures obtained from "Weekly Inmate Counts of Total Population Report" of 2-6-92 produced by the Correctional Service of Canada

**TABLE E**  
**INSTITUTIONAL VISITS**

<u>Institution</u>	<u>Number of Visits</u>
Archambault	6
Atlantic	8
Bath	3
Beaver Creek	2
Bowden	16
Collins Bay	13
Cowansville	8
Donnacona	3
Dorchester	8
Drumheller	9
Drummond	8
Edmonton	5
Elbow Lake	2
Federal Training Centre	7
Ferndale	5
Frontenac	4
Joyceville	5
Kent	6
Kingston Penitentiary	15
La Macaza	7
Leclerc	8
Matsqui	5
Millhaven	18
Mission	6
Montee St. Francois	3
Mountain	5
Pittsburgh	4
Port Cartier	8
Prison for Women	7
Regional Psychiatric, Pacific	5
Regional Psychiatric, Prairie	3
Reception Centre, Quebec	7
Rockwood	1
Saskatchewan Penitentiary	5
Saskatchewan Farm Annex	3
Springhill	3
Ste. Anne des Plaines(minimum)	5
Ste. Anne des Plaines (SHU)	5
Stony Mountain	2
Warkworth	17
Westmorland	4
William Head	3
Total	267

---

**TABLE F  
INMATE INTERVIEWS**

---

<u>Month</u>	<u>Number of Interviews</u>
<u>1991</u>	
June	92
July	128
August	278
September	117
October	269
November	117
December	110
<u>1992</u>	
January	294
February	155
March	132
April	150
May	<u>226</u>
Total	2068

---

**TABLE G  
DISPOSITION OF COMPLAINTS**

---

<u>Action</u>	<u>Number</u>
Assistance, Advice or Referral Given	1850
Declined	
a) Not Justified	594
b) Not Within Mandate	177
c) Premature	1195
Pending	232
Resolved	600
Unable to Resolve	131
Withdrawn	<u>311</u>
Total	5090

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

<u>Category</u>	<u>Resolved</u>	<u>Assistance, Advice or Referral Given</u>
Administrative Segregation		
a) Placement	34	108
b) Conditions	31	60
Case Preparation	94	223
Cell Effects	20	25
Cell Placement	6	30
Claims		
a) Decisions	4	5
b) Processing	6	29
Correspondence	10	28
Outside Court		
a) Decisions	0	0
b) Procedures	0	4
Diets		
a) Medical	2	8
b) Religious	1	2
Discipline		
a) ICP Decisions	0	5
b) Minor Court Decisions	2	5
c) Procedures	6	35
Discrimination	1	2
Earned Remission	3	15
File Information		
a) Access	4	13
b) Correction	10	57
Financial Matter		
a) Access to Funds	10	11
b) Pay	29	35
Food Services	2	7
Grievance Processing	19	90
Health Care	45	179
Mental Health		
a) Access	5	15
b) Programs	1	6
Other	1	6
Parole	0	75
Penitentiary Placement	8	26
Private Family Visits	10	27
Programs	6	35
Provincial Matters	0	2
Request for Information	0	75
Sentence Administration	8	34

**TABLE H (cont'd)**  
**COMPLAINTS RESOLVED OR ASSISTED WITH — BY CATEGORY**

<u>Category</u>	<u>Resolved</u>	<u>Assistance, Advice or Referral Given</u>
Staff	7	53
Telephone	15	18
Temporary Absence		
a) Denial	6	38
b) Processing	32	58
Transfer		
a) Denial	11	20
b) Involuntary	16	57
c) Process	82	216
Use of Force	5	7
Visits	24	64
Work Placement	24	42
Total	600	1850



## **ISSUES OUTSTANDING FROM 1990-91 ANNUAL REPORT**

While several issues from my last Annual Report have been finalized or are near finalization from a policy perspective, there are some which were not resolved during the reporting year and require further comment by this office.

### **1. Special Handling Units**

The operation of the Service's Special Handling Units (SHU) for "dangerous inmates" has been a longstanding area of concern of this office.

The Service revised its policy on SHU in March of 1990, the highlights of which were detailed in my 1989-90 Report. I commented at that time that the revised policy was a positive first step towards meeting the Service's commitment of providing suitable treatment and programming within a humane environment for violent offenders.

The policy requires that the National SHU Review Committee prepare a report annually for the Commissioner detailing its observations and recommendations on the operation of the Units. I commented last year that it was my hope that the Committee's report would not only objectively evaluate the compliance of the Unit's operation against the stated policy, but as well, objectively evaluate the effectiveness of the operations in meeting the stated objectives of the program.

The Special Handling Unit Annual Report 1990-91, received January, 1992, was considered inadequate by all concerned. The Service, in an attempt to ensure that future analysis in this area is more meaningful, has undertaken to standardize both the reporting structure and statistical information gathered with respect to SHU operations. I have been advised that it is the Service's hope that "the next report will be more detailed and of a higher quality".

I share that hope and look forward to reviewing the next report, inclusive of the Commissioner's comments on SHU operations.

### **2. Inmate Pay**

The question of inmate pay was initially raised in my 1988-89 Annual Report recommending that an across the board pay increase be implemented to offset the erosion of the offender's financial situation. I noted that the erosion affected not only the ability to purchase internally, but as well reduced the funds available on release.

I was advised by the Commissioner of Corrections that the Service was reviewing the possibility of an indexing system to assist in alleviating the problem. However the situation has grown progressively worse and there is a need for some immediate, meaningful adjustment. Offender complaints concerning this issue have gone from 134 in 1990-91 to 229 in 1991-92.

### **3. Grievance Process**

The grievance process has been under formal review within the Correctional Service of Canada since April of 1989. As a bit of background this office was initially advised by the Commissioner that a revised Commissioner's Directive, 081, was to be sent for consultation to the Service's Executive Committee in November of 1991. We were subsequently advised that a package was to be forwarded to that Executive Committee for final approval by March 31, 1992.

At our reporting year-end meeting with the Commissioner, we were advised that the new Commissioner's Directive mentioned above would be promulgated by the end of June, 1992 in conjunction with the production of manuals for staff, a brochure for inmates and a video.

I should also repeat that the Service's own Internal Audit back in June of 1990 recommended that:

National Headquarters and the Regional Headquarters must define the types of information required to process grievances and establish formal procedures that would ensure that this information is forwarded to the subsequent levels of grievances.

The review of this process has obviously been excessively long but we await the implementation of the revised grievance process, inclusive of an automated reporting system which will permit identification and analysis of deficiencies within the process itself, as well as provide management with information that will detect inconsistencies regarding the interpretation of policies.

It is my intention to monitor the new system which hopefully will reduce the complaint load on this issue. Grievance complaints increased this year to 155 from 92 in 1990-91.

### **4. Case Preparation and Access to Mental Health Programming**

This issue was initially raised with the Correctional Service in February of 1989 and the number of complaints received by this office since then concerning delayed and incomplete case assessments and programming continues to increase. In 1989-90 we recorded 274 complaints, in 1990-91 411 complaints and this year 555 complaints.

Although the Correctional Service has acknowledged that there are problems in these areas and has undertaken a number of initiatives to address them, the problems still exist and the Service has fallen far short of its commitments. This issue would appear to be stalled and needs immediate attention.

### **5. Offender Rights and Privileges**

We raised this issue in July of 1989 and have noted in two previous reports that it is imperative that the relationship between rights, programs, activities and privileges be clarified and published by the Correctional Service for the benefit of both staff and offenders. The Commissioner indicated that the Service considers this issue a high priority and had initially advised that the handbook was scheduled to be published by the end of 1991. We

were later advised that publication would await the finalization of Bill C-36 so we look forward to distribution in the near future.

## **6. Double Bunking**

I have commented extensively in past Reports on the general impact of overcrowding on Correctional Service operations and the specific difficulties caused by double bunking.

Double bunking over the course of this reporting year I am advised has gone from 1200 to 1700. Of that number, in excess of 600 inmates are housed in non-general population cells which limits their movement within the institution and their access to programming and employment, resulting in extensive periods of time in their cells.

I concluded last year's Report by recommending that the Service monitor, on an ongoing basis at the Regional and National level, both the number of offenders in non-general population cells and the length of time these offenders were double bunked. The Correctional Service of Canada rejected this recommendation and although the Commissioner has assured this office that offenders will be moved to single cells on a priority basis and monitored through operational review and internal audit process, there has been no evidence that the situation has improved.

I therefore again restate my concern with respect to the continuation of this situation and again recommend that effective, timely and practical methods of monitoring this situation be implemented.

## **7. Transfers**

As was noted in last year's Annual Report, transfer decisions are the most important decisions taken by the Correctional Service during the course of an offender's period of incarceration and our statistics certainly support that fact in that transfer decisions and the processes leading to those decisions represent the single largest category of complaint received by this office.

As was also noted, the Correctional Service policy on transfers, as written, is both fair and reasonable, so the problems associated with transfer decisions are not with the policy but with the application of that policy in making individual decisions. And, contrary to the Correctional Service position that there is no problem, I suggest differently. In 1989-90 we had 497 complaints; in 1990-91 we had 654; and this year we had 739. The inmates obviously feel that there is a problem and to remedy the situation I agree with the Service's internal audit recommendation that a quality control mechanism and information system be put in place to ensure compliance with policy.

## **8. Management of Offender Personal Effects**

In response to reviewing the Service's draft policy and guidelines on its review of its policy on offender personal effects, I noted in last year's Annual Report that I was hopeful that this initiative would address such issues as the areas of responsibility for lost or damaged

personal effects in a double-bunked situation; the replacement-value cost in the settling of offender claims; and, the inconsistencies in allowable personal effects which have resulted in offenders purchasing effects at one institution only to be advised at another institution that they are not allowed.

I concluded by indicating that although there had been some delay concerning this issue, I was advised that a revised policy, inclusive of national guidelines, was expected to be approved by October of 1991. I noted that I looked forward to the Service finalizing its policy in this area and hoped that implementation at the operational level assists in addressing some of the long-standing areas of concern associated with offender personal effects.

As of this reporting date, there has yet to be a policy issued on this matter.

## **9. Temporary Absence Programming**

The problems associated with this program were brought to the attention of the Correctional Service of Canada in June of 1989 and the details were reported in last year's Annual Report. Basically the Correctional Service, at that time, committed to undertake a complete analysis on an institution-by-institution basis on the decline in temporary absences. However, in May 1991 on the basis of statistics for 1990 showing an increase in temporary absences over the previous year, and without the benefit of the complete analysis promised, the Correctional Service decided that there was no longer a problem and considered the issue closed. In March of 1992 the Pepino Commission on the Review of the Temporary Absence Program for Penitentiary Inmates recommended:

That the CSC undertake a complete analysis on an institution-by-institution basis to ascertain the rates of grants of ETAs and UTAs over the last five years, to ascertain any statistical decline, and the reasons therefore. In addition, CSC should develop a comprehensive data base to track variances in the rate of granting TAs and an appropriate framework for analysis on an institution by institution basis of information such as the population profile, when a TA occurs in the offender's sentence and whether a TA is completed successfully.

Shortly thereafter, in April of 1992, we were advised that the Correctional Service did not intend to spend further time examining past statistics on temporary absences, and that there were no plans to incorporate temporary absence data into the Service's Correctional Results Reports. A clear rejection of the Pepino recommendation.

Meanwhile complaints related to temporary absences have gone from 156 in 1989-90, to 213 in 1990-91, to 283 in 1991-92.

## **10. Application of Offender Pay Policy for Segregated Offenders**

In May of 1991 the Service adjusted its pay policy in an attempt to ensure that offenders who were not able to work through no fault of their own were provided reasonable compensation. The policy emphasized the Warden's authority to adjust the pay levels of those offenders unable to work due to long-term illness or incapacity as a result of an accident and those offenders unable to work because no work was available. A review every two weeks by the Institutional Work Board of all offenders on level one pay was proposed,

within the Service's Memorandum of Clarification on this policy, as the best method to ensure equitable compensation.

I stated in last year's Annual Report that I was encouraged by these changes and expected that a reasonable exercising of discretion at the institutional level would go a long way to alleviating some of the inequities inherent in the previous application of the Service's pay policy.

Our review of complaints related to this area over the course of this reporting year has indicated that not only is the policy not being applied universally, but in some instances the institutions were not even aware of the policy change.

## **11. Criteria for Humanitarian Escorted Temporary Absences**

This issue was initially raised with the Commissioner's office in April of 1988 as a result of a number of complaints from offenders who had been denied escorted temporary absences to attend the funeral of a family member.

Our investigations clearly indicated that cost was a significant criterion, and in some cases the only criteria, considered in reaching the decision to deny such temporary absences and that the Service had on occasion requested money from offenders and their families to offset these costs.

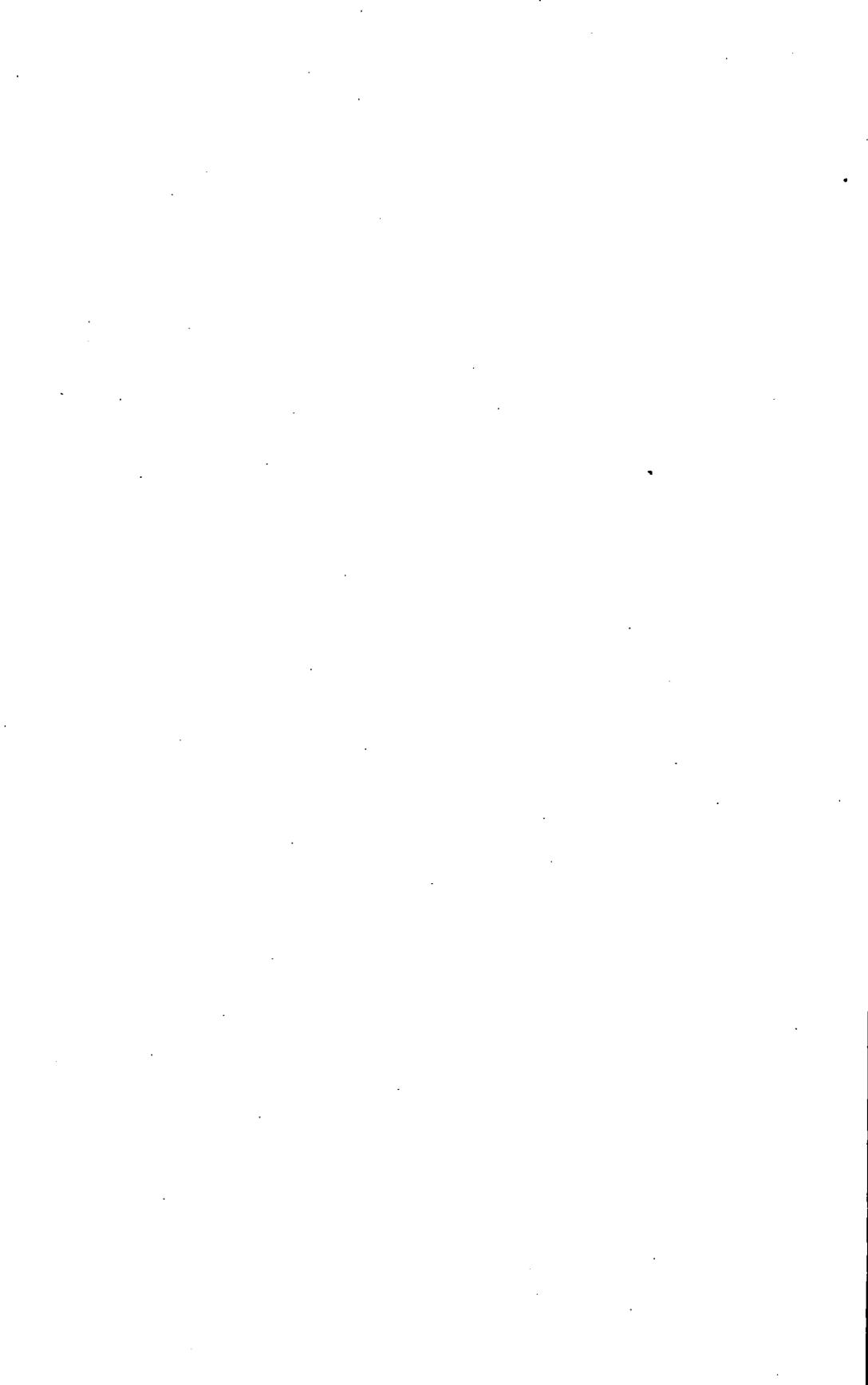
I concluded that such practices were without reasonable justification as it not only established a situation within which a conflict of interest was certain to develop, it further created an inequity of access for offenders to this form of temporary absence programming based on geography and finances.

The Service in January of 1990 revised its policy removing cost as a factor in such decisions and stated that:

escorted temporary absences for humanitarian reasons *shall be granted*...unless significant security or case management information exists that is unfavourable to such an absence.

While acknowledging this positive policy initiative I cautioned, given the time sensitivity of such decisions, that there was a need for the Service to ensure that the policy was both understood and implemented at the institutional level. There is really no appropriate corrective action available when an error in this area is made – death and funerals are not re-scheduable yet we continue to receive complaints from offenders whose absences have been denied for reasons inconsistent with the policy.

Before closing off this section of the Report dealing with last year's issues, I must thank Mr. Ingstrup, the Commissioner of Corrections, for resolving the issue of offender telephone access to Correctional Service senior officials. Our recommendation was that the Correctional Service should allow offenders telephone access to officials in Parole Offices, Regional Headquarters and National Headquarters but I sensed some reluctance on the part of several members of the Executive Committee to go along with that proposal. However, after hearing the arguments pro and con, the Commissioner decided to accept the recommendation and directed that all regions set up a system to incorporate this policy.



## COMPLAINT ISSUES

### 1. Policy on Disciplinary Dissociation

In late 1989 I raised the issue of the disparity across the Correctional Service concerning the conditions of dissociation in terms of the rights and privileges afforded dissociated inmates and in response I was advised that a Study Group was reviewing the Commissioner's Directives in relation to the Mission Statement of the Correctional Service and assured that the purpose of dissociation and the questions of the rights and privileges would be addressed by this review.

In October 1990 I was advised that the review had been completed and we were provided with a copy of the Final Report – Review of Policies Against the CSC Mission. This document offered an analysis and recommendation with respect to Commissioner's Directive 597 – Disciplinary Dissociation. The recommendation suggested that the policy should be amended to clarify what is meant by rights as opposed to privileges for inmates in disciplinary dissociation and that it should define whether the intent of disciplinary dissociation is to impose a more punitive regime than that of administrative segregation.

Between October 1990 and February 1992, despite numerous exchanges of correspondence, there is no evidence of any action being taken on either our initial observation of late 1989 or the above recommendation from their own internal review of 1990.

In February 1992 we were provided with a detailing of proposed amendments which were unfortunately inconsistent with their own recommendation and failed to address the concerns raised by this office in 1989. In April we recommended that the conditions of confinement for disciplinary dissociation be the same as those for administrative dissociation which had been established in November 1991 and reads as follows:

#### Conditions of Confinement

Inmates in administrative dissociation shall be accorded the same rights, privileges and conditions of confinement as those inmates in the general population except for those that:

- a. can only be enjoyed in association with other inmates; or,
- b. cannot reasonably be given owing to limitations specific to the administrative dissociation area, or security requirements.

The response in May appears to have accepted that position while indicating that a consultative draft would be ready by May 22, 1992. We continue to await finalization.

### 2. Gender Change Policy

In April 1991 we received a complaint from a transsexual inmate who had exhausted the grievance procedure in an effort to have a hormone treatment. The reply at the third level was a denial indicating that the request for such treatment was contrary to Commissioner's

Directive 800 which states *inter alia* that hormones will only be provided nine months prior to release. Unfortunately the complainant was serving a life sentence.

I am advised that transsexuality is a term applied to a defect in psychological and sexual development which leads to a cross-gender identity with the opposite sex, generally leading to cross dressing without sexual excitement and with a continual and consuming desire to belong to the opposite sex. This affliction is not to be confused with transvestism or passive male homosexuality.

An assessment was done on the complainant and because of the policy the doctor noted that it would be several years before hormone therapy may be provided. He went on to say that the Correctional Service of Canada must decide whether it is part of its Mission to go through the extensive and risky procedures to make the person more content or stick to its policy and advise him to wait until release.

With this information I wrote to the Commissioner of Corrections asking him to review the matter and to provide my office with the Service's decision with reasons.

The Commissioner of Corrections responded by indicating that attempting to meet the needs of the incarcerated transsexual is truly a difficult challenge. He went on to describe some history of association with a well known Gender Identity Clinic and made a convincing argument for the decision of the Correctional Service to freeze inmates at the stage of feminization or masculinization that they had reached at the time of entry to the penitentiary system. He also reviewed previous assessments and concluded that consensus was that this inmate was not considered a reasonable candidate at this time for surgical re-assignment nor to long-term hormone therapy.

In a further letter to the Commissioner of Corrections I noted that the policy calling for hormone therapy for a period no greater than nine months prior to release would effectively make ineligible all federal offenders except those serving a very short sentence. My concern with the Service's current policy was that it did not seem to afford the degree of flexibility necessary to address the individual needs of the offender. At a minimum, the Service's position on gender change should reflect a willingness to undertake whatever reasonable options are available to meet the needs of those offender under the Service's care.

Consequently I recommended that the Service undertake a review of its position on sexual gender changes to ensure that its policy does not unduly restrict the options available in meeting with the legitimate needs of this offender.

In December 1991 this office was contacted by two inmates who were recommended by a recognized Gender Dysphoria Clinic for a treatment program which was inconsistent with the Service's existing policy despite the support of the regional medical and treatment staff, this recommended treatment program was denied by National Headquarters.

After exchanging another round of correspondence the Commissioner of Corrections was satisfied that there was sufficient flexibility in the way in which they carried out their policy however he did agree with me that such flexibility may not be self-evident in the policy itself and accordingly amended the section governing the provision of hormones in the pertinent Commissioner's Directive to:

Upon approval, hormones may be given to an offender for a period normally no greater than nine months prior to release, providing that the offender has been accepted into a sexual gender change program on a post-release basis.

This was a first step but because the Service's policy was based on ten-year-old consultation information, we felt that a complete review of the whole policy would be in order. I believe that a combination of factors convinced National Headquarters to accept that recommendation. Certainly the opinion of senior regional medical staff who supported the proposed treatment program for the additional two complainants was most compelling.

A decision was made by the Commissioner of Corrections to have the policy on gender change reviewed and a psychiatrist at the Royal Ottawa Hospital was asked to conduct that review. The Commissioner further advised that the existing policy was to remain in place until new amendments were approved. The report was expected by March 31, 1992.

Before the end of our reporting year we requested being provided with the results of the review and the recommendations made with regard to the policy. We were advised that the Correctional Service would be consulting further with a number of clinics and treatment facilities before finalizing its policy regarding the treatment of transsexualism and consequently the doctor's input may well be subject to amendment. They did however offer to provide a copy of the draft policy. We again requested a copy of the review which was not forthcoming by year's end. We will of course continue to monitor the situation.

### **3. Review of Medical Grievances**

This issue was formally raised in August 1991 through correspondence with the Commissioner of Corrections. The problem brought to our attention by several complaints, centred on the absence of medical expertise at the regional level to effectively address health care matters raised by inmates through the grievance process. At the time of writing to the Commissioner, the Pacific was the only Region that had a doctor in the position of Regional Administration Health Care Services. The Correctional Service had decided to discontinue staffing that position with a physician in the other four regions.

In response to our observation a memorandum was sent to the Regional Deputy Commissioners requesting that they review their current situation to ensure that second level medical grievances are appropriately reviewed. Shortly thereafter this office was advised of the revised regional plans for reviewing second level medical grievances.

In the Atlantic Region medical grievances will be reviewed by the Regional Chief, Clinical and Nursing Services, and in exceptional circumstances the region would secure a second opinion of a position through a fee-for-service contract. A staff physician from an institution in the Quebec Region will review and respond to medical grievances in that region and in Ontario they are adopting the same practice, while in the Prairie Region the services of one of the contract physicians will be utilized for the review of grievances.

#### 4. Hostage Taking – Saskatchewan Penitentiary

Following receipt and review of the Correctional Service Board of Investigation Report into an incident at Saskatchewan Penitentiary on March 25, 1991, which resulted in the death of two inmates, I wrote to the Commissioner of Corrections on August 7, 1991 expressing our concerns with that Report and more specifically, requested further information on four areas detailed in the Report.

These four areas were a) the decision to use drugs as an item of negotiation; b) the availability of audio-visual surveillance devices; c) the policy of integrating protective custody offenders into the population; and, d) the availability of information related to a previous hostage-taking by one of the perpetrators.

The decision to use drugs as an item of negotiation raises questions as to both the effect that the sanctioning of the decision will have on the Service's policy, as well as the timing of the decision in this particular instance. I should note that the Service's policy was and still is that "drugs shall not be given to inmates as an item of negotiation". With respect to timing, it appears from a review of the chronology section of the Report that the option of using drugs as an item of negotiation was under consideration prior to the Warden being advised that the "perpetrators wanted drugs in exchange for a hostage". I concluded by asking if the Service was intending to clarify its policy on this issue.

With respect to the second concern raised by this office, the Report clearly details the "hardly ideal" conditions under which the limited surveillance of the shop area, where the incident took place, was maintained. The Report also states that "unfortunately since no RCMP representative was in the Emergency Command Post, technical advice on audio-visual surveillance devices was not readily available". Although the Board of Investigation in its Findings section states that "better use could have been made of outside technical assistance" there was no corresponding recommendation to ensure that such assistance is readily available in the future.

In my letter to the Commissioner I simply restated the Report Finding and suggested that a recommendation to ensure such assistance would be readily available in the future, would have been appropriate.

My third area of concern was the difficulties associated with integrating protective custody offenders into the general population at Saskatchewan Penitentiary due to the presence of an increasing number of hard core maximum security inmates. The Board of Inquiry did comment on the subject noting that "the forced integration of protective custody inmates and maximum security offenders has proceeded, while not without incident, surprisingly well at Saskatchewan Penitentiary", and went on to attribute the few numbers of incidents to a variety of factors, including the strong, confident staff presence within the institution. However, the Board also noted the expressed dissatisfaction of both staff and inmates with the growing number of what it termed "lunatic fringe" arriving at the institution but offered no conclusive comment on the utility of continuing the Service's current integration policy in light of the comments and the hostage-taking incident.

My final comment on the Report had to do with the availability of information concerning one of the hostage-takers' previous hostage-taking at another institution. A review of the chronology section of the Report shows that Saskatchewan Penitentiary requested from

National Headquarters information concerning this previous hostage-taking in excess of fourteen hours after the incident commenced. My letter questioned why such information was not available at Saskatchewan Penitentiary and why it took some fourteen hours to request it from another source. It seemed to me that this type of information should be on file at the offender's institution and readily available.

Exactly three months later I received a response from the Commissioner of Corrections which began by acknowledging receipt of my concerns but questioning how this situation fitted into my mandate. As I later mentioned to him, not only did we receive complaints on the matter, but that our office looks into all Correctional Service inquiries into major disruptions and that I am mandated to investigate and report upon problems on my own initiative.

With respect to the use of drugs as an item of negotiation I was informed that paragraph 37 of Commissioner's Directive 600 entitled "Management of Emergencies" states:

Drugs shall not be given to inmates as items of negotiation. However, as the Service remains responsible for providing the necessary health and medical care, inmates and staff shall continue to be provided with authorized medication, as deemed necessary.

He went on to state that "this policy which is consistent with that of the Federal Government has remained largely unchanged over the years and has become known as the "no deals policy". However, when the life of a hostage is in imminent danger – real threat of death or serious assault – if medication prescribed by a physician could result in the reduction of tension in this very specific type of situation, this could be considered negotiable. "Nevertheless, the question of the use of medication and the timing of the decision in this incident are ongoing and clarification with the Deputy Commissioners and Wardens will be issued."

On my second concern I was advised that there was no recommendation to ensure that outside technical assistance is readily available in the future because a vast majority of such incidents are resolved without injury or loss of life and rarely is such equipment required on the scene.

Concerning the integration of special needs offenders at Saskatchewan Penitentiary, the response indicated that while the Board felt that it was appropriate for them to comment on the progress of the initiative at the institution, they also felt that their mandate did not include conducting an evaluation of the Service's policy in this area.

In response to my last concern I was advised that although they knew that one of the hostage-takers had been involved in similar incidents at other institutions they did not have detailed information about how the crises managers had handled these incidents or the outcome of them. Such detailed information I was told would only be available in the inquiries conducted following the incidents which are kept at National Headquarters. On the question of the lateness in requesting information, I was further advised that once the situation began to deteriorate and it became apparent that a quick resolution was not possible, management took steps to obtain all pertinent information which they hoped would be useful to them in achieving a peaceful conclusion to the incident.

The Commissioner's response to the issues raised was not convincing so the matter was a topic of discussion with him over the next few months at our regular meetings. Finally in

March, 1992 a commitment was made for the Assistant Commissioner, Executive Services to follow up on the issue of the use of drugs in the hostage-taking and the Correctional Programs and Operations Assistant Commissioner was to look at what could be done to ensure that pertinent information on post hostage taking incidents was readily available.

Hoping to have some resolution before the end of our reporting year May 31, 1992, we wrote again to National Headquarters on April 28, 1992 indicating our dissatisfaction with the earlier reply and requesting further comment but received no response to that request before the end of the reporting year.

We will however, press the Correctional Service for further comment and clarification on outstanding problem areas associated with this hostage taking incident at Saskatchewan Penitentiary.

## **5. Correctional Service Policy on Complaint Litigation**

In August 1991 we wrote to the Assistant Commissioner Executive Services requesting a further review of a third level grievance decision concerning a transfer denial. The response indicated that the subject had taken the matter to court and that "in these circumstances, you will understand that it would be inappropriate for me to comment at this time, on the question you have raised". We disagreed with both the decision taken on the grievance and with the position to not respond to our questions because the matter was being litigated. We requested clarification and agreement was reached to review both matters. We wrote in February, 1992 inquiring as to the status of the review and were advised again that Correctional Service decided not to comment on the questions raised because the inmate had appealed the denial of his transfer. There was no indication that a review had been conducted.

In March, 1992 we again wrote stating in part that "the issue at question here ... is the Service's decision to not respond. Litigation, in and of itself, does not negate the Service's responsibility to address issues raised by this office". We again requested clarification of their position but received no further comment by years end.

## **6. Offender Pay – Prison for Women**

An offender housed at Prison for Women wrote to Regional Headquarters Ontario in September 1990 pointing out that female inmate clerks working at Kingston Penitentiary and at Regional Headquarters were to receive a pay increase from \$6.90 per day to \$28.00 per day. The woman thought that due to an oversight that her name was not on the list to receive the increment and requested that she be included.

The memorandum to her in response indicated that her request was fully supported but would have to be decided by the Deputy Commissioner and was forwarded to Personnel. Personnel responded saying that it was outside their power to intervene. So she wrote to the Deputy Commissioner who responded by informing her that there is no provision in the Commissioner's Directives to adjust her pay rate. He explained that the Correctional Staff College had approval to pay workers the higher rate which was equivalent to the rate for day parolees.

Next she wrote to the Commissioner of Corrections and again was denied the higher level. The explanation this time was that there was no contract between Isabel McNeil House, a minimum security facility, and the Staff College and that the budget for wages is one that would have been used to pay an outside contractor. There is no such contract between the Prison for Women and the Staff College.

Next she called National Headquarters indicating that the only difference between her and the women receiving higher pay is that she is housed in the main institution building while the others are housed at Isabel McNeil House. All are minimum security inmates. She further indicated that contrary to the explanation she was given, not all those receiving the pay increase were working at the Staff College.

It is now January, 1992 and she writes our office seeking assistance so we request copies of all the correspondence and documentation related to the decision. During the course of our investigation we find that no one is happy with the situation and a number of reviews are undertaken. I broached the matter with the Commissioner of Corrections who was hopeful that it would be favourably resolved by March, 1992 however we received subsequent notification to the effect that the issue was more complex than first thought but that our office would be kept informed.

It is truly amazing the amount of time that has been spent on this complaint by so many people and the system's inability to resolve it compounding the frustration of the complainant over the course of almost two years. We will of course continue to monitor this ongoing saga.

## **7. Mental Incompetence**

One of my Investigators raised the issue of representation available to offenders who lack legal capacity pursuant to various provincial statutes governing trusteeship or guardianship of mentally incompetent persons. So in October 1991 we wrote to National Headquarters requesting that information and specifically for:

- 1) the measures taken to adjudge an offender's capacity to manage his own affairs when it becomes apparent to staff that a problem may exist;
- 2) the offender activities to which such a determination would apply, eg: personal finances, release planning, etc.
- 3) the steps taken by the Service to provide for personal representation, under provincial law or otherwise, when the Service determines that incapacity may exist; and,
- 4) the procedures undertaken when persons outside the Service inform staff that they suspect an offender could suffer from a mental incapacity.

The matter was raised subsequently at meetings with Correctional Service staff in January and March 1992 and the Service undertook to review and discuss the matters raised in our earlier correspondence. We look forward to receiving the results of that review.

## **CONCLUSION**

Work in corrections is fraught with difficulties and consequently those who demonstrate a sense of dedication deserve to be recognized. We therefore wish to thank those men and women for their perseverance and for their assistance to this office in the resolution of complaints. I would also like to offer a special thank you to the Commissioner for his positive approach to this office during the year.

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 remuneration and reimbursement as may be approved by the Treasury Board; and
4. that the Commissioner shall submit an annual report to the Solicitor General of Canada regarding problems investigated and action taken.

Certified to be a true copy

Clerk of the Privy Council

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 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 or 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

