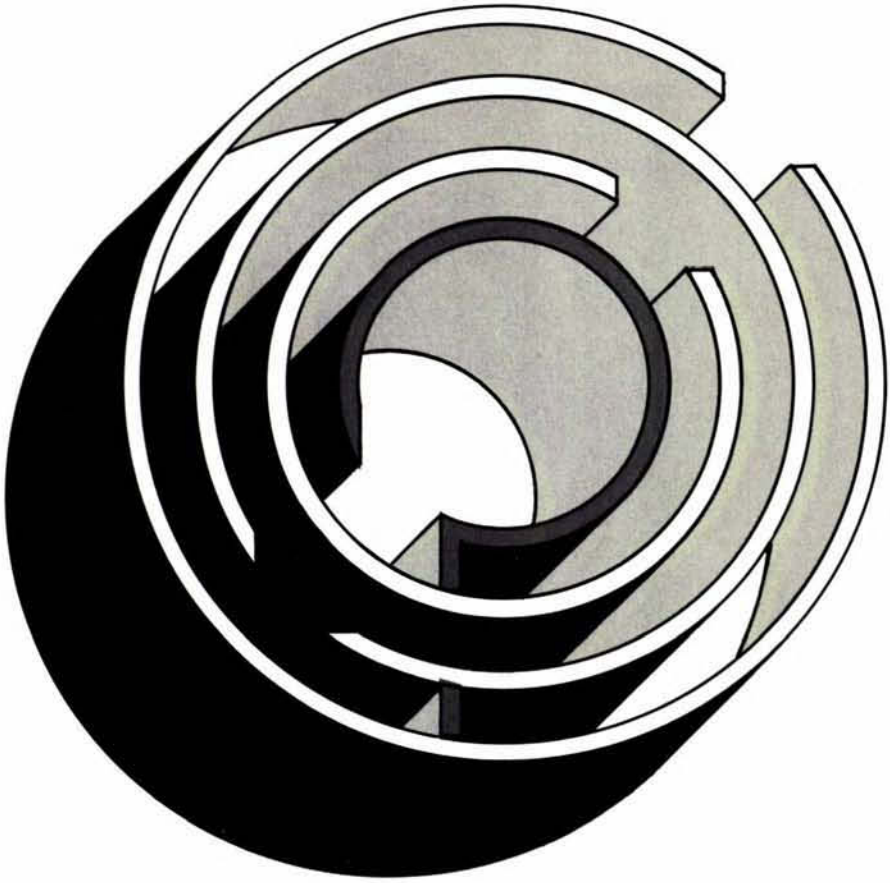
Canada



Annual Report of the Correctional Investigator

1992 - 1993

The Correctional Investigator
Canada

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The Correctional Investigator
Canada

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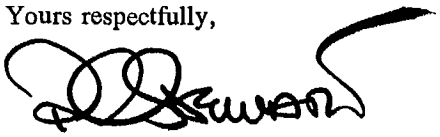
25 June, 1993

The Honourable D. Lewis
Solicitor General of Canada
House of Commons
Wellington Street
Ottawa, Ontario

Dear Mr. Minister:

In accordance with the provisions of section 192 of the Corrections and Conditional Release Act, it is my duty and privilege to submit to you, the twentieth Annual Report of the Correctional Investigator.

Yours respectfully,



R.L. Stewart
Correctional Investigator

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INTRODUCTION

On November 1, 1992 the *Corrections and Conditional Release Act* ("an Act respecting corrections and the conditional release and detention of offenders and to establish the Office of the Correctional Investigator") came into force. The enactment of this legislation has generated some comment on whether the Correctional Investigator, as detailed within Part III of the Act, has been afforded new or greater powers than those provided during the Office's twenty-year mandate under the provisions of the *Inquiries Act*. .

My view is that the Act has not significantly added to the powers which the Correctional Investigator previously possessed. Rather, the legislation has clearly established the "Function" of the Correctional Investigator as that of an Ombudsman and clarified the authority and responsibilities of the Office within a procedural framework which both focuses and paces our activities. In essence, Parliament has provided the Correctional Investigator, not with new powers, but with specific direction and momentum.

A key and central element of any Ombudsman operation is the independence of the office from the government organization it is mandated to investigate. This independence has traditionally been established and maintained through having the Ombudsman report directly to the legislature. The reporting relationship of the Correctional Investigator to the Solicitor General of Canada, given that Minister's direct responsibility for Corrections, has been an ongoing point of debate within the corrections field. During the public consultations leading to the finalization of the *Corrections and Conditional Release Act* many, including this Office, advocated for the establishment of direct legislative reporting.

The Act maintains the Correctional Investigator's traditional reporting relationship through the Solicitor General to the Houses of Parliament. In so doing, the legislation has attempted to balance the need for Ministerial accountability for correctional operations with the need that the Correctional Investigator be and be seen to be independent. To this end, the Act has afforded the Office the flexibility of mandate and function associated with more traditional ombudsman operations and established a time frame and structure within which the Minister must present reports from this Office to Parliament. Although I personally continue to support the concept of a direct legislative reporting relationship, I am of the opinion that the provisions of the Act provide for a legislative structure within which both the independence and effectiveness of the Office can be maintained and promoted.

Part III of the Act parallels, as I indicated, very closely the provisions of most provincial Ombudsman legislation, albeit, in our case, within the context of investigating the activities of a single government organization and reporting to the legislature through a single Minister. The "Function" of the Correctional Investigator, as with all Ombudman mandates, is purposefully broad:

> ... to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner (of

Corrections) or any person under the control and management of, or performing services for or on behalf of, the Commissioner, that affect offenders either individually or as a group.

Inquiries can be initiated on the basis of a complaint or at the initiative of the Correctional Investigator with full discretion resting with the Office in deciding whether to conduct an investigation and how that investigation will be carried out.

In the course of an investigation, the Office is afforded significant authority to require the production of information up to and including a formal hearing involving examination under oath. This authority is tempered, and the integrity of our function protected, by the strict obligation that we limit the disclosure of information acquired in the course of our duties to that which is necessary to the progress of the investigation and to the establishing of grounds for our conclusions and recommendations. Our disclosure of information, to all parties, is further governed by safety and security considerations and the provisions of the *Privacy* and *Access to Information Acts*.

The provisions, above, which limit our disclosure of information, are complimented by other provisions within Part III of the Act which prevent our being summoned in legal proceedings and which underline that our process exists without affecting, or being affected by, appeals or remedies before the Courts or under any other Act. The purpose of these measures is to prevent us from being compromised by our implication, either as a "discovery" mechanism or as a procedural prerequisite, within other processes - an eventuality which could potentially undermine the Office's Ombudsman function.

The Office's observations and findings, subsequent to an investigation, are not limited to a determination that a decision, recommendation, act or omission was contrary to existing law or established policy. In keeping with the purposefully broad nature of our Ombudsman function, the Correctional Investigator can determine that a decision, recommendation, act or omission was; "unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on a mistake of law or fact"; or that a discretionary power has been exercised, "for an improper purpose, on irrelevant grounds, on the taking into account of irrelevant considerations or without reasons having been given".

The Act at Section 178 requires that where in the opinion of the Correctional Investigator a problem exists, the Commissioner of Corrections shall be informed of that opinion and the reasons therefore. The practice of the Office has been to attempt to resolve problems through consultation at the institutional and regional levels in advance of referring matters to the attention of the Commissioner. While we will continue to ensure that appropriate levels of management within the Service are approached with respect to complaints and investigations, I believe this provision clearly implies that the unresolved "problems" of offenders are to be referred to the Commissioner in a timely fashion. As such the pace of our resolution process at all levels within the Service will necessarily be quickened.

The legislation as well provides that the Correctional Investigator, when informing the Commissioner of the existence of a problem, may make any recommendation relevant to the resolution of the problem that the Correctional Investigator considers appropriate. Although these recommendations are not binding, consistent with the Ombudsman

function, the authority of the Office lies in it's ability to thoroughly and objectively investigate a wide spectrum of administrative actions and present its findings and recommendations to an equally broad spectrum of decision-makers, inclusive of Parliament, which can cause reasonable corrective action to be taken if earlier attempts at resolution have failed.

A significant step in this resolution process is the provision at Section 180 of the Act which requires the Correctional Investigator to give notice and report to the Minister if within a reasonable time no action is taken by the Commissioner that seems to the Correctional Investigator to be adequate and appropriate. Section 192 and 193 of the legislation continues this process by requiring the Minister to table in both Houses of Parliament within a prescribed time period the Annual Report and any Special Report issued by the Correctional Investigator.

Although this reporting process, as I have indicated, is important, it must be kept in mind that the purpose of the Office is not to report; it is to facilitate the resolution of offender problems. It is within this context that I feel the mandate afforded the Office within Part III of the Act will be of assistance. Assistance, not only in providing specific direction and momentum to our activities, but assistance in providing more direction and momentum to all those charged with the responsibility of ensuring that offender problems are addressed in a fair and timely fashion.

STATISTICS

TABLE A

COMPLAINTS RECEIVED AND PENDING - BY CATEGORY

Administrative segregation	
a) Placement	271
b) Conditions	130
Case preparation	
a) Parole	384
b) Temporary absence	124
c) Transfer	317
Cell effects	254
Cell placement	95
Claims	
a) Decisions	40
b) Processing	54
Correspondence	63
Diet	
a) Medical	20
b) Religious	16
Discipline	
a) ICP decisions	38
b) Minor court decisions	17
c) Procedures	120
Discrimination	20
Employment	176
Financial matters	
a) Access	57
b) Pay	106
Food services	15
Grievance procedure	165
Health care	
a) Access	190
b) Decisions	267
Information	
a) Access	62
b) Correction	173
Mental health	
a) Access	55
b) Programs	10
Penitentiary placement	105
Private family visits	152
Programs	143
Request for information	303

TABLE A (cont'd)

COMPLAINTS RECEIVED AND PENDING - BY CATEGORY

Sentence administration	118
Staff	227
Temporary absence decision	122
Telephone	81
Transfer	
a) Decision	190
b) Involuntary	212
Use of force	52
Visits	213
Outside Terms of Reference	
Parole Board decisions	194
Outside court	23
Provincial matter	16
Total	5490

TABLE B

COMPLAINTS - BY MONTH

1992	
June	348
July	570
August	593
September	471
October	495
November	673
December	549
1993	
January	629
February	546
March	616
Total	5490

TABLE C

COMPLAINTS - BY REGION

	1992							1993			
MARITIMES	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	TOTAL
Atlantic	11	26	11	17	19	19	10	15	12	17	157
Dorchester	9	6	14	9	8	13	8	21	4	9	101
Springhill	13	4	14	2	32	31	18	28	19	25	186
Westmorland	3	2	4	4	9	7	10	15	0	6	60
Provincial	1	1	1	3	3	0	0	0	1	1	11
ONTARIO											
Bath	5	2	4	5	1	4	2	5	2	6	36
Beaver Creek	1	3	4	0	2	1	0	1	4	2	18
Collins Bay	10	29	17	12	12	8	29	27	31	18	193
Frontenac	0	3	4	4	3	4	4	4	0	2	28
Joyceville	7	29	7	16	8	10	14	20	13	22	146
Kingston Penitentiary	8	42	13	21	10	12	40	29	34	13	222
Millhaven	28	13	11	11	42	9	8	16	16	53	207
Pittsburgh	2	2	1	2	1	2	0	14	5	2	31
Prison for Women	1	3	5	2	2	6	1	7	3	7	37
Warkworth	17	64	34	32	25	34	28	24	61	29	348
Provincial	1	1	2	5	4	2	2	4	5	3	29
PACIFIC											
Elbow Lake	1	2	0	0	0	0	0	1	0	0	4
Ferndale	2	4	2	2	3	5	0	1	0	1	20
Kent	10	24	26	10	19	76	9	28	13	11	226
Matsqui	2	6	7	7	3	24	1	5	3	5	63
Mission	3	10	11	4	3	8	4	6	1	3	53
Mountain	7	12	17	2	9	21	6	4	11	13	102
RPC Pacific	2	4	7	2	1	12	0	9	5	0	42
William Head	0	0	21	1	1	0	1	13	2	2	41
Provincial	1	0	0	0	4	1	1	0	0	0	7
PRAIRIE											
Bowden	31	24	45	17	28	39	24	48	11	20	287
Drumheller	4	13	7	11	21	21	22	12	16	25	152
Edmonton	2	12	5	7	23	6	20	8	11	79	173
Oskana Centre	0	0	0	0	0	0	0	0	0	0	0
Rockwood	0	2	0	8	0	0	2	0	0	2	14
RPC Prairies	1	1	5	2	1	1	10	1	6	0	28
Saskatchewan Farm	1	0	0	2	0	6	0	1	1	0	11
Saskatchewan Penitentiary	7	20	12	20	12	40	18	29	9	15	182
Stony Mountain	23	9	5	30	9	4	17	8	10	21	136
Provincial	1	1	1	1	3	4	0	4	7	1	23

TABLE C (cont'd)

COMPLAINTS - BY REGION

	1992							1993			
QUEBEC	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	TOTAL
Archambault	15	16	36	24	18	17	23	26	17	13	205
Cowansville	16	18	28	30	15	43	19	20	10	30	229
Donnacona	5	23	15	13	27	15	17	23	15	34	187
Drummondville	28	24	36	29	19	35	29	34	44	16	294
FTC	15	17	37	14	19	25	21	24	59	21	252
La Macaza	18	27	34	17	7	20	46	15	5	19	208
Leclerc	14	10	15	11	9	30	29	24	13	23	178
Montee St. Francois	6	11	17	11	12	16	11	10	9	8	111
Ogilvy Centre	0	0	0	0	0	0	0	0	0	0	0
Port Cartier	2	23	42	25	10	18	11	22	39	23	215
RRC Quebec	5	7	4	9	19	8	12	12	9	5	90
Ste-Anne des Plaines	7	14	8	10	18	11	20	5	9	9	111
Provincial	2	6	4	7	1	5	2	6	1	2	36
TOTAL	348	570	593	471	495	673	549	629	546	616	5490

TABLE D

COMPLAINTS AND INMATE POPULATION - BY REGION

Region	Complaints	Inmate Population*
Pacific	558	1597
Prairie	1006	2642
Ontario	1295	3680
Quebec	2116	3772
Maritimes	515	1245
Total	5490	12,936

* The inmate population figures were provided by the Correctional Service of Canada and are those for March 31, 1993.

TABLE E

INSTITUTIONAL VISITS

Institution	Number of Visits
Archambault	7
Atlantic	5
Bath	5
Beaver Creek	3
Bowden	8
Collins Bay	8
Cowansville	9
Donnacona	7
Dorchester	9
Drumheller	6
Drummond	8
Edmonton	6
Elbow Lake	1
Federal Training Centre	4
Ferndale	3
Frontenac	7
Joyceville	8
Kent	9
Kingston Penitentiary	8
La Macaza	9
Leclerc	8
Matsqui	7
Millhaven	8
Mission	6
Montee St. François	5
Mountain	6
Pittsburgh	5
Port Cartier	6
Prison for Women	6
Psychiatric Centre, Pacific	4
Psychiatric Centre, Prairies	4
Reception Centre, Quebec	8
Riverbend	6
Rockwood	2
Saskatchewan Penitentiary	8
Springhill	4
Ste. Anne des Plaines	8
Stony Mountain	4
Warkworth	9
Westmorland	3
William Head	3
Total	250

TABLE F

INMATE INTERVIEWS

	Number of Interviews
1992	
June	53
July	115
August	202
September	95
October	161
November	244
December	122
1993	
January	241
February	187
March	224
Total	1644

TABLE G

DISPOSITION OF COMPLAINTS

Action	Number
Pending	309
Beyond mandate (no action)	125
Premature	1022
Not justified	646
Withdrawn	193
Assistance given	1206
Advice given	692
Information given	664
Resolved	489
Unable to resolve	144
Total	5490

TABLE H

COMPLAINTS RESOLVED OR ASSISTED WITH - BY CATEGORY

Category	Resolved	Information Given	Advice Given	Assistance Given
Administrative segregation				
a) Placement	10	7	7	60
b) Conditions	28	10	20	60
Case preparation				
a) Parole	31	54	49	105
b) Temporary Absence	17	6	21	39
c) Transfer	35	32	24	101
Cell effects	41	17	40	67
Cell placement	4	7	15	21
Claims				
a) Decisions	2	2	7	6
b) Processing	7	3	10	14
Correspondence	8	1	6	9
Diet				
a) Medical	3	0	2	7
b) Religious	4	1	1	7
Discipline				
a) ICP Decisions	1	10	4	6
b) Minor court decisions	0	0	5	2
c) Procedures	12	11	17	20
Discrimination	1	2	3	6
Employment	15	9	23	39
Financial matters				
a) Access	9	7	8	12
b) Pay	26	9	9	16
Food services	2	2	1	2
Grievance procedure	23	13	11	62
Health care				
a) Access	22	15	22	57
b) Decisions	14	25	31	46
Information				
a) Access	13	7	11	13
b) Correction	9	38	27	29
Mental health				
a) Access	5	6	4	7
b) Programs	0	1	3	2
Penitentiary placement	8	14	14	19
Private family visits	24	8	9	36
Programs	7	13	18	29
Request for information	1	231	34	30

TABLE H (cont'd)

COMPLAINTS RESOLVED OR ASSISTED WITH - BY CATEGORY

Category	Resolved	Information Given	Advice Given	Assistance Given
Sentence administration	14	14	28	23
Staff	4	8	47	35
Temporary absence decision	10	8	11	34
Telephone	18	2	8	20
Transfer				
a) Decision	17	16	25	55
b) Involuntary	6	11	45	25
Use of force	2	1	2	10
Visits	32	12	35	28
Outside Terms of Reference				
Parole Board decisions	4	24	30	39
Outside court	0	4	3	6
Provincial matter	—	3	2	2
Total	489	664	692	1206

OPERATIONS

Operationally, the primary function of the Correctional Investigator as detailed by Part III of the *Corrections and Conditional Release Act* is to investigate and bring resolution to offender complaints. The Office as well has a responsibility to review and make recommendations on the Service's policies and procedures associated with the areas of complaint to ensure that systemic areas of concern are identified and appropriately addressed.

All complaints received by the office are reviewed and initial inquiries made to the extent necessary to obtain a clear understanding of the issue in question. After this initial review, in those cases where it is determined that the area of complaint is outside our mandate, the complainant is advised of the appropriate avenue of redress and assisted when necessary in accessing that avenue. For those cases that are within our mandate the complainant is provided with a detailing of the Service's policies and procedures associated with the area of complaint. An interview is arranged and the offender is encouraged to initially address the concerns through the Service's internal grievance process. Although we encourage the use of the internal grievance process, we do not insist on its use as a pre-condition to our involvement. If it is determined during the course of our initial review that the offender will not or cannot reasonably address the area of concern through the internal grievance process or the area of complaint is already under review with the Service, we will exercise our discretion and take whatever steps are required to ensure that the area of complaint is addressed.

The Office received 5,490 complaints over the course of this reporting period which represents a slight increase. The Office's investigative staff made 250 institutional visits and conducted 1,644 interviews with offenders which are consistent with past reporting periods. A breakdown of these numbers is provided in Tables A through H in this report.

There has been comment made by some within the Service on what they perceive as an absence of analysis within our Annual Report on figures presented. I will take this opportunity to briefly address this matter.

The Office, for the most part, receives and investigates individual offender complaints. Our efforts at resolution of these complaints centres, in the first instance, at the institutional level. As I have indicated in past Annual Reports, the vast majority of our work takes place at the institutional level. Within this framework, the analysis of complaint numbers at the national level at best provides a general indication of where the major areas of offender concern lie and if viewed over time an indication of the effectiveness of the measures taken by the Service in addressing these general areas of concern.

It should as well be noted that the raw number of complaints associated with any issue should not be viewed as an indicator, nationally, as to the significance of the issue; one use of force complaint is too many and a decrease in the number of access to mental health complaints can as legitimately indicate an acceptance on the part of offenders of

unreasonable delay as it can a resolution to the problem. These issues must be viewed within an institutional and regional context as they relate to the number of individual complaints in any given area.

In this same vein it should be realized that the numbers in terms of our Disposition of Complaints categorization at Table G cannot be seen as an indicator of the Office's workload. It can take considerably more time in some instances to determine that a complaint is "beyond our mandate" or "premature" than it does to resolve another complaint.

As I indicated, our efforts at resolution are initiated at the institutional and regional levels. It is the interpretation given to our numbers, in terms of complaint categories, at the institutional and regional level which allows for the linking of the individual and group complaints to the specific areas of concern and, in turn, the identification of how best to address the issues. As such, the Office has been and will continue to produce regular institutional and regional reports which provide a breakdown on the specific areas of concern raised by the complainants and the action we have taken in an attempt to have the complaints addressed. This information is reviewed on a regular basis with regional officials in an attempt to ensure that both individual and systemic areas of concern are identified and addressed in a timely fashion. The responses to this process, for the most part, have been encouraging and the cooperation of institutional and regional staff in this area is recognized and appreciated.

STAFF

I would be extremely remiss if I did not pass public comment on the efforts of my staff over the course of this past year. Offender complaints remained at an extremely demanding level, yet the legislative process leading to the enactment of the *Corrections and Conditional Release Act* impacted measurably on our limited resources and time. I feel through your unfailingly dedicated efforts we, collectively as an Office, were able to fulfil our responsibilities on both fronts. I would like to simply state that your level of dedication, humanity and professionalism is acknowledged and greatly appreciated.

I would be equally remiss if I did not acknowledge the fine work done by the staff of the Ministry Secretariat in their assistance and direction to this Office throughout the legislative process. The end results speak directly to the effectiveness of their efforts.

CURRENT COMPLAINT ISSUES

Many of these issues have been extensively detailed in past Annual Reports. I will therefore provide at this time a brief comment on the area of concern and the current status of the issue in terms of the actions taken by the Correctional Service of Canada to address the area of concern. It should as well be noted that all of these issues have been reviewed in detail with senior officials of the Correctional Service, including the new Commissioner, Mr. John Edwards, who took over his new duties February 11, 1993.

1. SPECIAL HANDLING UNITS

These Units are the Service's highest level of security and house those offenders which the Service has judged to be too dangerous to be housed in a maximum security institution. There are two Special Handling Units, one in Prince Albert, Saskatchewan, the other at Ste-Anne-des-Plaines in Quebec. The combined capacity of the Units is 170 and they currently house 120 offenders.

The Service amended its policy governing the operation of these Units in March of 1990 with the stated objective of creating an environment with programs designed specifically to assess and address the needs of dangerous inmates so as to facilitate their integration in a maximum security institution.

I commented extensively in my *1989/90 Annual Report* on the evolution of these Units and this Office's ongoing concerns with both the concept of separate institutions for these offenders and the operation of the Units themselves. I concluded that report by stating:

> 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.

The following year 1990/91 as the Review Committee report had not as yet been issued, my Annual Report re-stated the expectation that the Committee's review would objectively evaluate the compliance of the Special Handling Unit operation against the stated policy and as well objectively evaluate the effectiveness of those operations in meeting the stated objectives of the program.

A draft Special Handling Unit Report was issued by the Service in October of 1991 with the final report being released in January of 1992. The database within this report was inconsistent and ill-defined with no substantive analysis or review of the program's effectiveness in meeting the identified needs of the offender population. The Service, in summarizing the report stated that "as is evident from some of the statistical information contained in the report, a standardized reporting structure must be developed and agreed upon so that future analysis can be more meaningful".

I noted the inadequacy of the Annual Special Handling Unit Report in my *1991/92 Annual Report* and further stated:

> 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 S.H.U. operations. I have as well been advised that it is the Service's hope that 'the next report will be more detailed and of higher quality'.

The second Annual Special Handling Unit Report, covering the period April, 1991 through March, 1992, was issued November 20, 1992. The Service with respect to the quality of this report has stated "that the second Annual Report while still not meeting all the expectations of the Correctional Investigator is much improved".

The quality of the report is peripheral to the central issue which is the quality of the Special Handling Unit program. Our review of this program, which has been shared with both the Deputy Commissioners of Quebec and Prairies, indicates that current operations are little more than a form of long-term dissociation. Programming and employment opportunities are limited with little or no evidence of a link between the programming offered and the identified needs of the offender population being served. Restrictions on offender movements and association and staff/inmate interaction, despite the policy pronouncements, remain excessively controlled. The provision of psychiatric and psychological interventions are generally limited to assessments associated with National Review Committee decision-making with little evidence of ongoing treatment or programming related to identified needs. The data collection and analysis requirements detailed in the policy are not being met, and the National Review Committee's responsibilities in terms of monitoring and overseeing Special Handling Unit operations are not being fulfilled.

It is not our expectations which need to be met but rather the expectations of the Correctional Service of Canada's policy. To date the Service, despite earlier commitments, has not objectively evaluated Special Handling Unit operations and it has been three years since the policy change.

I was advised at a recent meeting with the Commissioner that the Third Annual Special Handling Unit Report will be released shortly and it is again the Service's expectation that the report will be better. The Commissioner has as well advised that Special Handling Unit operations will be the subject of an internal audit during the course of the next year.

2. INMATE PAY

I initially raised the issue of inmate pay in my *1988/89 Annual Report* and recommended at that time that an across-the-board increase be implemented to offset the erosion of the offender's financial situation. I further noted that this erosion impacted not only on the offender's ability to purchase internally, but as well reduced the funds available on release.

I concluded last year's Annual Report by noting that the number of complaints in this area had increased, that the situation previously noted had grown progressively worse and called again for an immediate, meaningful adjustment to inmate pay levels.

Following a meeting in April of last year with the former Commissioner to review the issue of inmate pay I wrote Mr. Ingstrup stating:

> As I am sure you are aware, for many offenders it is costing them more per day for tobacco than they are earning in a day through employment. We have been advised by both offenders and staff that the situation has significantly increased tension and illicit activity within institutions.
>
> We are also advised that more offenders are in debt to other offenders, more offenders are seeking protection as a result of being in debt, and illicit activities such as brew making, drug trafficking and loansharking are on the rise.
>
> It is a basic economic fact that if money is not available from legitimate sources, individuals are forced to deal with or become part of a considerably less legitimate black market economy. I fear that if this situation is not immediately addressed, there will be an increase in unrest within institutions which are already suffering from the tensions of overcrowding. Consequently, I recommend that immediate action be taken to ensure that offender pay scales reasonably reflect the cost of living within the institutions.

I again, for the fifth year running, recommend that immediate action on this matter be taken.

3. GRIEVANCE PROCESS

This office has long had concerns with the operation of the Correctional Service of Canada's internal grievance process. The effectiveness and credibility of any levelled redress mechanism is dependent upon a combined front end process which was capable

in a participative fashion of thoroughly and objectively reviewing the issue at question, and a final level within the process which has the courage to take definitive and timely decisions on those issues referred to its attention for resolution. As I have said before, in my opinion the current difficulties with the process are related less to its structure and procedures than to the commitment and acceptance of responsibility on the part of those mandated to make the process work.

With respect to the matter of management commitment and the acceptance of responsibility in making the process work, the former Commissioner in commenting on the Service's obligation to ensure that offenders were provided with an effective avenue of redress said in February of 1990, "the timeliness of our responses will be seen - quite correctly - as a real indicator of the importance we place on resolving offender complaints".

I recommended in my *1990/91 Annual Report* that the Service produce quarterly reports, regionally and nationally, on grievance decisions so as to ensure a degree of consistency in the Service's interpretation and application of its policies in response to the concerns raised by offenders.

I was advised in March of 1992 that the Service "did not support the development of separate reporting mechanisms for specific issues and that it intended to address the recommendation on a broader scale by introducing an automated reporting system which would permit identification and analysis of deficiencies which may emerge through the grievance system". The system was to be "on line by June 1, 1992" and provide the Correctional of Service Canada with "the capacity to detect inconsistencies in the interpretation of policies".

I was advised at a recent meeting with the Commissioner that the system is now "scheduled to be on line by the summer of 1993".

The grievance process, despite years of internal review and past commitments, displays, at the national level, little if any evidence of effective management of the system or management commitment to the system. Grievance responses continue to be delayed well beyond the prescribed time frames of the policy and the thoroughness and objectivity of the reviews undertaken in many instances is wanting. The automated reporting system has yet to come on line and as such, the process continues without the capacity to provide relevant information on its own operations or management with ongoing information capable of identifying inconsistencies concerning the interpretation and application of the Service's policies.

The *Corrections and Conditional Release Act* requires of the Service the establishment of a "procedure for fairly and expeditiously resolving offender grievances". The current procedure does not meet this requirement.

The process is anything but expeditious, with offender grievances taking up to six months to work their way through the process. The current process as well cannot be seen as directed towards fair resolution; it is rather an adversarial, win-lose exercise played out on a very uneven playing field with the offender having limited input at the higher levels of the procedure.

In conjunction with the primary function as defined by the Act, the inmate grievance procedure should be seen by the Service as an invaluable management tool in identifying specific areas of concern and potential avenues of resolution; it is not. The monthly institutional and regional reports on grievances which are to be submitted to National Headquarters as per Service policy, are not being submitted and there is no evidence of monitoring or analysis of the procedure at the national level.

In conclusion on this matter, I return to my comments of 1989, that improvement in the effectiveness and credibility of this process will only happen when the senior management of the Service accepts responsibility for the operation of the procedure.

As a first step, I recommend that the Service conduct an extensive national audit on the management of the current procedure with a view to not only ensuring that the time frames and reporting requirements are met, but to as well examine the thoroughness and objectivity of the current procedure and the level of credibility it currently holds with the population it is intended to serve.

4. CASE PREPARATION AND ACCESS TO MENTAL HEALTH PROGRAMMING

This issue was initially raised in my *1988/89 Annual Report* and focused on the increasing inability of the Service to prepare the cases of offenders in a thorough and timely fashion for conditional release consideration. It was evident from our review at that time that a significant number of these delays were directly related to the Service being unable to provide the required mental health assessment and treatment programming in advance of the offender's scheduled parole hearing dates.

I further noted in 1990 that the continuation of this 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 concluded last year's Annual Report by stating

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

The above-noted commitments specific to this issue are:

a) The implementation of an Offender Management Information System by the Fall of 1992 to alleviate gaps in management's capacity to measure the availability and timely delivery of key offender programs. The current system is not capable of providing management with this information. I am advised the revised system should be on line by the Fall of 1993.

b) The production of Quarterly Reports on the Use of Waivers/Postponements and Reasons to commence April 1992. The Quarterly Reports were to contain an analysis of the reasons for the delays in presenting cases for conditional release consideration so as to ensure that corrective management action could be taken in a timely fashion. The first Quarterly Report was issued in December of 1992 with no identification as to the reasons for the delays. The second and third Quarterly Reports were issued in January of 1993 and although they identified a broad categorization of reasons for the delays, there was no evidence of analysis or comment as to what, if any, management action was called for to assist in reducing the numbers.

   The last Quarterly Report reviewed indicated that 1400 conditional release hearings were either waived or postponed for the period October through December, 1992.

c) The development and implementation of a Tracking System to provide management with ongoing relevant information on the impact its sex offender treatment programming was having on conditional release decision-making and the results of the Service's efforts at ensuring that "sex offenders were provided the opportunity for assessment and treatment by the offender's parole eligibility dates".

   There is no national tracking system capable of providing relevant information in this area. Sex offenders are seldom entering treatment programs in advance of their parole eligibility dates and in many instances, the offenders are fortunate to complete treatment prior to their statutory release dates. The Quarterly Report for October through December 1992 on Waivers/Postponements shows that close to 500 delays were identified as "needs to complete/continue a treatment or training program prior to the review or hearing".

The Service acknowledges that there is a significant problem in the area of timely case preparation and access to mental health programming. The current state of the Service's information base in this area does not allow for a clear determination of the scope or specific causes of the problems or what management action or direction is needed to reasonably address the problems.

I am advised that an improved offender information system is scheduled for implementation this summer. Until such time as the Service is capable of measuring the availability and timely delivery of key offender programs, their policy development and management decisions in this area will continue to be *ad hoc* and uncoordinated. I again recommend that this issue be given immediate attention.

5. OFFENDER RIGHTS AND PRIVILEGES

I initially raised this issue in July of 1989 and have noted in three 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 previous Commissioner indicated that the Service considered this issue

"a high priority" and advised that a handbook was scheduled to be published by the end of 1991. I was later advised that the publication would await the passing of the *Corrections and Conditional Release Act*.

The Office received a "consultation draft" on offender rights and privileges in March of 1993. I have recently been advised that publication is now scheduled for the Summer of 1993.

6. DOUBLE BUNKING

I have been commenting in my Annual Reports on the negative impact of double bunking on the individual offender and institutional operations since 1984. In that year, there were approximately 700 federal inmates double bunked and Canada's national newspaper ran a headline quoting the then Commissioner of Corrections stating: "Penitentiary Overcrowding Will End By Next July".

In my *1989/90 Annual Report* with approximately 1000 federal inmates double bunked, I restated my June 21, 1984 recommendation:

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

I as well restated my specific concern with respect to the impact of double bunking on non-general population offenders given their limited access to programming and employment opportunities and the limitations on their general movement within the institutions which results in extended periods of time being spent in the cell block area.

I was advised by the Commissioner in response to my comments that

> ... double bunking is not correctionally acceptable and that the Service would continue in its efforts to reduce double bunking by preparing offenders for conditional release in a timely fashion.

In my *1990/91 Annual Report*, with 1200 inmates now double bunked, 500 of which were housed in non-general population cells, I recommended that the Service monitor, on an ongoing basis at the regional and national level, both the number of offenders double bunked in non-general population cells and the length of time these offenders are double bunked.

The Correctional Service of Canada rejected this recommendation and said that the monitoring of double bunking would be conducted "through operational reviews and the internal audit process".

In my *1991/92 Annual Report* with the number of double bunked offenders now standing at 1700, I again recommended that effective, timely and practical methods of monitoring the double bunking situation be immediately implemented.

I was advised in April of 1992 by the Service that efforts were under way to develop an offender tracking system to identify inmates who are double bunked for any portion of their dissociation time. To date, this tracking system does not exist.

In response to our request for copies of the "operational reviews" and "internal audits" on double bunking we were advised in January of 1993 that "there has been no formal audit or operational review of this issue to date, each region has adopted a means of monitoring the use of double bunking and reporting to N.H.Q. A national roll-up is produced monthly".

In summary on this issue:

- there is no tracking system to identify inmates who are double bunked in non-general population cells;
- there has been no operational reviews or internal audits done on the double bunking situation;
- regional reporting of double bunking figures are inconsistent and at times inaccurate;
- the national roll-up and monthly reports reflect the inconsistencies and inaccuracies of the regional reporting process; and,
- the national double bunking monthly report is simply a compilation of numbers with no evidence of analysis or review.
- the number of inmates double bunked, since the Service's commitment in 1990 to reduce these numbers "by preparing offenders for conditional release in a timely fashion" has doubled.

There are currently in excess of 2000 federal inmates double bunked, in some instances three to a cell, which represent more than 20% of the maximum and medium security population. There is no tangible evidence that the Service has acted on my recommendation that "effective, timely and practical methods of monitoring this situation be implemented". This situation continues to demand the immediate attention of the Service, as we have seen the problem is obviously not going to go away by itself.

7. TEMPORARY ABSENCE PROGRAMMING

As indicated last year, 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 my *1990/91 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 Report of the Panel Appointed to Review the Temporary Absence Program for Penitentiary Inmates* (Pepino) recommended:

> That 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 database 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.

I was further advised in April of 1992 that the "Correctional Service of Canada has directed the regions to monitor variations in temporary absence levels and to take remedial action as appropriate". As we continued to receive complaints in this area and it was evident from our review that temporary absence programming was continuing to decline, we asked to see the results of the regional monitoring and to be provided with a detailing of the remedial action taken. We were advised in December of 1992 that "regions do not view the monitoring of this program as a priority".

I am now advised that when the revised Offender Management System is put in place, some time this calendar year, the Service will have more detailed data on temporary absence programming at the institutional level. At that time, the Service intends to undertake a complete system-wide analysis of its temporary absence program.

In summary on this issue:

a) the recommendation of *The Report of the Panel Appointed to Review the Temporary Absence Program for Penitentiary Inmates* (Pepino) of March 1992 concerning an institution-by-institution analysis has not been done;

b) the regional monitoring of variations in temporary absence levels directed by the Service in early 1992 has not been done;

c) the development of a comprehensive database to track variances in the rate of granting temporary absences (Pepino), has not been developed; and

d) a complete system-wide analysis of the temporary absence program awaits the implementation of the revised Offender Management System.

I believe that the Service has been running a "smoke and mirrors" campaign around this issue for the past two years. In some institutions between 1987 and 1992 temporary absence programming has been cut in half and the disparity between regional grant rates in some cases is five to one. The Service at best can only speculate as to the reasons for these declines and this disparity.

The *Corrections and Conditional Release Act* has changed the rules of the game for temporary absence programming. Without a sound historical database and understanding of what variables influence its operation, the Service is not going to be in a position to

reasonably measure the impact of the changes introduced by the Act on temporary absences.

I am of the opinion that this is an important program which directly contributes to the successful reintegration of offenders back into society and effects measurably the Service's ability to prepare cases for conditional release consideration in a timely fashion. It is a program that far too long has been neglected.

8. TRANSFERS

As I have indicated previously, transfer decisions are potentially the most important decisions taken by The Correctional Service of Canada during the course of an offender's period of incarceration. Whether it is a decision taken on an initial placement, a decision taken to involuntarily transfer to higher security or a decision taken on an offender-initiated transfer application, such decisions affect not only the offenders' immediate access to programming and privileges, but also their potential for future favourable conditional release consideration. There are very few offenders within the federal system who over the course of a year are not affected by a transfer decision. As such, it is not surprising that once again this year, transfer decisions and the processes leading to those decisions represent the single largest category of complaint received by this office.

The Service in 1989 conducted an internal audit of its involuntary transfer process. The audit team made two observations relevant to the earlier concerns expressed by this Office. First, there was a need for increased awareness on the part of both staff and offenders as to the appropriate avenue of redress on transfer decisions. Second, there was a requirement for a more effective quality control mechanisms at the regional and national levels to ensure that the transfer process complied with established procedures and time frames for decision-making.

I called in my *1990/91 Annual Report* for the Service to take action on the audit team's comments concerning the establishment of an effective quality control mechanism. I as well recommended in that report that the Service, through its offender grievance procedure, ensure:

a) that the system is capable of objectively reviewing and issuing a decision on transfer appeals in a timely fashion;

b) that during the course of its review of individual appeals that it focus not only on the decision taken, but as well, on the fairness of the process leading to that decision; and,

c) that a quarterly report be issued summarizing the review of transfer appeals.

I was advised in March of 1992 that the Service did not support my recommendation and would rather address the issues associated with the transfer process "through the implementation of the Offender Management System in the Fall of 1992". I am now advised that "National Headquarters will be able to monitor inmate transfers directly once

Release 2 of the Offender Management System is in place, some time before the end of calendar 1993".

Again, as with the Grievance Process, Case Preparation, Double Bunking, and Temporary Absences, the Service has failed to take reasonable and timely action on a long-standing area of offender concern, in part, because it continues to await the development of an automated Offender Management System. Corrective action in these areas can no longer afford to await the constantly delayed development of this system. Management can no longer afford to use the shortcomings of this system as an excuse for not taking action.

9. MANAGEMENT OF OFFENDER PERSONAL EFFECTS

The Service undertook a review of its policy on offender personal effects in early 1990 with the intention of developing national guidelines on the management of offender personal property.

In January of 1991, as a result of a number of concerns we had raised in the area, the Office received a copy of the Service's draft policy and guidelines which had been forwarded to the field for consultation. We met with the Service's National Headquarters staff in April of 1991 to provide our further comment on their draft policy.

I stated in my *1990/91 Annual Report* that I was hopeful that this initiative would reasonably address some longstanding areas of concern such 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 had resulted in offenders purchasing effects at one institution only to be advised at another institution that they are not allowed.

I concluded that Report by stating that "although there had been some delay concerning this issue, I was advised that a revised policy, inclusive of national guidelines, is expected to be approved by October of 1991".

I concluded last year's Annual Report on this issue by stating that "as of this reporting date (May 1992), there has yet to be a policy issued on the matter". Although as of this report date (March 31, 1993) there again has yet to be a policy issued on this matter. I was advised that a draft Commissioner's Directive is due in May 1993.

10. APPLICATION OF OFFENDER PAY POLICY FOR UNEMPLOYED INMATES

The Service in May of 1991 adjusted its pay policy in an attempt to ensure that offenders who were not able to work though no fault of their own were provided reasonable compensation. The policy re-emphasized the Warden's authority to adjust the pay levels

of those offenders who were unemployed as a result of accidents, long term illness or incapacity and those offenders unable to work because no work was available.

As I stated in last year's Annual Report, our review of complaints related to this area indicated that not only was the amended policy not being universally applied, in some instances, the institutions were not even aware of the policy change.

A further memorandum of clarification on this matter was issued from the Service's National Headquarters in December of 1992 and I am as well advised that a revised Commissioner's Directive is scheduled for promulgation in April of 1993. The delay on the part of the Service in ensuring that this policy was implemented, given the situation of the inmate pay issue commented on earlier is, I believe, unreasonable.

11. CRITERIA FOR HUMANITARIAN ESCORTED TEMPORARY ABSENCES

This issue, as I indicated last year, was initially raised with the Commissioner of Corrections 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 investigation of these cases had clearly indicated that the cost of the temporary absence was a significant criterion, and in some cases the only criterion, considered in reaching the decision to deny the absence. We as well determined that the Service had in some instances requested money from the offenders and their families to assist in offsetting these costs.

I concluded in my *1988/89 Annual Report* that the practice was 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 in this area removing cost as a factor in reaching 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.

I acknowledged this positive policy change in my *1990/91 Annual Report* and cautioned at that time 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. I stated in last year's Annual Report that there is really no appropriate corrective action when an error is made in this area - death and funerals are not re-schedulable - and that we were continuing to receive complaints from offenders whose absences had been denied for reasons inconsistent with the stated policy.

I have again this year received complaints from offenders where the decisions taken have been obviously inconsistent with the policy. I have reviewed this matter, and the specifics of these cases, with the current Commissioner and I recommend at this time that a clarification of this policy be issued to all Wardens by the Commissioner and that this

clarification be published in the Offender Rights and Privileges Handbook scheduled for distribution this Summer.

12. GENDER CHANGE POLICY

I raised this matter with the Commissioner of Corrections in April of 1991 as the Service's existing policy was, in my opinion, excessively restrictive in terms of the treatment options available for transsexual inmates. I recommended at that time that the "Service review its position on sexual gender change to ensure that its policy does not unduly restrict the options available in meeting the legitimate needs of all offenders including those serving long sentences".

The Service initiated a policy review in March of 1992 and although this review has been completed and a number of options have been presented to the Service's Executive Committee on this matter the policy, to date, has yet to be amended. I find this delay inexcusable.

13. HOSTAGE-TAKING - SASKATCHEWAN PENITENTIARY

This incident occurred on March 25, 1991 and resulted in the death of two offenders. I wrote the Commissioner of Corrections August 7, 1991, following our review of the Service's Board of Investigation Report on the incident, requesting further information on four areas detailed in their Investigation Report.

Those four areas, as I indicated last year 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 general population; and,
d) the availability of information related to a previous hostage-taking by one of the perpetrators.

I concluded last year's Annual Report stating that the Commissioner's response to these matters "was not convincing" and that further correspondence had been forwarded from this Office on April 28, 1992 indicating our dissatisfaction with the Service's earlier reply. The content of that April 28, 1992 correspondence is reproduced here:

> This is further to our meeting of March 12, 1992 with specific reference to the Board of Investigation Report into the hostage-taking at Saskatchewan Penitentiary and our earlier communications on this matter.
>
> Mr. Stewart requested in his 7 August 1991 correspondence, enclosed, comment on four general issues detailed within the Board of Investigation Report.

The first issue centered on the decision and the timing of the decision by management to use drugs as an item of negotiation and the effect of that decision, given the Board's conclusion, on the Service's long standing policy that 'drugs shall not be given to inmates as an item of negotiation'.

Hostage-taking within a penitentiary by its very nature poses a 'real threat of death or serious assault', as such we do not understand the qualification of the policy you put forth at page one of the Commissioner's November, 1991 correspondence.

The Commissioner further states that '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'. When are you expecting this clarification to be issued?

It is recommended, that immediate clarification on this policy matter be issued inclusive of the role of the physician in prescribing drugs during hostage-takings.

The second issue dealt with the availability of audio-visual surveillance devices.

Mr. Stewart initially questioned, given the findings of the Board that 'better use could have been made of outside technical assistance', why there was no corresponding recommendation in the Report to ensure that such assistance was readily available in the future?

The Commissioner indicated that 'rarely is such equipment required on the scene' and consequently, the Board felt that management would draw their own conclusions and take corrective steps accordingly'. I fail to see the logic in this conclusion.

I would think that all institutions would be well advised to take the steps necessary to ensure that when it is required, outside technical assistance is readily available. A recommendation to this effect, to my mind, would have been more advisable than having individual management draw their own conclusions.

The third issue concerned the difficulties associated with the integration of protective custody offenders into the general population at Saskatchewan Penitentiary given the presence of an increasing number of hard core maximum security inmates.

The Board, although indicating that the integration efforts to date had been positive cautioned that this 'is not to say that there are not problems on the horizon'. The Board as well noted the expressed dissatisfaction of both staff and inmates with the growing number of what they termed 'lunatic fringe' arriving at the institution. Mr. Stewart asked, in light of the Board's observations why the Report contained no conclusive comment with respect to the Service's integration policy? The Commissioner, in his response, indicated

that the Board did not feel that their mandate included the conducting of an evaluation of the Service's policy in this area.

It was not suggested that the Board of Investigation conduct an evaluation of the Service's integration policy, although a review of the Board's Convening Order and Terms of Reference does not appear to prohibit such an action. It was rather suggested, given the observations and comments of the Board, that there was a need for a review of the policy so as to bring some conclusion to an issue which had obviously raised concern on the part of both staff and offenders.

The fourth issue related to the availability of information at the institution on McDonald's previous hostage-taking at Dorchester Penitentiary.

The institution requested from National Headquarters information on how the previous hostage-taking involving McDonald had been resolved. The Commissioner indicated in his correspondence that what the institution did not have was detailed information about how the administration/crisis managers had handled the incident, how McDonald behaved during the incident, the demands that had been made, or the outcome of the incident. He further states 'that such detailed information would only be available in the inquiries conducted following the incident'.

This information may very well only be available in the inquiries conducted following such incidents but this does not answer the question of why this information is not available to those who may need it.

We have reviewed the two packages of documentation faxed to this institution during the course of the hostage-taking in response to the administration's request for information on how the previous incident involving McDonald was resolved and have the following observations:

(a) the first package contains no relevant information on the Dorchester hostage-taking of April 1979 other than the one sentence from a report authored in Edmonton in May of 1983 which reads: 'This inmate has a history of hostage-taking at Dorchester Institution where injuries were inflicted on the hostages (staff)';

(b) the second package appears to be information related to an incident at Millhaven Institution in May of 1980 involving inmate H.D. MacDonald not G.J. McDonald.

It would appear that not only did National Headquarters fail to provide information relevant to the institution's request, it as well provided potentially damaging misinformation on one of the participants.

The Commissioner states in his correspondence that the information which the institution did have on McDonald confirmed his 'involvement in previous hostage-takings at both Dorchester (04/79) and Millhaven Institutions (04/80)'.

Would you please provide me with the specific detailings of the incident at Millhaven Institution in April of 1980? Would you as well please provide me with a copy of the Inquiry conducted into the incident at Dorchester in April of 1979?

It is recommended that immediate steps be taken to ensure that detailed information, inclusive of investigation reports, on past hostage-taking incidents is available, on site, to those crisis managers who may need that information.

The Board of Investigation Report into the incident is narrowly focused and inconclusive.

In conjunction with the above requests for specific information I invited any further comment the Service may have on the foregoing which will be incorporated into our final Report on this matter.

A response was received from the Correctional Service of Canada June 10, 1992 providing the following information on the issues raised:

a) the use of drugs as an item of negotiation; although the Service continued to contradict the findings of its own Board of Inquiry on this matter they stated that "the Commissioner has decided to take specific measures to address this issue... he has approved the design and implementation of a Crisis Management Training Program... one of the thrusts of this program is to provide clarification of our no deals policy".

b) the availability of audio-visual surveillance devises; the "Crisis Management Training Program is being designed to deal specifically with issues similar to those raised during this incident and includes an extensive section on the availability and use of these and similar surveillance devices".

c) the policy of integrating protective custody offenders into the general population; while attempting to down play the significance of this issue the Service did state that "the Commissioner was also troubled by the concerns raised in this report and he has recently decided to launch a national review of the integration of Protective Custody inmates and the impact of policies governing this process. The findings of this review, which should be completed by January, 1993, will undoubtedly provide us with more accurate information concerning the strengths and weaknesses of our current policies, and allow us to improve our management of this process".

d) the availability of information related to a previous hostage-taking by one of the perpetrators; the Service continued, despite the evidence of their own Board of Inquiry, to insist that relevant information was provided in a timely fashion. Their further comments rather than clarifying the specifics of the situation raised further questions on both the relevancy of the information provided and its timeliness.

I followed-up with the Correctional Service on the commitments they had made and the further issues raised in their June, 1992 correspondence. I was advised that the Crisis Management Training Package which was to address the issues associated with "use of drugs as an item of negotiation" and "the availability of audio visual surveillance devices" had not been finalized. The national review, launched by the Commissioner, on the impact of the Service's policies governing the "integration of Protective Custody inmates", had been abandoned in favour of a "fundamental review of violence among inmates". This "fundamental review" is very narrowly focused, centering on three institutions only one of which has attempted to integrate protective custody offenders. The results of the review, which had very limited distribution within the Correctional Service, make only passing comment on the concerns associated with integration. The review itself, in my opinion, does not fulfil the undertaking given by the Service in June of 1992 to conduct a national review or provide the Service "with more accurate information concerning the strengths and weaknesses of their current policies and allow for improved management of the process". With respect to the issue of "availability of information on past hostage-takings" the Service acknowledged that the "bottom line was that information concerning one of the hostage-taker's involvement in a previous incident was not readily available to those authorities who needed it most". In response to this matter, the Service has "ordered a comprehensive review of the role of the Preventive Security function". I continue to await the results of that review and a clear indication from the Service as to how they will assure that relevant information is available in a timely fashion to those who need it.

The bottom line, two years after the incident, is that there is no tangible evidence that the Service has taken any meaningful corrective action on any of the issues raised.

During the course of this reporting year, through our contact with the surviving hostage-taker, two further issues have been raised. One centres on the subject's claim that he was physically assaulted by Service staff immediately following the incident and the second relates to the potential conflict of interest that existed when the chief negotiator during the hostage-taking incident subsequently became defence counsel for the hostage-taker. These matters have been discussed with senior officials from the Correctional Service of Canada and I am currently awaiting the results of their review.

14. CORRECTIONAL SERVICE POLICY ON COMPLAINT LITIGATION

I briefly commented in last year's Annual Report on the matter of not receiving responses from the Correctional Service of Canada on issues that were currently under litigation. I received correspondence in January of 1993 stating in part that "CSC is prepared to cooperate fully with the Correctional Investigator's officials at any stage of an investigation". As such, I am pleased to advise that this matter has been resolved.

15. MENTAL INCOMPETENCE

I indicated in last year's Annual Report that the issue of representation available to offenders who lack legal capacity pursuant to various provincial statutes governing trusteeship or guardianship was raised with the Service in August of 1991. We then

wrote to the Commissioner's office in October of 1991 specifically requesting information on:

a) the measures taken to adjudge an offenders capacity to manage his own affairs when it becomes apparent to staff that a problem may exist;

b) the offender activities to which such a determination would apply, e.g., personal finances, release planning, etc.;

c) 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,

d) the procedures undertaken when persons outside the Service inform staff that they suspect an offender could suffer from a mental incapacity.

These matters were subsequently further discussed with Correctional Service officials at meetings in January through March of 1992 at which time the Service undertook to conduct a review of the concerns related to these matters.

I am now advised, as of March 1993 that "discussions with the Correctional Investigator's office will be undertaken to better understand the nature of the Correctional Investigator's concerns related to this issue, its magnitude, and what procedures CSC could adopt to strengthen the current process, aside from usual good case management practices". I look forward to the initiation of these discussions.

16. POLICY ON DISCIPLINARY DISSOCIATION

I initially raised the issue of the disparity across the Service concerning the conditions of dissociation in terms of the rights and privileges afforded dissociated inmates in late 1989. As I indicated in last year's Report, I was advised at that time that a Study Group was in the process of reviewing the Service's policies in relation to their Mission Statement and assured that this process would "review the purpose of dissociation and the question of the rights and privileges to be afforded dissociated inmates".

The Final Report - Review of Policies Against the CSC Mission was issued in October of 1990. This document recommended that the policy on disciplinary dissociation needed to be amended in order "to clarify what is meant by rights as opposed to privileges for inmates housed in Disciplinary Dissociation and that the policy should clearly reflect whether the intent of Disciplinary Dissociation is to impose a more punitive regime than that of administrative dissociation". The Service between October of 1990 and February of 1992 took no action on this recommendation.

The Service in November of 1991 had amended their policy on Administrative Dissociation in terms of the "conditions of confinement" to read:

> 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.

As the Service had taken no action on the issue of Disciplinary Dissociation I recommended in April of 1992 that the conditions of confinement afforded be consistent with those detailed in their policy on Administrative Dissociation.

The Regulations to the *Corrections and Conditional Release Act*, assented to 18th June, 1992, at section 40(3) reads:

> An inmate who is serving a period of segregation as a sanction for a disciplinary offence shall be accorded the same conditions of confinement as would be accorded to an inmate in administrative segregation.

The Service finally amended its policy to reflect this requirement in November of 1992, which is quite a delay from October 1990.

17. OFFENDER PAY - PRISON FOR WOMEN

I detailed in last year's Annual Report a complaint received from an offender housed at the Prison for Women concerning an issue of pay disparity. During the course of our investigation of this complaint it became evident that the offender's position on this matter was accepted by most within the Service as reasonable, with the question being not whether but how to compensate her.

I reviewed this matter with the former Commissioner of Corrections who initially indicated that he was hopeful that a favourable resolution could be reached by March of 1992. I was subsequently advised by the Service that the issue was more complex than they had first thought and more time was required.

The offender initiated this matter through correspondence with the Correctional Service of Canada in September of 1990. I concluded last year's Annual Report stating that "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."

The saga continues; no resolution has yet been reached, but I am hopeful that the new Commissioner will find a way to break the log jam.

18. OFFICER IDENTIFICATION

The matter of officer identification was a key issue throughout the course of the Archambault Inquiry conducted by this Office in 1984 and a matter that has never been completely settled. I noted in my *1988/89 Annual Report* concern that "many staff members were neglecting or refusing to wear their identification badges while on duty."

I wrote the Commissioner in April of 1989 putting forth the position that in this day and age it is totally unacceptable for a public servant, especially a public servant designated as a peace officer, not to be identifiable to the public they serve. I was subsequently advised that the Service had reviewed the issue and had taken a decision that where name tags were not being worn they would be introduced upon the issuing of the new Correctional Service of Canada uniforms scheduled for introduction between June and October of 1992. I stated in my *1990/91 Annual Report* that I could "not accept as reasonable a further eighteen-month delay in implementing a basic policy decision on an issue initially raised in early 1989."

I am now advised that the new uniforms are expected to be issued by July 1, 1993 and that "Executive Committee members confirmed that, as uniforms are issued, all employees (uniformed and non-uniformed) in institutions will be required to wear name tags." The unreasonable eighteen-month delay, previously noted, is now a thirty-month delay on an issue raised in early 1989.

19. DISCIPLINARY COURT DECISION

We were contacted during the course of this reporting year by an offender concerning a minor disciplinary court decision and fine. The subject was charged with "wilfully or negligently damaging the property of Her Majesty or the property of another person". The charge stemmed from an incident where the subject after having been provided with a copy of his psychological report to read and sign, wrote on the report his objections to what he felt were inaccuracies and untruths. He was convicted in minor disciplinary court and fined twenty-five dollars. In contacting this office he claimed he had attempted at his hearing to provide an explanation for his action but the chairperson had refused to hear him out.

As part of our investigation of this matter we requested a copy of the minor disciplinary court hearing record. We were advised that the institution did not maintain records of such hearings. I raise this point here because the Service in January of 1990 following a recommendation from this Office in 1988 issued an interim instruction stating that basic information concerning minor court proceedings be recorded via electronic or any other means and retained for a period of two years. The Service officially amended its policy issuing a revised Commissioner's Directive in August of 1990. The offence at question took place in the fall of 1991.

Relevant to this matter I concluded my *1990/91 Annual Report* by stating:

> I reported last year that it was quite evident during the time period between the issuing of the interim instruction and the Directive that the communication of

the policy change to the institutional level was considerably less than universal. During the course of this reporting year, our review of complaints relating to minor disciplinary decisions has indicated that although the policy appears to be known at the institutional level, there exists a wide variance on the quality and content of the records maintained. This inconsistency obviously has an effect on the review of offender complaints on minor court decisions, whether undertaken by the Service's grievance process or this Office and as such, I suggest that the Regional Operational Review process include an analysis of minor court records as an element of its review.

To the best of my knowledge no Regional Operational Reviews have been undertaken in this area.

With respect to the specific complaint at issue, our review raised serious questions as to the legitimacy of the charge and conviction as well as the appropriateness of the fine levied.

The Service has a responsibility "to ensure that offenders are provided with all relevant information in a timely and meaningful manner" which affects the management of their case. This is why the report in question was being shared with the offender. The Service as well has a responsibility to ensure that information contained in its reports is accurate and complete and to provide an avenue through which offender requests for corrections can be made. There is no evidence available to suggest that the subject was advised either prior to his writing on the report or after he started writing on the report as to the proper avenue through which to request corrections.

The fine of twenty-five dollars, was to my mind excessive, representing in excess of one week's wages, and was further inconsistent with the Service's stated purpose of the disciplinary process which is to "be first and foremost corrective" in nature.

This matter was reviewed with both the Warden and the Regional Deputy Commissioner in an attempt to find a resolution. Both officials maintained support for the initial conviction and fine. We wrote National Headquarters on May of 1992 detailing our areas of concern, indicating the matter had been thoroughly reviewed with both the Warden and Regional Deputy Commissioner and requested a further review. We received correspondence from the Assistant Commissioner, Executive Services in June of 1992 advising that he had reviewed our previous correspondence with the Warden and Regional Deputy Commissioner and he supported their position. He further suggested that if we had any further questions regarding the matter we should raise them directly with the Warden and Deputy Commissioner.

I wrote the Commissioner, following our further review of the matter, indicating that in my opinion the charge was unjustified, the conviction unwarranted and the penalty excessive. I further noted the fact that the institution, contrary to the Service's policy and my earlier comments and recommendation, did not have a record of the disciplinary hearing in question.

The Commissioner's response failed to pass reasonable comment or show evidence of a thorough review on any of the issues raised. Following further discussions on this matter with the Commissioner's office we were advised by the Assistant Commissioner, Executive Services, in March of this year that: "I have reviewed the case with everyone concerned. There is no question the fine is heavy. However, the Warden carefully considered the case before making his decision. I support his decision and will not recommend re-opening the case."

Setting aside the issues surrounding the legitimacy of the charge and conviction which have yet to be addressed by the Service, the decision at question was not taken by the Warden, it was taken by a Unit Manager, and careful consideration could hardly have been given by the Warden after the fact because the Service failed to maintain a record of the disciplinary hearing. With respect to having "reviewed the case with everyone concerned" to the best of my knowledge, the inmate was never consulted during the referenced review.

In my opinion the Correctional Service of Canada has failed to objectively and reasonably address the issues raised by this case; specifically the legitimacy of the charge itself, the severity of the penalty imposed and the non-maintenance of minor court records contrary to their existing policy. My recommendation that the conviction be quashed and the subject reimbursed his twenty-five dollars has been rejected.

20. USE OF FORCE - INVESTIGATIONS AND FOLLOW-UP

The Service's policy in this area as detailed in the Commissioner's Directive defines use of force as:

> the physical constraint of inmates by means of physical handling, restraint equipment, chemical agents, authorized spray irritants, batons, water hoses, patrol dogs and firearms.

This same Directives states that:

> following an incident where force has been used, an investigation shall normally be ordered by the institutional head or other designated authority.

We noted during the course of reviewing complaints related to the use of force that the Service was not consistently conducting investigations as called for by their policy. We as well noted, that even in those instances where investigations were undertaken, there was seldom evidence that the investigating officer had contacted the inmates affected by the use of force or that the recommendations emanating from the investigations had been reviewed and actioned by senior management.

The Service has a responsibility to ensure that use of force incidents are thoroughly and objectively investigated and that corrective action where necessary is implemented in a timely fashion. This matter has been reviewed with senior correctional officials at both the regional and national level and I am advised that amendments to the Service's Security Manual are being proposed. I recommend that amendments ensuring that all use

of force incidents are investigated and that those investigations include input from the inmates affected would be best placed within the Commissioner's Directive. I further recommend that the Directive clearly detail senior management's responsibilities in ensuring that investigative reports are thorough and objective and that corrective follow-up action including coordination and analysis at the regional and national level is undertaken in a timely fashion.

21. INMATE INJURIES

The *Corrections and Conditional Release Act* requires that the Service take all reasonable steps to ensure that the "living and working conditions of inmates are healthful and safe." During the course of our investigations into concerns related to inmate injuries it became evident that across the Service, the reporting and investigation of inmate injuries was inconsistent and uncoordinated.

The *Report of Inmate Injury* form, which we were initially advised "was completed in all cases of injury", was found to be used infrequently in cases of injury other than those related to employment activities. Further, there was little evidence of review and coordination of these reports, when they were completed, at either the institutional or regional levels. Our concerns in this area were reviewed with the Service's National Headquarters' staff in May of 1992.

I have recently been advised that the Service has initiated a number of activities to address this matter including a proposal to develop a "separate Commissioner's Directive on the recording and reporting of offender injuries to provide a clear national framework and expectations on actions to be taken when an inmate incurs an injury, whatever the circumstances might be that led to that injury."

I recommend that the Service give this issue priority and I support the development of a separate Directive on Inmate Injuries to ensure that the inconsistencies and lack of coordination of the past are avoided.

On a related matter, the *Corrections and Conditional Release Act* at section 19(1) requires that:

> Where an inmate dies or suffers serious bodily injury, the Service shall, whether or not there is an investigation under section 20, forthwith investigate the matter and report thereon to the Commissioner or to a person designated by the Commissioner.

Section 19(2) further requires that:

> The Service shall give the Correctional Investigator, as defined in Part III, a copy of its report referred to in subsection (1).

The Service, despite numerous requests, has yet to provide a working definition of what constitutes "serious bodily injury." The Act came into force November 1, 1992 and to date I have not received any investigative reports from the Commissioner related to

inmates who have suffered "serious bodily injury." In fact to date I have not received any reports as required by section 19 of the Act.

I therefore recommend that the Service take immediate action to ensure that all investigative reports, inclusive of the Commissioner's comments, called for by Section 19 of the *Corrections and Conditional Release Act*, are forwarded to my attention in a timely fashion.

22. VISITS TO DISSOCIATION AND DELEGATION

The Service in November of 1991 amended the Commissioner's Directive on Dissociation to require the Warden or the Deputy Warden or a person acting in those respective positions to visit the Dissociation area daily and to visit any dissociated inmate upon request by the inmate. During the course of our institutional visits and review of complaints related to Dissociation it was noted that at a number of institutions these visits were not taking place. Following our review of this matter at the institutional and regional levels and having received no consistent assurance of adherence to the policy I wrote the Commissioner of Corrections on August 17, 1992 stating in part "our review of institutional dissociation practices has clearly shown that Wardens or Deputy Wardens are not visiting the area on a daily basis." I requested the Commissioner's comments on the matter and recommended that clarification of this policy requirement be issued.

On November 1, 1992 the *Corrections and Conditional Release Act* became law. The Act at section 36(2) reads:

> The institutional head shall visit the administrative segregation area at least once every day and meet with individual inmates on request.

This performance of duty assigned to the "institutional head" can be delegated to a staff member who is designated by name or position in institutional Standing Orders or Commissioner's Directives. The delegation instrument must be readily accessible to the inmate population.

The Correctional Service of Canada issued revised Commissioner's Directives dated November 1, 1992, coincidental with the coming into force of the Act. With respect to the matter of staff visits to Dissociation areas this Directive maintained the previous requirement of daily visits by the Warden or Deputy Warden. There was no provision for further delegation of this duty.

On December 10, 1992, I finally received a response from the Acting Commissioner to my August 17 correspondence which indicated that he was personally opposed to the policy in question and intended to raise the issue at the Services' Executive Committee meeting in January of 1993 with a proposal to delegate the performance of this function to a lower level. The Acting Commissioner concluded by stating: "Given this approach, I am not prepared to instruct Wardens at this time to strictly adhere to our previous decision."

This response was totally unacceptable, and the matter was further reviewed with the Acting Commissioner. I subsequently received correspondence dated February 11, 1993 stating:

> By Executive Committee decision we have delegated the authority in that Deputy Wardens, Assistant Wardens or Unit Managers will make daily visits. The relevant Commissioner's Directive is being amended to be completed within the next month.
>
> Let me be clear, however, on where we stand today. We took the decision at the January executive Committee. The decision is to take effect immediately and Regional Deputy Commissioners were to inform their Wardens.

The Service's practice in terms of staff visits to Dissociation Areas has been in violation of its nationally stated policy since November of 1991. I notified the Commissioner of the existence of this violation in August of 1992 and the Service took no reasonable corrective action. The Service has been in violation of Section 36(2) of the *Corrections and Conditional Release Act* since November 1, 1992. The "Executive Committee decision" of January 1993 does not constitute a delegation as per section 6 of the Regulations to the Act. The Commissioner's Directive referenced in the Acting Commissioner's correspondence of February 11, 1993 has not been amended. In summary, the Service has knowingly been in violation of its own policy since November of 1991 and the *Corrections and Conditional Release Act* since November 1, 1992, and to date has taken no corrective action.

With respect to the level of delegation, I am of the opinion that to move below the level of Deputy Warden is to negate the intent of Section 36 of the Act, which is to provide offenders with reasonable access to a senior official, who is not part of the regular routine and management of the area, to ensure that timely and effective action can be taken on concerns raised by segregated offenders. As such I recommend that the existing policy be maintained and implemented.

CONCLUSION

The last year has brought a number of changes to the field of federal corrections, the most significant being the proclamation of the *Corrections and Conditional Release Act* in November of 1992. This legislation has clarified procedural and administrative fairness requirements in many of the areas presented above and has tied these requirements to a detailed statement of "Principles" designed to guide the Service's actions.

The legislation, as I indicated in the Introduction to this Report, has as well clarified the mandate and function of this Office and established an increased onus on us to advise the Minister of offender-related problems which are not addressed by the Correctional Service in a timely and reasonable fashion. The effective meeting of our mandate to a great extent is dependent upon the willingness of the Service, at all levels, to undertake a thorough, timely and objective review of matters referred by this Office.

While the level of cooperation at the institutional and regional level, for the most part, has been encouraging the responses at the national level are often excessively delayed, defensive and non-committal. I am hopeful that as the appreciation and understanding of the legislation increases all parties involved in the correctional process will accept their responsibility in ensuring that offender concerns are addressed in a thorough, timely and objective fashion.

Third Session, Thirty-fourth Parliament
40-41 Elizabeth II, 1991-92

STATUTES OF CANADA 1992

CHAPTER 20

An Act respecting corrections and the conditional release and detention of offenders and to establish the office of the Correctional Investigator

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BILL C-36

ASSENTED TO 18th JUNE, 1992

PART III

CORRECTIONAL INVESTIGATOR

Interpretation

Definitions

157. In this Part,

"Commissioner" — "Commissioner" has the same meaning as in Part I;

"Correctional Investigator" — "Correctional Investigator" means the Correctional Investigator of Canada appointed pursuant to section 158;

"Minister" — "Minister" has the same meaning as in Part I;

"offender" — "offender" has the same meaning as in Part II;

"parole" — "parole" has the same meaning as in Part II;

"penitentiary" — "penitentiary" has the same meaning as in Part I;

"provincial parole board" — "provincial parole board" has the same meaning as in Part II.

CORRECTIONAL INVESTIGATOR

Appointment

158. The Governor in Council may appoint a person to be known as the Correctional Investigator of Canada.

Eligibility

159. A person is eligible to be appointed as Correctional Investigator or to continue in that office only if the person is a Canadian citizen ordinarily resident in Canada or a permanent resident as defined in subsection 2(1) of the *Immigration Act* who is ordinarily resident in Canada.

Tenure of office and removal

160. (1) The Correctional Investigator holds office during good behaviour for a term not exceeding five years, but may be suspended or removed for cause at any time by the Governor in Council.

Further terms

(2) The Correctional Investigator, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term.

Absence, incapacity or vacancy

161. In the event of the absence or incapacity of the Correctional Investigator, or if the office of Correctional Investigator is vacant, the Governor in Council may appoint another qualified person to hold office instead of the Correctional Investigator during the absence, incapacity or vacancy, and that personal shall, while holding that office, have the same functions as and all of the powers and duties of the Correctional Investigator under this Part and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.

Devotion to duties

162. The Correctional Investigator shall engage exclusively in the function and duties of the office of the Correctional Investigator and shall not hold any other office under Her Majesty in right of Canada or a province for reward or engage in any other employment for reward.

Salary and expenses

163. (1) The Correctional Investigator shall be paid such salary as may be fixed by the Governor in Council and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Part.

Pension Benefits

(2) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Correctional Investigator, except that a person appointed as Correctional Investigator from outside the Public Service, as defined in subsection 3(1) of the *Public Service Superannuation Act*, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided for in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Correctional Investigator from the date of appointment and the provisions of the *Public Service Superannuation Act* do not apply.

Other Benefits

(3) The Correctional Investigator is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

MANAGEMENT

Management

164. The Correctional Investigator has the control and management of all matters connected with the office of the Correctional Investigator.

STAFF

Staff of the Correctional Investigator

165.(1) Such officers and employees as are necessary to enable the Correctional Investigator to perform the function and duties of the Correctional Investigator under this Part shall be appointed in accordance with the *Public Service Employment Act*.

Technical assistance

(2) The Correctional Investigator may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Correctional Investigator to advise and assist the Correctional Investigator in the performance of the function and duties of the Correctional Investigator under this Part and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons.

OATH OF OFFICE

Oath of Office

166. The Correctional Investigator and every person appointed pursuant to section 161 or subsection 165(1) shall, before commencing the duties of office, take the following oath of office:

"I, (name), swear that I will faithfully and impartially to the best of my abilities perform the duties required of me as (Correctional Investigator, Acting Correctional Investigator or officer or employee of the Correctional Investigator). So help me God."

FUNCTION

Function

167.(1) It is the function of the Correctional Investigator to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner or any person under the control and management of, or performing services for or on behalf of, the Commissioner that affect offenders either individually or as a group.

Restrictions

(2) In performing the function referred to in subsection (1), the Correctional Investigator may not investigate

(a) any decision, recommendation, act or omission of

(i) the National Parole Board in the exercise of its exclusive jurisdiction under this Act, or

(ii) any provincial parole board in the exercise of its exclusive jurisdiction

(b) any problem of an offender related to the offender's confinement in a provincial correctional facility, whether or not the confinement is pursuant to an agreement between the federal government and the government of the province in which the provincial correctional facility is located; and

(c) any decision, recommendation, act or omission of an official of a province supervising, pursuant to an agreement between the federal government and the government of the province, an offender on temporary absence, parole, statutory release subject to supervision or mandatory supervision where the matter has been, is being or is going to be investigated by an ombudsman of that province.

Exception

(3) Notwithstanding paragraph (2)(b), the Correctional Investigator may, in any province that has not appointed a provincial parole board, investigate the problems of offenders confined in provincial correctional facilities in that province related to the preparation of cases of parole by any person under the control and management of, or performing services for or on behalf of, the Commissioner.

Application to Federal Court

168. Where any question arises as to whether the Correctional Investigator has jurisdiction to investigate any particular problem, the Correctional Investigator may apply to the Federal Court for a declaratory order determining the question.

INFORMATION PROGRAM

Information Program

169. The Correctional Investigator shall maintain a program of communicating information to offenders concerning
(a) the function of the Correctional Investigator;
(b) the circumstances under which an investigation may be commenced by the Correctional Investigator; and
(c) The independence of the Correctional Investigator.

INVESTIGATIONS

Commencement

170.(1) The Correctional Investigator may commence an investigation
(a) on the receipt of a complaint by or on behalf of an offender;
(b) at the request of the Minister; or
(c) on the initiative of the Correctional Investigator.

Discretion

(2) the Correctional Investigator has full discretion as to
(a) whether an investigation should be conducted in relation to any particular complaint or request;
(b) how every investigation is to be carried out; and
(c) whether any investigation should be terminated before its completion.

Right to hold hearing

171.(1) In the course of an investigation, the Correctional Investigator may hold any hearing and make such inquiries as the Correctional Investigator considers appropriate, but no person is entitled as of right to be heard by the Correctional Investigator.

Hearings to be in camera

(2) Every hearing held by the Correctional Investigator shall be *in camera* unless the Correctional Investigator decides otherwise.

Right to require information and documents

172.(1) In the course of an investigation, the Correctional Investigator may require any person
(a) to furnish any information that, in the opinion of the Correctional Investigator, the person may be able to furnish in relation to the matter being investigated; and
(b) subject to subsection (2), to produce, for examination by the Correctional Investigator, any document, paper or thing that in the opinion of the Correctional Investigator relates to the matter being investigated and that may be in the possession or under the control of that person.

Return of document, etc.

(2) The Correctional Investigator shall return any document, paper or thing produced pursuant to paragraph (1)(b) to the person who produced it within ten days after a request therefor is made to the Correctional Investigator, but nothing in this subsection precludes the Correctional Investigator from again requiring its production in accordance with paragraph (1)(b).

Right to make copies

(3) The Correctional Investigator may make copies of any document, paper or thing produced pursuant to paragraph (1)(b).

Right to examine under oath

173.(1) In the course of an investigation, the Correctional Investigator may summon and examine on oath
(a) where the investigation is in relation to a complaint, the complainant, and
(b) any person who, in the opinion of the Correctional Investigator, is able to furnish any information relating to the matter being investigated, and for that purpose may administer an oath.

Representation by counsel

(2) Where a person is summoned pursuant to subsection (1), that person may be represented by counsel during the examination in respect of which the person is summoned.

Right to enter

174. For the purposes of this Part, the Correctional Investigator may, on satisfying any applicable security requirements, at any time enter any premises occupied by or under the control and management of the Commissioner and inspect the premises and carry out therein any investigation or inspection.

FINDINGS, REPORTS AND RECOMMENDATIONS

Decision not to investigate

175. Where the Correctional Investigator decides not to conduct an investigation in relation to a complaint or a request from the Minister or decides to terminate such an investigation before its completion, the Correctional Investigator shall inform the complainant or the Minister, as the case may be, of that decision and, if the Correctional Investigator considers it appropriate, the reasons therefor, providing the complainant with only such information as can be disclosed pursuant to the *Privacy Act* and the *Access to Information Act*.

Complaint not substantiated

176. Where, after conducting an investigation in relation to a complaint, the Correctional Investigator concludes that the complaint has not been substantiated, the Correctional Investigator shall inform the complainant of that conclusion and, where the Correctional Investigator considers it appropriate, the reasons therefor, providing the complainant with only such information as can be disclosed pursuant to the *Privacy Act* and the *Access to Information Act*.

Informing of problem

177. Where, after conducting an investigation, the Correctional Investigator determines that a problem referred to in section 167 exists in relation to one or more offenders, the Correctional Investigator shall inform
(a) the Commissioner, or
(b) where the problem arises out of the exercise of

a power delegated by the Chairperson of the National Parole Board to a person under the control and management of the Commissioner, the Commissioner and the Chairperson of the National Parole Board of the problem and the particulars thereof.

Opinion re decision, recommendation, etc.

178.(1) Where, after conducting an investigation, the Correctional Investigator is of the opinion that the decision, recommendation, act or omission to which a problem referred to in section 167 relates

(a) appears to have been contrary to law or to an established policy,

(b) was unreasonable, unjust, oppressive or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act or a practice or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory, or

(c) was based wholly or partly on a mistake of law or fact,

the Correctional Investigator shall indicate that opinion, and the reasons therefor, when informing the Commissioner, or the Commissioner and the Chairperson of the National Parole Board, as the case may be, of the problem.

Opinion re exercise of discretionary power

(2) Where, after conducting an investigation, the Correctional Investigator is of the opinion that in the making of the decision or recommendation, or in the act or omission, to which a problem referred to in section 167 relates to a discretionary power has been exercised

(a) for an improper purpose,

(b) on irrelevant grounds,

(c) on the taking into account of irrelevant considerations, or

(d) without reasons having been given,

the Correctional Investigator shall indicate that opinion, and the reasons therefor, when informing the Commissioner, or the Commissioner and the Chairperson of the National Parole Board, as the case may be, of the problem.

Recommendations

179.(1) When informing the Commissioner, or the Commissioner and the Chairperson of the National Parole Board, as the case may be, of a problem, the Correctional Investigator may make any recommendation that the Correctional Investigator considers appropriate.

Recommendations in relation to decision, recommendation, etc.

(2) In making recommendations in relation to a decision, recommendation, act or omission referred to in subsection 167(1), the Correctional Investigator may, without restricting the generality of subsection (1), recommend that

(a) reasons be given to explain why the decision or recommendation was made or the act or omission occurred;

(b) the decision, recommendation, act or omission be referred to the appropriate authority for further consideration;

(c) the decision or recommendation be cancelled or varied;

(d) the act or omission be rectified; or

(e) the law, practice or policy on which the decision, recommendation, act or omission was based be altered or reconsidered.

Recommendations not binding

(3) Neither the Commissioner nor the Chairperson of the National Parole Board is bound to act on any finding or recommendation made under this section.

Notice and report to Minister

180. If, within a reasonable time after informing the Commissioner, or the Commissioner and the Chairperson of the National Parole Board, as the case may be, of a problem, no action is taken that seems to the Correctional Investigator to be adequate and appropriate, the Correctional Investigator shall inform the Minister of that fact and provide the Minister with whatever information was originally provided to the Commissioner, or the Commissioner and the Chairman of the National Parole Board, as the case may be.

Complainant to be informed of result of investigation

181. Where an investigation is in relation to a complaint, the Correctional Investigator shall, in such manner and at such time as the Correctional Investigator considers appropriate, inform the complainant of the results of the investigation, providing the complainant with only such information as can be disclosed pursuant to the *Privacy Act* and the *Access to Information Act*.

CONFIDENTIALITY

Confidentiality

182. Subject to this Part, the Correctional Investigator and every person acting on behalf or under the direction of the Correctional Investigator shall not disclose any information that comes to their knowledge in the exercise of their powers or the performance of their functions and duties under this Part.

Disclosure authorized

183.(1) Subject to subsection (2), the Correctional Investigator may disclose or may authorize any person acting on behalf or under the direction of the Correctional Investigator to disclose information

(a) that, in the opinion of the Correctional Investigator, is necessary to

(i) carry out an investigation, or

(ii) establish the grounds for findings and recommendations made under this Part; or

(b) in the course of a prosecution for an offence under this Part or a prosecution for an offence under section 131 (perjury) of the *Criminal Code* in respect of a statement made under this Part.

Exceptions

(2) The Correctional Investigator and every person acting on behalf or under the direction of the Correctional Investigator shall take every reasonable precaution to avoid the disclosure of, and shall not disclose, any information the disclosure of which could reasonably be expected

(a) to disclose information obtained or prepared in the course of lawful investigations pertaining to

(i) the detection, prevention or suppression of crime,
(ii) the enforcement of any law of Canada or a province, where the investigation is ongoing, or
(iii) activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*,
if the information came into existence less than twenty years before the anticipated disclosure;
(b) to be injurious to the conduct of any lawful investigation;
(c) in respect of any individual under sentence for an offence against any Act of Parliament, to
(i) lead to a serious disruption of that individual's institutional or conditional release program, or
(ii) result in physical or other harm to that individual or any other person;
(d) to disclose advice or recommendations developed by or for a government institution within the meaning of the *Access to Information Act* or a minister of the Crown; or
(e) to disclose confidences of the Queen's Privy Council for Canada referred to in section 196.

Definition of "investigation"

(3) For the purposes of paragraph (2)(b), "investigation" means an investigation that
(a) pertains to the administration or enforcement of an Act of Parliament or of a province; or
(b) is authorized by or pursuant to an Act of Parliament or of a province

Letter to be unopened

184. Notwithstanding any provision in any Act or regulation, where
(a) a letter written by an offender is addressed to the Correctional Investigator, or
(b) a letter written by the Correctional Investigator is addressed to an offender, the letter shall immediately be forwarded unopened to the Correctional Investigator or to the offender, as the case may be, by the person in charge of the institution at which the offender is incarcerated.

DELEGATION

Delegation by Correctional Investigator

185.(1) The Correctional Investigator may authorize any person to exercise or perform, subject to such restrictions or limitations as the Correctional Investigator may specify, the function, powers and duties of the Correctional Investigator under this Part except
(a) the power to delegate under this section; and
(b) the duty or power to make a report to the Minister under section 192 or 193.

Delegation is revocable

(2) Every delegation under this section is revocable at will and no delegation prevents the exercise or performance by the Correctional Investigator of the delegated function, powers and duties.

Continuing effect of delegation

(3) In the event that the Correctional Investigator who makes a delegation under this section ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Correctional Investigator

RELATIONSHIP WITH OTHER ACTS

Power to conduct investigations

186.(1) The power of the Correctional Investigator to conduct investigations exists notwithstanding any provision in any Act to the effect that the matter being investigated is final and that no appeal lies in respect thereof or that the matter may not be challenged, reviewed, quashed or in any way called into question.

Relationship with other Acts

(2) The power of the Correctional Investigator to conduct investigations is in addition to the provisions of any other Act or rule of law under which
(a) any remedy or right of appeal or objection is provided for any person, or
(b) any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Part limits or affects any such remedy, right of appeal, objection or procedure.

LEGAL PROCEEDINGS

Acts not to be questioned or subject to review

187. Except on the ground of lack of jurisdiction, nothing done by the Correctional Investigator, including the making of any report or recommendation, is liable to be challenged, reviewed, quashed or called into question in any court.

Protection of Correctional Investigator

188. No criminal or civil proceedings lie against the Correctional Investigator, or against any person acting on behalf or under the direction of the Correctional Investigator, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any function, power or duty of the Correctional Investigator.

No summons

189. The Correctional Investigator or any person acting on behalf or under the direction of the Correctional Investigator is not a competent or compellable witness in respect of any matter coming to the knowledge of the Correctional Investigator or that person in the course of the exercise or performance or purported exercise or performance of any function, power or duty of the Correctional Investigator, in any proceedings other than a prosecution for an offence under this Part or a prosecution for an offence under section 131 (perjury) of the *Criminal Code* in respect of a statement made under this Part.

Libel or slander

190. For the purposes of any law relating to libel or slander,

(a) anything said, any information furnished or any document, paper or thing produced in good faith in the course of an investigation by or on behalf of the Correctional Investigator under this Part is privileged; and

(b) any report made in good faith by the Correctional Investigator under this Part and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

OFFENCE AND PUNISHMENT

Offences

191. Every person who
(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Correctional Investigator or any other person in the exercise or performance of the function, powers or duties of the Correctional Investigator,
(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Correctional Investigator or any other person under this Part, or
(c) wilfully makes any false statement to or misleads or attempts to mislead the Correctional Investigator or any other person in the exercise or performance of the function, powers or duties of the Correctional Investigator,
is guilty of an offence punishable on summary conviction and liable to a fine not exceeding two thousand dollars.

ANNUAL AND SPECIAL REPORTS

Annual reports

192. The Correctional Investigator shall, within three months after the end of each fiscal year, submit to the Minister a report of the activities of the office of the Correctional Investigator during that year, and the Minister shall cause every such report to be laid before each House of Parliament on any of the first thirty days on which that House is sitting after the day on which the Minister receives it.

Urgent matters

193. The Correctional Investigator may, at any time, make a special report to the Minister referring to and commenting on any matter within the scope of the function, powers and duties of the Correctional Investigator where, in the opinion of the Correctional Investigator, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for the submission of the next annual report to the Minister under section 192, and the Minister shall cause every such special report to be laid before each House of Parliament on any of the first thirty days on which that House is sitting after the day on which the Minister receives it.

Reporting of public hearings

194. Where the Correctional Investigator decides to hold hearings in public in relation to any investigation, the Correctional Investigator shall indicate in relation to that investigation, in the report submitted under section 192, the reasons why the hearings were held in public.

Adverse comments

195. Where it appears to the Correctional Investigator that there may be sufficient grounds for including in a report under section 192 or 193 any comment or information that reflects or might reflect adversely on any person or organization, the Correctional Investigator shall give that person or organization a reasonable opportunity to make representations respecting the comment or information and shall include in the report a fair and accurate summary of those representations.

CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL

Confidences of the Queen's Privy Council for Canada

196.(1) The powers of the Correctional Investigator under sections 172, 173, and 174 do not apply with respect to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing,
(a) memoranda the purpose of which is to present proposals or recommendations to Council;
(b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;
(c) agenda of Council or records recording deliberations or decisions of Council;
(d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
(e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d);
(f) draft legislation; and
(g) records that contain information about the contents of any record within a class of records referred to in paragraphs (a) to (f).

Definition of "Council"

(2) For the purposes of subsection (1), "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

Exception

(3) Subsection (1) does not apply with respect to

(a) confidences of the Queen's Privy Council for Canada that have been in existence for more than twenty years; or

(b) discussion papers described in paragraph (1)(b)

(i) if the decisions to which the discussion papers relate have been made public, or

(ii) where the decisions have not been made public, if four years have passed since the decisions were made.

REGULATIONS

Regulations

197. The Governor in Council may make such regulations as the Governor in Council deems necessary for carrying out the purposes and provisions of this Part.

HER MAJESTY

Binding on Her Majesty

198. This Part is binding on Her Majesty in right of Canada.