Canada

Annual Report of the Correctional Investigator

1994 - 1995

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June 29, 1995

The Honourable Herb Gray
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 twenty-second Annual Report of the Correctional Investigator.

Yours respectfully,

R.L. Stewart
Correctional Investigator

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INTRODUCTION

I concluded last year's Annual Report with a specific request: that legitimate inmate concerns be dealt with in a responsive and timely fashion. I opened last year's Annual Report by stating that I saw little evidence that areas of legitimate inmate concern were being given the priority which they required.

The Correctional Service of Canada's responses at the national level over the course of this reporting year, whether on individual or systemic areas of inmate concern, unfortunately remain as characterized by this Office in 1992; excessively delayed, defensive and non-committal.

The practice and tradition of this Office has been to attempt to reasonably resolve the concerns of inmates through discussion, review and negotiation with the Service. The reporting of instances to the Minister of delayed, inadequate or inappropriate action on the part of the Service has, traditionally, been through a detailing of the matter within my Annual Report. The effectiveness of this approach, quite obviously, was dependent upon the Service being willing to reasonably discuss, review, negotiate and take corrective action on concerns raised by this Office in a relatively responsive and timely fashion. The will of the Service, especially at the National Headquarters level, to reasonably address inmate concerns during this past year has been at best sporadic.

This continuing situation of excessive delay, defensiveness and non-commitment has in effect negated the Commissioner's level as a dependable point of resolution for either individual or systemic areas of inmate concern. As such I, for the first time since the enactment of the current legislation, referred seven cases to the attention of the Minister this year under Section 180 of the *Corrections and Conditional Release Act*:

> 180. *Notice and report to Minister*
> *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.*

I as well made a Special Report on the Prison for Women in February of this year pursuant to Section 193 of the *Corrections and Conditional Release Act:*

> 193. *Urgent Matters*
> *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.*

I have included as Appendixes A and B to this Report copies of both the Section 180 referral letters and the Special Report, inclusive of the Response by the Correctional Service.

The *Corrections and Conditional Release Act*, which came into effect in November of 1992, clearly established both the independence and mandate of this Office within a legislative framework consistent with that of an Ombudsman. The observations and recommendations of this Office, in keeping with the traditional function of an Ombudsman, are

not binding. The Office's authority and effectiveness lies in its ability to thoroughly and objectively investigate a wide spectrum of administrative actions and present its observations and recommendations to an equally broad spectrum of decision-makers, who in turn can cause reasonable corrective action to be taken if earlier attempts at resolution have failed.

I stated in my 1992-93 Annual Report that the reporting provisions of Sections 180 and 193 of the Act were important and necessary elements within a non-binding resolution process. I as well stated at that time, that while these reporting provisions were essential, it must be kept in mind that the primary function of this Office was not to "report" but rather to facilitate the resolution of inmate concerns. It was within this context of facilitating resolution, of both systemic and individual concerns, that I believed the legislation would be of assistance. Assistance, not only in providing specific direction and momentum to this Office's 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.

Although current direction and momentum would not on the face of it support my position, I do believe that within the existing framework, the possibility of reasonable resolution exists. I invite all those responsible for ensuring that offender concerns are addressed in a fair and timely fashion, to turn their attention to the specifics of this Office's observations and recommendations rather than approaching these Issues in vague global and futuristic terms. The future for federal corrections, given the current excessive level of overcrowding, is being formed now.

I have, in light of the limited progress made over the course of this reporting year, reproduced the text from last year's Annual Report on those long-standing systemic Issues which remain under review. I continue to believe that an understanding and appreciation of the impact and evolution of these Issues, inclusive of the Service's past comments and commitments, is important if a resolution is to be achieved. I further believe that if common ground is going to be found there is a need to move away from a process which has tended in the past not only to polarize positions but has also unreasonably expanded and clouded the central focus of the Issues at question.

I have, as such, in the concluding section on each of the Issues, in this year's Report, rather than simply presenting a restating of previously defined positions, attempted to identify the specific areas of concern associated with the Issue as well as those specific matters which need to be clarified or addressed if a reasonable resolution is to be achieved. I have further in an attempt to provide both a balanced and detailed reporting on the actions taken with respect to these Issues, and to satisfy the provisions of Section 195 of the *Corrections and Conditional Release Act*, included as Appendixes C and D, this Office's Working Paper: Annual Report 1994-95 and the Commissioner's Comments on the Working Paper.

I hope that this refocusing on the specifics of the Issues will be of assistance in ensuring not only that these systemic concerns are addressed but that individual inmate concerns, associated with these Issues, can be dealt with in a timely and responsive fashion.

STATISTICS

TABLE A

COMPLAINTS RECEIVED AND PENDING-BY CATEGORY

Administrative segregation	
a) Placement	361
b) Conditions	143
Case preparation	
a) Parole	339
b) Temporary absence	62
c) Transfer	397
Cell effects	339
Cell Placement	139
Claims	
a) Decisions	74
b) Processing	61
Correspondence	85
Diet	
a) Medical	47
b) Religious	12
Discipline	
a) ICP decisions	30
b) Minor court decisions	19
c) Procedures	125
Discrimination	16
Employment	197
Financial matters	
a) Access	77
b) Pay	211
Food Services	22
Grievance procedure	197
Health care	
a) Access	320
b) Decisions	300
Information	
a) Access	65
b) Correction	212
Mental health	
a) Access	64
b) Programs	10
Other	213
Penitentiary Placement	109
Private family visits	244
Programs	195
Request for information	368
Sentence administration	90
Staff	254
Security Classification	44
Temporary absence decision	87

TABLE A (Cont'd)

COMPLAINTS RECEIVED AND PENDING-BY CATEGORY

Telephone	92
Transfer	
a) Decision	362
b) Involuntary	268
Use of force	44
Visits	288
Outside Terms of Reference	
Parole Board decisions	162
Outside court	18
Provincial matter	37
Total	6799

TABLE B

COMPLAINTS-BY MONTH

1994	
June	670
July	532
August	425
September	730
October	568
November	609
December	564
1995	
January	535
February	471
March	445
April	690
May	560
Total	6799

TABLE C

COMPLAINTS BY REGION

	1993					
	April	May	June	July	Aug.	Sept.
MARITIMES						
Atlantic	27	16	20	15	9	25
Dorchester	17	12	15	15	8	30
Springhill	11	14	24	18	6	45
Westmorland	8	7	1	1	2	8
Provincial	1	1	1	0	0	2
ONTARIO						
Bath	4	2	4	2	1	7
Beaver Creek	1	4	8	3	2	3
Collins Bay	36	21	20	22	23	15
Frontenac	13	2	3	11	2	5
Joyceville	9	31	27	29	16	45
Kingston Penitentiary	20	63	43	43	10	41
Millhaven	42	9	23	26	7	8
Pittsburgh	0	1	1	2	0	0
Prison for Women	27	53	29	36	25	6
Regional Treatment Center	1	5	2	1	0	1
Warkworth	23	86	35	29	30	69
Provincial	3	5	7	1	6	7
PACIFIC						
Elbow Lake	0	3	0	3	6	0
Ferndale	0	1	0	2	0	2
Kent	36	9	5	25	8	38
Matsqui	2	4	4	15	3	16
Mission	11	4	1	14	9	31
Mountain	5	6	9	10	6	9
RPC Pacific	6	0	1	4	1	3
William Head	2	4	1	6	5	6
Provincial	0	0	1	0	0	0

TABLE C

COMPLAINTS BY REGION

	1993			1994			
Oct.	Nov.	Dec.		Jan.	Feb.	March	TOTAL
26	19	33		32	16	3	**241**
21	13	23		14	18	9	**195**
12	10	13		16	12	6	**187**
4	4	13		3	1	4	**56**
4	4	0		2	0	0	**15**
33	7	8		10	1	14	**93**
21	2	1		3	3	1	**51**
10	30	14		9	15	20	**235**
2	13	1		9	1	5	**67**
17	15	18		20	36	12	**275**
30	68	22		30	11	1	**382**
28	20	16		8	8	27	**222**
2	2	2		3	2	2	**17**
32	28	15		5	26	5	**288**
4	8	6		5	3	3	**39**
29	39	82		47	33	99	**601**
5	2	9		7	5	4	**61**
0	1	1		0	7	3	**24**
1	1	1		0	7	1	**16**
5	10	10		14	59	5	**224**
2	2	3		6	4	2	**63**
8	6	9		6	16	5	**120**
4	4	8		3	11	8	**75**
2	1	4		2	16	6	**46**
2	6	8		11	17	5	**73**
0	1	0		0	1	1	**4**

TABLE C (Cont'd)

COMPLAINTS BY REGION

PRAIRIE	April	May	June	July	Aug.	Sept.
Bowden	21	19	21	29	15	17
Drumheller	14	14	11	23	16	4
Edmonton	3	8	5	16	11	4
Oskana Centre	0	0	0	0	0	0
Riverbend	0	4	0	4	1	2
Rockwood	3	1	1	1	0	0
RCP Prairies	7	10	3	29	1	4
Saskatchewan Penitentiary	9	12	2	10	3	3
Special Handling Unit	6	12	7	14	0	2
Stony Mountain	24	6	7	30	9	5
Provincial	2	2	0	4	2	1
QUEBEC						
Archambault	35	9	31	18	23	19
Cowansville	31	15	28	15	11	34
Donnacona	29	16	20	37	13	26
Drummondville	16	15	28	6	26	23
FTC	15	8	14	20	11	13
La Macaza	33	15	22	19	17	22
Leclerc	45	49	24	13	28	16
Montée St. François	6	2	9	4	4	5
Ogilvy Center	0	0	0	0	0	0
Port-Cartier	29	16	17	12	48	9
RRC Québec	2	5	4	1	3	0
Special Handling Unit	1	1	5	10	3	1
Sainte-Anne-des-Plaines	12	3	2	13	2	5
Provincial	2	2	2	2	2	2
TOTAL	**690**	**560**	**670**	**532**	**425**	**730**

TABLE C (Cont'd)

COMPLAINTS BY REGION

1993			1994			
Oct.	Nov.	Dec.	Jan.	Feb.	March	TOTAL
19	19	22	8	44	12	**246**
21	5	9	10	10	9	**146**
8	6	16	2	63	6	**148**
0	0	0	0	0	0	**0**
23	4	1	0	0	2	**41**
0	0	0	0	1	0	**7**
22	3	5	1	3	0	**88**
40	5	6	1	11	9	**111**
12	7	2	1	9	8	**80**
1	20	8	3	7	13	**133**
2	0	1	4	0	1	**19**
19	14	9	32	19	14	**242**
8	24	15	18	8	23	**230**
10	26	50	19	34	14	**294**
17	25	15	14	32	21	**238**
10	11	10	13	4	12	**141**
15	48	17	10	18	18	**254**
11	25	24	11	15	12	**273**
12	4	2	4	6	2	**60**
0	0	0	0	0	0	**0**
8	24	11	19	6	6	**205**
2	1	1	1	2	4	**26**
1	4	4	2	6	2	**40**
2	2	2	5	6	2	**56**
0	0	1	3	4	3	**23**
568	**609**	**564**	**535**	**471**	**445**	**6 799**

TABLE D

COMPLAINTS AND INMATE POPULATION BY REGION

Region	Complaints	Inmate Population*
Pacific	645	1523
Prairie	1019	2773
Ontario	2331	3860
Quebec	2082	3739
Maritimes	694	1417
CCC and CRC	28	———
Total	6799	13312

* The inmate population figures were provided by the Correctional Service of Canada and are those for March 31, 1994.

TABLE E

INSTITUTIONAL VISITS

Institution	Number of Visits
Archambault	5
Atlantic	14
Bath	4
Beaver Creek	2
Bowden	6
Collins Bay	8
Cowansville	8
Donnacona	9
Dorchester	8
Drumheller	8
Edmonton	7
Elbow Lake	1
Federal Training Centre	6
Ferndale	3
Frontenac	4
Joyceville	9
Kent	6
Kingston Penitentiary	19
La Macaza	6
Leclerc	9
Matsqui	5
Millhaven	6
Mission	5
Montée St. François	4
Mountain	5
Pittsburgh	3
Port Cartier	11
Prison for Women	8
Psychiatric Centre, Pacific	4
Psychiatric Centre, Prairies	4
Reception Centre, Quebec	4
Riverbend	4
Rockwood	2
Saskatchewan Penitentiary	8
Springhill	11
Ste. Anne des Plaines	8
Stony Mountain	3
Warkworth	13
Westmorland	3
William Head	1
Total	254

TABLE F

INMATE INTERVIEWS

1994	Number of Interviews
June	259
July	111
August	81
September	296
October	132
November	172
December	233
1995	
January	71
February	121
March	150
April	298
May	154
Total	2078

TABLE G

DISPOSITION OF COMPLAINTS

Action	Number
Pending	265
Beyond Mandate (no action)	186
Premature	1965
Not Justified	791
Withdrawn	326
Assistance Given	849
Advice Given	190
Information Given	1567
Resolved	486
Unable to Resolve	174
Total	6799

TABLE H

COMPLAINTS RESOLVED OR ASSISTED WITH BY CATEGORY

	Resolved	Assisted
Administrative segregation		
a) Placement	22	45
b) Conditions	19	42
Case preparation		
a) Parole	16	64
b) Temporary absence	7	8
c) Transfer	36	54
Cell effects	63	58
Cell Placement	8	27
Claims		
a) Decisions	3	1
b) Processing	9	6
Correspondence	7	10
Diet		
a) Medical	3	6
b) Religious	3	3
Discipline		
a) ICP decisions	0	1
b) Minor court decisions	0	1
c) Procedures	10	13
Discrimination	0	0
Employment	4	18
Financial matters		
a) Access	12	12
b) Pay	28	12
Food Services	1	1
Grievance procedure	16	39
Health care		
a) Access	42	63
b) Decisions	9	38
Information		
a) Access	12	9
b) Correction	8	20
Mental health		
a) Access	6	7
b) Programs	0	0
Other	13	32
Penitentiary Placement	4	17
Private family visits	25	26
Programs	7	31
Request for information	3	4
Sentence administration	6	9
Staff	10	40

TABLE H (Cont'd)

COMPLAINTS RESOLVED OR ASSISTED WITH BY CATEGORY

Security Classification	1	1
Telephone	13	16
Temporary absence decision	8	12
Transfer		
a) Decision	20	42
b) Involuntary	2	18
Use of force	4	9
Visits	26	26
Outside Terms of Reference		
Parole Board decisions	0	5
Outside court	0	2
Provincial matter	0	1
Total	486	849

OPERATIONS

Operationally the primary function of the Correctional Investigator is to investigate and bring resolution to individual 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 individual complaint to ensure that systemic areas of concern are identified and appropriately addressed. I have included as Appendix E to the Report, a copy of Part III of the *Corrections and Conditional Release Act* which details the mandate afforded this Office.

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. If deemed necessary, 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 is neither an agent of the Correctional Service of Canada nor the advocate of every complainant or interest group that lodges a complaint. The Office investigates complaints from an independent and neutral position, considers thoroughly the Service's action and the reasons behind it, and either endorses and explains that action to the complainant or if there is evidence of unfairness, makes an appropriate recommendation concerning corrective action. The Office over the course of the reporting year received 6,800 complaints; the investigative staff spent 254 days at federal penitentiaries and conducted in excess of 2,000 interviews with inmates and half again that number of interviews with institutional staff.

These numbers are consistent with our operations last year and again have been managed within a decreasing budget.

The areas of complaint continue to focus on those long-standing issues which have been detailed in past Annual Reports. A specific breakdown on areas of complaint, dispositions, institutional visits and interviews is provided in the statistics.

In addition to addressing individual complaints, Section 19 of the *Correctional and Conditional Release Act* requires this Office to review all investigative reports of the Correctional Service of Canada conducted into incidents resulting in the death or serious injury of an offender. Over the course of this year, my staff reviewed in excess of 130 of these investigation reports.

It has been an extremely demanding and at times frustrating year. I will take this opportunity to acknowledge and thank my staff for their tireless efforts in responding to the concerns of those incarcerated in our federal penitentiaries.

CURRENT COMPLAINT ISSUES

The following Section of the Report on Current Complaint Issues provides a detailing of those major areas of inmate concern reviewed with the Commissioner of Corrections during the past year. I have divided each of the individual Issues into three parts: Part a) is a detailing of the Issue as presented in my 1992-93 Annual Report; Part b) provides the status of the Issue as reported by this Office in March of 1994 and; Part c) is the current status of the Issue.

I have chosen this format, in concert with the annexing to this Report of our Working Paper and the Commissioner's comments, for two reasons: first, to provide a detailed overview on the evolution of these long-standing Issues, inclusive of a fair representation of the Service's previous and current comments and commitments; and second, to promote a focusing on the specific areas of concern associated with these Issues in the hope of causing some meaningful action to be taken.

1. SPECIAL HANDLING UNITS

a) 1992-93

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 on-going 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 Correctional Service 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.

b) Status as of March 1994

The Correctional Service of Canada finalized its Internal Audit Report on Special Handling Units in January of 1994. The observations detailed in the Report, in large part, affirm the legitimacy of the concerns raised by this Office over the course of the last three years. The Audit Team has put forth a series of Recommendations calling for:

- a thorough review and analysis of the programming offered within these Units as it relates to the identified needs of the inmate population, and

- the development of specific terms of reference for the National Review Committee to ensure more cohesiveness in the decision-making process and better monitoring of the activities in the Special Handling Units.

I am currently awaiting the comments and action plans from National Headquarters on the Audit Report. I further recommend, in conjunction with ensuring more cohesiveness in the decision-making process, that the Service specifically establish membership for the National Review Committee that reflects the requirement for objectivity and fairness in the decision taken by this Committee.

Until such time as substantive action is taken by the Service in response to these observations and recommendations, Special Handling Unit operations will remain little more than an expensive form of long-term dissociation.

c) Current Status

The concerns raised on complaints by inmates with respect to Special Handling Unit operations centre on two inter-related areas:

First, the ability of the Special Handling Unit to provide employment and programming opportunities in a reasonable and timely fashion which are responsive to the specific identified needs of the inmate population served. Second, the objectivity and fairness of the National Review Committee with respect to its roles both as a decision-making body on individual cases and as the body responsible for the ongoing monitoring and analysis of the Special Handling Unit program.

To address these areas of concern the Service needs to :

a) specifically identify and catalogue the needs of the Special Handling Unit population and ensure that the employment and programming opportunities available specifically address those identified needs;

b) clarify the requirement that the National Review Committee, in fulfilling its responsibilities associated with the monitoring and analysis of Special Handling Unit operations, addresses specifically the effectiveness of the programming in relation to its stated objectives;

c) ensure that the results of this monitoring and analysis are detailed in the Special Handling Unit Annual Report and that that Report is produced in a timely fashion;

d) establish a National Review Committee with a senior national presence which has and is seen to have the authority and objectivity required to carry out its functions in a fair and responsive manner; and

e) establish in policy the requirement that the National Review Committee afford inmates the opportunity, as part of the decision-making process, to meet with the Committee.

The Service has recently committed to reducing the number of inmates housed within the Special Handling Unit and plans to centralize its operation at one institution. As such, the timing would appear to be right for immediate action to be taken on the above-noted areas.

2. INMATE PAY

a) 1992-93

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.

b) Status as of March 1994

The Correctional Service of Canada has all along been strongly in support of a pay increase and sought and received approval from Treasury Board to implement a new pay system, with an increase in pay rates for most inmates. However, in response to public resistance a decision was taken, despite the Service's expressed "sensitivity to the issue of pay for inmates", that there would be no rate increase during this fiscal year.

There has not been a meaningful adjustment to inmate pay rates for a decade. The number of complaints received by this Office related to pay and employment issues continues to increase. The associated institutional problems beyond the erosion of the inmate's purchasing power and ability to save for release are detailed in the above letter to the former Commissioner of Corrections.

A linking of the long overdue upward adjustment of inmates pay rates with the current economic situation and freeze on public service wages creates a difficult position to defend. I can only recommend that the issue be re-examined with a view to resolving the erosion of the inmates' financial situation.

c) Current Status

There has been no thorough re-examination of this Issue. I am fully aware of the considerations for "policy making in the 1990s" referenced by the Commissioner. I am also aware of the legitimacy of the concerns raised by inmates on the erosion of their financial situation over the past decade.

These concerns are two fold. First is the impact on institutional operations. If remuneration for authorized activities is inadequate other avenues of income will obviously be found to finance day to day living. Inadequate pay levels promote and maintain an illicit underground economy within institutions.

The second area of impact is on the inmate's release. Again, if remuneration is inadequate, it is unreasonable to expect inmates to be able to save sufficient monies for their eventual release. There is no benefit to be derived from releasing inmates without adequate funds to support their reintegration.

The Service's responses on this issue over the past decade, while acknowledging the erosion of the inmate's financial situation, have shown no evidence of will to address the matter.

There is a need for an immediate across-the-board increase on inmate pay levels. There is further a need for the Service to initiate a thorough examination of the impact of inmate pay on both institutional operations and conditional release.

3. GRIEVANCE PROCESS

a) 1992-93

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 is 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 Correctional 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 on-going 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.

b) Status as of March 1994

The above recommendation that the Service conduct an extensive national audit on the management of the grievance system was not acted upon.

The Service acknowledges that "certain problems" exist with the current redress system and has initiated a high levelled review process mandated to "make recommendations for a re-designed process". I agreed, given the importance this Office places on the Inmate Grievance process, to participate as an advisory member of the Steering Committee for the Redress Review Team.

Although I note that this is the third major review of the grievance process in five years, I applaud this particular initiative and am impressed with the determination of the group involved to remedy the present situation and come up with an effective solution.

In the meantime, the number of complaints received by this Office specifically related to excessively delayed processing of grievances during this reporting year has increased from 165 to 258. The number of inmates approaching our Office prior to attempting to resolve their concerns through the grievance process has doubled. Confidence in the procedure's ability to reasonably and in a timely fashion address concerns has been seriously eroded. The grievance process which I characterized last year as failing to meet the requirements of the *Corrections and Conditional Release Act* in terms of "fairly and expeditiously resolving offender grievances", has become bogged down at the Commissioner's level. Inmates are currently waiting six to eight months for responses from the Commissioner's level which by policy are to be responded to within ten working days. The Commissioner assures me however, that he is committed to finding a way to reduce the delays in response time.

c) Current Status

The Inmate Grievance Process despite years of internal review and past commitments, continues to show little evidence of being effectively managed.

The review process initiated in December of 1993, mandated to make specific recommendations to the Service's Senior Management for a redesigned procedure has to date produced no policy or procedural changes to the system.

The automated reporting system has yet to come on line and as such the process continues without a capacity to provide relevant information on its own operations or provide management with ongoing information capable of identifying inconsistencies concerning the interpretation and application of the Service's policies.

The Commissioner recently stated that the average number of days to respond to a third level grievance is now 50-60 days, down from 100-200 days. The policy requirement on third level responses is 10 working days. I was advised in March of 1993 that the turn around time for cases at the third level averaged 47 calendar days. In the absence of any ongoing reporting system, it is very difficult to get an accurate reading on whether any progress has been made in this area.

Without accurate ongoing information on the system's operations it cannot be reasonably managed. The first step, in advance of any policy or procedural changes, is to establish an information base for management so an evaluation can be done on the effectiveness of the current process on meeting its stated objectives.

4. CASE PREPARATION AND ACCESS TO PROGRAMMING

a) 1992-93

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 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.

b) Status as of March 1994

From our vantage point, there has been little progress made on the issues raised by timely case preparation and access to programming. The commitments made by the Service last year detailed above have not been actioned and the state of the Service's information base on this key area continues to not afford for a clear determination of either the scope or cause of the problems at hand or what management action or direction is needed to reasonably address the problems.

Specifically, the automated Offender Management System remains in a state of development; Quarterly Reports on the use of Waivers and Postponements have not been produced over the course of this reporting year, yet the Service continues to claim that timely case preparation is a priority; the development and implementation of a Tracking System designed to provide management with on-going relevant information on the availability and impact of treatment programming in relation to conditional release decision-making has yet to happen; the level of meaningful contact between case management staff and offenders, as reported by both groups, is down; the rate of timely conditional release is on the decline; and the incarcerated population continues to increase.

I was initially advised by the Service in response to last year's Annual Report that "the national implementation of the Intake Assessment process will systematically identify those offenders requiring psychological or psychiatric intervention at the start of their sentence... and would allow the Service to schedule individual offenders based on such factors as time remaining to Parole Eligibility and total program resources... Technical complications related to Release 2 of O.M.S. make it difficult to predict when Intake Assessment will be integrated with O.M.S.... assessment cannot be implemented until early in the new fiscal year". I was later advised that the Service "anticipated that Inmate Assessment could be fully operational by as early as September 1994".

As noted in last year's Report, I was advised in 1991 that "an automated Offender Management Information System designed to alleviate gaps in management's capacity to measure the availability and timely delivery of key offender programs would be implemented by the Fall of 1992".

The key to the Service meeting its primary Corporate Objective and effectively managing its population growth lies in the provision of timely access to programming and case preparation. More than one-third of an inmate's sentence, that period between day parole eligibility and statutory release, is discretionary time. The measurement of the Service's effectiveness in reducing the relative use of incarceration must focus on the actions taken at the front end of an inmate's sentence in preparing the case for conditional release consideration and the timing within the discretionary period that the case is presented for conditional release considerations. There is limited benefit in having cases presented for decision at the back end of the discretionary time period.

The Commissioner has made a point of advising this Office of the rapid expansion of programming launched by CSC in recent years and that increased program capacity in the areas of Substance Abuse, Living Skills and Sex Offender Treatment continues to be a priority. He further advises that the capacity to treat sex offenders has risen to almost 1800 per annum by the end of 1993/94 from less than 200 per annum in 1988. This is all well and good but the issue here is not the proliferation of programs but rather the Services inability to reasonably measure the availability and timely delivery of key offender programs which in turn negates its responsibility to provide equitable and just treatment to the offender population.

It seems that we are keeping a lot of inmates in prison at huge costs to complete programs which could be delivered on the street. The measurement here is not the number of inmates released because eventually they all are, but at what point in their sentence they are released.

As I indicated in the Introduction, I do not believe that in the long run the solution to delayed case preparation lies with the expansion of current institutional capacity or resources. The Service over the years, with the proliferation of institutional programming, has become dependent on this extended period of incarceration, between parole eligibility and statutory release, to provide programming. There appears to be a reluctance on the part of case management staff to give consideration to conditional release as an option until such time as these programs have been completed, many of which could be provided under supervision in the community. The current population increase, caused in part by offenders remaining in institutions to complete programs, has further delayed timely access to these programs which in turn extends the period of incarceration and adds to the population growth.

This cycle of dependency is unlikely to be interrupted until such time as the Service accepts and takes action on the principle that the protection of society is served through the timely re-integration of offenders as law abiding citizens. A continuation of business as usual in this area will promote further population growth and will impact measurably on the viability of the system's current decision-making processes; the efficiency and effectiveness of existing institutional programs and, the ability of the Service to provide equitable and just treatment in a responsive fashion to the inmate population.

c) Current Status

I concur with the Commissioner, "this is a complex Issue which cannot be addressed by an single simplistic solution". It is also an Issue which impacts directly on the Service's ability to effectively manage the inmate population growth. It was precisely because of the complexities and importance of the relationship between access to programming, case preparation and timely conditional release consideration that I recommended a number of years ago that the Service take immediate action to ensure that it had a clear understanding of both the scope and the causes of the problems associated with delays in this areas.

The current state of the Service's information base relevant to this Issue continues to not allow for a clear determination of the scope or specific causes of the problem or identify what management action or direction is needed to reasonably address the problem.

The Commissioner, in January of 1994 following a Focus Group on Accommodation Policies, directed that a review be undertaken to address the question: Why are Incarcerated Numbers Increasing? The specific areas identified for review in addressing this question were: "admissions, releases, waiver rates, National Parole Board concordance rates, paperwork backlog, requirements for release, timing of programming for release and the adequacy of community infrastructure".

I was advised earlier this year that, "for a number of reasons", information relevant to this issue, on admissions, releases, waivers, postponements and concordance rates was not available. I was as well advised that well over one thousand non-violent inmates are currently incarcerated in federal penitentiaries beyond their parole eligibility date, yet no information was provided to explain why.

This continuing lack of information needs to be attended to if the Service is going to reasonably address this issue. I suggest a starting point would be action on the above-noted review directed by the Commissioner in January of 1994.

Until such time as there is substantive progress on this Issue, the Service's efforts at addressing overcrowding will continue to be directed at the symptoms rather than the causes of the problem.

5. DOUBLE BUNKING

a) 1992-93

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;
- the national double-bunking monthly report is simply a compilation of numbers with no evidence of analysis or review; and
- 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 represents 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.

b) Status as of March 1994

The number of inmates double-bunked nearly doubled between January, 1993 and January, 1994 and now stands well in excess of 3,000. The Correctional Service of Canada, as I noted in the Introduction, has moved from a position two years ago of claiming that double bunking was "correctionally unacceptable" with a commitment to "reduce double bunking by preparing offenders for conditional release in a timely fashion" to a current position of acknowledging double bunking as "a regular accepted practice". There remains no evidence that the Service has taken any reasonable steps in response to my long-standing recommendation that effective, timely and practical methods of monitoring the situation be implemented. In fact, the Service has less reliable information now on double bunking then it did a year ago because they stopped producing their National Monthly Reports in September of 1993 in anticipation of the implementation of Release 2 of the automated Offender Management System.

In May of 1993, the Service's Executive Committee agreed to form a Task Force "to examine short and long-term options to reduce double bunking where possible and to create the most humane accommodation conditions given the current resource restraints". I was advised that the results of the Task Force would be shared with this Office. To date I have seen no results.

The Commissioner chaired a Focus Group on Accommodation Policies in January of 1994. The action plan from the Focus Group called for a Review to be undertaken, within three months, to address the question: "Why are incarcerated numbers increasing?" The areas identified for specific review were, "admissions, releases, waiver rates, National Parole Board concordance rates, paperwork backlog, requirements for work release, timing of programming for release and adequacy of community infrastructure". I look forward to receiving a copy of this Review.

The Service, in response to my specific concerns with the inhumanity of double bunking in segregation, stated in December of 1993 that "CSC strives to avoid double bunking in dissociation. If the Correctional Investigator identifies specific incidents where this is occurring, the Service will take prompt action to try to correct the situation". Not only have I identified specific incidents but a review of their own reports identifies fourteen maximum and medium security institutions with ongoing double bunking in Segregation/Dissociation Units.

c) Current Status

There are approximately five thousand federal inmates currently double bunked in penitentiary cells initially designed to house one individual.

I am encouraged by the Commissioner's recent statement that "the Service recognizes the need to understand as fully as possible the factors contributing to population growth". I am somewhat troubled though by his comment that "experience shows that an exhaustive analysis is far more difficult than the Correctional Investigator implies".

I have never implied that an understanding or analysis of the factors contributing to population growth were easy. I did offer simply as an observation that the state of the Services existing data, or at least that data provided to this Office, does not lend itself to a reasonable analysis as to the specific causes of the excessive increase in population. The first step in moving towards meeting the need of "understanding as fully as possible the factors contributing to the population growth" have been detailed in the proceeding Issue on Program Access and Case Preparation.

On the issue of double bunking, which is obviously a bi-product of excessive population growth, and more specifically on the concerns related to double bunking in segregation, I have been advised recently that the Service "unfortunately" does not record this information any longer. This fact places at serious question both the Service's longstanding claim of concern with respect to the practice of double bunking in non-general population cells and their commitment to effectively monitor this practice to ensure that the negative impacts are minimized.

Given the apparent ignoring of this Issue at the national level, I feel it is necessary to once again restate the obvious; **the housing of two individuals in a secure cell, designed for one individual, for up to twenty-three hours a day, for months on end, is inhumane.** This practice which continues unmonitored, defies not only any reasonable standard of decency but also the standards of international convention.

6. TEMPORARY ABSENCE PROGRAMMING

a) 1992-93

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.

b) Status as of March 1994

I was initially advised by the Commissioner in August of 1993, in response to last year's Annual Report, that a study was being undertaken by the Service focusing on the impact of the *Corrections and Conditional Release Act* on temporary absence programming.

I was subsequently informed in December of 1993 that "the obligation for monitoring the ongoing use of temporary absences is the responsibility of individual Wardens. Given, however, the common concern shared by both the Correctional Investigator and the Correctional Service of Canada... the Service will undertake periodic reviews at either the national or regional levels. Clearly, if information coming from any source suggests particular problems with temporary absences in a certain part of the system, the reviews would target those aspects".

In response to our follow up on the matter of periodic national or regional reviews, the Office was advised in March of 1994 that the Service had no immediate plans to initiate regional or national reviews on temporary absence programming. We were as well advised at that time that "individual institutions will continue to monitor and analyze data on TAs".

We requested of individual institutions the results of their monitoring and analysis. The responses received show little if any evidence of what would be identified as ongoing monitoring or analysis.

The Office continues to receive a significant number of complaints related to temporary absence decisions although from our discussions with the inmate population it is apparent that inmates are becoming acceptant of the declining availability of this program. For evidence of this decline one has only to review the festive season temporary absence data produced by the Service: a decade ago Christmas temporary absences were in excess of 1000; from 1988 through 1992, they averaged around 800; last Christmas there were fewer than 400 temporary absences granted.

On the other hand, the Commissioner advises that although they do not know why a festive season temporary absences went down in 1993/94 that overall the total of temporary absences and unescorted temporary absences and work releases increased by about 4%. We have requested that data and on receipt will examine it carefully because temporary absence programming has traditionally been and should continue to be a key element of the case preparation and re-integration process.

c) Current Status

The Service has done nothing despite its previous commitments to monitor and evaluate the reasons for the decline in the use of the temporary absence programming. The past five years of non-action I fear has placed the viability of this program as an effective element of the conditional release process at serious risk.

Although I acknowledge both the Commissioner's recent apparent recognition of the fact that this Office has raised legitimate questions concerning the decline of this program and his further commitment to launch an evaluation of the temporary absence program in 1995-96, I do so with a keen awareness of the Service's past track record on this Issue.

It must be recognized that the Service has no reliable data base against which to measure its current performance in this area. As such in moving towards an "evaluation" of temporary absence programming the questions of what is meant by evaluation, what methodology is to be employed and for what purpose is the exercise being undertaken need to be clearly addressed by the Service.

7. TRANSFERS

a) 1992-93

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 longstanding 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.

b) Status as of March 1994

Transfer decisions and the process leading to those decisions, as in past years, continues to represent the single largest category of complaint received by this Office and has increased over the course of this reporting year from 719 to 927.

Overcrowding has caused excessive delays in both the processing of transfer applications and the decision-making process itself. The Service's policy of shifting decision-making on voluntary intra-regional transfers from a centralized point at Regional Headquarters to the individual Wardens has further impacted on these delays and has, as well, caused significant inconsistencies in the detail of information provided to inmates in instances where the transfer is denied.

The appeal process on transfer decisions at the Commissioner's level, as mentioned earlier is basically dysfunctional. The delay in the processing and actioning of decisions on intra-regional and inter-regional transfers continues to increase.

Reception Centres in all regions are double bunked and the placement of inmates from these Units to general population institutions following the reception process, given the systemic state of over-crowding, is often delayed, which in turn delays the inmate's access to required programming.

The institutional transfer of general population inmates either laterally or downward in security level for program reasons, are in competition with reception inmates for a diminishing number of cells and their transfers are as well in many instances being excessively delayed.

In conjunction with the above, overcrowding has limited the transfer options available to the Service in response to those inmates seeking protective custody and a greater number of these inmates are as a result being double bunked in long-term segregation units.

I was advised again by the Commissioner in December of 1993 that "regions have put in place monitoring mechanisms to satisfy the internal audit conducted in 1989. The implementation of Release 2 of the Offender Management System will allow for effective monitoring of transfers at the national level".

The 1989 audit stated that there was a requirement for a more effective quality control mechanism at the regional and national levels to ensure that the transfer process complied with established procedures and time-frames for decision-making.

This Office's investigations of inmate complaints related to the transfer process has found little evidence of effective quality control and our specific requests to the regions for the results of their monitoring of the transfer process produced limited responses.

The monitoring of the transfer process at the national level continues to await the implementation of Release 2 of the Offender Management System.

c) Current Status

Transfer decisions and the process leading to those decisions continues to represent the single largest category of complaint received by this Office. The Service's Internal Audit recommended in 1989 the requirement for an effective quality control mechanism at the regional and national levels to ensure that the transfer process complied with established procedures and timeframes for decision-making.

Over the past five years, this Office has commented extensively on the inadequacies of the transfer process and has put forth numerous recommendations in support of the Audit findings in an attempt to ensure:

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

b) that during the course of its review of individual appeals on those decisions that the review 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.

The Office was advised in 1991 that the regions had acted on the recommendations of the 1989 Audit Report. We were advised in 1992 that OMS Release 2 would allow for effective monitoring of transfers at the national level and again in 1993, the Office was further advised that transfers were monitored at the institutional level. Three years of smoke and mirrors.

Last year's Annual Report concluded that our "investigation of inmate complaints related to the transfer process has found little evidence of effective quality control and our specific requests to the regions and institutions concerning their monitoring of the transfer process produced limited responses".

The Commissioner's October 1994 response advises that OMS is experiencing problems with the quality of the data being entered... and that it is expected that detailed information concerning transfers will be available during 1995.

Over the course of this reporting year, the Service has implemented additional changes to Commissioner's Directive 540 delegating further decision-making authority for transfers to the institutional level, a process which I characterized in past Annual Reports as negatively impacting on both the efficiency and objectivity of the system. The Office has also witnessed, in response to excessive overcrowding, involuntary transfers to provincial institutions being authorized under exchange of service agreements, an increase in involuntary inter-regional transfers for the purpose of population management and a growing number of inmates being housed in institutions inconsistent with their security classification.

On this latter point, the Auditor General in his recent report indicated that the Service should:

- revise the Custody Rating Scale as soon as possible, using the most current data, to ensure its continuing validity;

- consider including additional factors in the scale to ensure more consistency between inmate security classification system and the provision for accelerated parole review; and

- consider reclassifying inmates more frequently than on an annual basis and place more emphasis on the consistency between security reclassification and other risk assessment decisions such as transfers and parole.

At the time of the Auditor General's review, there were approximately 900 inmates housed in prisons with a security level higher than their individual classification. The absence of accurate up-to-date information on this situation, at the headquarters level, was viewed by the Auditor General as "a very serious problem".

The Service in response to the above, indicated that its Research Branch has been requested to undertake a study on the accuracy and application of the Custody Rating Scale, and the question of consistency or correlation between Accelerated Parole review status and individual inmates' security classification will be examined.

The Commissioner's March 1995 Response with respect to the transfer process advises that "OMS provides information to allow tracking of the inmate transfer process, including the provision of information such as the type of transfer (voluntary/involuntary), date of application, reason, decision, actual date of inmate movement and the outcome of any appeals". The question is: Is this information available at headquarters, is it correlated and analyzed, and what does it show?

As with the previous issues of Case Preparation, Program Access, Grievances, Double Bunking and Temporary Absences, the Service, to address the concerns associated with these matters, needs to clearly identify specifically what they are going to do, how they intend to do it and who is responsible and accountable for getting it done.

8. MANAGEMENT OF OFFENDER PERSONAL EFFECTS

a) 1992-93

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". 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.

b) Status as of March 1994

I was advised by the Commissioner in August of 1993 that a Commissioner's Directive and Guidelines on this issue would be finalized by October of 1993. I was then informed in December of 1993 that the Service, in accordance with Section 74 of the *Corrections and Conditional Release Act*, had solicited inmate comments on the revised Directive and Guidelines. These comments had been received in early August of 1993 and a finalized Directive and Guidelines were to be sent to Executive Committee for sign-off by January, 1994.

As of the end of this reporting year (March 31, 1994) no Directive or Guidelines have been issued, although it has been rumoured that a Commissioner's Directive could possibly be published by the end of the Summer of 1994.

The Service's review of this policy began in early 1990.

c) Current Status

The Commissioner in March of 1995 advises that the final Commissioner's Directive and Guidelines on offender personal effects have been forwarded for his signature. Although the revised policy and guidelines address many of the initial concerns raised, difficulties continue to surface with respect to inconsistencies in allowable personal effects specifically related to computers.

I have recently been advised that the Service is continuing in its efforts to develop a policy on inmate access to computers in an attempt to "bring more consistency of practice across the country". The Service has been reviewing the matter of inmate effects and computers from a security perspective for in excess of two years. I would hope that a final decision ensuring both reasonable access and consistency on this matter will be taken in the very near future.

9. APPLICATION OF OFFENDER PAY POLICY FOR UNEMPLOYED INMATES

a) 1992-93

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.

b) Status as of March 1994

The Service in responding to the issue in December of 1993 stated:

> There has been a long-standing understanding that $1.60 (a day) is insufficient as an allowance for inmates who are unable to work through no fault of their own. Wardens have been advised to review all such cases regularly, and to use their discretion to increase pay rates where applicable. This is intended as an interim measure until the implementation of Commissioner's Directive 730, Inmate Program Assignment and Pay.

The number of unemployed inmates continues to rise caused in part by the increase in population and the increase in the number of inmates seeking protection and ending up in long-term segregation. The number of inmates continuing to receive $1.60 a day does not appear to have been affected by the above statement.

Our review of complaints related to pay and employment issues, which have increased significantly over the course of this year, clearly indicates that inmates at $1.60 a day are not being reviewed regularly for the purpose of increasing pay rates where applicable. The Office has been advised by one region that its Inmate Pay Budget cannot afford to move inmates off the $1.60 a day pay level even if they are unemployed through no fault of their own.

It would appear, despite the Service's claimed understanding that $1.60 a day is insufficient as an allowance, that the situation remains as I reported it three years ago.

I recommend, on this issue and in conjunction with the general issue of inmate pay, that a sufficient minimum daily allowance be established and that all inmates regardless of status receive at least that minimum daily allowance. I further recommend, given the excessive delay on this issue, that immediate action be taken.

c) Current Status

Last year's Annual Report, in light of the agreed upon position that $1.60 a day was an insufficient allowance specifically recommended that:

> A sufficient minimum daily allowance be established and that all inmates regardless of status receive at least that minimum daily allowance.

There has been no action or comment by the Service on this recommendation.

There further appears to be a retreat on the part of the Service from its former commitment to review those inmates who are unemployed through no fault of their own for the purpose of increasing their level of pay above the $1.60 a day mark.

The Issue of unemployed inmates needs to be reviewed in conjunction with the previous Issue of Imate Pay to ensure that the Service has a coordinated and reasonable pay policy.

10. CRITERIA FOR HUMANITARIAN ESCORTED TEMPORARY ABSENCES

a) 1992-93

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.

b) Status as of March 1994

The Commissioner was concerned with the situation and took action to reinforce the Service's policy in this area by issuing guidelines for Wardens to utilize in granting Escorted Temporary Absences for compassionate reasons.

The guidelines are clear and reasonably reflect the Service's policy. Despite continuing to receive some complaints where the decision taken is inconsistent with the policy, I accept this as inevitable and consider the issue to be resolved.

In those circumstances where we find after investigation that a decision is inconsistent with the policy, I will refer it directly to the Commissioner given the significance of such decisions to both the inmate and family members and the time sensitivity associated with such decisions.

c) Current Status

Last year's Annual Report acknowledged that the Commissioner had taken action on this issue by issuing Guidelines to reinforce the Service's policy on Humanitarian Escorted Temporary Absences. I as well acknowledged in last year's Report that the guidelines were "clear and reasonably reflected the Service's policy", yet I accepted that it was inevitable that decisions would continue to be made inconsistent with the policy and guidelines.

I concluded last year's Report by stating that decisions inconsistent with the Service's policy would be referred directly to the Commissioner. Over the course of this reporting year, a number of Humanitarian Escorted Temporary Absence decisions have been referred to the Commissioner for his review. Unfortunately, the results of those reviews have tended to be excessively delayed, defensive and non-committal.

11. HOSTAGE-TAKING - SASKATCHEWAN PENITENTIARY

a) 1992-93

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 centred 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 with 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.

b) Status as of March 1994

Three years have now passed since the occurrence of this tragic incident. The Service over the course of this reporting year has offered little in the way of substantive comment on the issues raised by the incident itself and the Service's subsequent Investigation.

My comments of last year regarding the quality of the investigation and the Service's actions during the two year period following the Investigation stand.

Although I do not have further information relevant to this matter, I do have a number of continuing concerns. I am concerned with:

a) the clarity and understanding of the Service's policies related to the use of drugs as an item of negotiation and the role of outside negotiators;

b) the absence of a comprehensive review on the issues associated with protective custody integration and institutional violence;

c) the delayed publication of Preventive Security Standards and Guidelines; and

d) the fact that the Service's Investigation concluded that the surviving hostage-taker suffered no injuries, when a simple review of the subject's medical file would have indicated otherwise.

On a more general and personal basis I am concerned by the approach taken by the Service in addressing this matter. It was never the intention of this Office to point fingers or cast blame. We were not there and I have no doubt that the decisions and actions taken by those responsible for the management of this incident were taken in good faith. It was our intention to cause the Service to thoroughly and objectively review those issues raised by its own Board of Investigation. This never happened.

c) Current Status

The Commissioner in commenting on this Issue in March of 1995 stated; "the Service reported to the Minister on October 3, 1994 that in our opinion, the matter is closed".

This entire Issue and the Service's handling of it speaks more directly to the objectivity and thoroughness of their Investigative Process than it does to the incident at Saskatchewan Penitentiary four years ago.

At the risk of belabouring this Issue and in the hope that some attention can be focused on matters which continue to have relevance to Correctional Service of Canada operations, I offer the following comment on the four areas of concern initially identified.

Hostage Taking Policy

The focus on this issue was the clarity and understanding of the policy in place at the time as it related to the use of drugs as an item of negotiation and the role of outside negotiators. If the policy in these areas is clear and generally understood perhaps the Service could enunciate that policy and relate that policy to what happened at Saskatchewan Penitentiary.

Review of Institutional Violence

The focus here centred on the integration of protective custody and general population inmates. In response to concerns raised by their own Internal Investigation, the Commissioner, in mid-1992, "decided to launch a national review of the integration of Protective Custody inmates and the impact of policies governing this process". As I reported in my 1992-1993 Annual Report, this national review was abandoned without notice or explanation in favour of a "fundamental review of violence among inmates". I further reported that same year that this "fundamental review" was narrowly focused, centering on three institutions only one of which had attempted to integrate protective custody offenders. I concluded in that same Report that the results of this review, which purposely had a very limited

distribution within CSC, made at best only passing comment on the concerns associated with integration and fell far short of fulfilling the undertaking given by the Service to provide an accurate information base from which to manage the process of integration.

As a number of regions, in response to overcrowding, are initiating policies of integrating protective custody offenders into general population institutions, I believe the Service would be very well advised to return to its 1992 undertaking in this area.

Preventive Security Guidelines

This issue centred initially on the non availability of relevant Preventive Security information on one of the hostage takers to those responsible for the onsite management of the incident. Since that time a myriad of concerns associated with the coordination, verification, communication and correction of preventive security information and the role of preventive security officers, have surfaced. The Commissioner's March 1995 Response has established a "target date" of April 30, 1995 for the production of Preventive Security Standards. Whether these Standards in fact address these issues remains open.

Alleged Assault on Hostage Taker

The Commissioner's March 1995 Response states; "The Service did review a television video of the subject shortly after the incident, a photograph shown by Mr. Stewart, and comments made by the negotiator, and concluded that the subject was not assaulted following the hostage-taking."

The issue here, at this late date, is the thoroughness of the Service's Board of Investigation, which concluded that the subject "suffered no injuries", and the objectivity displayed by the Service when confronted with information to the contrary.

The referenced photograph, in the Commissioner's Response, was obtained from the subject's institutional file as was medical information provided to the Commissioner, which clearly indicated that the subject had suffered injuries consistent with an assault. Rather than address the specifics of this information, the Service has waltzed around this issue for the past two and a half years. To my mind, the music stopped playing quite some time ago - on this issue the Board of Investigation was wrong and the Service's follow-up action was at best evasive.

On the overall Issue, I re-state again, it was never the intention of this Office to point fingers or case blame, it was our intention to cause the Service to thoroughly and objectively review those issues raised by its own Board of Investigation. Quite evidently this has not happened.

12. MENTAL INCOMPETENCE

a) 1992-93

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 C.S.C. could adopt to strengthen the current process, aside from usual good case management practices". I look forward to the initiation of these discussions.

b) Status as of March 1994

I was advised in December of 1993, without the Service having fulfilled its undertaking of March, 1993 to hold further discussions with this Office, that "The procedures for mental incompetence remain a provincial matter and vary significantly within each province. CSC is not in a position to consider a national policy until such a time that a uniform Mental Health Act is enacted, however, this is unlikely to occur in the foreseeable future".

I do not agree with the Service's position on this matter. I would have thought that the absence of national direction in this area, the level of mental health problems evident in federal penitentiaries and the fact that uniformity via a National Mental Health Act is not likely in the foreseeable future, would be reasons for the Service to develop a national policy in this area.

c) Current Status

Substantial progress has been made over the course of this reporting year in both focusing the areas of concern associated with this issue and establishing future direction in addressing these matters. The Commissioner's March 1995 Response in part stated:

> The issue of incompetence and its repercussions has been listed as an ongoing concern by the Correctional Investigator. Part of the reason for this is that it is identified as a general concern, which may include several issues. It pertains to the legal definition of incompetence, as defined by provincial statutes, and, in the broader sense, the large number of offenders who, while legally competent, are not able to cope successfully with daily life.
>
> As the issue of mental incompetence and adult guardianship are provincial matters guided by complicated and widely varying provincial statutes, there is no simple way to ensure a consistent approach across CSC. There is no uniform approach to mental health in Canada, despite the existence of a draft Uniform Mental Health Act.

The concerns raised may, however, include those offenders who, while legally competent, are not able to manage their daily affairs. For these offenders, CSC has a long-term plan as part of its Mental Health Strategy. As part of the Corporate Operational Plan, the Service plans to build or convert up to 6% of its cell space for the mentally disordered offender. The primary aim of these units is to provide the type of care and assistance outlined in the Correctional Investigator's report.

This Office has recently corresponded with the Correctional Service to further establish specific areas of further consultation and we look forward to a cooperative approach in addressing this difficult yet important Issue.

13. OFFICER IDENTIFICATION

a) 1992-93

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 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.

b) Status as of March 1994

A decision was taken by the Service's Executive Committee in May of 1993 that all institutional staff whether uniformed or non-uniformed would be required to wear name tags effective July 1, 1993. Hopefully the matter is resolved.

c) Current Status

A visit to any number of federal penitentiaries provides clear evidence that the policy on the wearing of name tags is not consistently enforced. I therefore recommend that the Commissioner issue a direction on this Issue to ensure consistent application of the Service's policy.

14. DISCIPLINARY COURT DECISION

a) 1992-93

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 by 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 question 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 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.

b) Status as of March 1994

The Service has passed no comment on my observations of last year concerning its failure to maintain records of disciplinary hearings.

Section 33(1) of the *Regulations* to the *Corrections and Conditional Release Act* reads:

> The Service shall ensure that all hearings of disciplinary offences are recorded in such a manner as to make a full review of any hearing possible.

Despite the *Regulations*, this Office's past comments and the Service's 1990 commitment to ensure that a record of all disciplinary hearings was maintained, this Office continues to encounter cases where an adequate disciplinary record has not been produced and maintained. I therefore recommend that the Service take immediate steps to ensure that all hearings of disciplinary offences are recorded in such a manner as to make a full review of any hearing possible. I further recommend that the Service initiate an Audit of their current disciplinary policies and practices, including those related to punitive dissociation, to ensure that they are in compliance with the provisions of the Act and Regulations.

c) Current Status

The Office was advised in October of 1994 by the Commissioner that Wardens had again been reminded of the requirement to maintain a record of disciplinary hearings.

I recommended last year in response to the increasing number of complaints related to the disciplinary process that:

> The Service initiate an audit of their current disciplinary policies and practices, including those related to punitive dissociation, to ensure that they were in compliance with the provisions of the Act and Regulations.

I was advised by the Service in October of 1994 that "a review of the disciplinary process as it related to the regulations is currently being conducted. A report of the findings is expected by October." I have never seen the results of this review.

I was later advised by the Commissioner that a "full scale audit of the process was done in 1992". The Commissioner further stated that it was decided in "December, 1993 that a further review of this function, including examination of the regulations should await use of the process under the CCRA".

This Office has not been able to locate the referenced "full scale audit" and I note that the *Corrections and Conditional Release Act* was enacted thirty months ago.

The bottom line on this Issue is the Service has taken no action on my recommendation from last year.

15. USE OF FORCE - INVESTIGATIONS AND FOLLOW UP

a) 1992-93

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.

b) Status as of March 1994

The Service in response to my recommendation that: "All use of force incidents be investigated and that those investigations include input from the inmates affected", initiated a number of policy and procedural changes in the Fall of 1993:

- Commissioner's Directive 605 Use of Force was amended to read: Following an incident where force has been used, an investigation shall be ordered by the institutional head or other designated authority.

- the Service's Use of Force Report was amended to include a section where the inmate could indicate whether or not they wished to make representation to the Warden, and

- the Service's Security Manual was amended indicating that the Warden's review of the amended Use of Force Report in instances of routine use of force would constitute the required investigation.

Unfortunately, the effect of all this amending has not solved the problem. The amendment to the Security Manual defining the Warden's review of the Use of Force Report as constituting an "investigation" in instances of routine use of force has basically negated the amendment to the Commissioner's Directive calling for an investigation in all cases where force has been used. Virtually, all use of force is now being identified as routine. In addition to this, the amended Use of Force Report is not being used, as such there is no evidence to indicate that inmates are being advised that they can make representations, and we have seen little if any evidence that the Warden's review prior to the determination that the use of force was routine included a consideration of the comments of those inmates affected.

This series of policy amendments, whether intended or not, has done nothing more than entrench past practices in current policy. I do not believe that the Warden's review of the Use of Force Report, amended or otherwise, constitutes an investigation. I further do not believe that the use of force should be approached or characterized as a routine event. I therefore restate my recommendation that all use of force incidents be thoroughly investigated and that those investigations include input from those inmates affected.

The Service has not addressed my further recommendation in this area concerning management responsibility, as such I recommend again 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.

c) Current Status

Last year's Annual Report re-stated the previous year's recommendation that all use of force incidents be thoroughly investigated and that those investigations include input from those inmates affected.

This recommendation was re-stated because the series of amendments offered by CSC the previous year failed to address this Office's observations of two years ago: "that the Service was not consistently conducting investigations as called for by existing policy and in those instances where an investigation was undertaken there was seldom evidence that the inmates affected were interviewed or that the observations and recommendations emanating from the investigation had been reviewed or actioned by senior management".

The Service in responding to the Issue in March of 1995 stated:

> We do not share the view of the Correctional Investigator that an investigation, as described by section 19 of the CCRA, is necessary in every instance of the use of force. These investigations are costly and time consuming.

In two years of commenting on this issue, the Annual Report has never put forth the position that use of force incidents must be investigated as described by section 19 of the *Corrections and Conditional Release Act*. In fact, section 19 of the *Corrections and Conditional Release Act* has never been referenced by this Office in terms of use of force investigations. As such, I am at a loss to understand what it is that the Service is referring to or understand the rationale put forth in support of their position.

The Service's response goes on to say "that more and more investigations are being conducted at the informal level following the use of force". I have no idea what constitutes an "informal level of investigation" but I do know that it was the absence of a formal structure within CSC's review of use of force incidents that lead to this Office's initial observations and recommendations in this area. Recent correspondence has again been forwarded to the Commissioner providing further examples of inconsistencies in the Service's management and reporting of these incidents.

In order to reasonably address the concerns raised by this Issue, the Service must ensure that:

- all use of force incidents are thoroughly and objectively investigated, inclusive of input from those inmates affected;

- management is responsible for reviewing the reports and ensuring that corrective follow-up action is taken;

- an information base is maintained regionally and nationally on use of force incidents, type of force used, circumstances, number of injuries, etc., for the purpose of review and analysis to ensure that such incidents are kept to a minimum. (How many use of force incidents occur over the course of a year?).

I fail to understand the continuing reluctance of the Service to ensure that use of force incidents are thoroughly and objectively investigated.

16. INMATE INJURIES

a) 1992-93

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. There was further, 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.

b) Status as of March 1994

I was initially advised in August of 1993, in response to my recommendation supporting the development of a separate Commissioner's Directive on Inmate Injuries to ensure that the inconsistencies and lack of coordination of the past were avoided, that a revised Directive would be issued by the end of December, 1993. I received a draft Directive on the Reporting and Recording of Inmate Injuries in the Fall of 1993 and our comments were provided to the Service. The Office was later advised that a "new draft will be distributed for comment before the end of the year". As of this reporting date, no Commissioner's Directive on Inmate Injuries has been issued.

With respect to the related matter of the Service's responsibilities under Section 19 of the *Corrections and Conditional Release Act*;

- the working definition of what constitutes "serious bodily injury" remains under development,
- all incidents resulting in serious bodily injury, as defined by any reasonable person, are not being investigated as per the requirements of s. 19, and
- the quality of those investigations which this Office has received are in far too many instances inadequate.

I am advised that the Service will initiate a review of its investigative process in the near future and I am in total support of this initiative.

c) Current Status

The central areas of concern associated with this Issue continue to focus on the Service's investigative process and their responsibilities pursuant to Section 19 of the *Corrections and Conditional Release Act*. Last year's Annual Report stated in part:

- all incidents resulting in serious bodily injury, as defined by any reasonable person, are not being investigated as per the requirements of s.19; and

- the quality of those investigations which this Office has received are in far too many instances inadequate.

I am advised that the Service will initiate a review of its investigative process in the near future and I am in total support of this initiative.

The Service's Interim Instruction on Recording and Reporting of Inmate Injuries, issued in July of 1994, provided a definition of serious bodily injury, yet this Office continues to find instances resulting in injuries which would reasonably appear to fall within this definition which are not being investigated pursuant to s.19.

The Interim Instruction as well states that "a copy of the investigation report, together with the response to any recommendations, shall be forwarded through the Deputy Commissioner of the region or the Commissioner to the Correctional Investigator". The Office continues to receive the vast majority of s.19 Investigation Reports absent of any response from the convening authority on the report's recommendations.

To address these areas of concern, there is a need for a clarification of the Service's Interim Instruction to ensure that all instances resulting in death or serious bodily injury are investigated as per the requirements of s. 19 of the *Corrections and Conditional Release Act* and that the investigative reports forwarded to this Office are complete. The Service further needs to ensure that its investigative process, besides being thorough and objective, has at both the regional and national level, the capacity to correlate, analyze and follow up on the results of its investigations in a timely and responsive fashion.

With respect to the Service's review of its investigative process, I was recently advised that a final report has been submitted and that most of the 71 recommendations contained in the report have been accepted. I look forward to reviewing the policy and procedural changes which flow from these recommendations.

17. VISITS TO DISSOCIATION AND DELEGATION

a) 1992-93

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.

b) Status as of March 1994

The Corrections and Conditional Release Act, and before it coming into force, the Commissioner's Directive required that the Warden or Deputy Warden visit the administrative segregation area at least once every day and meet with individual inmates on request.

The Service has passed no comment on my observations that they knowingly operated in violation of their own policy (from November, 1991) and the Act (from November, 1992) and took no corrective action until June of 1993.

In June of 1993, the action taken by the Service was to delegate the responsibility for daily visits to the segregation area to the level of Unit Manager. The Commissioner in commenting on the delegation issue stated "that the Executive Committee's decision was to delegate responsibility for visiting dissociation units to a senior manager level. The directive states that this level shall not normally be below the level of Unit Manager". With all due respect to Unit Managers, they are not senior managers. Unit Managers are responsible for the day to day operation of a unit, and the segregation area would be part of that unit. The intent of the legislation was to have a senior manager, not directly responsible for the day to day operation of the area, present and available to the inmate population.

Segregation populations continue to increase, inmates are double bunked, sometimes triple bunked, the requirements for showers and daily exercise are not always being met, the required written psychological opinions on long-term segregation cases are not routinely being done and complaints to this Office concerning segregation conditions and reasons for placement continue to increase. The area requires the daily presence of senior management.

The Warden has the authority to place offenders in segregation, maintain them in segregation or release them from segregation and the authority to facilitate transfers from the institution to alleviate long-term segregation.

Consequently he or the Deputy Warden should be the official to attend daily in segregation and be available to meet with inmates housed there. To delegate to a lesser official negates the intent of section 36 of the Act.

c) Current Status

The Commissioner issued an instruction relevant to this matter December 22, 1994 which reads in part:

> I expect Wardens and Deputy Wardens to visit the segregation area at least once a week, unless there are convincing reasons to the contrary. I expect this to be a full visit to include, as a minimum, an inspection of the area, review of logs, meeting with staff, and making oneself available to inmates. I would ask Deputy Commissioners to join me in checking the log when we are visiting institutions to confirm that this is happening. This does not obviate the requirement for a daily visit by a Unit Manager as the CD requires.
>
> In a year's time, I will re-address this matter and, if it remains a troublesome issue, the CD will be changed.

This is a positive direction. The objective of this Office was to ensure the ongoing presence of senior management, as called for by the Act, in the segregation area. The question now is, will the direction be complied with and will the presence of senior management in the segregation area assist in alleviating those areas of concern associated with segregation? In this regard, I am encouraged by the fact that the Commissioner has undertaken to re-address this matter in a year's time.

CONCLUSION

The Service's responses over the course of this reporting year are consistent with their past performances. The responses have avoided the substance of the issues at question including a failure to address the specific observations and recommendations contained in last year's Annual Report. The Responses are defensive, display little if any appreciation for the history or significance of the issues at question and provide at best a further string of endless promises of future action, with no indication as to expected results or how the results of these proposed actions will be measured or analyzed.

The Office has two key areas of focus:

a) the Correctional Service of Canada's continuing delayed, indifferent responses to concerns, individual and systemic, which are referred from this Office, and

b) the issue of overcrowding;

- its impact on the individual inmate and on the Correctional Service of Canada's ability to reasonably and safely manage the population; and

- its causes, which are to a great extent controllable through the reasonable and timely management of the inmate population.

To ensure that these Issues are reasonably addressed, the Service must begin to turn its attention to the specifics identified within the Annual Reports and cease its current practice of approaching the Issues in an overly generic and isolated fashion. I am hopeful that a focusing on the specifics of the Issues will assist in ensuring not only that these systemic concerns are reasonably addressed but that individual inmate concerns, associated with these Issues, can be dealt with in a timely and responsive fashion.

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December 12, 1994

The Honourable Herb Gray
Solicitor General of Canada
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Dear Mr. Minister,

I am informing you, pursuant to s. 180 of the Corrections and Conditional Release Act (C.C.R.A.), of the fact that the Commissioner of Corrections, within a reasonable time of having been informed of a problem associated with the case of has failed to take adequate or appropriate action. I have enclosed a copy of all information provided to the Commissioner on this matter.

As is evident from the enclosed documentation concerns with respect to the denial of claim were initially referred to the Assistant Commissioner, Executive Services March 16, 1993. This case was then referred by myself to the Commissioner February 3, 1994 as one of thirteen cases which remained outstanding despite numerous follow-up letters from this Office. A response to our March 16, 1993 correspondence was received from the Assistant Commissioner, Executive Services July 12, 1994. Following my review of this response from the Assistant Commissioner, I referred the matter back to the Commissioner, September 7, 1994 as the concerns detailed in our March, 1993 correspondence remained unaddressed. I wrote the Commissioner again October 19, 1994 referencing my September correspondence indicating that a response had yet to be provided. The absence of a response on this matter was further brought to the attention of the Commissioner at a meeting November 8, 1994.

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Canada

I have as of this date not received a response from the Commissioner. I am informing you of this situation, as stated above, as a requirement of s. 180 of the C.C.R.A. I am as well by copy of this letter again requesting that the Commissioner of Corrections address the concerns raised by case.

Yours respectfully

R.L. Stewart
Correctional Investigator

C.C. Mr. John Edwards
Commissioner of Corrections

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November 29, 1994

The Honourable Herb Gray
Solicitor General of Canada
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Wellington Street
Ottawa, Ontario
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Dear Mr. Minister,

I am informing you, pursuant to s.180 of the Corrections and Conditional Release Act, of the fact that the Commissioner of Corrections, within a reasonable time after having been informed of a problem associated with the case of has failed to take adequate or appropriate action. I have enclosed a copy of all information provided to the Commissioner on this matter.

As is evident from the enclosed documentation, the concerns raised by case were initially referred to the Assistant Commissioner Executive Services January 24, 1994. Following my review of the Service's position on this matter as detailed in their July 7, 1994 correspondence, I referred the matter directly to the Commissioner's attention August 16, 1994. I followed up this correspondence with a reminder letter October 18, 1994. The absence of a response on this matter was further brought to the attention of the Commissioner at a meeting November 8, 1994.

.../2

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As is evident from the enclosed documentation, the concern related to the excessive delay in the processing of grievance at the Commissioner's level of the process was initially referred to the Assistant Commissioner, Executive Services June 25, 1993. case was then referred by myself to the Commissioner February 3, 1994 as one of thirteen cases which remained outstanding despite numerous follow-up letters from this Office. Following my review of the response received July 22, 1994 from the Assistant Commissioner Executive Services, I referred the matter again back to the Commissioner August 16, 1994 as January 1993 grievance remained unaddressed. I wrote the Commissioner again October 18 1994 referencing my August correspondence indicating that a response had yet to be provided. The absence of a response on this matter was further brought to the attention of the Commissioner at a meeting November 8, 1994.

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Dear Mr. Minister,

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The concerns raised by were initially referred to the Deputy Commissioner Atlantic Region, June 7, 1994. Following my review of the Deputy Commissioner's response of June 20, 1994 I referred the matter to the attention of the Commissioner August 16, 1994 with a request for his immediate attention to the issue. I followed up this correspondence with a reminder letter October 18, 1994. The absence of a response on this matter was further brought to the attention of the Commissioner at a meeting November 8, 1994.

.../2

I have as of this date not received a response from the Commissioner. I am informing you of this situation, as stated above, as a requirement of s.180 of the CCRA. I am as well by copy of this letter again requesting that the Commissioner of Corrections address the concerns raised by case.

Yours respectfully,

R.L. Stewart
Correctional Investigator

C.C. Mr. John Edwards
Commissioner of Corrections

The Correctional Investigator
Canada

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Suite 402
Ottawa, Ontario
K1P 5H9

L'enquêteur correctionnel
Canada

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December 12, 1994

The Honourable Herb Gray
Solicitor General of Canada
Parliament Buildings
Wellington Street
Ottawa, Ontario
K1A 0A6

Dear Mr. Minister,

I am informing you, pursuant to s.180 of the Corrections and Conditional Release Act (C.C.R.A.), of the fact that the Commissioner of Corrections, within a reasonable time after having been informed of a problem associated with the case of , has failed to take adequate or appropriate action. I have enclosed a copy of all information provided to the Commissioner on this matter.

As is evident from the enclosed documentation, the concerns related to the denial of transfer application were initially referred to the Assistant Commissioner, Executive Services March 14, 1994. August 15, 1994, wrote to the Commissioner of Corrections with a copy provided to this Office. I wrote the Commissioner, September 7, 1994, requesting a response to our March 14, 1994 correspondence and a copy of his response to I wrote the Commissioner again October 18, 1994 referencing my September 7, 1994 correspondence indicating that a response had yet to be provided. The absence of a response on this matter was further brought to the attention of the Commissioner at a meeting November 6, 1994.

... /2

Canada

I have as of this date not received a response from the Commissioner. I am informing you of this situation, as stated above as a requirement of s. 180 of the C.C.R.A. I am as well by copy of this letter again requesting that the Commissioner of Corrections address the concerns raised by case.

Yours respectfully

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December 12, 1994

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Dear Mr. Minister,

I am informing you, pursuant to s.180 of the Corrections and Conditional Release Act (C.C.R.A.), of the fact that the Commissioner of Corrections, within a reasonable time after having been informed of a problem associated with the case of has failed to take adequate or appropriate action. I have enclosed a copy of all information provided to the Commissioner on this matter.

As is evident from the enclosed documentation, this Office's concern with the excessive delay in proccessing grievance at the Commissioner's level of the procedure was initially referred to the Assistant Commissioner, Executive Services, December 20, 1993. A response to the subject's grievance, which was filed in August of 1993, was received at this Office July 20, 1994. Following my review of that response, I referred the matter directly to the Commissioner's attention September 7, 1994 with a request for a further review of the processing of case. I wrote the Commissioner again October 18, 1994 referencing my September 7th correspondence indicating that a response had yet to be provided. The absence of a response on this matter was further brought to the attention of the Commissioner at a meeting November 8, 1994.

... /2

Canada

I have as of this date not received a response from the Commissioner I am informing you of this situation, as stated above, as a requirement of s. 180 of the C.C.R.A. I am as well by copy of this letter again requesting that the Commissioner of Corrections address the concerns raised by case.

Yours respectfully

R.L. Stewart
Correctional Investigator

C.C. Mr. John Edwards
Commissioner of Corrections

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December 12, 1994

The Honourable Herb Gray
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K1A 0A6

Dear Mr. Minister,

I am informing you, pursuant to s.180 of the Corrections and Conditional Release Act (C.C.R.A.), of the fact that the Commissioner of Corrections, within a reasonable time after having been informed of a problem associated with the case of has failed to take adequate or appropriate action. I have enclosed a copy of all information provided to the Commissioner on this matter.

As is evident from the enclosed documentation, the concerns raised by case were initially referred to the Assistant Commissioner, Executive Services June 13, 1994. As this Office had not received a response, I wrote to the Commissioner September 22, 1994 requesting his personal attention and immediate action on the matter. I wrote the Commissioner again October 19, 1994 referencing both our June and September correspondence and further requesting his personal attention in addressing the matter. The absence of a response on this case was further brought to the attention of the Commissioner at a meeting November 8, 1994.

... /2

I have, as of this date, not received a response from the Commissioner. I am informing you of this situation, as stated above, as a requirement of s.180 of the C.C.R.A. I am as well by copy of this letter again requesting that the Commissioner of Corrections address the concerns raised by case.

Yours respectfully

R.L. Stewart
Correctional Investigator

C.C. Mr. John Edwards
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14 February 1995

The Honourable Herb Gray, M.P.
Solicitor General of Canada
340 Laurier Avenue West
Ottawa, Ontario

Dear Mr. Minister

I am submitting to you pursuant to Section 193 of the Corrections and Conditional Release Act a special report setting out my observations and recommendations concerning the treatment of inmates and the subsequent inquiry following certain incidents at the Prison for Women in April 1994 and thereafter.

Because of the importance of this matter, I make this report now rather than defer it for inclusion in my next annual report.

Yours respectfully

R.L. Stewart
Correctional Investigator

Canada

SPECIAL REPORT OF

THE CORRECTIONAL INVESTIGATOR

PURSUANT TO SECTION 193 CORRECTIONS AND CONDITIONAL RELEASE ACT

CONCERNING THE TREATMENT OF INMATES AND SUBSEQUENT INQUIRY FOLLOWING CERTAIN INCIDENTS AT THE PRISON FOR WOMEN IN APRIL 1994 AND THEREAFTER

R.L. Stewart
Correctional Investigator
14 February 1995

INTRODUCTION

This Report is submitted pursuant to Section 193 of the Corrections and Conditional Release Act (CCRA):

> *"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."*

I hereby submit this Report, as I am of the opinion that the matters associated with the Prison for Women incidents of April 1994 are of sufficient urgency and importance that their referral to your attention could not reasonably await the submission of my next Annual Report.

The following Observations and Recommendations are the result of an extensive review undertaken by the Office of the Correctional Investigator of the incidents at the Prison for Women 22 April through 26 April and the extended Segregation of the women involved. The review included: interviews at the Prison for Women and Kingston Penitentiary, April 1994 through February 1995 with the women involved; meetings and exchanges of correspondence with the Warden of the Prison for Women, the Regional Deputy Commissioner, and the Commissioner May 1994 through January, 1995; meetings and discussions with senior representatives of the Elizabeth Fry Society in Ottawa and Kingston, with members of the Citizen Advisory Committee (Prison for Women) and lawyers representing the women involved in the April incident; an analysis of the Service's Board of Investigation Report into the incident (received 14 November 1994); a review of the Service's responses to the inmate grievances filed on the Emergency Response Team (ERT) intervention of 26 April 1994; and a review on 27 January 1995 of the video tape of the Emergency Response Team intervention of 26 April 1994.

I have attached as Annexes A and B to this Report a chronology of this Office's activities relevant to this review covering the period 15 April 1994 through 3 February 1995 as well as our detailed observations of the 26 April 1994 video tape.

OBSERVATIONS

1. *The Correctional Service of Canada failed to ensure that its investigative process into these incidents was and was seen to be open, independent and objective. The characterization of the Board of Investigation Report as a "white wash" by the offenders involved and the Elizabeth Fry Society is no surprise given the make-up of the Board.*

2. *The section of the Board of Investigation Report entitled Inmate Profile, pages 7 to 21 inclusive, provides little if any information directly relevant to the incident under investigation other than to discredit and portray the inmates involved in the most negative light possible. This detracts from the objectivity of the Report and tends to lend justification to the actions taken by the Service as evidenced in the Commissioner's January 13, 1995 letter which reads in part:*

> *"I understand that you received a copy of the investigation into the incidents of late April. I hope this will have brought home more forcefully the records of the women involved and the dangerousness of their actions in April."*

3. *The Board of Investigation Report does not pass conclusive comment on the appropriateness of the decision to deploy the ERT.*

   Although the Commissioner states that "in their report, the Investigation Team noted that: the intervention of the ERT in the segregation unit on April 26 was necessary to restore order and prevent injuries to staff as well as other inmates", the Report itself simply states under the heading <u>The Adequacy and Effectiveness of Staff Response</u>: "The Board of Investigation was struck by the length of time (four days) inmates were allowed to be disruptive and throw urine and feces at staff before the decision was taken to bring in the ERT. Certainly by April 26, 1994 ... some action had to be taken".

4. *The Board of Investigation did not interview the two Citizen Advisory Committee (CAC) members who attended the segregation area at the Prison for Women during the period under investigation. Both of these CAC members, at a later date, made separate representations to the Warden with regard to their concerns on the management of the situation and the continuing conditions of confinement imposed upon the women involved.*

The Chairman of the CAC was in attendance in the Segregation Unit just hours before the recommendation to call in the ERT. Over the period of an hour and a half he interviewed most if not all of the women subsequently involved in the ERT exercise. During this time period he was on the Unit by himself, no security staff were present. He notes that he did not feel threatened and that the atmosphere on the unit was "certainly calm enough that they (inmates) were able to speak to me, with great anger, with considerable anger, but rationally".

The second CAC member was in attendance at the Segregation Unit April 27, 1994 in both the morning and again that evening to witness the body cavity searches of the women involved in the ERT actions of April 26, 1994.

5. *The Board of Investigation Report, in relation to the ERT deployment decision, does not present sufficient evidence or detailing to cause one to reasonably conclude that four days of "disruptive" behaviour in segregation had culminated in a situation where there was "no alternative but to call in the ERT" as claimed by the Commissioner.*

In this regard, I note:

- *The Board of Investigation Report provides no detailing of "disruptive behaviour" from 11:30 Friday evening through till 4:30 Tuesday afternoon, with the exception of the slashing and attempted suicide on Sunday afternoon.*
- *both incidents on Tuesday evening, which appear to have precipitated the decision to call in the ERT, occurred while the staff member was alone in the Segregation Unit.*
- *the Chairman of the CAC was in the Segregation Unit, unaccompanied by security staff for an hour and a half interviewing inmates, just hours before the recommendation to call in the ERT.*
- *the Board of Investigation Report references a "report" prepared by the Correctional Supervisor recommending "that the ERT be brought in" but provides no detailing as to the content of the report or the reasons for the recommendation.*

- *the Correctional Supervisor's "report" dated 26/4/94 1750 hrs. (attached as Annex E) notes that the inmates were moved to Segregation on April 22, 1994 and* ***NOT*** *searched prior to their placement in the Segregation cells, contrary to policy. The "report" further states that "given the fragile psyche of the Officers at the institution at this time, I strongly recommend that an ERT cell extraction team be brought in and all inmates in the dissociation side be taken from their cells, strip searched and placed in stripped cells". The "report" concludes; "otherwise, I fear that we will have more staff requesting stress leave and a diminished credibility towards management."*
- *the Board of Investigation Report further states that the Warden reads the Correctional Supervisor's report "and with the situation not improving in the Segregation area, makes the decision to request assistance of the ERT from Kingston Penitentiary". This decision is taken at 8:45 Tuesday evening, the ERT is deployed at 11:37 yet the Investigation Report provides no detailing of the inmates' behaviour in the segregation area during this three hour period.*
- *all of the women prior to and at the time of the ERT deployment were locked securely in their segregation cells.*

The Board of Investigation Report, as I stated above, does not provide sufficient evidence or detailing to cause one to reasonably conclude that the decision taken to employ the ERT was "necessary" or the "only option". This Office requested in correspondence dated 23 November 1994, in an attempt to more reasonably reach a conclusion on this matter, copies of all observation/officer reports, offense reports, security reports and Use of Force reports for the period 22 April to 26 April 1994. As of the date of this report, the Office has not received this material.

6. *The Board of Investigation Report is at best incomplete, inconclusive and self serving.*

7. *The video tape of the 26 April 1994 incident involving the ERT was requested in correspondence to the Regional Deputy Commissioner by this Office 23 June 1994. A further request for the video tape was made to the Commissioner's Office 7 November and again 18 November, 1994. This Office obtained access to the video 27 January 1995.*

The video tape of the deployment of the ERT shows a massive display of force being exercised in the face of virtually no resistance. Even if one could accept the legitimacy of the initial decision to deploy the ERT, it is difficult to accept the continuation of this exercise given the obvious level of cooperation displayed by the inmates. The task of the ERT was to remove one woman at a time from her cell, strip the cell of all effects, and return that woman to her cell.

In the first case depicted, the woman's clothing was forcibly removed and given that the film starts during this process, it is not clear if she was initially offered the opportunity to remove her own clothes. In each case after that, the ERT members entered the cell and if the woman was not already naked, ordered the woman to remove her clothes. In all but one of these instances, the women complied, and in the case where one woman did not comply quickly enough, her clothing was also forcibly removed. Each woman was then told to kneel, naked, on the floor of her cell, surrounded by ERT members while restraint equipment was applied.

After the restraint equipment was applied, each woman was helped to her feet, backed out of the cell naked, then given a flimsy paper gown, and marched backwards by the ERT from her cell to the shower area.

The woman was then directed by the ERT, with the assistance of their batons and shields, to stand facing a wall, one member holding the woman's head against the wall, presumably so she could not see what was going on while another member held a baton close to her head.

While in the shower area, the cell was stripped of everything including the bed. Once the cell was stripped, the woman was marched backwards back to her cell. Each was placed in her cell, asked to lie or kneel on the floor, the ERT members exited, the door was locked and the woman was left without a blanket or mattress in the stripped cell with the restraint equipment still on; contrary to s.68, 69 and 70 of the CCRA. However, in one case the woman was returned to her cell, made to kneel naked on the floor surrounded by ERT members for in excess of ten minutes, while team members fumbled with the restraint equipment.

This procedure was repeated for each of the eight women involved and took in excess of two and a half hours to complete. Over the course of this time period, there was evidence of physical handling of the women by the ERT members and a number of women were poked or prodded with batons.

These incidents appeared in part to result from the women not understanding the mumbled directions given through the security helmets worn by ERT members.

There are six interruptions on the tape totalling in excess of 50 minutes of unrecorded activity.

This exercise was, in my opinion, an excessive use of force and it was without question degrading and dehumanizing for those women involved. The responsibility and eventual accountability for these actions primarily rests with those officials who ordered the intervention and those who have continued to characterize the exercise as reasonable and professional without any recognition or apparent appreciation of its effect on the women involved.

8. *The exercise was initiated to my mind for the purpose of appeasing fragile staff psyches and boosting management's diminishing credibility in the eyes of its employees.*

9. *The Commissioner's level of the grievance process responded to the grievances filed on the intervention of the ERT without having reviewed the video tape. As such, the Commissioner's level of the process has failed to ensure that the concerns raised by the women were addressed in a thorough and objective fashion.*

The detailing provided by the grievors was measurably more reflective of the events captured on the video than were the responses provided by the Senior Management of the Service.

10. *The other CAC member's diary which served as a method of recording personal impressions and keeping dates straight, notes:*

> *"Wednesday 10 am, I visited the cells while Bob Batter (Chairman of CAC) stayed outside the segregation door. Most were naked and very angry. Women naked or in torn paper gowns, in shackles, no mattresses, no hygiene items/utensils etc. Segregation was quite cold...at least it would seem so for a person with no clothes on.*

Wednesday night--call from Mary Cassidy approx 9pm. I went to prison and witnessed the internal vaginal and rectal examinations. Women signed agreeing to the searches in exchange for showers, and each were given a cigarette around 12:30am Women were given security gowns and had one blanket to sleep on at this time. No toilet paper except as requested piece by piece--no hygiene products. Body searches went OK---no force was used by the officers etc. Most of the women seemed in ok spirits.

Issue of sanitary napkins very barbaric---great discussion over old dirty underwear---was there any clean? Image of women walking from shower with pads between their legs naked---quite unnecessary."

11. *The women were held, in some cases, for up to eight months, in segregation cells initially stripped of all amenities, subject to 24 hour a day camera surveillance and the wearing of restraint equipment whenever they left their cells. They were denied for extended periods of time bedding, clothing, including underwear, basic hygiene items, personal address books, writing material, contact with family and daily exercise. The unit was not cleaned for over a month following the April incident and Senior management was not visiting the segregation unit on a daily basis to meet with offenders as required by the legislation (s.36(2) of the CCRA), in fact this Office noted a month period where there is no record of the Unit Manager attending the area. The level of insensitivity displayed following the 26 April ERT intervention is difficult to comprehend and indefensible.*

    The extended period of time spent in segregation and the conditions under which the women were forced to live were punitive and inconsistent with the legislative provisions governing Administrative Segregation (s.31(2) and s.37 of the CCRA) and the provisions governing General Living Conditions (s.68, 69 and 70 of the CCRA). The actions taken by management in perpetuating this situation had a great deal more to do with addressing staff's "low morale and feelings of powerlessness" than addressing any ongoing concerns related to individual safety or institutional security.

12. *The above concerns, related to segregation, were brought to the attention of the Service's Senior Management by this Office through correspondence and meetings commencing in April of 1994 and culminating with my correspondence of 7 November 1994 to the Commissioner of Corrections attached as Annex F and his response of January 13, 1995, attached as Annex G.*

The Correctional Service of Canada, in responding to these concerns, has taken no action which can be seen as timely, adequate or appropriate. The Service's responses to this entire matter can be characterized as ***"admit no wrong, give as little as possible and time will eventually resolve the matter"****. Hardly consistent with the Service's motto of Accountability, Integrity, Openness.*

RECOMMENDATIONS

1. *That the Correctional Service of Canada establish as policy the appointment of a civilian chairperson on Boards of Investigation into major incidents and the inclusion of civilian members on Boards of Investigation convened for incidents resulting in the use of force, bodily injury or death.*

2. *That the Service ensure that their Investigation Reports contain sufficient information so as to reasonably reflect the totality of the incident under review and the breadth of the evidence and testimony received.*

3. *That the Board of Investigation Reports contain personal information on the inmates involved only as it relates specifically to the incident under investigation.*

4. *That the convening authority for investigations thoroughly and objectively review, in a timely fashion, Investigation Reports to ensure that Accountability, Integrity, Openness has some meaning and that this requirement be clearly stated in Service policy.*

5. *That the "report" prepared on 26 April 1994 recommending that the ERT be brought in and the reasons for the Warden's decision to initiate the ERT intervention be published as an Annex to the publicly released Board of Investigation Report.*

6. *That the video tape of the ERT intervention of 26 April 1994 at the Prison for Women be made public, limited only by the privacy concerns of the inmates involved.*

7. *That the individual grievances filed by the inmates concerning the ERT intervention be further reviewed and responded to personally by the Commissioner.*

8. *That the Correctional Service of Canada desist from the practice of deploying a male Emergency Response Team against female inmates.*

9. *That the Correctional Service of Canada re-think its decision on the hiring of male frontline correctional officers and primary case workers for women's prisons. This re-thinking should include extensive consultation with those organizations initially involved in the Task Force on Federally Sentenced Women and those women currently incarcerated.*

10. *That the Correctional Service of Canada enter into immediate negotiations with those women affected by the ERT intervention and the resulting long term segregation placement for the purpose of establishing reasonable compensation packages.*

Correctional Service Canada | Service correctionnel Canada

Ottawa, Canada
K1A 0P9

Your file *Votre référence*

Our file *Notre référence*

RESPONSE BY THE CORRECTIONAL SERVICE TO THE RECOMMENDATIONS OF THE CORRECTIONAL INVESTIGATOR

1. *That the Correctional Service of Canada establish as policy the appointment of a civilian chairperson on Boards of Investigation into major incidents and the inclusion of civilian members on Boards of Investigation convened for incidents resulting in the use of force, bodily injury or death.*

   Response

   The policy introduced by the Commissioner in mid 1994 is that all national investigations require a member from outside the Service and, depending on the nature of a particular case, this outside member can be the chair, e.g. recent investigation into escapes from Bath Institution.

2. *That the Service ensure that their investigation Reports contain sufficient information so as to reasonably reflect the totality of the incident under review and the breadth of the evidence and testimony received.*

   Response

   Agreed.

3. *That the Board of Investigation Reports contain personal information on the inmates involved only as it relates specifically to the incident under investigation.*

   Response

   The risk presented by particular offenders is usually a critical factor in determining the appropriateness of the course of action adopted. Generally, profiles are thus an important part of investigation reports. It is agreed that personal information unrelated to providing a context for the assessment of risk should not be made public.

4. *That the convening authority for investigations thoroughly and objectively review, in a timely fashion, Investigation Reports to ensure that Accountability, Integrity, and Openness has some meaning and that this requirement be clearly stated in Service policy.*

   Response

   Agreed.

5. *That the "report" prepared on 26 April 1994 recommending that the ERT be brought in and the reasons for the Warden's decision to initiate the ERT intervention be published as an Annex to the publicly released Board of Investigation Report.*

   Response

   Agreed.

6. *That the video tape of the ERT intervention of 26 April 1994 at the Prison for Women be made public, limited only by the privacy concerns of the inmates involved.*

   Response

   Any request will have to be subject to the provisions of the Privacy Act. The advice of the Correctional Investigator will be sought as to what limitations would be warranted in respect to the privacy concerns of the inmates involved.

7. *That the individual grievances filed by the inmates concerning the ERT intervention be further reviewed and responded to personally by the Commissioner.*

   Response

   While the Commissioner cannot be expected to review and respond personally to some thousand complaints addressed to him each year, he will further review those that have been filed by the Prison for Women inmates concerning the ERT intervention and respond personally to the grievors.

8. *That the Correctional Service of Canada desist from the practice of deploying a male Emergency Response Team against female inmates.*

   Response

   Steps are already underway to create a trained team of female correctional officers within the Prison for Women which could limit any need to call in the emergency response team from Kingston Penitentiary. In the event the ERT were again to be called in, their role would be limited to handcuffing and/or shackling inmates; every reasonable step will be taken to avoid their presence when inmates are required to be naked.

   When the Prison for Women is replaced next year by smaller regional facilities, the intention would be to call upon local police detachments should unrest occur beyond the capacity of prison staff to handle effectively. Protocols to that effect are being sought.

9. *That the Correctional Service of Canada re-think its decision on the hiring of male frontline correctional officers and primary case workers for women's prisons. This re-thinking should include extensive consultation with those organizations initially involved in the Task Force on Federally Sentenced Women and those women currently incarcerated.*

   Response

   Many women federal offenders spend a period of years in incarceration. To try to provide them with a total isolation from men would not likely assist in their eventual re-integration into the community. Recruitment for the new facilities has begun, and screening of candidates is rigorous. Few men have applied to date.

10. *That the Correctional Service of Canada enter into immediate negotiations with those women affected by the ERT intervention and the resulting long term segregation placement for the purpose of establishing reasonable compensation packages.*

    Response

    The issue is already before the courts.

APPENDIX C

April 1995

ANNUAL REPORT
1994-1995
WORKING PAPER

COMMISSIONER'S RESPONSES OF OCTOBER 1994 AND MARCH 1995 ON ANNUAL REPORT 1993-1994

The Commissioner's Responses appear to have been authored in part without benefit of access to the 1993/94 Annual Report.

The Responses make no attempt to address the overriding concern detailed in the Annual Report's Introduction related to the Service's inability to effectively and efficiently manage an ever increasing inmate population. The individual areas of inmate concern are for the most part dealt with in isolation from each other in a rather cursory fashion often ignoring the specific observations and recommendations of the Annual Report. In short, the Responses are dismissive, giving little or no acknowledgement to the significance of the Issues, the Service's past unfulfilled commitments or the explosiveness of the current situation which has some 5000 federal inmates double bunked.

Below find a brief summary on the current status of each of the Issues.

1. SPECIAL HANDLING UNITS

Last year's Annual Report shifted this Office's focus from the Service's SHU Annual Report, which had been characterized for years as inadequate, and centred on the Service's Internal Audit of January 1994 which in large part had affirmed the legitimacy of the concerns raised by this Office over the years.

The Annual Report concluded by stating that the Office awaited the Service's action plans from this Audit and specifically recommended that the Service establish membership for the National Review Committee that reflects the requirement for objectivity and fairness in the decisions taken by this Committee.

*The Commissioner in his October 1994 Response speaks of a "**draft 1993/94 Annual Report on SHU**" yet says nothing about the action plans from the Audit and passes no comment on the specific recommendation related to the National Review Committee.*

*The Commissioner's March 1995 Response states that Commissioner's Directive 551 was "**revised and promulgated 1995-02-01 - the functions, make-up and mandate of the National Review Committee have been formalized ... the programming objectives are clearly stated**". The function, make-up and mandate of the National Review Committee was formalized within the previous Commissioner's Directive as were the programming objectives. The difficulty over the years has not been with the policy, it has been with the application of and commitment to the policy.*

The concerns with respect to SHU operations, as detailed within the Office's Annual Reports, have centred on two inter-related areas.

First, the ability of the SHU to provide programming in a reasonable and timely fashion which was responsive to the specific identified needs of the inmate population it served. Second, the objectivity and fairness of the National Review Committee with respect to its roles both as a decision making body on individual cases and the body responsible for the ongoing monitoring and analysis of the SHU program.

Neither of these areas of concern are reasonably addressed by the policy revisions of February 1, 1995. (See attached correspondence to the Commissioner dated February 8, 1995).

To address these areas of concern, the Service needs to;

a) specifically identify and catalogue the individual needs of the SHU inmate population and ensure that the programming available specifically address those needs;

b) require the National Review Committee, in fulfilling its responsibilities associated with monitoring and analysis, to address specifically the effectiveness of SHU programming in relation to the stated objectives; and

c) establish a National Review Committee with a senior national presence which has and is seen to have the authority and objectivity required to carry out its functions in a fair and responsive manner.

The decision to amalgamate the two SHU operations into one facility, while a positive move, has I believe resulted less from an objective review of individual security classifications as per existing policy objectives than from existing population pressures. Until such time as the above noted areas are addressed, SHU operations, whether in one or two locations will continue to be little more an expensive form of long term segregation.

2. *INMATE PAY*

The Correctional Service of Canada had been, until recently, supportive of a pay increase for offenders. (See attached correspondence from the Assistant Commissioner Executive Services dated March 30, 1993). There has not been a meaningful adjustment to inmate pay rates for over a decade. The problems created by this situation were detailed in correspondence to the Commissioner of Corrections in April of 1992.

Last year's Annual Report concluded by stating:

> ***A linking of the long overdue upward adjustment of inmate pay rates with the current economic situation and freeze on public service wages creates a difficult position to defend. I can only recommend that the issue be re-examined with a view to resolving the erosion of the inmates' financial situation.***

The Commissioner in his October 1994 Response states:

> ***"We are exploring a new structure that would establish a higher rate for those who are unemployed through no fault of their own. This would be offset by also reducing the rate for those who agree to work but who refuse to participate in programming related to their Correctional Plan".***

The Commissioner's March 1995 Response, while acknowledging that this Office's observations are fair and accurate, concludes by stating:

> ***"Although the Service technically still has approval from Treasury Board to fund an increase in pay rates, there is little likelihood in the current economic climate that there would be any support for such a measure".***

The position taken by the Service on this issue is wrong. Reason and fairness dictates that even in the face of the existing "climate", a decision to adjust inmate pay levels needs to be taken. Public misperception cannot be allowed to form public policy.

3. *GRIEVANCE PROCESS*

The Commissioner's October 1994 Response on this issue is nothing more than a rambling attempt at defending the indefensible, interspersed with future promises of change. The Service's referenced review of the redress system, by a high level CSC Steering Committee, as noted in last year's Annual

Report, is the third major review in the past five years. The responsiveness of the system at the Commissioner's level has been in decline for the past five years and has been characterized in past Annual Reports as basically dysfunctional.

The Commissioner's March 1995 Response provides a detailing of the Inmate Affairs Division's work load, presumably as an explanation for the continuing excessive delays in third level grievance responses. I am not, nor have I in the past, questioned the work ethic of those involved in processing grievances. I have and continue to question the commitment of the Service, especially at the Commissioner's level, to providing a responsive redress system.

While the Commissioner's latest Response states that the Service ***"remains committed to eliminating the backlog of grievances at the 3rd level"****, data for the months of November 1994 through January 1995 clearly indicates a continuing massive discrepancy between policy, commitment and reality. This Response further states that* ***"a concentrated effort to eliminate the backlog began in September of 1994"****. To place this comment in perspective I refer you to the attached correspondence from the Assistant Commissioner Executive Services dated March 29, 1993.*

This is a very simple issue. The Corrections and Conditional Release Act (CCRA) requires that the Service establish and maintain a procedure for "fairly and expeditiously resolving offender grievances". The former Commissioner in commenting on the system stated; ***"the timeliness of our responses will be seen - quite correctly - as a real indicator of the importance we place on resolving offender complaints"****. The current system, as operating neither meets the requirements of the CCRA nor provides an indication that the Service places an "importance" on resolving offender complaints.*

Neither existing work loads or future plans for re-engineering the process can reasonably be put forth as excuses for the current situation. To effectively manage the grievance process, the Service needs;

- *to establish and maintain an information system which identifies areas of complaint, significant issues raised by complaints, corrective actions taken and timeliness of responses; and*

- *to commit sufficient resources to the process to ensure that legislative and policy requirements are met.*

4. *CASE PREPARATION AND ACCESS TO MENTAL HEALTH PROGRAMMING*

The Commissioner's Responses on this issue, as has become the tradition, are written in the future tense.

The Office's 1992/93 Annual Report stated:

> ***The Service has failed to take reasonable and timely action on these longstanding areas of offender concern, in part, because it continues to await the development of 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.***

The Commissioner's October 1994 Comments on this matter speak directly to its current status.

> *"While national tracking of indicators of progress related to Corporate Objective 1, using the O.M.S. has not yet been resolved the Service is presently building computerized reports to automatically track the cases of offenders past their parole eligibility dates including the associated reasons (e.g., awaiting implementation of decision, case preparation not completed, waiver/postponement invoked, etc)";*
>
> *"The aspects of O.M.S. designed to capture information on the availability and timely delivery of key offender programs were implemented in the autumn of 1993. There were difficulties initially with design of computer programs which resulted in limited use of the program module";*
>
> *"Progress is being made on the issue of sex offender tracking and program information. By using Management Information Component data in the new system, it is possible to identify and track sex offenders and monitor their status vis-a-vis decision making... Ultimately, when offender intake assessment is fully implemented and program participation history is entered into the O.M.S., this information will be readily accessible";*
>
> *"Preliminary data relating to temporary absences has been extracted from the O.M.S. and has revealed imputing deficiencies. These deficiencies are being addressed";*

> *"Experience with O.M.S. has shown that, in this portion of the system, there are problems with the quality of the data being entered as well as the functioning of the application according to design specifications".*

Corrective action continues to await the constantly delayed development of this system and management continues to use the shortcomings of the system as an excuse for not taking action. The results of this inaction has contributed significantly to the Service's continuing inability to effectively and efficiently manage the ever increasing federal inmate population.

Overcrowding is as much the by-product of CSC's own failure to provide timely access to programming and case preparation as anything else the Service might like to suggest. And although CSC claims they remain "committed to Corporate Objective No. 1" after four years of promises on projects intended to move them towards the achievement of this Objective the words ring a little hollow. The bottom line on this issue remains as stated in 1992:

> ***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 adhoc and uncoordinated.***

*The Commissioner's March 1995 Response again detailed a number of projects, which "**will be coming to fruition over the next months**", intended to assist the Service in "**working towards the achievement of Corporate Objective #1**". These projects are not new, yet they are presented without any clear indication as to their anticipated impact on current Service operations or what performance indicators will be used to evaluate the effectiveness of these projects. In short, what changes does the Service expect from these projects and against what is the Service going to measure the effectiveness of these changes in its movement towards achievement of Corporate Objective #1?*

For a further detailing of those areas that need to be addressed, beyond those identified in my Annual Report, I refer you to correspondence dated November 14, 1994 re: Proposed Strategy to Managing Crowding and March 27, 1995 concerning data base requirements (attached).

The Commissioner's Responses on this matter, given the long standing nature of the issues and the Service's past failure to do what it claimed needed to be done, continue to appear to be adhoc and uncoordinated.

5. *DOUBLE BUNKING (OVERCROWDING)*

I do not accept the current situation as inevitable or beyond the control of the Correctional Service. To do so is to deny recent history and the reality of the present.

The Commissioner's March 1995 Response on this issue opens by stating:

> ***The higher than forecast admissions,*** *(how high?, what types of admissions?)* ***combined with lower than forecast releases*** *(how low?, what types of releases?)* ***has resulted in the accommodation shortfall which CSC must manage.***

The reasons for this population increase have not been thoroughly analyzed by the Service. Rather it has been left to speculation; the public mood, pressure on judges to get tough on violent offenders, longer sentences, more cautious Parole Board decisions. You cannot reasonably manage a problem if you do not know its cause. I refer you again for a further detailing of the Office's position on this matter to the previously referred to correspondence of November 14, 1994, which reads in part:

> ***"The Service is not a hapless victim of circumstances beyond its control in this process of population increase. I have commented for years within my Annual Reports on the impact of timely case preparation and access to programming. I concluded this year's Annual Report on this matter by stating:***
>
> ***As indicated in the Introduction, I do not believe that in the long run the solution to delayed case preparation lies with the expansion of current institutional capacity of resources. The Service over the years, with the proliferation of institution programming, has become dependent on this extended period of incarceration, between parole eligibility and statutory release, to provide programming. There appears to be a reluctance on the part of case management staff to give consideration to conditional release as an option until such time as these programs have been completed, many of which could be provided under supervision in the community. The current population increase, caused in part by offenders remaining in institutions to complete programs, has further delayed timely access to these programs which in turn extends the period of incarceration and adds to the population growth.***

This cycle of dependency is unlikely to be interrupted until such time as the Service accepts and takes action on the principle that the protection of society is served through the timely re-integration of offenders as law-abiding citizens. A continuation of business as usual in this area will promote further population growth and will impact measurably on the viability of the system's current decision-making processes; the efficiency and effectiveness of existing institutional programs; and the ability of the Service to provide equitable and just treatment in a responsive fashion to the inmate population.

A cursory review of the unanalyzed raw data recently provided by the Service on Admissions and Releases indicates that overcrowding to a significant degree is a self inflicted injury. While admittance to federal penitentiaries via Warrant of Committal has increased by less than 100 over the past year, admittance as a result of parole revocations is up by over 500. On the other end of the scale, the number of inmates released on parole is down by more than 700. A combination of the increase in revocations and the decrease in paroles more than accounts for the annual population increase.

I offer the above simply as an observation. The state of the Service's existing data, or at least that data provided to this Office, on performance indicators relevant to Corporate Objective #1 does not lend itself to reasonable analysis. This situation continues to exist despite the Service's acknowledgement in 1990 that there was a significant problem in this area. A thorough analysis of the impact of the release and supervision processes on population growth can not be done until such time as reliable data not only on the number of releases but on the timing of those releases is available.

I cannot overstate the importance of this analysis on the Service's ability to manage the offender population. A strategy to manage overcrowding must incorporate a clear detailing as to the causes of the problem and specific direction on how to address the problem".

The action plan from the Commissioner's Focus Group on Accommodation Policies in January of 1994 calling for a review to be undertaken to address the question, "Why are incarceration numbers increasing?", has not been actioned. As notes in last year's Annual Report, the areas identified for specific review were; "admissions, releases, waiver rates, National Parole

Board concordance rates, paperwork backlog, requirements for Work Release, timing of programming for release, and adequacy of community infrastructure".

This undertaking, as with the Service's Executive Committee decision of May 1993 to form a task force "to examine short and long term options to reduce double bunking", has produced no tangible results. The number of double bunked inmates has gone from around 2,000 in 1992-93 to in excess of 5,000 in 1994-95.

In short, the Correctional Service of Canada appears to be currently recommending that more inmates spend longer periods of time incarcerated and in turn recommending that more conditionally released offenders be returned to prison - why?

On the matter of double bunking in segregation, the Commissioner's Response of October 1994 states:

> ***It should be noted in response to the Correctional Investigator's concern on the "inhumanity of double bunking in segregation" that the current reading of the draft strategy indicates that offenders should not be double bunked in special needs cells such as psychiatric/treatment cells; segregation cells (disciplinary, administrative and protective). However, in periods of extreme population pressures, regions may choose to use special needs cells to double bunk normal association or special needs offenders. Such measures shall take into consideration identified selection criteria, for short term periods and only utilized until cell space becomes available.***

The Service has been in "a period of extreme population pressure" for the past six years and I have as yet to see any "selection criteria" applied to those double bunked in segregation. "Short term periods" - how do they know? The Service recommitted itself in April of 1993, see attached correspondence from Assistant Commissioner Executive Services, to the monitoring of inmates double bunked in terms of time and cell location. The Commissioner's Response of November 1994, advises that the ***"monitoring and evaluation mechanism, when implemented on finalization of the policy, will identify the length of time offenders are double bunked and the number of offenders double bunked in these cells. Double bunking reports will be available to the Office of the Correctional Investigator as produced".***

The Commissioner's Response of March 1995 further stated that ***"institutions are reporting double bunking data to National Office weekly, permitting ongoing monitoring of the double bunking situation in each institution and each region".***

I have yet to see these reports or the results of the monitoring. How long have the individual inmates who are double bunked, for instance, at Edmonton Institution in segregation been so housed?

*The Commissioner's Response of March 1995 goes on to state that the Service's Accommodation Policy (which started out as a Proposed Strategy to Manage Crowding) "**reflects the acknowledgement by the Auditor General in his annual report that double bunking is a humane and cost effective measure to mitigate the effects of overcrowding**". I have reviewed the Auditor General's annual report and although I cannot find such acknowledgement, I feel compelled to once again state that double bunking in a cell designed for one individual is inhumane.*

I believe that there are currently thousands of inmates in federal institutions who could be given positive consideration for conditional release if the Service could provide timely access to programming and case preparation. This would eliminate double bunking. Continued population increases will place greater pressures on timely programming access and case preparation which in turn will cause a further increase in the population.

6. TEMPORARY ABSENCE PROGRAMMING

This issue, specifically the decline in Temporary Absence Programming, was raised in 1989. The Office has been advised by the Service over the past five years that the matter was being assessed through various study groups, evaluation plans and audit reports. The Office was also advised in response to the 1992 Pepino Report that Temporary Absence Programming was being monitored, first in 1993 at the national level, then in 1994 at the regional level and finally, when no evidence existed in support of these claims, the Service stated that individual institutions were monitoring and analyzing the data on Temporary Absences.

This Office has reported in response to these various claims of monitoring and analysis that the Service's approach to this issue over the years was best characterized as a "smoke and mirrors campaign".

*The Commissioner's October 1994 Response states that "**preliminary data relating to temporary absences... has revealed inputting deficiencies... it is expected that the data extraction program (which will allow for meaningful analysis) will be available to local and regional levels in early 1995**".*

This passing admittance of unreliable data and future promise of meaningful analysis does not begin to address or excuse five years of misleading information and unfulfilled commitments. This is or perhaps was an important

program directly linked to timely conditional release preparation; where is the accountability for the past five years and what exactly is the Service now committing itself to do?

The Commissioner's March 1995 Response claims that a data extraction program has been prepared which will provide basic information about Temporary Absence Programs for inclusion in the Executive Information System. It is further stated that this will provide the capability of each Executive Information System user to carry out analysis of the Temporary Absence program. What is meant by analysis? Methodology? Coordination? Purpose?

The March 1995 Response also advises that ***"the Correctional Research and Development Sector is proposing to conduct an evaluation of the Temporary Absence Program during 1995/96... the proposed Correctional Service of Canada research plan, which includes the Temporary Absence project, will be reviewed by the Executive Committee at its next meeting".*** *Given the Service's track record on this Issue, without a specific detailing as to what is meant by "an evaluation" and "a research plan" the acceptance of these renewed undertakings could well be nothing more than the buying of more smoke with the mirrors to follow.*

7. TRANSFERS

The evolvement of this Issue is very similar to that of Temporary Absence Programming.

Transfer decisions and the process leading to those decisions continues to represent the single largest category of complaint received by this Office. The Service's Internal Audit recommended in 1989 the requirement for an effective quality control mechanism at the regional and national levels to ensure that the transfer process complied with established procedures and timeframes for decision making.

Over the past five years, this Office has commented extensively on the inadequacies of the transfer process and has put forth numerous recommendations in support of the Audit findings in an attempt to ensure:

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

b) *that during the course of its review of individual appeals on those decisions that the review 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.*

The Office was advised in 1991 that the regions had acted on the recommendations of the 1989 Audit Report. We were advised in 1992 that OMS Release 2 would allow for effective monitoring of transfers at the national level and again in 1993, the Office was further advised that transfers were monitored at the institutional level. Three years of smoke and mirrors.

Last year's Annual Report concluded that our ***"investigation of inmate complaints related to the transfer process has found little evidence of effective quality control and our specific requests to the regions and institutions concerning their monitoring of the transfer process produced limited responses".***

The Commissioner's October 1994 Response advises that ***OMS is experiencing problems with the quality of the data being entered... and that it is expected that detailed information concerning transfers will be available during 1995.***

Over the course of this reporting year, the Service has implemented additional changes to Commissioner's Directive 540 delegating further decision making authority for transfers to the institutional level, a process which I characterized in past Annual Reports as negatively impacting on both the efficiency and objectivity of the system. The Office has also witnessed, in response to excessive overcrowding, involuntary transfers to provincial institutions being authorized under exchange of service agreements, an increase in involuntary inter-regional transfer for the purpose of population management and a growing number of inmates being housed in institutions inconsistent with their security classification.

On this latter point, the Auditor General in his recent report indicated that the Service should:

- *revise the Custody Rating Scale as soon as possible, using the most current data, to ensure its continuing validity;*

- *consider including additional factors in the scale to ensure more consistency between inmate security classification system and the provision for accelerated parole review; and*

- *consider reclassifying inmates more frequently than on an annual basis and place more emphasis on the consistency between security reclassification and other risk assessment decisions such as transfers and parole.*

At the time of the Auditor General's review, there were approximately 900 inmates housed in prisons with a security level higher than their individual classification. The absence of accurate up-to-date information on this situation, at the headquarters level, was viewed by the Auditor General as "a very serious problem".

The Service in response to the above, indicated that its Research Branch has been requested to undertake a study on the accuracy and application of the Custody Rating Scale, and the question of consistency or correlation between Accelerated Parole review status and individual inmates' security classification will be examined.

The Commissioner's March 1995 Response with respect to the transfer process advises that ***"OMS provides information to allow tracking of the inmate transfer process, including the provision of information such as the type of transfer (voluntary/involuntary), date of application, reason, decision, actual date of inmate movement and the outcome of any appeals".*** *The question is; is this information available at headquarters, is it correlated and analyzed, and what does it show?*

As with the previous issues of Case Preparation, Program Access, Grievances, Double Bunking and Temporary Absences, the Service, to address the concerns associated with these matters, needs to clearly identify specifically what they are going to do, how they intend to do it and who is responsible and accountable for getting it done.

8. MANAGEMENT OF OFFENDER PERSONAL EFFECTS

The Service initiated a review of its policy on this issue in early 1990. The Commissioner's March 1995 Response advises that the final Commissioner's Directive and Guidelines had been sent for his signature. While the revised policy address many of the initial concerns raised, difficulties continue to surface with respect to inconsistencies in allowable personal effects, specifically related to computers.

The Service has been reviewing this matter from a security perspective, for in excess of two years. I would hope that a final decision ensuring reasonable consistency on this matter will be taken in the immediate future.

9. *PAY POLICY FOR UNEMPLOYED INMATES*

Last year's Annual Report, in light of the agreed upon position that $1.60 a day was an insufficient allowance, specifically recommended that:

> ***A sufficient minimum daily allowance be established and that all inmates regardless of status receive at least that minimum daily allowance.***

I concluded last year's Report by stating; ***"I further recommend, given the excessive delay on this issue, that immediate action be taken".***

The Commissioner's Responses of October 1994 and March 1995 pass no reasonable comment on the above recommendation.

The Service has moved over the past year from a policy of pay for work to one of pay for participation in ones correctional program, including treatment. There is a fine line between providing an incentive and coercion. The provision of an insufficient allowance for those who do not participate in programming to my mind crosses that line into the murky waters of forced treatment. I therefore, in terms of fairness and to ensure that inmate pay is in fact an incentive to program participation, re-state my above recommendation and again call for immediate action.

10. *CRITERIA FOR HUMANITARIAN ESCORTED TEMPORARY ABSENCES*

The Commissioner's October 1994 Response simply states: ***Issue resolved in 1992-1993.*** *The March 1995 Response says nothing.*

Last year's Annual Report acknowledged that the Commissioner had taken action on this issue by issuing Guidelines to reinforce the Service's policy on Humanitarian Escorted Temporary Absences. I as well acknowledged in last year's Report that the Guidelines were "clear and reasonably reflected the Service's policy", yet I accepted that it was inevitable that decisions would continue to be made inconsistent with the policy and guidelines.

I concluded last year's Report by stating that decisions inconsistent with the Service's Policy would be referred directly to the Commissioner. Over the course of this reporting year, a number of Humanitarian Escorted Temporary Absence decisions have been referred to the Commissioner for his review. Unfortunately, the results of those reviews have tended to be excessively delayed, defensive and non committal.

11. HOSTAGE TAKING - SASKATCHEWAN PENITENTIARY

Last year's Annual Report on this matter stated:

"Although I do not have further information relevant to this matter, I do have a number of continuing concerns. I am concerned with:

a) the clarity and understanding of the Service's policies related to the use of drugs as an item of negotiation and the role of outside negotiators;

b) the absence of a comprehensive review on the issues associated with protective custody integration and institutional violence;

c) the delayed publication of Preventive Security Standards and Guidelines; and

d) the fact that the Services' Investigation concluded that the surviving hostage-taker suffered no injuries, when a simple review of the subject's medical file would have indicated otherwise.

On a more general and personal basis, I was concerned with the approach taken by the Service in addressing this matter. It was never the intention of this Office to point fingers or cast blame. We were not there and I have no doubt that the decisions and actions taken by those responsible for the management of this incident were taken in good faith. It was our intention to cause the Service to thoroughly and objectively review those issues raised by its own Board of Investigation. This never happened".

The Commissioner's October 1994 Response states:

> ***"Further to CSC's response to the Correctional Investigator's Annual Report (1992/93) dated January 6, 1994, the Commissioner met with the Correctional Investigator and made it very clear that CSC considered the above mentioned matter closed".***

The Commissioner's March 1995 Response stated that "the Service reported to the Minister on October 3, 1994 that in our opinion, the matter is closed. This was also reported on January 6, 1994". This Response then goes on to pass brief comment on each of the four areas of specific concern identified in last year's Annual Report.

This entire issue and the Service's handling of it speaks more directly to the objectivity and thoroughness of their Investigative Process than it does to the incident at Saskatchewan Penitentiary four years ago.

At the risk of belabouring this issue and in the hope that some attention can be focused on matters which continue to have relevance to Correctional Service of Canada operations, I offer the following, using the format provided in the Commissioner's March 1995 Response.

Hostage Taking Policy

The focus on this issue was the clarity and understanding of the policy in place at the time as it related to the use of drugs as an item of negotiation and the role of outside negotiators. If the policy in these areas is clear and generally understood perhaps the Service could enunciate that policy and relate that policy to what happened at Saskatchewan Penitentiary.

Review of Institutional Violence

*The focus here centred on the integration of protective custody and general population inmates. In response to concerns raised by their own Internal Investigation, the Commissioner, in mid-1992, "**decided to launch a national review of the integration of Protective Custody inmates and the impact of policies governing this process**". As I reported in my 1992-1993 Annual Report, this national review was abandoned without notice or explanation in favour of a "fundamental review of violence among inmates". I further reported that same year that this* "fundamental review" was narrowly focused, centering on three institutions only one of which had attempted to integrate protective custody offenders. *I concluded in that same Report **that the results of this review, which purposely had a very limited distribution within CSC, made at best only passing comment on the concerns associated with integration and fell far short of fulfilling the undertaking given by the Service to provide an accurate information base from which to manage the process of integration.***

As a number of regions, in response to overcrowding, are initiating policies of integrating protective custody offenders into general population institutions, I believe the Service would be very well advised to return to its 1992 undertaking in this area.

Preventive Security Guidelines

This issue centred initially on the non availability of relevant Preventive Security information on one of the hostage takers to those responsible for the onsite management of the incident. Since that time a myriad of concerns

associated with the coordination, verification, communication and correction of preventive security information and the role of preventive security officers, have surfaced. The Commissioner's March 1995 Response has established a "target date" of April 30, 1995 for the production of Preventive Security Standards. Whether these Standards in fact address these issue remains open.

Alleged Assault on Hostage Taker

*The Commissioner's March 1995 Response states; "**The Service did review a television video of the subject shortly after the incident, a photograph shown by Mr. Stewart, and comments made by the negotiator, and concluded that the subject was not assaulted following the hostage-taking.***

The issue here, at this late date, is the thoroughness of the Service's Board of Investigation, which concluded that the subject "suffered no injuries", and the objectivity displayed by the Service when confronted with information to the contrary.

The referenced photograph, in the Commissioner's Response, was obtained from the subject's institutional file as was medical information provided to the Commissioner, which clearly indicated that the subject had suffered injuries consistent with an assault. Rather than address the specifics of this information, the Service has waltzed around this issue for the past two and a half years. To my mind, the music stopped playing quite some time ago - on this issue the Board of Investigation was wrong and the Service's follow-up action was at best evasive.

On the overall issue, I re-state again, it was never the intention of this Office to point fingers or cast blame, it was our intention to cause the Service to thoroughly and objectively review those issues raised by its own Board of Investigation. Quite evidently this has not happened.

12. MENTAL INCOMPETENCE

Substantial progress has been made over the course of this reporting year in both focusing the areas of concern associated with this issue and establishing future direction in addressing these matters. The Commissioner's March 1995 Response in part stated:

> ***"The issue of incompetence and its repercussions has been listed as an ongoing concern by the Correctional Investigator. Part of the reason for this is that it is identified as a general concerns, which may include several issues. It pertains to the legal definition of***

incompetence, as defined by provincial status, and, in the broader sense, the large number of offenders who, while legally competent, are not able to cope successfully with daily life.

"As the issue of mental incompetence and adult guardianship are provincial matters guided by complicated and widely varying provincial statues, there is no simple way to ensure a consistent approach across CSC. There is no uniform approach to mental health in Canada, despite the existence of a draft Uniform Mental Health Act.

"The concerns raised may, however, include those offenders who, while legally competent, are not able to manage their daily affairs. For these offenders, CSC has a long-term plan as part of its Mental Health Strategy. As part of the Corporate Operational Plan, the Service plans to build or convert up to 6% of its cell space for the mentally disordered offender. The primary aim of these units is to provide the type of care and assistance outlined in the Correctional Investigator's report".

This Office has recently corresponded with the Correctional Service to further establish specific areas of further consultation and we look forward to a cooperative approach in addressing this difficult yet important issue.

13. OFFICER IDENTIFICATION

This issue was initially raised with the Correctional Service of Canada in April of 1989.

Last year's Annual Report concluded:

A decision was taken by the Service's Executive Committee in May of 1993 that all institutional staff whether uniform or non-uniform would be required to wear name tags effective July 1, 1993. Hopefully the matter is resolved.

The Commissioner's October 1994 Response stated: "Issue resolved 1992-1993".

An Issue of this type cannot be simply written off as resolved. A visit to any number of federal penitentiaries provides clear evidence that although a definitive policy may well be in place, the practice continues to be considerably less than consistent. I remain firm in my position that it is unacceptable for a public servant, especially a public servant designated as a

peace officer, not to be identifiable to the public they serve. I again therefore recommend that the Commissioner take whatever action is necessary to ensure that the Service's policy in this area is consistently adhered to.

14. DISCIPLINARY COURT DECISIONS

The requirement to maintain a record of disciplinary hearings has existed in Service policy since 1990. The Office in response to last year's Annual Report was advised by the Commissioner in his October 1994 Response that Wardens had been again reminded of this requirement.

Last year's Annual Report further recommended on this matter that:

> ***the Service initiate an Audit of their current disciplinary policies and practices, including those related to punitive dissociation, to ensure that they were in compliance with the provisions of the Act and Regulations.***

*The Commissioner's October 1994 Response states that "**a review of the disciplinary process as it relates to the regulations is currently being conducted. A report of the findings is expected by October**". The Commissioner's March 1995 Response passed no comment on this issue. If the above noted review was completed, I would appreciate receiving a copy, if the review of the disciplinary process has not been undertaken, I would appreciate even more an explanation.*

15. USE OF FORCE - INVESTIGATIONS AND FOLLOW-UP

*Last year's Annual Report re-stated the previous year's recommendation that **all use of force incidents be thoroughly investigated and that those investigations include input from those inmates affected.***

*This recommendation was re-stated because the series of amendments offered by CSC the previous year failed to address this Office's observations of two years ago: **"that the Service was not consistently conducting investigations as called for by existing policy and in those instances where an investigation was undertaken there was seldom evidence that the inmates affected were interviewed or that the observations and recommendations emanating from the investigation had been reviewed or actioned by senior management".***

The Commissioner's Responses of October 1994 and March 1995 states:

> ***"We do not share the view of the Correctional Investigator that an investigation, as described by section 19 of the CCRA, is necessary in every instance of the use of force. These investigations are costly and time consuming".***

In two years of commenting on this issue, the Annual Report has never put forth the position that use of force incidents must be investigated as described by section 19 of the CCRA. In fact, section 19 of the CCRA has never been referenced by this Office in terms of use of force investigations. As such, I am at a loss to understand what it is that the Commissioner is referring to or understand the rationale put forth in support of his position.

The Commissioner's Responses goes on to say ***"that more and more investigations are being conducted at the informal level following the use of force".*** *I have no idea what constitutes an "informal level of investigation" but I do know that it was the absence of a formal structure within CSC's review of use of force incidents that lead to this Office's initial observations and recommendations in this area. Recent correspondence has been forwarded to the Commissioner providing further examples of inconsistencies in the Service's management and reporting of these incidents.*

Again, the issue is relatively simple and has not been reasonably addressed:

- *all use of force incidents should be thoroughly and objectively investigated, inclusive of input from those inmates affected;*

- *management is responsible for reviewing the reports and ensuring that corrective follow-up action is taken;*

- *an information base should be maintained regionally and nationally on use of force incidents, type of force used, circumstances, number of injuries, etc., for the purpose of review and analysis to ensure that such incidents are kept to a minimum. (How many use of force incidents occur over the course of a year?).*

The Commissioner's Responses again this year are void of any comment on the matter of management responsibility in this area and continues to promote a policy of "informal investigation". Why should use of force incidents not be thoroughly and objectively investigated?

16. INMATE INJURIES

The issues associated with the reporting and recording of inmate injuries were raised with the Service in May of 1992. The Commissioner's October 1994 Response states that ***"consultation on the interim instruction is to be completed by September 1994, whereupon it will be revised for approval and publication as a formal Commissioner's Directive".*** *This is the same Commissioner's Directive on Recording and Reporting of Inmate Injuries that this Office passed comment on in draft form in August 1993 and were advised at that time would be published by December of 1993. An Interim Instruction was issued by the Service in July of 1994. The Commissioner's March 1995 Response states,* ***"although some adjustments to the directive are to be made in light of comments received from regions and the USGE, the Service is satisfied that adequate over all policy direction now exists on this subject".*** *This Office will await finalization of the Commissioner's Directive prior to passing further comment.*

In terms of the related issue of the Service's investigative process and their responsibilities pursuant to Section 19 of the Corrections and Conditional Release Act, last year's Annual Report stated in part:

> ***"- all incidents resulting in serious bodily injury, as defined by any reasonable person, are not being investigated as per the requirements of s.19; and***
>
> ***- the quality of those investigations which this Office has received are in far too many instances inadequate.***
>
> ***I am advised that the Service will initiate a review of its investigative process in the near future and I am in total support of this initiative".***

The Interim Instruction on Recording and Reporting of Inmate Injuries provides a definition of serious bodily injury, yet the Office continues to find instances resulting in injuries which would appear to fall within this definition which are not being investigated pursuant to s.19. Correspondence on this matter was forwarded to the Commissioner March 27, 1995, copy enclosed.

The Interim Instruction as well states that ***"a copy of the investigation report, together with the response to any recommendations, shall be forwarded through the Deputy Commissioner of the region or the Commissioner to the Correctional Investigator".*** *The Office continues to receive the vast majority of s.19 Investigation Reports absent of comment from the convening authority or response to the recommendations and follow-up action.*

In terms of the Service's "review" of its investigative process, which was given

this Office's total support in last year's Annual Report, there have been a number of beginnings but to date no finalization:

- *the Office was invited in April of last year to participate in a focus group on the issue of re-engineering the Service's investigative process.*

- *following a meeting with the Assistant Commissioner Corporate Review, the Office was provided with an EXCOM Proposal to Introduce A Process For Investigations Follow-Up in September of last year.*

- *the Office in November of last year met with a consultant employed by CSC to conduct a review of the Correctional Service of Canada's investigative process.*

- *in March of this year, we were provided a copy of the consultant's report.*

What is the current status of the Service's review of its Investigative Process?

17. *VISITS TO DISSOCIATION AND DELEGATION*

The Commissioner issued an instruction relevant to this matter December 22, 1994 which reads in part:

> ***I expect Wardens and Deputy Wardens to visit the segregation area at least once a week, unless there are convincing reasons to the contrary. I expect this to be a full visit to include, as a minimum, an inspection of the area, review of logs, meeting with staff, and making oneself available to inmates. I would ask Deputy Commissioners to join me in checking the log when we are visiting institutions to confirm that this is happening. This does not obviate the requirement for a daily visit by a Unit Manager as the CD requires.***
>
> ***In a year's time, I will re-address this matter and, if it remains a troublesome issue, the CD will be changed.***

This is a positive direction. The objective of this Office was to ensure the ongoing presence of senior management, as called for by the Act, in the segregation area. The issue now is, will the direction be complied with and will the presence of senior management in the segregation area assist in alleviating those areas of concern associated with segregation? In this regard, I am encouraged by the fact that the Commissioner has undertaken to re-address this matter in a year's time.

CONCLUSION

The Commissioner's Responses of both October 1994 and March 1995 are consistent with CSC's past performances. The Responses have avoided the substance of the issues at question including a failure to address the specific observations and recommendations contained in last year's Annual Report. The Responses are defensive, displays little if any appreciation for the history or significance of the issues at question and provides at best a further string of endless promises of future action, with no indication as to expected results or how the results of these proposed actions will be measured or analyzed.

The Office has two key areas of focus:

a) *the Correctional Service of Canada's delayed, indifferent responses to concerns, individual and systemic, which are referred from this Office, and*

b) *the issue of overcrowding;*
   - *its impact on the individual inmate and on CSC's ability to reasonably manage the population; and*

   - *its causes, which are to a great extent controllable through the reasonable and timely management of the inmate population.*

To ensure that these Issues are reasonably addressed, the Service must turn its attention to the specifics identified within the Annual Reports and cease its current practice of approaching the Issues in an overly generic and isolated fashion. I am hopeful that a focusing on the specifics of the Issues will assist in ensuring not only that these systemic concerns are reasonably addressed but that individual inmate concerns, associated with these Issues, can be dealt with in a timely and responsive fashion.

Correctional Service Canada
Service correctionnel Canada

Commissioner
Commissaire

Ottawa, Canada
K1A 0P9

APPENDIX D

Your file Votre référence

MAY MAI 18 1995 Our file Notre référence

Mr. Ron Stewart
Correctional Investigator
Office of the Correctional Investigator
275 Slater Street, 4th Floor
Ottawa, Ontario
K1P 5H9

Dear Ron,

Thank you for providing us with a copy of your working paper on the Annual Report 1994/95. We have reviewed it in detail. Our comments topic-by-topic are enclosed. Where possible, we have kept our comments within the range typically published by the Auditor General to facilitate verbatim inclusion. This you will appreciate has been hard to do since there are few lines in your report that do not contain criticisms. We have had to overlook many.

The one very long response is the one on double-bunking since I believe your draft underestimates the complexity of the issue and our efforts to address them.

To us, the most important response is the one under "Introduction" That I believe will help the reader to see the significant difference between our two perspectives, a difference I am increasingly realizing explains just how difficult it is for our two agencies to agree on what needs to be done in respect of the issues you report each year.

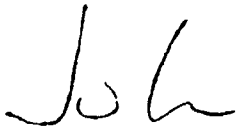
Canada

As you finalize the report, we would want to know what changes are made to any comment that is critical of CSC or any of its employees. Such changes may warrant additional responses and adjustments to the attached responses which have been shaped specifically by the content of the Working Paper. This would be consistent with Section 195 of the CCRA which gives us the chance to make representations on any comment or information in your final report.

We would also appreciate knowing in advance the manner in which our representations are embodied into the report. This move to conformity with Section 195 is new terrain for both agencies. The one guidepost I tend to follow is that of the Auditor General.

I do hope that these comments will have an impact on the tone and civility of your final report.

Yours sincerely,



John Edwards

Correctional Service of Canada

Comments on issues raised in
Correctional Investigator Annual Report 1994/95

Introduction:

The thrust of the adverse comments contained in this report reflect a view held by the Correctional Investigator of the Correctional Service of Canada that is so different from that of the Correctional Service of Canada as to make effective and agreed upon progress on the issues very difficult.

While the Correctional Service certainly makes mistakes and is trying to make progress in many areas, it does see itself as:

- one of the world's leading correctional systems in terms of facilities, programming, research and resources;
- having state-of-the-art risk assessment tools which address the key issues of public safety;
- having state-of-the-art programming which, despite budget reductions, has been steadily increasing, both inside its prisons and in the community for those offenders on conditional release;
- having generous policies vis-à-vis inmate pay, personal effects, temporary absences, private family visits, small unit housing, health care and many others;
- having a substantial array of checks against arbitrary treatment of inmates --complaints to members of Parliament, the Correctional Investigator and his office, an elaborate and heavily used grievance process, independent chairpersons to hear disciplinary cases, ready access to legal aid to pursue issues with the courts, and the opportunity to express views to the media.

The Correctional Service cannot accept the general negativism of the Correctional Investigator's observations. Many just do not seem to be linked to the realities within which the Correctional Service must work:

- realities of funding, realities of deeply held conflicting public views about the treatment of offenders in which serious violent offenders are growing in number, realities of changes in the mix of offenders;
- realities of implementing significant large improvements to our information systems; and
- realities of managing a large and complex operation.

The Correctional Investigator accuses the Service of a general failure to act on his findings. A review of his past three annual reports will show that the Service has taken steps in various policy and administrative areas:

- the review of medical grievances at regions;
- the review of medical grievances at CSC policy on complaint litigation;
- CSC policy on disciplinary dissociation;
- identifying and beginning implementation of a strategic approach to redress through informal problem resolution;
- clear guidelines for humanitarian ETA's;
- the gender change policy;
- offender pay for selected women at Prison for Women
- officer identification; and
- reconfirmation of policy on not using drugs as a negotiating tool in hostage takings.

1. SHU's:

The SHU Review Committee pursues a policy of ensuring that only those inmates who require intensive supervision are kept in the SHU's. The numbers in the Quebec facility have been declining steadily from a high of 63 in April, 1991 to the present level of 45. The numbers in the Prairie region reached a high of 74 in February, 1995, but have since been reduced to 60.

The rights of individuals placed in SHU's are scrupulously observed. Violent inmates will not be returned to reduced security until they have demonstrated that they have reduced their potential to commit violent acts by adhering to a correctional plan and benefiting from the programs or interventions that have been identified to help address the causes of their violent behavior.

Both facilities have increased programming to address the identified needs of the inmates. These include anger management, living skills and education.

Inmates who choose to follow their correctional plans and show improvement can be granted extended privileges leading to return to maximum security. Both facilities report that a number of inmates refuse to participate in either needs assessment or programming and therefore cannot be assessed in terms of reduced risk. As such they remain a danger to others.

The level of serious incidents in maximum and medium security institutions, despite overcrowding, has not been increasing. It is believed this is due, in part, to removing from their populations the most violent inmates and maintaining them in Special Handling Units.

2. Inmate Pay:

Policy making in the 1990's includes careful consideration of law, research, operations, political leadership, and public views. None of these can be ignored. CSC acknowledges inmates have not received a pay increase since 1986, but inmate pay has not been reduced or eliminated as has been happening in some provincial jurisdictions. The Service has made adjustments to distribute pay based on inmates following a correctional plan leading to safe re-integration to the community. This is being achieved without any increase in the overall pay budget

3. Grievance Process:

The direction and the commitment of the Service regarding offender redress is clear. Development of the revised grievance system resulted from a recent review which went beyond the scope of previous studies and focused on root issues. The revised grievance system is expected to have more inmate problems resolved informally. We believe that we have the support of the Correctional Investigator for this change.

Movement towards a revised grievance system has included establishment of institutional pilots to model informal resolution. In order to implement this model, the Service has prepared a training package for staff, provided conflict resolution training for a number of managers, and applied mediation to selected 3rd level grievances and to other written or verbal complaints. The development of the Inmate Redress Information System in an OMS-based format will enable improved report generation for better analysis.

The Correctional Service of Canada does not accept that the current grievance process is in violation of the CCRA. A comprehensive system which compares favorably with other jurisdictions is currently in place and is, in the main, being used effectively at all levels by offenders. Some increased usage of the system is in part related to CCRA allowing offenders "complete access" to the grievance process as of 1992. A number of high frequency users of the system are clearly interfering with reasonable access to the system by others.

Since 1982, first level complaints have gradually increased from 10,000 to 14,500. More than 60% of these were resolved locally and did not proceed to the higher levels of the grievance process. The system has been consistently used by approximately half the population, and in most cases used effectively.

The allocation of additional resources allowed the grievance backlog at 3rd level to be reduced from about 250 in September, 1994 to some 60 grievances in late November, 1994. The reduction in backlog has occurred despite receiving 1029 grievances at 3rd level in 1994-95, an increase of 12% over 1992-93 and 18% over 1991-92, albeit less than the 1237 received in 1993-94 which was the primary cause of the backlog. The average number of days to respond to a 3rd level grievance is now 50-60 days, down from 100-200 days a few months ago. The backlog at 3rd level remains at about 60 grievances.

The Service currently devotes about 40 FTEs to administer the grievance system at all levels and to investigate at 2nd and 3rd levels. That figure does not include the time provided by inmates and operational staff in problem solving and investigating, nor the time of managers in reviewing and monitoring the process. At the 3rd level, 6 FTEs were allocated to Inmate Affairs in 1990-91 and 1991-92. This was increased to 8 in 1992-93, 1993-94 and 1994-95. A further increase to 9 FTEs was approved for this year.

4. Case Preparation & Mental Health Programming:

The Service's approach to programming has been strategic, not ad hoc as seen by the Correctional Investigator. This area of activity is far too complex to be addressed by any single simplistic solution. We have implemented a number of related projects to address the central questions:

What are the right programs for offenders with particular risk/need profiles ?	CSC has contributed to and is using the best research available in this area. That research has lead to better targeting of program interventions on those individuals who have the highest need in relation to their criminal behavior. It has also helped to identify those types of offenders for whom programming is either not needed or unlikely to produce change. Clear standards and guidelines have been developed for psychological interventions and sexual offender interventions. These are now being implemented. Work designed to improve the targeting of substance abuse programming will be complete in June and implemented during the following few months. Research is underway regarding violent offenders. Education programming has been targeted at assisting offenders to obtain employment readiness levels (ABE). Aboriginal and women specific programs are being developed and piloted.
What are the risks and needs presented by offenders ?	After several years of intensive development and testing, in November 1994 a comprehensive Offender Intake Assessment process was implemented at all reception centers. Over 1,400 offenders have received this assessment which leads to a clear description of the risks the offender presents and the needs to be addressed through programs. A similar profile of offenders admitted prior to November will be generated by early fall 1995.

When should programming occur for each offender ?	A revised Correctional Plan process was introduced in the fall of 1994. This process assists staff to assess in which programs an offender should be enrolled and at what point in the sentence. While the OM system does not yet fully support the process and generate all of the required monitoring data, CSC has not stood still waiting for the system to become fully functional.
How effective are the programs ?	Longitudinal studies are underway with one focusing on employment scheduled for completion in 1995. Shorter term effectiveness studies are underway or are part of the Research Plan for 1995-96.

In March, 1995, the Service described for the Correctional Investigator a number of initiatives underway or complete to improve information sharing and analysis for the National Parole Board as well as streamlining the process of case management. All of these actions reflect a multi-faceted, strategic approach to a complex area of work. No facet can ever be seen as complete because each must be improved as new knowledge is obtained.

Finally, in response to the need to ensure efficient case work and effective information sharing with NPB, police, and others working with offenders, the Service has developed the Offender Management System, and related administrative agreements and standards describing the file and information sharing requirements of all parties.

The Offender Management System is now a sound Canada wide system effectively serving front line workers in managing the offender population. 2500 users log on each day to process 10,000 offender transactions. The Service acknowledges delays in the management information component of the system and shares the Correctional Investigator's frustration.

5. Double-Bunking/Overcrowding

The Service does not agree that the causes of the population increase have been left to speculation as suggested by the Correctional Investigator. The factors that have contributed to the growth in population include the number of offenders admitted to federal custody, the nature of the offences committed and the offenders committing them, the length of the sentences imposed and the type of interventions required in order to address the causes of an offenders criminality prior to release to the community. The

Service recognizes the need to understand as fully as possible the factors contributing to population growth yet experience shows that an exhaustive analysis is far more difficult than the Correctional Investigator implies. As such, the Correctional Investigator's interpretation of this data is but one of many.

The Correctional Service has experienced a higher increase than was forecast in admissions to federal institutions though preliminary data suggests this may have begun to change in recent months in some parts of the country. Every year from 1986/87 to 1993/94 the number of Warrant of Committal admissions have increased and upward pressure has been compounded in the last few years by a rise in revocations. While it is unlikely that the number of revocations will continue to rise, Warrant of Committal admissions will likely continue to increase with changes being planned and implemented in legislation.

We agree that there has been a decline in the number of parole releases. This is in part due to the fact that over the past 9 years there has been an increase in the number of offenders being sentenced to federal custody for violent crimes. With these type of offences there is greater need for programming and a growing demand for access to them, with a consequent delay as to when a release can be effected and an offender safely managed in the community

The median sentence length for inmates admitted to federal penitentiaries, while stable for many years, has shown some tendency to increase in recent times; for example from 43.4 months in 1992/93 to 46.3 months in 1993-94. This represents an increase of 6.7%.[1]

Since 1980, the population of offenders serving life sentences has continued to grow to a point where there are presently over 3000 under the jurisdiction of CSC. Over 2000 of these inmates are incarcerated, representing a significant and growing demand for facilities and services. Inmates serving life sentences represent approximately 15% of the total inmate population and this will continue to rise to perhaps 3000 or so at which point there the number being released to match the new ones arriving. Of course, this could go higher should changes be made to Section 745 of the criminal code, to place further restrictions on parole as a current private member's bill proposes.

[1] Adult Correctional Services in Canada Canadian Centre for Justice Statistics 1993-94

There have been approximately 1200 offenders referred by CSC to NPB for detention since 1989. Of those referred, the proportion of detention decisions has continually risen since 1989 from 64% to 89% in 1993/94. Of these, more than 60% are sex offenders. The number of detention referrals continues to increase each year. The rate of detention has increased markedly and the use of other possible decisions, such as residency has shown corresponding decreases.

The Correctional Service does not agree that crowding in institutions could be readily resolved by administrative actions on its part alone. Eligibility for a conditional release is set by law. Decisions made by the Service with respect to recommendations for release and the return of offenders to incarceration from conditional release must always be based on an assessment of the risk posed by an offender and the capacity for that risk to be managed. Public safety is paramount.

Of the 4, 276 federal offenders on full parole in April 1995, about 60% had served less than 40% of their sentence prior to release. It is important to recognize that the CSC is dealing with a much more difficult population. It is not an issue of depending on an extended period to program, but the need to program sufficiently before release can be considered, including release for participation in community-based relapse prevention programs. At the same time, the Service recognizes the desirability of continuity of programming and the value of programs delivered in the community for those whose risk can be managed there. For example, 600 sex offenders can now receive treatment in the community where only five years ago no such capacity was available.

We recognize that there are many offenders in institutions who are past their parole eligibility date, but to assume they should be released is neither realistic nor reasonable in light of the continued risk they pose to public safety. Those who are past their parole eligibility date include those who are detained, those who have been denied a conditional release, those who had been released but failed to abide by conditions or committed another offence, those who it has been deemed require further programming before their risk to society can be managed in a community setting, and, in some cases, those for whom no amount of programming will reduce risk to a tolerable level.

The federal full parole grant rate may fluctuate over the years based on a number of factors including the nature of the inmate population and legislative change. Since 1982/83, the federal full parole grant rate has remained relatively constant, with an average rate of 34%

CSC is working to ensure timely release decisions by:

- streamlining of case management;
- harmonization of information requirements with the National Parole Board;
- recent commencement of a program using the OMS to monitor each month a random sample of cases where inmates have passed their parole eligibility date without having a parole hearing;

While striving to release inmates when programs have been provided and risk is tolerable, the Service is also moving to ensure its accommodation policies respond in a humane and effective way to crowding.

New Accommodation Policies were issued in February, 1995. Their full impact will become apparent over the coming months, particularly as the numerous steps to reduce population pressures occur (leasing provincial facilities, expanding existing facilities, transfers, temporary dormitories).

Already some implementation has occurred. For example, in Kingston Penitentiary which has some of the smallest cells, the number of double-bunked cells has been reduced. The overall population is now at 438 where not so long ago it was over 500. By this Fall, no inmates will be double-bunked in cells of less than five square meters.

In the Introduction of this report, the Correctional Investigator describes the overcrowding as a crisis and explosive. The Service does not agree it is a crisis though it is the major issue the Service faces. While any high security prison can become explosive, an examination of major incidents shows that the number has not increased at all over the past four years. We agree that the reference to the Auditor General unintentionally went beyond the wording in his report.

6. TA Programming:

Effective May 12, 1995, the Executive Information System contains a statistical module related to the TA program.

The Service sees the temporary absence program as highly successful. The rate of completion without breaches of conditions has been steadily above 98%). Its success has been due to the care with which the risk assessment is made. We are not detecting any significant problem with TA's.

The Correctional Investigator has asked legitimate questions and, given its views, an evaluation will be launched as part of the 1995-96 Plan by the Correctional Research and Development Sector. The project will commence this Fall.

7. Transfers:

Transfer decisions are made on the basis of public safety and needs of inmates.

The study on the Custody Rating Scale and the Reclassification Process was approved as part of the Correctional Research and Development Plan for FY 1995-96. The study has commenced the following phases:

- review, revision and revalidation of the Custody Rating Scale - April to September;
- development of a more objective reclassification tool - June to October;
- consultation on the new tool with staff - November to December;
- pilot testing of tool - January and February;
- revisions and training - February and March;
- implementation - April 1996.

The results of this project will be a more objective, more transparent process for initial placement decisions and subsequent reclassifications and transfers. Although one cannot and should not remove the element of professional judgment from such decisions, the increased objectivity should contribute to fewer disputed decisions.

It is not surprising that, given the proportion of transfers that are refused, complaints are high. We spend $200-$300K on transfers not including the salary costs of CSC escorts. Most transfers are in response to requests from inmates.

8. Personal Effects:

CSC is wrestling with the rapidly changing world of technology and its potential impacts, both positive and negative. Our own experiences, as well as those of the Federal Bureau of Prisons, have clearly documented that there is an inherent risk associated with the use of computers by inmates. At present, about 500 inmate owned computers are in institutions. There have been, in each region, incidents where inmate access to computers has been a key element in attempted criminal or inappropriate behavior. The risks of these types of incidents will increase if cell effect technology is allowed to expand without appropriate action to control the risks presented.

We recognize that there are significant program and development gains to be achieved by inmates acquiring computer skills. These can and are being met outside of cells, e.g. education, work locations, special computer centers.

The Service is developing policy on computer inmate access to technology so as to bring more consistency of practice across the country. It is seeking a balance that will protect security and yet have as much flexibility for inmates as possible. This work must also now consider the impact of overcrowding on the management of computers and other personal effects.

The Service has decided that VCRs will not be permitted as personal effects and the CD has been amended to that effect.

9. Pay Policy for Unemployed Inmates

Inmate pay is a valid incentive for work and program participants. The Service believes it is more than reasonable to encourage and assist inmates to safely re-integrate to the community by following a correctional plan. This is not "forced treatment" any more than income for employment is "forced labor". It is using all means at our disposal to prepare inmates for safe return to the community, thus increasing our contribution to public safety. Therefore, inmate pay is a valid disincentive for refusal to work and incentive to participate in a correctional plan.

The Service is planning to adjust the pay budget so that those inmates who do not have work through no fault of their own receive a daily allowance of $2 65 rather than $1.60. This will be achieved without any increase in the overall pay budget.

10. Criteria for Humanitarian Escorted Temporary Absences

In spite of the obvious need to respond sensitively to a death in the family of an inmate, wardens must balance the continued need for public safety at times of high stress for the inmates.

Seven cases have been referred by the Correctional Investigator since April, 1993:

- in three cases the review confirmed that the Warden's decision, which preceded the guidelines, was consistent with the CD;
- in one case the Service agreed with the Correctional Investigator's analysis, reminded the Warden of policy and directed a graveside visit;
- in one case the review concluded that the Warden's decision was consistent with the guidelines and the CD;
- one case was not re-opened as it was simply too old; and
- in the final case the review is still underway.

With the exception of the case of the inmate whose request led to the development of the guidelines, the interval between receipt of the Correctional Investigator's letter and the Service's reply, i.e. the time for investigation and response was between 23 and 61 days. We do not consider that response time to be "excessively delayed" given that in such cases the National Headquarters must work with the institution concerned.

11. Hostage-Taking- Saskatchewan Penitentiary:

The Preventive Security Standards have been completed. The distribution to Institutions of computer discs containing the Standards and the placement of the Standards on CSC's Strategic Information Network has been just and complete. As with any Standards, they must be regularly reviewed and changed as necessary. For the remaining issues relating to this 1991 incident, the Service and the Correctional Investigator have long disagreed.

12. Mental Incompetence:

No comment required

13. Officer Identification: Revised

The policy of wearing name tags is to be found in CSC's Dress and Deportment Guide. Wardens are expected to take action when they are made aware of non-compliance. If Correctional Investigator analysts observe non compliance, they should raise the issue with the Warden.

14. Disciplinary Court Decisions:

The policy of properly maintaining records of Disciplinary Court decisions is to be found in CD 580. Wardens are expected to take action when they are made aware of non compliance. If Correctional Investigator analysts observe non compliance, they should raise the issue with the Warden. The Service did conduct a review of CCRA regulations which included a review of the regulations governing inmate discipline.

A full scale audit of the process was done in 1992. It was decided in December, 1993 that a further review of this function, including examination of the regulations, should await use of the process under CCRA, and appointment and necessary training of new ICPs.

15. Use of force investigations and follow-up:

In any instance of the use of force, a report must be forwarded to the institutional head and the incident must be recorded in the Offender Management System according to CD 605. The reporting of the incident requires a full description of the incident and observations/comments from health care and supervisory staff and requires that the inmate is advised that he may provide his version of the incident to the institutional head.

If no one has been injured, if the information is deemed sufficient, and if the inmate has raised no objections, the institutional head may conclude that there is no need for further inquiry. If any injury has resulted or if questions remain, an inquiry will be convened at the local, regional or national level depending on the nature of the incident. This approach allows the institutional head the flexibility required to effectively operate the institution.

If corrective action is required following any review of incidents of the use of force, the institutional head is responsible for ensuring that this action is taken.

As the information is available on the Offender Management System, the Service will initiate steps to include the information in the Executive Information System. This will allow for the monitoring and analysis of the incidents of use of force at the institutional, regional and national levels.

If the Correctional Investigator becomes aware of failures to comply with the stated policy, he is encouraged to bring this to the attention of the Warden.

16. Inmate Injuries:

On January 12, 1995, the report on the review of the investigation process was submitted. On March 8, a copy of the report was sent to the Correctional Investigator. Most of the 71 recommendations of the report have been accepted verbatim, and action plans have been developed. Some recommendations have already been implemented.

17. Visits to dissociation:

No comment required.

APPENDIX E

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

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.