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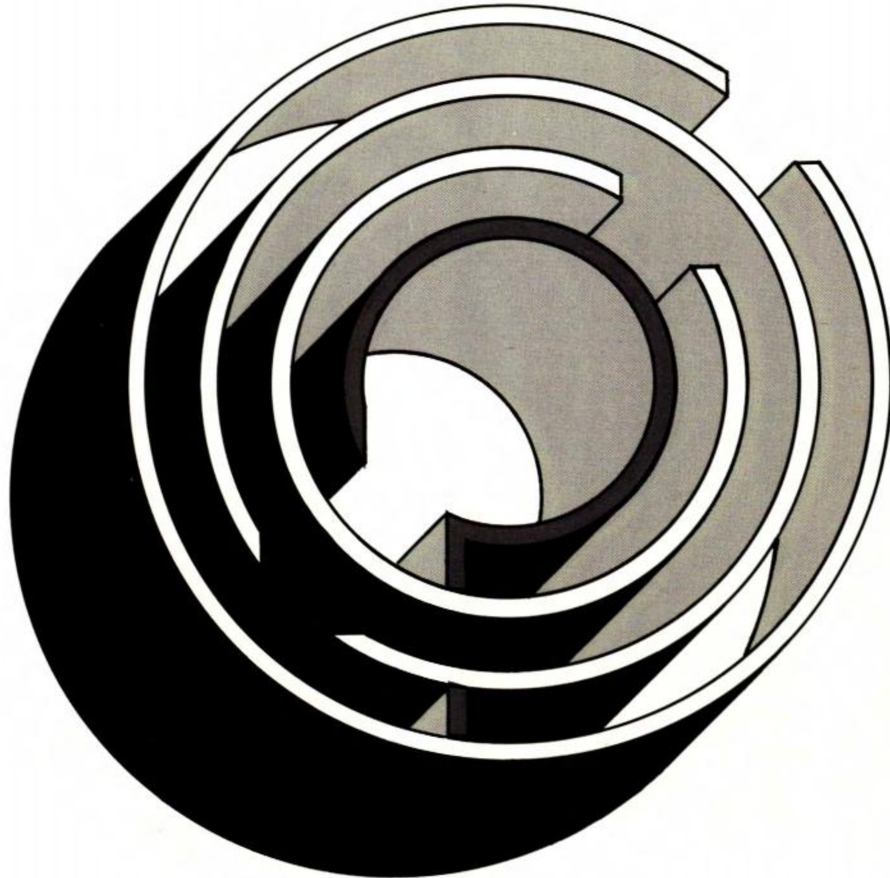
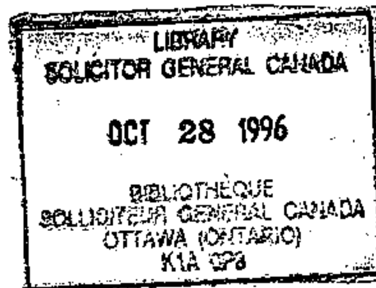


Annual Report of the Correctional Investigator

1995 - 1996

The Correctional Investigator
Canada

Annual Report of the Correctional Investigator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The Correctional Investigator
Canada

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L'Enquêteur correctionnel
Canada

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June 28, 1996

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-third Annual Report of the Correctional Investigator.

Yours respectfully,

R.L. Stewart
Correctional Investigator

Canada

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INTRODUCTION

I end this reporting year on a cautiously optimistic note despite the fact that limited progress has been achieved on most of the issues detailed in this report and the approach of the Correctional Service at the national level in addressing these matters remains for the most part excessively defensive, delayed and non-committal. The source of my guarded hope for positive change in federal corrections is tied to the work of the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* and the anticipated ministerial response to the Commission's Report.

The Commission and the report have provided for all those involved in and responsible for federal corrections with both an opportunity and a clear direction for necessary change. The key to the effectiveness of this change will be in large part dependent on the steps taken to address the Correctional Service's "deplorable defensive culture". This culture has resulted, far too often, in a management approach, characterized by Madame Justice Arbour as - "deny error, defend against criticism and react without a proper investigation of the truth".

The Office of the Correctional Investigator is mandated as an Ombudsman for Federal Corrections. The specific function of the Office as detailed at Section 167 of the *Corrections and Conditional Release Act* reads: "to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner (of Corrections) or any person under the control and management of, or performing services for or on behalf of the Commissioner that affect offenders either individually or as a group". A central element of any ombudsman function, in addition to independence and unfetted access to information in the conducting of its investigations, is that they act by way of recommendation and public reporting, as opposed to decisions that are enforced. I have included within the Operations Section of this report an overview of the legislative provisions governing our operation.

The authority of the Office, within this framework, lies in its ability to thoroughly and objectively investigate a wide spectrum of administrative actions and present its findings and recommendations initially to the Correctional Service of Canada. In those instances where the Correctional Service of Canada has failed to reasonably address the Office's findings and recommendations, the issue is referred to the Minister and eventually to Parliament and the public, generally through the vehicle of our Annual Report. The Office, as such, in attempting to ensure administrative fairness and accountability within correctional operations is dependent in large part on the willingness of the Correctional Service to approach the findings and recommendations of this Office in an objective, thorough and timely fashion.

I have been singularly unsuccessful over the past few years, as evidenced by my previous Annual Reports, in causing a change in the Correctional Service's approach in dealing with matters raised by this Office. Madame Justice Arbour in commenting on Correctional Service accountability and the role of this Office stated:

> It is clear to me that the Correctional Investigator's statutory mandate should continue to be supported and facilitated. Of all the outside observers of the Correctional Service, the Correctional Investigator is in a unique position both to assist in the resolution of individual problems, and to comment publicly on the systemic shortcomings of the Service. Of all the internal and external mechanisms or agencies designed to make the Correctional Service open and accountable, the Office of the Correctional Investigator is by far the most efficient and the best equipped to discharge that function. It is only because of the Correctional Investigator's inability to compel compliance by the Service with his conclusions, and because of the demonstrated unwillingness of the Service to do so willingly in many instances, that I recommend greater access by prisoners to the courts for the effective enforcement of their rights and the vindication of the Rule of Law.

In concluding on this matter, Madame Justice Arbour stated: "In terms of general correctional issues, the facts of this inquiry have revealed a disturbing lack of commitment to the ideals of Justice on the part of the Correctional Service... There is nothing to suggest that the Service is either willing or able to reform without judicial guidance and control".

On the basis of my own experience over the past few years and without limiting the judicial guidance and control called for by Justice Arbour, I believe there is a need for a mechanism between this Office and the courts with the authority to order timely corrective action in instances of illegalities, gross mis-management or unfairness. The correctional environment, the impact of administratie decisions on individuals within that environment and the consistent failure of the Correctional Service to approach individual and systemic areas of concern in an objective, thorough and timely fashion demands that a timely and responsive binding avenue of redress be available.

As such I recommend:

a) that an administrative tribunal be established with the authority both to compel Correctional Service compliance with legislation and policy governing the administration of the sentence and to redress the adverse effects of non-compliance, and

b) that access to the tribunal be provided for in those instances where if within a reasonable time after receiving a recommendation from the Correctional Investigator pursuant to s. 179 of the *Corrections and Conditional Release Act*, the Commissioner of Corrections takes no action that is seen as adequate or appropriate.

The above recommendation is intended to support and complement, not attenuate or replace, the function of the Office in ensuring that areas of offender concern are decided on in an objective and timely fashion consistent with the Service's legislative responsibilities.

With respect to the long-standing areas of systemic concern detailed in last year's Annual Report, as I mentioned at the outset, limited progress has been achieved.

I stated last year that: "The responses of the Correctional Service on these matters have consistently avoided the substance of the issues at question, including a failure to address the specific observations and recommendations contained in previous reports. The responses, further, are excessively defensive, display little if any appreciation of 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".

In an effort to break this cycle of annually restating increasingly polarized positions on these matters I attempted, in last year's report, to do two things. 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. Second, to promote a focusing on the specific areas of concern associated with those issues in the hope of causing some meaningful action to be taken. I concluded last year's report by stating: "To ensure that these issues are reasonably addressed, the Service must begin to turn its attention to the specifics identified within the Annual Report 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 the individual inmate concerns associated with these issues, can be dealt with in a timely and responsive fashion".

I quite frankly, at this time, have very little to add to either my above-noted comments or my previous detailing on the specifics of the issues. There is, in attempting to move towards a resolution on these long-standing areas of concern, limited benefit to be gained at this time through either a rewording of my position on these issues or the passing of additional comment on the Service's responses. I have therefore in this year's Annual Report, for each of the issues which remain outstanding, provided the text from last year and limited my current commentary to the identification of the specific actions that, to my mind, need to be taken to reasonably address the areas of concern. I have, as well, in an attempt to ensure that the public record on these issues is complete, included as annexes to this report:

a) This Office's Overview on the status of Annual Report issues provided to the Correctional Service and the Minister's Office in February of 1996, and

b) The Correctional Service's Progress Report on the Annual Report issues received May 1, 1996.

Prior to closing the Introduction to this year's Annual Report, I want to ensure clarity on a number of points.

First, I view the issues detailed in this report as extremely significant and central to the Service's meeting of its legislative responsibilities for ensuring the fair and humane administration of the sentence and the successful re-integration of offenders into society so as to ensure the protection of society.

Second, I believe that the finding of common ground and the resolution of these issues is achievable if there is a will to address these areas of offender concern in an open and cooperative fashion.

Third, I appreciate the fact that the finding of common ground and movement toward resolution is a two party process. This Office is prepared to continue to work with the senior administration of the Correctional Service in an open and cooperative fashion in order to assist in addressing these areas of concern.

Finally, I am firmly committed to the Ombudsman concept and remain of the opinion that the provisions of the *Corrections and Conditional Release Act* provide for a process within which the vast majority of individual and systemic concerns can be reasonably addressed. An element of that process, which to date I have used sparingly, provides for the referral of issues directly to the Minister, independent of the Annual Report, on matters which are "urgent" or where the Service has failed, within a reasonable time, to take "adequate or appropriate action". Given the significance of the Annual Report issues and the ineffectiveness of the Annual Report as a vehicle of resolution, I have no option, if immediate action is not taken by the Service to reasonably address these matters, other than to refer these issues directly to the attention of the Minister under the provisions provided for by the legislation.

OPERATIONS

On November 1, 1992 the *Corrections and Conditional Release Act* ("an Act respecting corrections and the conditional release and detention of offenders and to establish the Office of the Correctional Investigator") came into force. Part III of the Act governs the operation of this Office and parallels very closely the provisions of most provincial Ombudsman legislation, albeit, in our case, within the context of investigating the activities of a single government organization and reporting to the legislature through a single Minister. The "Function" of the Correctional Investigator, as with all Ombudman mandates, is purposefully broad:

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

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

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

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

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

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

The legislation as well provides that the Correctional Investigator, when informing the Commissioner of the existence of a problem, may make any recommendation relevant to the resolution of the problem that the Correctional Investigator considers appropriate. Although these recommendations are not binding, consistent with the Ombudsman function, the authority of the Office lies in its ability to thoroughly and objectively investigate a wide spectrum of administrative actions and present its findings and recommendations to an equally broad spectrum of decision-makers, inclusive of Parliament, which can cause reasonable corrective action to be taken if earlier attempts at resolution have failed.

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

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.

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

The Office 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 6,794 complaints, the investigative staff spent 236 days at federal penitentiaries and conducted nearly 2,000 interviews with inmates and half again that number of interviews with institutional and regional staff. These numbers are consistent with our operations last year and have again been managed within a decreasing budget. This has been achieved in large part through the creativity and plain hard work of a very dedicated and talented staff and I wish to publicly thank them for their efforts.

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 section.

In addition to the above, the Office was party to and an active participant in the Arbour Commission of Inquiry. I have included as Annexes C and D to this Report my *Special Report* on the Prison for Women incident, dated February 14,1995, which in part prompted the Commission of Inquiry and this Office's Submission on Phase II, Arbour Commission, Policy Review dated January 9, 1996.

Given this Office's active involvement in the addressing of the complaints raised at the Prison for Women in April of 1994, our participation in the Commission of Inquiry and our continuing responsibilities of addressing complaints raised by federally sentenced women, I will be following up with both the Minister and the Commissioner of Corrections on the specifics of Madame Justice Arbour's findings and recommendations when the ministerial response is finalized.

STATISTICS

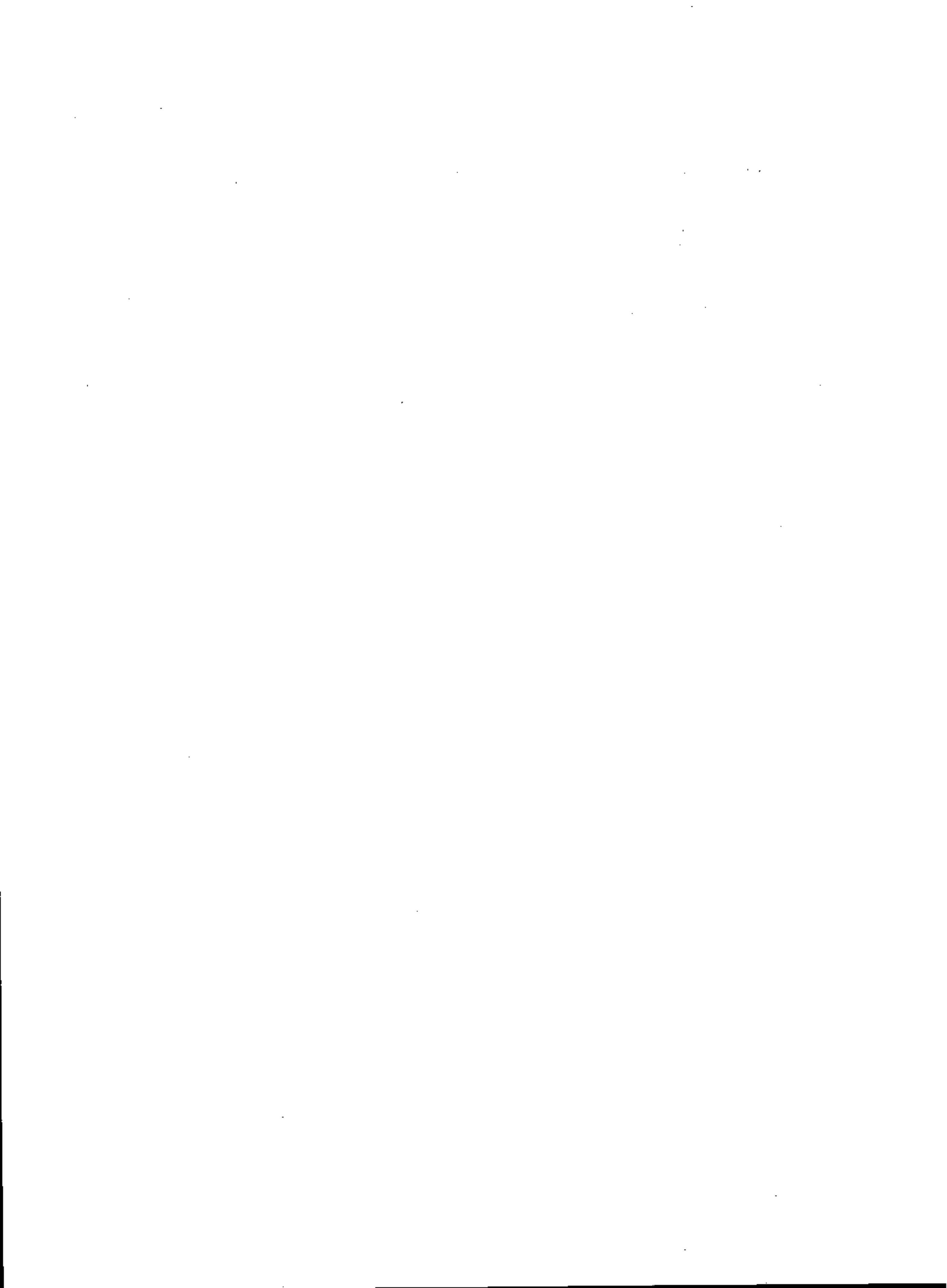

TABLE A
COMPLAINTS RECEIVED AND PENDING BY CATEGORY

Category	Number
Administrative Segregation	
a) Placement	117
b) Conditions	370
Case Preparation	
a) Parole	323
b) Temporary absences	96
c) Transfer	390
Cell Effects	425
Cell Placement	120
Claims	
a) Decisions	74
b) Processing	82
Correspondence	81
Diet	
a) Medical	29
b) Religious	23
Discipline	
a) ICP decisions	28
b) Minor court decisions	18
c) Procedures	142
Discrimination	10
Employment	151
Financial matters	
a) Access	74
b) Pay	237
Food Services	24
Grievance procedure	280
Health Care	
a) Access	290
b) Decisions	268
Information	
a) Access	88
b) Correction	275
Mental health	
a) Access	26
b) Programs	5
Other	46
Penitentiary Placement	133
Private family visits	232
Programs	244
Request for information	297
Security classification	72
Sentence administration	83
Staff	314
Temporary absence decisions	91
Telephone	91

TABLE A (Cont'd)
COMPLAINTS RECEIVED AND PENDING BY CATEGORY

Transfer	
a) Decision	295
b) Involuntary	270
Use of force	57
Visits	314
<u>Outside Terms of Reference</u>	
Parole Board decisions	147
Outside court	21
Provincial matter	41
Total	6794

TABLE B
COMPLAINTS - BY MONTH

1995	
April	645
May	610
June	542
July	619
August	488
September	636
October	674
November	480
December	374
1996	
January	472
February	629
March	625
Total	6794

TABLE C
COMPLAINTS - BY REGION

	Apr.	May	June	July	Aug.	Sept.
Maritimes						
Atlantic	55	34	16	15	14	38
Dorchester	44	18	14	8	8	19
Springhill	18	16	19	13	19	10
Westmorland	5	6	2	5	3	6
Provincial Facilities	0	2	0	3	0	1
Ontario						
Bath	6	12	5	13	11	8
Beaver Creek	2	15	3	5	6	3
Collins Bay	9	10	34	7	16	15
Frontenac	7	6	6	0	4	0
Joyceville	20	39	16	10	22	26
Kingston Penitentiary	77	38	57	22	18	33
Millhaven	16	15	21	21	31	21
Pittsburgh	2	5	0	0	0	0
Prison for Women	7	26	10	20	16	22
Regional Treatment Centre	20	4	2	1	2	1
Warkworth	38	37	31	40	37	19
Provincial Facilities	7	4	10	7	7	6
Pacific						
Burnaby Correctional Centre	0	0	0	0	0	0
Elbow Lake	1	1	0	13	1	8
Ferndale	1	1	0	1	1	0
Kent	8	15	5	53	19	18
Matsqui	1	4	4	13	2	6
Mission	3	4	6	9	4	5
Mountain	6	8	3	32	1	4
Regional Health Centre	1	0	1	14	1	1
William Head	1	3	3	22	0	5
Provincial Facilities	0	0	0	0	0	0

TABLE C
COMPLAINTS - BY REGION

Oct.	Nov.	Dec.	Jan.	Feb.	March	Total
18	4	25	12	16	19	**266**
51	10	21	15	19	17	**244**
35	6	19	18	13	23	**209**
38	1	2	1	4	3	**76**
3	2	3	4	6	9	**33**
17	10	4	2	6	11	**105**
6	6	2	3	6	2	**59**
38	10	9	8	19	19	**194**
6	0	1	3	6	1	**40**
22	30	10	11	29	23	**258**
13	31	3	23	48	13	**376**
62	23	21	8	14	49	**302**
0	6	0	0	2	1	**16**
13	13	22	6	6	36	**197**
4	3	0	9	4	2	**52**
41	25	25	14	65	20	**392**
8	5	4	0	3	4	**65**
0	1	0	0	0	0	**1**
1	1	0	7	1	0	**34**
1	1	0	0	1	0	**7**
17	36	10	52	9	8	**250**
4	9	3	6	9	7	**68**
9	33	3	3	11	6	**96**
6	14	4	5	8	4	**95**
7	3	2	3	26	0	**59**
0	4	3	6	20	2	**69**
1	0	1	0	0	0	**2**

TABLE C (Cont'd)
COMPLAINTS - BY REGION

	Apr.	May	June	July	Aug.	Sept.
Prairies						
Bowden	9	30	33	14	17	29
Drumheller	4	14	19	7	14	19
Edmonton	11	11	19	18	15	21
Edmonton Women's Facility	0	0	0	0	0	0
Grande Cache	0	0	0	0	0	0
Healing Lodge	0	0	0	0	0	0
Riverbend	12	0	1	9	1	12
Rockwood	5	1	0	0	0	12
Saskatchewan Penitentiary	11	6	1	21	1	24
Special Handling Unit	13	2	3	12	0	17
Stony Mountain	11	7	7	37	8	34
Provincial Facilities	2	8	2	14	6	3
Regional Psychiatric Centre	13	3	5	4	1	6
Quebec						
Archambault	7	30	13	16	15	16
Cowansville	47	25	14	10	15	25
Donnacona	11	36	8	37	22	30
Drummondville	28	13	23	9	14	25
Federal Training Centre	9	9	12	14	6	7
La Macaza	12	25	10	14	36	11
Leclerc	21	27	40	17	24	24
Montee St. Francois	7	1	5	1	9	13
Port Cartier	39	22	46	11	16	20
Regional Reception Centre	2	3	3	1	2	4
Special Handing Unit	4	8	3	3	5	4
Ste-Anne des Plaines	12	2	5	0	9	2
Provincial Facilities	0	4	1	2	3	1
CCC and CRC	0	0	1	1	6	2
Total	**645**	**610**	**542**	**619**	**488**	**636**

TABLE C (cont'd)
COMPLAINTS - BY REGION

Oct.	Nov.	Dec.	Jan.	Feb.	March	Total
10	14	9	12	10	72	**259**
4	11	0	4	12	27	**135**
8	5	3	4	2	37	**154**
0	0	0	0	0	14	**14**
2	3	0	0	2	0	**7**
0	1	0	0	1	3	**5**
1	2	3	0	1	6	**48**
1	0	0	0	2	12	**33**
5	5	18	5	4	7	**108**
12	6	3	0	3	5	**76**
7	6	11	14	6	18	**166**
5	7	1	3	3	4	**58**
6	0	1	3	1	6	**49**
36	7	7	9	10	8	**174**
15	10	13	15	42	7	**238**
27	16	17	33	34	14	**285**
24	15	12	29	25	20	**237**
8	6	9	25	21	14	**140**
11	7	15	30	11	5	**187**
24	25	17	18	27	30	**294**
3	5	7	4	9	2	**66**
18	20	12	14	14	18	**250**
11	8	6	14	16	7	**77**
5	4	6	6	6	6	**60**
7	3	7	6	11	3	**67**
3	4	0	2	4	0	**24**
0	3	0	3	1	1	**18**
674	**481**	**374**	**472**	**629**	**625**	**6794**

TABLE D
COMPLAINTS AND INMATE POPULATION BY REGION

Region	Complaints	Inmate Population
Pacific	682	1926
Prairie	1112	3285
Ontario	2056	3756
Quebec	2099	3882
Maritimes	828	1438
CCC	17	380
Total	6794	14667

TABLE E
INSTITUTIONAL VISITS

Institution	Number of Visits
Archambault	7
Atlantic	5
Bath	2
Beaver Creek	2
Bowden	7
Collins Bay	4
Cowansville	10
Donnacona	14
Dorchester	3
Drummond	6
Drumheller	5
Edmonton	6
Elbow Lake	2
Federal Training Centre	3
Ferndale	4
Frontenac	6
Grande Cache	1
Joyceville	8
Kent	6
Kingston Penitentiary	11
La Macaza	13
Leclerc	4
Matsqui	4
Millhaven	4
Mission	4
Montee St. Francois	3
Mountain	4
Pittsburgh	4
Port Cartier	13
Prison for Women	9
Psychiatric Centre, Pacific	3
Psychiatric Centre, Prairies	4
Reception Centre, Quebec	5
Riverbend	3
Rockwood	3
Saskatchewan Penitentiary	11
Springhill	4
Ste. Anne des Plaines	11
Stony Mountain	8
Warkworth	4
Westmorland	3
William Head	3
Total	236

TABLE F
INMATE INTERVIEWS

1995	
April	250
May	122
June	134
July	233
August	58
September	152
October	146
November	138
December	94
1996	
January	78
February	240
March	202
Total	1847

TABLE G
DISPOSITION OF COMPLAINTS

Action	Number
Pending	237
Beyond mandate (no action)	169
Premature	1666
Not justified	673
Withdrawn	207
Assistance given	1106
Advice given	519
Information given	1615
Resolved	489
Unable to resolve	113
Total	6794

TABLE H
COMPLAINTS RESOLVED OR ASSISTED WITH BY CATEGORY

	Resolved	Assisted
Administrative Segregation		
a) Placement	27	67
b) Conditions	24	44
Case Preparation		
a) Parole	21	51
b) Temporary absences	7	21
c) Transfer	31	82
Cell Effects	53	88
Cell Placement	13	25
Claims		
a) Decisions	2	12
b) Processing	5	15
Correspondence	12	11
Diet		
a) Medical	4	3
b) Religious	2	4
Discipline		
a) ICP decisions	1	1
b) Minor court decisions	2	0
c) Procedures	12	7
Discrimination	1	1
Employment	5	15
Financial matters		
a) Access	5	17
b) Pay	29	15
Food Services	1	4
Grievance procedure	22	66
Health Care		
a) Access	28	75
b) Decisions	12	39
Information		
a) Access	15	23
b) Correction	9	43
Mental health		
a) Access	0	6
b) Programs	1	3
Other	2	8
Penitentiary Placement	6	19
Private family visits	20	35
Programs	17	45
Request for information	2	7
Security classification	4	4
Sentence administration	5	13
Staff	11	58
Temporary absence decisions	9	13
Telephone	10	22

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

Telephone	10	22
Transfer		
a) Decision	29	45
b) Involuntary	5	27
Use of force	1	10
Visits	22	46
Outside Terms of Reference		
Parole Board decisions	2	9
Outside court	0	2
Provincial matter	0	5
Total	489	1106

CURRENT COMPLAINT ISSUES

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 ongoing treatment or programming related to identified needs. The data collection and analysis requirements detailed in the policy are not being met, and the National Review Committee's responsibilities in terms of monitoring and overseeing Special Handling Unit operations are not being fulfilled.

It is not our expectations which need to be met but rather the expectations of 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) 1993-94

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 decisions 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) 1994-1995

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.

d) 1995-96 - Current Status

The long-standing concerns related to the provision of employment and programming opportunities in a timely fashion which are responsive to the identified needs of the offender population, although to date not addressed, are under examination by the Service by way of an internal audit. When we have had an opportunity to review the results of this audit, I will provide my further comments related to these areas of concern to the Commissioner.

The concerns related to objectivity and fairness have not been reasonably addressed.

With respect to the composition of the National Review Committee (N.R.C.): The N.R.C. is the decision-making authority on release or transfer of inmates from the Special Handling Unit. The Chairman of the Committee is organizationally subordinate to the decision-making authority which places offenders in the Special Handling Unit. Further the Chairman is regionally rather than nationally based, thereby being placed in the position of reviewing the decision of his immediate supervisor. Wardens of maximum security institutions, as members of the N.R.C. are taking decisions on cases that they may have

recommended for placement in the Special Handling Unit or were transferred to the Special Handling Unit by decision of their immediate supervisor. Further, given that cases transferred from the Special Handling Unit are placed in maximum security institutions, these Wardens have a direct interest in the decision being taken. In short, I continue to believe that the current composition of the National Review Committee leaves open to question the objectivity and fairness of the decisions taken.

With respect to the inmate's appearance before the National Review Committee, in terms of the significance of the decision being taken and the requirement for administrative fairness, this matter needs to be further reviewed and fully addressed by the Service.

The Service, given their decision to centralize Special Handling Unit operations at one institution, needs to identify a date for this change and ensure that the programming at that facility can meet the identified needs of those inmates to be transferred. I have specific concerns in the areas of mental health and Aboriginal programming.

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) 1993-94

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) 1994-95

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.

d) 1995-96 - Current Status

The Service has chosen not to initiate either an across-the-board increase on inmate pay levels or a thorough examination of the impact of the low levels of pay on institutional operations and conditional release. The Service further has not finalized its Treasury Board submission which was intended to increase the consistency between the inmates' level of pay and their program participation. The submission as well was to raise the daily allowance for those inmates unemployed through no fault of their own.

The areas of concern associated with the issue of Inmate Pay have not been addressed. Setting aside my long-standing recommendation concerning an increase in inmate pay, I believe there is a continuing requirement for the Service to thoroughly review the impact of current pay levels on tensions and illicit activities within institutions and the availability of inmate funds at the time of release.

I further believe that the Service needs to put into practice the intent of their Treasury Board submission, especially with regard to the raising of the daily allowance for unemployed inmates.

3. GRIEVANCE PROCEDURE

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

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

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

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

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

The process is anything but expeditious, with offender grievances taking up to six months to work their way through the process. The current process as well can not 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) 1993-94

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 have 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 have 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) 1994-95

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.

d) 1995-96 - Current Status

The operation of the inmate grievance process needs to be given a high priority by the Service and effectively managed at all levels with specific accountability for its operation assigned to senior management.

There has been an improvement in the process' operation at the national level in the past few months, yet I have witnessed periodic improvement before over the past decade only to see the process return to a state of chaos. To effectively manage the system in addition to commitment and accountability, the Service needs to issue a clear policy statement emphasizing the principles of administrative fairness and develop an information base at all levels of the organization which allows for the measurement of the system's performance on an ongoing basis.

The direction for change must come from the top. As noted by Justice Arbour: "At present, it would seem that the admission of error is perceived as an admission of defeat by the Correctional Service. In that climate, no internal method of dispute resolution will succeed". If there is to be a change in the climate, the Commissioner needs to send a clear message indicating that the failure to admit error and take action to redress the consequences of that error is totally unacceptable and inconsistent with the Service's claimed commitment to openness, integrity and accountability.

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) 1993-94

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 ongoing 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 Service's 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 delay 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) 1994-95

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 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.

d) 1995-96 - Current Status

The Correctional Service, I believe, correctly identified in January of 1994 the following specific variables that needed to be specifically reviewed in order to address the areas of concern associated with the issue of Case Preparation and Access to Programming: "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 appreciate that the inter-relationship of these variables and their impact on effective case management and programming is complex. I further acknowledge that the Service has undertaken a number of initiatives over the past few years in an attempt to streamline its case management process and better match inmates and programming. I believe these initiatives have been hampered by a number of factors.

First, the Service's information base relevant to the above variables, specifically with respect to waiver rates, and the timing of programming for release, continues to be wanting. As such, it remains difficult to determine the cause of the problems with delayed conditional release or what specific management action needs to be taken. I suggest that a concerted effort, in the short term needs to be taken to specifically identify the causes of waivers and postponements of Parole Board hearings and the factors currently used in determining the timing of programming for release.

Second, the initiatives undertaken recently by the Service, such as the Offender Intake Assessment process and the revised Correctional Plan process, appear to have been introduced absent of any clear indication as to the anticipated impact of the processes or any mechanism in place to measure the impact. I note that the Service is in the process of developing performance indicators for a number of components within the case management process and I look forward to reviewing these on their completion.

Third, the Service's programming, while extensive, lacks management control and coordination. There is limited information available to either staff or inmates on the effectiveness of individual programs or the availability and accessibility of programming at other institutions or in the community. This results at times in significant decisions being taken on matters such as transfers and parole in the absence of relevant information. With regard to this area I recommend:

- that the Service initiate a process to evaluate its programming to ensure that it is in fact meeting the needs of the inmate population;

- that the results of this process be made available to the inmate population; and

- that the Service undertake a review of its overall programming to ensure that its community based programming is sufficient to meet the needs of those on or potentially on conditional release and that it as well complements and supports its institutional programming.

Fourth, the division of responsibilities between the case management officer and the correctional officer II within the Service's current organizational structure for case management activities tends to create confusion, delay and at times an absence of felt ownership and responsibility for the management of the individual case. I suggest that a review of this division of labour be undertaken to ensure that both the objectives of the Service and the interests of the offender are being met within this organizational structure.

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 offender 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 represent more than 20% of the maximum and medium security population. There is no tangible evidence that the Service has acted on my recommendation that "effective, timely and practical methods of monitoring this situation be implemented". This situation continues to demand the immediate attention of the Service, as we have seen the problem is obviously not going to go away by itself.

b) 1993-94

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) 1994-95

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 long-standing 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.

d) 1995-96 - Current Status

The Office, during the course of this year, was advised: that a study of double-bunking had been completed over the summer of 1995, which would be shared with us after the final data had been added; that a review of double-bunking was about to be undertaken in November of 1995; and that a research project on the impact of double-bunking in segregation was currently being undertaken. At the end of the reporting year, having received neither the "study" or the "review", I was advised that "a preliminary review has determined that a research project on the impact of double-bunking in segregation is not feasible at this time, and, therefore, it has not been approved as part of our research plan."

I was also advised at the same time that "work is in progress by Accountability and Performance Measurement to establish a monitoring mechanism for double-bunking ...".

I realize that I indicated in the Introduction to this report that I would refrain both from a restating of my previous position or passing further comment on the Service's responses. On this issue, I feel compelled to abandon that commitment and return to my comments of last year:

> Given the apparent ignoring of the 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) 1993-94

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 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) 1994-95

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.

d) 1995-96 - Current Status

I am advised that an evaluation of the Service's Temporary Absence Program is currently under way which will examine the relationship between temporary absences and the granting of discretionary release, as well as post-release outcome. The expected completion date of this evaluation is April, 1996.

I look forward to reviewing the results of this evaluation which seems to have incorporated the areas of concern associated with this issue.

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 long-standing area of offender concern, in part, because it continues to await the development of an automated Offender Management System. Corrective action in these areas can no longer afford to await the constantly delayed development of this system. Management can no longer afford to use the shortcomings of this system as an excuse for not taking action.

b) 1993-94

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) 1994-95

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 time frames 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 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 the 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.

d) 1995-96 - Current Status

Although the specific areas of concern with the Service's transfer process initially identified in 1991 have yet to be addressed, I have been advised that transfers are one of the first two areas where performance indicators are being developed. The indicators are scheduled for release in June of 1996.

The Service as well claims that the regions will establish mechanisms by April of 1996 to monitor the transfer process. These mechanisms will be designed to ensure that the transfer process complies with policy and procedure, including all aspects such as adhering to timeframes, decision-making and the appeal process. I would suggest that, although the monitoring of transfer is well placed at the regional level, it would be advisable in the short term to have national headquarters conduct a quarterly review of the results of the monitoring process so as to ensure consistency and be in a position if necessary to initiate policy direction. I would further suggest that the penitentiary placement process be incorporated into this monitoring process.

I look forward to reviewing the performance indicators and the results of the transfer monitoring process.

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 long-standing areas of concern such as:

- the areas of responsibility for lost or damaged personal effects in a double-bunked situation;
- the replacement value cost in the settling of offender claims; and

- the inconsistencies in allowable personal effects which had resulted in offenders purchasing effects at one institution only to be advised at another institution that they are not allowed.

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

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

b) 1993-94

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) 1994-1995

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.

d) 1995-96 - Current Status

I was advised at the end of this reporting year that the policy in this area remains under development. As such, the moratorium on the purchase of hardware and software for inmate-owned computers remains in effect.

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) 1993-94

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) 1994-95

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.

d) 1995-96 - Current Status

The majority of the areas of concern associated with the offender pay have been addressed within Issue # 2 Inmate Pay. One matter specific to this issue is my March, 1994 recommendation concerning the establishment of a sufficient minimum daily allowance for all inmates. This recommendation has yet to be addressed by the Service beyond advising us in December of 1995 simply that "a minimum allowance is not anticipated nor being contemplated".

I believe the introduction of a reasonable minimum allowance for all inmates regardless of their status would assist in addressing the areas of concern associated with the Inmate Pay issue. I feel the perceived benefits of pay as a motivator for inmate participation in employment or programming is outweighed by the costs of having a portion of the inmate population at a remuneration level of zero or $1.60 a day. I further suggest as the Service moves towards a pay for program participation model the maintaining of unreasonably low remuneration levels for those who do not participate erodes the principle of informed consent, absent of coercion, regarding decisions on treatment participation.

I suggest that a review by the Service of this matter should be undertaken.

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) 1993-94

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) 1994-95

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.

d) 1995-96 - Current Status

The Service revised its policy in 1990 removing cost as a factor in reaching decisions on humanitarian escorted temporary absences. The Commissioner in 1993 issued guidelines to assist Wardens in taking these decisions which I characterized, at the time, as clear and reasonably reflective of the Service's policy in this area.

This Office was advised in December of 1995 that proposed changes to this policy had been drafted by the Senior Deputy Commissioner which would be going forward to the Service's Executive Committee for decision in 1996. To date I have not been advised as to the specifics of the proposed changes.

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 will be issued'. When are you expecting this clarification to be issued?
>
> It is recommended, that immediate clarification on this policy matter be issued inclusive of the role of the physician in prescribing drugs during hostage-takings.
>
> The second issue dealt with the availability of audio-visual surveillance devices.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commissioner states in his correspondence that the information which the institution did have on McDonald confirmed his 'involvement in previous hostage-takings at both Dorchester (04/79) and Millhaven Institutions (04/80)'. Would you please provide me with the specific detailings of the incident at Millhaven Institution in April of 1980 ? Would you as well please provide me with a copy of the Inquiry conducted into the incident at Dorchester in April of 1979?

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

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

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

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

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

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

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

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

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

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

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

b) 1993-94

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) 1994-95

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 cast blame, it was out 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.

d) 1995-96 - Current Status

In terms of the areas of concern raised by this 1991 incident, in some areas I continue to await the completion of the Service's actions, in others, I feel there is still specific action that needs to be taken in order to address the areas of concern.

In terms of the Service's hostage-taking policy and the use of drugs as an item of negotiation, I am advised that the matter is being re-visited.

In terms of the role of the outside negotiator, given the inconsistency of the information provided on this matter over the years, I remain of the opinion that policy clarification is required.

In terms of a review of institutional violence, I remain of the opinion that there is a need for a thorough review of the integration of protective custody inmates and the impact of the Service's policies governing that process. The current increase in the number of inmate assaults I believe speaks to this need.

In terms of Preventive Security Guidelines, I am led to believe that they are about to be published.

In terms of the alleged assault on the hostage-taker, as I have indicated in previous reports, the issue was 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. In terms of this incident, this area of concern is closed.

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 offender's capacity to manage his own affairs when it becomes apparent to staff that a problem may exist;

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

c) the steps taken by the Service to provide for personal representation, under provincial law or otherwise, when the Service determines that incapacity may exist; and

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

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

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

b) 1993-94

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 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) 1994-95

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 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.

d) 1995-96 - Current Status

I am advised that the Service has held a number of internal reviews on this issue. I have undertaken to contact the Service's Corporate Advisor, Health Care to ensure that we are fully advised as to the actions taken by the Service. I look forward to working with the Service in attempting to address the areas of concern associated with this 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) 1993-94

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) 1994-95

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.

d) 1995-96 - Current Status

I have been advised that the Commissioner has again reviewed the issue of the wearing of name tags with the Service's Executive Committee at a meeting in January 1996. Responsibility for ensuring that the policy is enforced has been vested with the Wardens and Regional Deputy Commissioners.

I consider, from a policy perspective, this issue closed.

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 questions regarding the matter we should raise them directly with the Warden and Deputy Commissioner.

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

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

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

In my opinion the Correctional Service 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) 1993-94

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) 1994-95

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.

d) 1995-96 - Current Status

I am advised that the Service is finalizing an audit on Inmate Discipline. This Office was consulted during the preparation phase of the audit to ensure that the areas of concern associated with my March, 1994 recommendation were given consideration.

I look forward to reviewing the audit report and I will forward to the Service the results of our review.

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) 1993-94

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) 1994-95

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 led 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; and

- 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.

d) 1995-96 - Current Status

The Service recently in response to the areas of concern associated with the use of force stated that investigations need to "be thorough and comprehensive with an examination to ensure all required reports have been completed and procedures followed as outlined in the Service's policy".

The Service also agrees that procedures need to be in place to monitor and review the quality and timeliness of investigation reports on use of force and ensure corrective action is taken where warranted but provides no detailing as to how or by whom this will be done.

The Service further acknowledges that no meaningful analysis is currently being done on the data collected and proposes that data on the use of force be monitored by National Headquarters on a monthly basis and meaningful analysis of the data be conducted by the regions on a quarterly basis, but again no detailing as to how or when this monitoring and analysis is going to be done.

I suggest there is a need for further information from the Service on this issue.

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) 1993-94

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) 1994-95

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 71 recommendations contained in the report have been accepted. I look forward to reviewing the policy and procedural changes which flow from these recommendations.

d) 1995-96 - Current Status

The difficulty specific to the matter of compliance with s. 19 of the *Corrections and Conditional Release Act* does not lie with the definition of serious bodily injury. I believe the difficulty lies in the understanding of the requirements of the Act and the failure of the Service's policy to reasonably reflect those requirements. As such, the Service continues to not be in compliance with s. 19.

The Service's response on the Issue of Inmate Injuries does not address this matter nor does it address a host of other areas of concern associated with investigations. Given this Office's comments in previous Reports and the focusing of the Arbour Commission on the Service's investigative process, I will be meeting with the Commissioner in the very near future in an attempt to clarify what I see as those areas related to investigations that need to be addressed.

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 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) 1993-94

The *Corrections and Conditional Release Act*, and before its 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) 1994-95

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.

d) 1995-96 - Current Status

Recent correspondence from the Commissioner provided me with the results of the Service's review of this issue which indicates overall compliance with the policy change of December 22,1994.

As I have previously indicated, this Office's objective was to ensure the ongoing presence of senior management, as called for by the Act, in the segregation area. I consider this issue, from a policy perspective, closed.

CONCLUSION

This has been an eventful and at times painful year for federal corrections which has provided for all of us both an opportunity and a clear direction for change.

A similar opportunity, although less painful, was provided in November of 1992 with the proclamation of the *Corrections and Conditional Release Act*. I anticipate, given the events of this year, that there will be a refocusing on the provisions of this legislation. I concluded my 1992-93 Annual Report following the coming into force of the Act with the following commentary:

> This legislation has clarified procedural and administrative fairness requirements in many of the areas presented above and has tied these requirements to a detailed statement of "Principles" designed to guide the Service's actions.
>
> The legislation, as I indicated in the Introduction to this report, has as well clarified the mandate and function of this office and established an increased onus on us to advise the Minister of offender related problems which are not addressed by the Correctional Service in a timely and reasonable fashion. The effective meeting of our mandate to a great extent is dependent upon the willingness of the Service, at all levels, to undertake a thorough, timely and objective review of matters referred by this Office.
>
> While the level of co-operation at the institutional and regional level, for the most part, has been encouraging the responses at the national level are often excessively delayed, defensive and non-committal. I am hopeful that as the appreciation and understanding of the legislation increases all parties involved in the correctional process will accept their responsibility in ensuring that offender concerns are addressed in a thorough, timely and objective fashion.

I remain hopeful. I also look forward to the coming year and the obvious challenges it will present. I am confident, as I indicated in the introduction, that the resolution of the issues detailed in this report are achievable and I am prepared to continue to work with the Commissioner of Corrections in an open and co-operative fashion in order to assist in addressing areas of inmate concern.

APPENDIX A

February 7, 1996

OVERVIEW: 1994-95 ANNUAL REPORT ISSUES

This is a brief detailing of the current status of Annual Report Issues 1994-95 subsequent to this Office's receipt of CSC's response of August 1995.

We have had two "business meetings" with the Senior Deputy Commissioner and his staff; October 18, 1995 and December 6, 1995. We have further had a meeting with the Senior Deputy Commissioner January 25, 1996 to review a number of individual cases. These cases will not be referenced in this memorandum and will be dealt with under separate cover.

Attached as Annexes to this Overview:

A) August 21, 1995 CSC response to 1994-95 Annual Report.
B) Minutes of October 18, 1995 meeting with Senior Deputy Commissioner.
C) Minutes of December 6, 1995 meeting with Senior Deputy Commissioner.
D) CSC Executive Committee Summary of Decisions November 21 and 22, 1995.
E) CSC Executive Committee Summary of Decisions (Conference call December 19, 1995).
F) Letter of December 14, 1995 from Senior Deputy Commissioner re: Use of Force and Serious Bodily Injury (s. 19 CCRA).
G) Memorandum Deputy Solicitor General to Solicitor General dated August 21, 1995; Subject: Correctional Investigator's Annual Report 1994-95.
H) Correspondence Chairman NPB to Commissioner CSC dated June 16, 1995 re: UTA Delegation to CSC.

1. Special Handling Units

First, a word on the Service's SHU Report covering the time period April 1994 to March 1995. We received a draft copy of the Report in August of 1995 with assurance that the final report would be available "shortly". The draft Report was reviewed at that time with the Chairman of the SHU National Review Committee and Mr. G. Rhodes of RHQ Atlantic.

At the October 1995 meeting with the Senior Deputy Commissioner (Annex B), we requested that a copy of the final report be provided before our next meeting. We were advised that the ACAPM would respond directly on this issues.

CSC's Executive Committee Summary of Decisions December 19, 1995 (Annex E), under the heading SHU Annual Report states: "Following discussion the report is approved by members. The report will be formally shared with the Correctional Investigator along with a briefing note summarizing how CSC is and will be responding to its conclusions."

It is of interest to note that the Deputy Solicitor General in August of 1995 in commenting on the issues associated with the SHU stated; "It will be necessary to monitor the annual reports (CSC's SHU annual reports) and to ensure that the reports are completed on a timely basis" (Annex G).

Until such time as we have had an opportunity to thoroughly review both the Report and the briefing note, we are not in a position to pass reasonable comment beyond that which appeared in our 1994-95 Annual Report. (The Service's SHU Report, for the period April, 1994 through March, 1995 was received February 7, 1996.)

Second, two issues identified within our Annual Report were not addressed in the Service's draft SHU Report;

> *- "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.*
>
> *- 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." (pg# 22, 94/95 Annual Report).*

Both of these issues were raised with the Senior Deputy Commissioner at our meeting of December 6, 1995 (Annex E). We were advised that "the A.C.C.P.C.P. will determine if inmates are attending NAB decision hearings" and that the Senior Deputy Commissioner "will write EXC. members indicating the need for inmate involvement in the decision making process and the requirement for objectivity and fairness in decision making". We have received no further information on either of these matters.

The Office's observations and recommendations, as detailed in our 94/95 Annual Report, have now been on the table for ten months. As mentioned above, until such time as we have a clearly detailed position from the Service on <u>all</u> issues

related to the SHU, inclusive of their commitments to close the Unit at Saskatchewan Penitentiary and conduct an audit on SHU operations, we are not in a position to do other than to restate our previous observations and recommendations.

2. *Inmate Pay*

There are two matters central to this issue which are not addressed in the Service's August 1995 response.

First, the initiation of a "thorough examination of the impact of inmate pay on both institutional operations and conditional release" (pg. 24, 94/95 Annual Report). Second, "a sufficient minimum daily allowance be established and that all inmates regardless of status receive at least that minimum daily allowance" (pg. 39, 94/95 Annual Report).

Both of these matters were raised at the October 1995 meeting (Annex B). We were advised that ACCESS would "check to see whether CSC's proposal to the Minister on the alignment of Inmate Pay was in the process". The Senior Deputy Commissioner further agreed at that meeting "to address the issue BI-laterally with the Executive Director after the Minister's decision is received".

According to the Executive Committee Summary of November 21 and 22 (Annex D) a meeting with the Minister to discuss the issue of Inmate Pay was held on November 20, 1995.

At the December 6, 1995 meeting (Annex C), both matters were again raised and we were advised "that the issue remains with the Minister". The Senior Deputy Commissioner indicated that "the Service will discuss the Correctional Investigator's position on this issue with the Minister the next time the issue is raised".

3. *Inmate Grievance Process*

The 1994-95 Annual Report stated:

> *"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" (pg#25, 94/95 Annual Report).*

> *"Without accurate ongoing information on the systems' operations, it can not 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" (pg# 26, 94/95 Annual Report).*

Despite the review process initiated by the Commissioner in December of 1993, there has been no redesign of the procedure and there is no information systems.

There has been a recent change of personnel within the Inmate Affairs Division and further commitments have been provided that the excessive backlog will be addressed. In the short term, we may well see a decrease in the current backlog. These changes and renewed commitments will not address the systemic issues associated with the management of the grievance process which have been clearly identified within our Annual Report. To assist in addressing these systemic problems, Mr. Sloan and Mr. Reid have been assigned to liaise directly with the Manager of Inmate Affairs.

A footnote on this matter. The Service at every opportunity speaks of its efforts at increasing the informal resolution of offender concerns and that these efforts are the by product of the review initiated in December of 1993. First, despite the claimed pilot projects and training programs, we to date have seen no evidence, either via policy or procedure, which indicates any change. Second, a central element of the existing process, which was initiated in the late 1970s, has always been the promotion of informal resolution of complaints. <u>What is it that the Service is specifically taking about that is different</u>? Third, no matter how effective the informal elements of the process are, there is a requirement, a legislative requirement, for a formal procedure to fairly and expeditiously resolve offender grievances. This formal procedure at the present time is basically dysfunctional.

These problems, although most acute at NHQ, are not exclusive to that level of the procedure. One of the focuses of the Arbour Commission was the failure of the grievance process, at all levels, to respond in a timely and accurate fashion to the grievances of the women involved in the April 1994 incident. The current Warden of the Prison for Women, in her testimony last fall indicated that the backlog at her prison had been or was about to be cleared up. This claim was restated in the Service's written submission to the Commission in January of 1996.

As a result of a number of complaints received from inmates on excessive delays in responding to grievances at the Prison for Women, we conducted a review in the Fall of 1995. The results of that review, which found that a significant number of complaints and grievances were excessively delayed, was forwarded to the Regional Deputy Commissioner. The Deputy Commissioner's response of January 25, 1996, while acknowledging the continuing backlog, stated that efforts at resolving this situation "have been impeded by a variety of issues requiring the attention of management such as, The Arbour Commission..."

On the associated matter of the delegation of third level grievance decision making, as detailed in correspondence to the Commissioner dated May 29, 1995, we received a response from the Senior Deputy Commissioner dated December 18, 1995.

Although the authority now rests with the Senior Deputy Commissioner as of October 1995, it was evident from the Commissioner's appearance in mid-December of 1995 before the Arbour Commission that the Service's position on this matter has not changed.

The Senior Deputy Commissioner's correspondence of December 18, 1995, does not address the issues raised in the correspondence to the Commissioner of May 29, 1995. This was discussed with the Senior Deputy Commissioner January 25, 1996 and he has undertaken to provide a detailed response to that correspondence.

Of note, although the delegation of decision making was placed with the Senior Deputy Commissioner in October of 1995, we have received third level grievance responses signed by the form Director, Inmate Affairs dated into January of 1996.

4. Case Preparation and Access to Programs

The quality and the timing of case preparation and the availability of programs both within the institution and the community have been identified by both CSC & NPB as areas which need to be addressed.

The Methe Report (The Report on Parole Eligibility) provides an overview of the current situation in terms of inmates incarcerated beyond their parole eligibility and proposes a three part strategy designed to assist in addressing this matter. This Report was discussed and approved by CSC's Executive Committee December 19, 1995 (Annex E).

A review of the Report's data, acknowledging the on-going limitations of O.M.S., tends to indicate that the reasons for the increase in the incarcerated population centres in part on delayed conditional release and increases in the number of conditional releases revoked without additional charges being laid.

The impact of the Report's recommendations in reasonably addressing these issues will be dependent upon the actions taken by the Service in response to the recommendations and the ability of the Service to measure the impact of those actions. As such what is required is clear and specific details of what the Service intends to do and how it intends to evaluate and measure the results.

As indicated above, the issues identified within the Methe Report are an area of shared concern between CSC & NPB. In conjunction with our discussions with the Senior Deputy Commissioner we have also met with the Chairman of NPB, Mr. Methe of CSC, Mr. Trowbridge and Mr. Tully of NPB as well as members of the Auditor General's staff who are currently conducting reviews on both programming and case management.

On the issue of Case Preparation and Access to Programming, we were advised by CSC in August of 1995 (Annex A):

> *- "After several years of intensive development and testing in November 1994, a comprehensive Offender Intake Assessment process was implemented".*
>
> *-"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".*
>
> *-"In March of 1995, the Service introduced 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".*

-"National Headquarters will sample cases for quality of case management among the assessments made will be whether or not the case work was complete before the NPB hearing".

What specifically were the results of the above actions?

Specific information on waivers and postponements related to N.P.B. hearings remains unavailable.

5. Double Bunking

Last year's Annual Report concluded on this issue:

"Given the apparent ignoring of the 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" (pg# 31, 94/95 Annual Report).

The obvious was restated at our meeting with the Senior Deputy Commissioner October 18, 1995 (Annex B). We as well requested a copy of the Service's monthly Double Bunking Report. We were advised at this meeting that, the ACAPM would find out about the report, that the Service still could not provide information on double bunking in non-general population cells and that a study was completed over the summer of 1995 and the results would be shared with our Office after final data is added and it is completed.

The CSC Executive Committee Summary November 21 and 22 (Annex D) indicates that a review of double-bunking will be undertaken over the next few months and that a research study will be undertaken to determine the affects of double bunking in segregation.

At the December 6, 1995 meeting (Annex C), we were advised by the ACAPM that a monthly report on double bunking is available.

This Office has yet to be provided with a copy of the monthly report. The study done over the summer of 1995 referenced at the October 18, 1995 meeting has never been provided. We have been provided with no details of either the review of double bunking in segregation or the research study referenced in the November 21 and 22, 1995 Executive Committee Summary. The Service after four years still has no information specific to the number of inmates double bunked in segregation.

DSG's memo (Annex G) states; "CSC's comments do not respond to the CI's chief concerns in relation to double bunking in segregation". We still have no response on this concern..

6. Temporary Absence Programming

We were advised in August of 1995 (Annex A) that a research project on TA programs would commence that fall. As noted in the DSG memo (Annex G), given the limitations of their existing data base, there will not be historical information against which to measure the overall decline of this program. Specific concerns with respect to decline and the disparity of the program from region to region were initially identified by the Correctional Investigator's Office in 1989.

In this regard, last year's Annual Report concluded on this issue by stating:

> *"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 question 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".*

Although we are not sure that the above question has been addressed, we have been advised that the evaluation framework has been completed and the final report will be shared with our Office in February of 1996. (Annex B)

Of note on this issue is the transference from NPB to CSC of the vast majority of decision making authority for TA's (Annex H). Has the Service notified those offenders affected by the policy change? Has the policy change had an impact on the program?

*7. **Transfers***

The DSG's August 21, 1995 Memo (Annex G) on this issue states in part:

"Among the problems noted by the CI are delays in processing transfer applications and in the decision-making process and significant inconsistencies between classifications and placement. Improvements called for by the CI include effective quality control mechanisms to ensure compliance with prescribed timeframes and procedures an effective means for objectively reviewing transfer appeals and regular status reports. CSC's comments are not responsive to these issues".

It was restated at the meeting of October 18, 1995 (Annex B) that "the issues of monitoring and management of the transfer process remain to be addressed". We were advised at that time that the "issue of transfers had been identified by Sector Heads as one in need of a separate meeting", between the various Sector Heads.

It was again, at the meeting of December 6, 1995 (Annex C), stated that the issue was the establishment of a monitoring and management system and for someone to be identified as accountable for that system. It was agreed that it might best be seen as a regional responsibility but to date there has been no indication that anyone is assuming responsibility for addressing this issue.

It is noted in the minutes of the December 6, 1995 meeting (Annex C) that part of the continuing delay in addressing this issue is now attributed to the revision of the Service's Custody Rating Scale. Although the relationship between the "scale" and the security classification process is obvious, it is considerably less obvious why the establishment of a management and monitoring system for the transfer process needs to await changes to the Custody Rating Scale.

The Commissioner advised this Office in March of 1995 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, reasons, decision, actual date of inmate movement and the outcome of any appeals. The question is: Is this information available at Headquarters (national or regional), is it correlated and analyzed and what does it show?" (pg#36, 94-95 Annual Report).

The Annual Report concluded on this Issue that the Service to address the concerns associated with the transfer process 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. This has not happened!

8. Management Offender Personnel Effects

The Service has still not issued Guidelines and a Directive on the Management of Offender Personal Effects. The delay appears to centre on finalizing a position with respect to inmate access to computers.

As per the minutes of December 6, 1995 (Annex C) we were forwarded the "EXCOM documentation" on this matter. These documents were reviewed by the Service's Executive Committee in December of 1995 (Annex E). We must confess to do not fully understanding the security concerns associated with inmates and computers nor appreciate how these concerns have remained under review for so long without a conclusion.

It is noted from the minutes of the December 1995 Executive Committee meeting (Annex E) that a further discussion paper is being prepared for review in January of 1996 and "that inmate consultation will need to be held". This Office was advised in December of 1993 that there would be a delay in issuing the Directive and Guidelines because the Service had to solicit inmate comments on the proposed revisions in accordance with s. 74 of the CCRA.

We have been assured by the Senior Deputy Commissioner that "any future decisions will be shared with this Office". The process continues.

9. Application of Offender Pay Policy for Unemployed Inmates

The Annual Report recommendation concerning the establishment of a sufficient minimum daily allowance for all inmates has been covered under Issue #2 Inmate Pay.

The Annual Report specifically on the issue of inmate unemployment stated that it "needs to be reviewed in conjunction with the previous Issue of Inmate Pay to ensure that the Service has a coordinated and reasonable pay policy" (pg#39, 94-95 Annual Report).

To date we have received no indication that the issue of unemployment is being reviewed.

10. Criteria for Humanitarian Escorted Temporary Absences

For two years running the Annual Report has characterized the Service's Directive and Guidelines as "clear and reasonably reflective of the policy". Our concern lay with the review undertaken at the Commissioner's level which was characterized as "excessively delayed, defensive and non-committed" (page# 40, 94-95 Annual Report).

We were advised by the Senior Deputy Commissioner at our meeting October 18, 1995 "that the Service is reviewing the possibility of changing policy" and that we will be "consulted along the way" (Annex B).

It would appear perhaps not to be in our best interest to characterize CSC policy as clear and reasonably reflective. We have since October not been consulted on the possibility of changes to the policy.

11. Hostage-Taking - Saskatchewan Penitentiary

We have been advised by the Senior Deputy Commissioner that he and his staff have thoroughly reviewed the areas of concern raised by this Issue.

It was further agreed at the December 6, 1995 meeting (Annex C) that the Executive Director and the Senior Deputy Commissioner would discuss this issue bi-laterally during the next meeting. The issue was briefly discussed during our meeting on January 25, 1996. To date no substantive discussion has taken place.

Although the incident itself has become "history" the areas of concern raised by the Service's management of the incident remain very current. In this regard, we refer to the DSG's memo at Annex G which concludes: "While the issue is becoming dated there may be increased interest this year due to the ongoing inquiry into the incident at the Prison for Women".

12. *Mental Incompetence*

The 1994-95 Annual Report concluded on this issue by stating:

"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" (pg# 47, 94-95 Annual Report).

We have received no further material from the Service on this matter since the releasing of last year's Annual Report. At the December 6, 1995 meeting with the Senior Deputy Commissioner and his staff (Annex C) the ACCRD agreed to follow-up on arranging a meeting between CSC and our Office on this issue. We continue to await this follow-up.

13. *Officer Identification*

The 1994-95 Annual Report on the issue concluded by stating:

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 the issue to ensure consistent application of the Service's policy (pg# 47, 94-95 Annual Report).

We were advised at the December 6, 1995 meeting with the Senior Deputy Commissioner (Annex C) that "the Commissioner recently sent notice to all staff that by February 1996 all CSC staff must wear proper identification".

A review of the November 1995 Executive Committee Summary (Annex D) would indicate that the above noted "notice to all staff" was in the form of the Commissioner advising the Deputy Commissioners of the requirement; not a written notice to staff. Given the effectiveness of the Service to date in having the policy adhered to it is not unreasonable to question this indirect approach of advising staff of the requirement.

14. *Inmate Disciplinary Process*

The Office recommended in our 1993-94 Annual Report that:

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

Last year's Annual Report concluded:

"The bottom line on this Issue is the Service has taken no action on my recommendation from last year" (pg# 50, 94-95 Annual Report).

At the October 18, 1995, meeting with the Senior Deputy Commissioner (Annex B), we were advised by the ACAPM that the audit is on-line to be completed in February of 1996.

15. *Use of Force - Investigations and Follow-up*

Last year's Annual Report concluded that: "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" (pg# 52, 94-95 Annual Report).

The Service's position on this issue is unclear.

Will the Service, following incidents where force has been used, ensure that a thorough and objective investigation is completed as per the requirements of CD 605? The current practice, as allowed for within the Service's Security Manual, allowing simply the Warden's review of the Use of Force Report to constitute an investigation does not meet the intent of the policy in this area.

Where is the policy direction specifically identifying management responsibility and accountability for ensuring that use of force investigations are reviewed and corrective follow-up action is taken?

What is the current status of the Service's efforts at establishing an information base and a review and analysis process on use of force incidents? In August of 1995 (Annex A), we were advised that "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 level". In December of 1995 (Annex F), we are advised, "Changes are being introduced to (1) gather complete data in the use of all types of force available to CSC staff, (2) Regional Headquarters will be directed to monitor the use of force in their specific regions and prepare periodic analysis of the data for presentation to NHQ and (3) NHQ will perform random audits of incidents to ensure the timely, accurate and thorough completion of the "Use of Force Report" and follow-up investigations if indicated" The questions is when?

16. Inmate Injuries

There has been no advancement on this issue. Following the release of last year's Annual Report, you wrote the Commissioner on July 26, 1995 stating in part:

> *"The point appears to have been missed.*
>
> *Investigations pursuant to s. 19 of the CCRA are not dependent upon the classification of the incident but rather on whether the incident resulted in a "serious bodily injury". The two incidents referred to your attention in March resulted in inmates suffering serious bodily injuries as defined within your Interim Instruction of July 20, 1994. As such the incidents should have resulted in an investigation pursuant to s. 19 of the CCRA. The Service therefore remains on non-compliance with s. 19 of the CCRA".*

The response received from the Senior Deputy Commissioner dated December 14, 1995 states that: "An extensive review of the subject reveals the underlying problem to be that CSC does not have a definitive definition of the term "serious bodily injury".

This is an interesting position for the Service to take in defence of its non-compliance with the legislation.

Our 1992-93 Annual Report stated:

The Service, despite numerous requests, has yet to provide a working definition of what constitutes "serious bodily injury".

Our 1993-94 Annual Report stated:

"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".

Our 1994-95 Annual Report stated:

"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 section 19".

The underlying problem here is not with the definition. The problem is the on-going refusal of the Service to admit they have been in violation of the Act since its inception and to take reasonable steps to ensure that investigations called for by section 19 are done.

The December 14, 1995, correspondence from the Senior Deputy Commissioner indicates that instructions will be issued to the field concerning the classification of injuries and ensuring that reports are timely, thorough and accurate. We have not received a copy of these instructions.

Of note, a review of SINTREPs for April, May and June of 1995 identified four incidents of major assaults on inmates for which we have received no investigative reports. Has the Commissioner or his designate been provided with a report as required by s. 19 of the C.C.R.A.?

On a general note relevant to the Office's ongoing concerns with the Service's Investigative Process, the Annual Report concluded:

"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" (pg# 54, 94-95 Annual Report).

We have not, as of this date, been advised of any specific policy or procedural changes flowing from the January 1995 Fyffe Report (A Review of the Correctional Service of Canada Investigation Process).

17. Visits to Dissociation and Delegation

The Commissioner issued an Instruction December 22, 1994 which read 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.

Last year's Annual Report characterized this as a "positive direction" and further indicated that we were encouraged that the Commissioner had undertaken to re-address this matter in a year's time to assess, we presumed, both the level of compliance with and the effectiveness of the Instruction.

The Commissioner in his testimony before the Arbour Commission in mid-December of 1995 indicated that the re-addressing of this matter was scheduled for the upcoming Executive Committee meeting. As it does not appear as an item in the December 19, 1995 Summary of Decision (Annex E) we assume it was on the agenda of the January 1995 Executive Committee meeting. Results and comments are expected shortly on the Service's re-addressing of this Issue.

Conclusion

Last year's Annual Report concluded:

> *"The Service's response 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 within a timely and responsive fashion" (pg# 57, 94-95 Annual Report).

To avoid a similar conclusion this year, it is hoped that the Senior Deputy Commissioner's commitment to produce a Quarterly Review Progress Report, by March of 1996, will provide the Service with the opportunity to focus on the specific observations and recommendations of last year's Report (See attached memorandum dated January 8, 1996).

PROGRESS REPORT ON THE RESPONSE TO THE

CORRECTIONAL INVESTIGATOR'S ANNUAL REPORT 1994-95

1. SPECIAL HANDLING UNIT

Issue

Since 1989-90, the Special Handling Units (SHU) have been under scrutiny by the C.I. for their purpose (likened to long-term dissociation) and SHU operations have been closely monitored. The National Review Committee (NRC) has been requested, as part of its mandate, to monitor and analyze the effectiveness of programming and to report this in a timely fashion in the SHU Annual Report.

Currently, two issues are noted in relation to the SHU in the C.I. report:

a) ***Employment and Programming*** opportunities should be offered in a reasonable and timely fashion, which are responsive to the specific identified needs of the inmate population served; and,

b) ***Objectivity and Fairness of the National Review Committee (NRC)*** with respect to its roles both as a decision-making body on individual cases and as the Committee responsible for the on-going monitoring and analysis of the SHU program.

a) Employment and Programming

Response

As previously communicated to the C.I., program offerings are designed to meet the identified needs of the SHU inmates and expedite their return to reduced security.

Action Taken

Programming in the Prairie Region SHU has been greatly enhanced over the last two years with such program offerings as Cognitive Skills, Anger Management, and Alcohol/Drug Counseling.

Similar programming attempts in the Quebec Region have not been as successful, as explained in the recently-submitted "*Report on the Special Handling Units (SHU) 1994-*

95" (September 1995)* i.e.; incompatibility of SHU inmates with group programming, the lack of inmate interest and boycotts of programs/counseling offered by the institution (occurring between September 1994 and February 1995), and the lack of space for program delivery.

An internal audit of both SHUs, scheduled to take place between April 22 and May 3, 1996, will include the examination of the delivery of programs and the role and mandate of the SHU NRC in accordance with criteria of objectivity and fairness. The audit project plan has been submitted to the Office of the C.I. for review.

b) Objectivity and Fairness of the National Review Committee (NRC):

Response

The composition of the Committee is based on the rationale that regional and local managers become active participants in both the administration of policy and the monitoring of results for EXCOM. The assignment of a senior manager to the Committee is seen as both a workable and legal approach, which also at present allows Wardens to participate directly in the review process. A recent court decision has confirmed the legality of this composition. As this Committee has proven to be a logical and viable entity, the Service is not planning to alter the membership of the SHU National Review Committee.

As referenced in the December 1995 SHU Interim Report, the current NRC is transferring a greater number of offenders from the SHUs, denying admission to an increasing number of offenders following initial assessment resulting in a net decrease to the overall population of the SHUs. Such results demonstrate the fairness and objectivity of this process.

Action Taken

At present, inmates have the capacity to make representation to the NRC, which considers their personal views. An alternate approach in addressing the concerns about objectivity and fairness (subsequently documented at the December 6, 1995 Joint CSC/C.I. Business Meeting) was to have inmates attend the NRC hearings. The NRC Chair indicates that, upon request, any SHU inmate can currently be interviewed by two members of the Committee at the first committee review following the inmate's request. The two members then report back to the full committee.

The Service is seriously examining the entire issue of representation at the NRC meetings and will, accordingly, seek legal advice, as this may have implications on other involuntary transfer decisions.

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*(NOTE: A draft and final copy of the 1994-95 Annual SHU Report have been provided to the C.I. as have subsequent 1995-96 Interim/Quarterly reports for 1995/96, published in September and December 1995.)

2. INMATE PAY

Issue

The C.I. has raised the issue of inmate pay since the 1988-89 Annual Report, urging across the board increases to offset the erosion of the offender's financial situation. Immediate action was recommended to ensure that the offender pay scales reasonably reflect the cost of living within the institution. The C.I. also expressed concerns about the negative impact of this situation on institutional tension, inmate debt and illicit activities.

In the 1994-95 Annual Report, the C.I. claimed that there had been no thorough review of inmate pay and, once again, raised two related concerns. The first is the impact on institutional operations (i.e., inadequate pay encourages illicit activity). The second relates to the release of offenders without adequate funds. The Report concluded with a call for a thorough examination of the impact of inmate pay on both these issues.

Response

The Service accepts the fact that issues surrounding inmate pay will continue to emerge, and that policies guiding it must change accordingly. Factors such as the impact of pay upon the inmate economy are among the issues to be considered. Under the Ministerial direction, a Treasury Board approved pay increase was not implemented in 1992-93. Given the fiscal climate, the Minister has indicated his preference to introduce new pay levels that are directly linked to the performance of the offender in completing the terms and conditions of his Correctional Plan and remain within current approved reference levels for inmate pay.

With regard to the review of inmate pay to study its impact on institutional operations and release, the Service has previously stated that it does not intend to take further action.

Action Taken

The Service is finalizing a Treasury Board submission for the Minister's signature that will adjust pay levels within the current ($19.2 Million) reference level. The submission proposed five pay levels that are more consistent in relating the offender's pay with program participation, and raise the minimum daily allowance for inmates unemployed by no fault of their own. The proposal is to be cost neutral and will not provide across the board pay increases.

3. INMATE GRIEVANCE PROCESS

Issue

The C.I. has long expressed concerns with CSC's internal inmate redress system, which is mandated by the *Corrections and Conditional Release Act (CCRA).* The concerns relate to: the lack of effective management of the system at the national level, including the establishment of an information base; little evidence of management commitment to this system; excessive delays in grievance responses, particularly at the Commissioner's level; a lack of information concerning the efforts undertaken to promote informal conflict resolution; and, the absence of a means of monitoring thoroughness and objectivity of reviews. Finally, the C.I. has requested that an extensive national audit of the management of the system be undertaken.

Response

The Service acknowledges that the inmate grievance process is of concern to both parties, and that it will work with the C.I. to seek improvements. The request by the C.I. for a national audit of the grievance process in the Annual Report is not supported by CSC at this time, as it is unlikely to reveal new information related to the problems identified with the system. As is noted by the C.I., a prerequisite for an effective review of the system is the establishment and implementation of an information base.

CSC acknowledges that the 3rd level grievance process has had serious problems, specifically timely replies, trend analysis and organization of the Inmate Affairs Division. The Service, however, is of the view that it provides high quality investigations and grievance responses.

The Service recognizes that it must improve its ability at resolving issues at the local levels, before formal grievances are submitted. Similarly, when a grievance is launched, the Service must respond more quickly in resolving the issue. This applies to all levels of the process.

Grievances are not responded to on a "first-in, first-out" basis. Rather, certain classes of grievances are given priority, such as involuntary transfers and temporary absences for humanitarian reasons. Generally, the test for determining the priority is whether the grievances relate to issues that have the potential to significantly effect an inmate's level of freedom and restriction. These are given immediate attention.

The Service will be undertaking a review of the CD on Inmate Grievances to determine if the time frames are achievable and to put into policy proposed prioritization of grievances. This review will be undertaken in the first half of fiscal year 1996-97, and policy changes will be made as required.

Action Taken

a) Effective management of the system at the national level, including the establishment of an information base.

The conversion of all data related to offender grievances, from an old system to Offender Management System, has been completed. All grievance data, including the subject of the complaint and the results of investigations, are now entered consistently at all grievance levels. In addition, a stand-alone system (DOMUS) was implemented for use by NHQ grievance analysts and managers. This provides an immediate mechanism to monitor response times for individual analysts' caseloads and for the overall efficiency of the 3rd level.

With the full implementation of the two electronic systems, the Inmate Affairs Division is now in a position to begin to analyze grievance trends across the country and will, in the next few months, begin to provide managers across the Service with data which can assist them to recognize both strengths and areas of weakness requiring attention. The first report for managers will be completed by July 1, 1996.

b) The lack of evidence of management commitment to this system.

A number of organizational and procedural changes have taken place to ensure that an appropriate level of management attention and commitment is dedicated to the Grievance System, including:

- the transfer of the direct reporting of the Inmate Affairs Division to the Senior Deputy Commissioner in September 1995;
- the establishment of regularly scheduled business meetings between senior officials from CSC and the Office of the Correctional Investigator, to promote ongoing dialogue and resolution of issues and concerns of a general nature;
- the establishment of two direct liaison functions between identified staff from the C.I.'s Office and the Manager of Inmate Affairs staff: one to deal with inmate case-specific issues, and the other to deal with concerns related to the inmate grievance system; and
- the Service has provided the C.I. with access to the CSC Executive Information System (EIS).

c) Excessive delays in grievance responses, particularly at the Commissioner's level.

Monthly statistical analysis of the time required to respond to 3rd level grievances was undertaken commencing in January, 1996, to allow close monitoring of response delay time and the identification of areas for improvement.

Staffing action to hire further permanent personnel was successfully completed in January, 1996. Two additional analysts have now commenced full time duties. In addition, a position has been approved for a senior analyst. It is anticipated that staffing action will be completed by May, 1996. The larger complement of staff and the permanency of personnel should serve to assist in having an area dedicated to effective and efficient investigation and response to 3rd level grievances in the coming year.

The efforts undertaken recently (January and February, 1996), have resulted in a reduction by approximately 45 days in the time required to respond to 3rd level grievances. Furthermore, in January the number of outstanding cases was 284, in February they were reduced to 195 and since February, they have been further reduced to less than 125.

In addition, the target for responding to correspondence from the Office of the Correctional Investigator to the Commissioner or Senior Deputy Commissioner has been reduced to 10 working days, wherever possible.

d) The lack of information being provided to the C.I. concerning CSC efforts to promote informal conflict resolution.

Pilot projects with increased commitment by institutional management have been successful in Warkworth and Edmonton Institutions, yielding significant reductions in the number of grievances filed at these two sites. From April 1, 1994 to March 31, 1995 there were 64 3rd level grievances at Warkworth and 28 at Edmonton. By contrast, from April 1, 1995 to March 7, 1996 the number of 3rd level grievances submitted were 33 and 15, respectively.

The Executive Committee (EXCOM) has endorsed this effort and has encouraged further similar projects at other institutional sites. A newly created position, Manager of the Dispute Resolution Initiative will be involved in the promotion and implementation of various projects, policies and training initiatives aimed at enhancing informal problem resolution processes. CSC will share information with the C.I. on an ongoing basis with respect to this initiative.

4. CASE PREPARATION AND ACCESS TO PROGRAMMING

Issue

This issue, first raised in the 1988-89 Annual Report, centres on the delays in providing assessments and treatment in advance of parole hearings. Initially, the concern was related specifically to mental health programs.

The C.I. suggests that this problem has contributed to escalating population growth. He further asserts that the present situation is unlikely to subside as long as effective information systems to assess the timely delivery of programs remain inadequate. Examples cited include the lack of reporting on sex offender program delivery, waivers, postponements and concordance rates between the CSC and NPB.

Although the C.I. acknowledges that this is a complex issue, as well as CSC's progress in terms of expanding programs in recent years, he contends that important aspects of the solution lie in improving the information base and in providing programs in a timely fashion. This has been a recurrent theme of the Annual Reports, particularly in the areas of the Offender Management System (OMS), the sex offender tracking system, and the use of waivers and postponements.

This issue has evolved from the initial concern about the lack of programs to the current emphasis on the timely delivery of programs. As the CSC expanded its program capacity to meet an ever-growing demand, the C.I.'s focus shifted to the need for more timely intervention, claiming that the dependence on the incarcerated portion of the sentence for delivering programs only served to delay the release of offenders at their earliest eligibility date. According to the C.I., the CSC was reluctant to shift the delivery of programs from the institution to the community, which was termed a "cycle of dependency".

In the 1994-95 Annual Report, the C.I. asked for a clear understanding of both the scope and causes of the problems associated with the delays. Again, underlying this concern is the perceived need for an adequate information base that would allow for this understanding.

Response

The Service responded to the 1994-95 Annual Report by highlighting the progress made over the past years, as well as the research conducted. The latter has led to improved targeting of program interventions on those offenders who have the highest need, based on their criminal behaviour.

The comprehensive intake assessment process, the revised Correctional Plan process, the development of the OMS information base, and improved communications with the NPB were cited as examples of the general improvement. In addition, the Service indicated that it was monitoring the number of offenders incarcerated beyond their eligibility date and would report on the results of this analysis by the end of October, 1995. Lastly, the CSC undertook two sample cases of the quality of case management which, among other factors, was to focus on whether or not the case work was completed prior to the NPB hearing.

Action Taken

During meetings with the C.I. in October and December, 1995, the Service presented an overview of the *Report on Parole Eligibility* and the highlights of the findings. Subsequently, a briefing was provided to the C.I. on January 18, 1996.

The implementation strategy for the *Report on Parole Eligibility* was approved by EXCOM on December 19, 1995. A three-part action plan has been developed to examine: the potential use of Mandatory Early Review (MER) of cases; a policy to limit the use of additional conditions; and, the role of community-based case managers in the case preparation process.

It should also be noted that the remaining institutional population who have not undergone Offender Intake Assessment are to be rated for risk/needs by June 30, 1996. CSC will therefore have access to risk/needs information on all incarcerated inmates available to program boards.

The Service, between June and December, 1995, sampled cases recorded on OMS in each region to assess the quality and the timeliness of the various components of the case management process. The intent of the sampling was to highlight for each Deputy Commissioner where attention should be focused to improve case management. The regions have used that information to assist them in determining topics for meetings, workshops or training and the regions are continuing to monitor case management using similar sampling methods.

Currently, the Service is developing management indicators to allow for a continuing assessment of how effectively a number of components within the case management process are being addressed. Work is underway on establishing meaningful indicators for segregation, transfers, release decisions, correctional plans, community case management, grievances, offender security classification, and urinalysis. The development process is complex and requires significant consultation, but it is being approached systematically on a priority basis. It is expected that the first management indicators will be in place by the end of June 1996, with others being added as the development is completed. These management indicators will form the basic accountabilities for operational unit heads.

5. DOUBLE BUNKING

Issue

This issue dates back to 1984, when the C.I. first commented on the negative impact of double bunking on the individual offender as well as institutional operations. The C.I. concluded the 1994-95 Annual Report with the statement that the practice of double bunking is inhumane and continues to be unmonitored.

Response

The impacts on CSC's population, and resulting accommodation measures, are multi-dimensional. Given the continued need for fiscal restraint, federal offender population growth and current and anticipated legislative impacts, double bunking (accommodation of two offenders in a cell designed for one) will continue to be a normal practice in CSC as described in CD 550, Inmate Accommodation. Even if populations decrease, the Service will be funded on the basis of a permanent double bunking policy.

Offender Growth and Profile

During the past four fiscal years (1991-92 through 1994-95), CSC experienced an unprecedented increase in its incarcerated offender population. Relative to the historical long-term (30-year trend) growth of 2.5% - 3% per year, the incarcerated offender population grew by an average of over 5% per year during this four-year period but this year, it was reduced.

Conversely, there has been a decrease of approximately 5.5% in the number of offenders under community supervision during 1994-95, particularly among conditionally released offenders on Full Parole. This overall reduction is attributable to a variety of factors, including a continued increase in the proportion of the incarcerated population who are serving sentences for violent offences (currently, 77% of CSC's incarcerated offenders are serving sentences for violent crimes).

In addressing this issue of increasing incarcerated population, the Service established (February 1995) population management planning measures. Such planning measures include: over-utilization by up to 25% of institutional capacity on a regional basis, in single occupancy designed cells.

CSC has approved a Population Management and Accommodation Strategy that is leading toward providing the Regions with the necessary accommodation to minimize double bunking of such special needs cells as: observation of suicide risks; health care; cells in regional treatment/psychiatric centres and mental health units, which are reserved for mental health treatment purposes; Special Handling Units; cells with no natural light; cells having an areas of 5.5 m^2 or less; and cells designed for handicapped inmates. The

strategy accepted by Treasury Board will provide CSC with the necessary resources to build sufficient accommodation, within the next three years, thus normally avoiding double bunking in these cells.

Achievements toward these planning measures to date include the elimination of double bunking in all cells at Kingston Penitentiary which are less than $5m^2$, and the elimination of double bunking in all normal association and reception cells which are $5m^2$ or less.

Complementing these measures is the planning for new, renovated or retrofitted accommodation, with the exception of special needs cells, based largely upon the use of shared accommodation (i.e., cells which are designed and built to house two offenders) and inter-regional transfers to alleviate temporary imbalances in regional levels of over-utilization of cells suitable for double bunking. However, none of these measures will eliminate double bunking. Double bunking will remain part of the Service's accommodation strategies.

Action Taken

Double Bunking in Cells Designed for One up to Twenty-three Hours a Day

The issue of double bunking in segregation and lack of monitoring of same was addressed in a memorandum, dated December 11, 1995, from the Assistant Commissioner, Accountability and Performance Measurement (APM) . The document requests that institutions "....minimize double bunking in segregation (as well as psychiatric and medical treatment areas)."

Monitoring the Use of Double Bunking

Each institution is to complete a segregation double bunking report on the 15th of each month. This monthly monitoring commenced in January 1996 and will be undertaken for a 6 month period initially. The C.I. has been provided the results of this review and will receive subsequent monthly reports. Statistics on the number of normal population double bunked cells (by institution) are available on CSC's EIS which has been made available to the Office of the C.I. Work is also in progress by Accountability and Performance Measurement to establish a monitoring mechanism for double bunking of special needs cells (by institution) as well as for shared accommodation. A preliminary review has determined that a research project on the impact of double bunking in segregation is not feasible at this time, and, therefore, it has not been approved as part of our research plan.

6. TEMPORARY ABSENCE

Issue

The C.I. initially raised concerns regarding the Temporary Absence Program in his Annual Report for 1990-91, requesting a complete analysis on an institution by institution basis, to determine the cause of the decline in the use of this program. In the C.I. report of 1994-95, the C.I. reiterated the assertion that the Service had done nothing to monitor and evaluate the reasons for the decline. In addition, it was stated that the Service has no reliable data base against which to measure its current performance in this area. The Report contained reservations about the CSC's commitment to undertake this evaluation, and questioned its meaning, purpose and methodology.

Response

The Service acknowledged the need for a reliable data base for TA's. It also agreed that the C.I. raised legitimate concerns regarding this program, which will be addressed as part of the evaluation of the TA Program to be completed as part of the 1995-96 Research Plan.

Action Taken

With respect to the need for a reliable data base, a data extraction program has been developed, providing basic information on the TA Program. In addition, as of May, 1995 the EIS contains a statistical model related to the TA Program. In her correspondence of November, 1995 the Assistant Commissioner, APM offered training to staff of the C.I. Office in extracting this and other information contained in EIS, once the C.I. has been connected to the system.

The evaluation of the TA Program is currently underway. The evaluation will examine the relationship between TA's and the granting of discretionary release, as well as post-release outcome. A cohort of 1993-94 TA's has been established (approx. 34,000 TA's and 7,000 offenders). Analysis is underway exploring the distributions of purpose and type of TA across regions, ethnic groups, major offense categories and risk levels. Correlation analysis are being conducted to examine the relationship between number and variety of TAs granted, discretionary release and post-release outcome. The study is expected to be completed by the end of April 1996.

In addition, the study on interim release being conducted as part of the CCRA Review will focus on the effect of the ETA/UTA program on both Day and Full Parole release decisions.

7. TRANSFERS

Issue

Among the problems noted by the C.I. are delays in processing transfer applications and in the decision-making process and significant inconsistencies between classification and placement. Improvements called for include effective quality control mechanisms to ensure compliance with prescribed time frames and procedures, an effective means for objectively reviewing transfer appeals and regular status reports.

The 1994-95 Annual Report concludes that the Service, to address the concerns associated with the transfer process, 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.

The C.I. further quotes the Auditor General in his recent report which 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.

Response

Transfers are one of the first two performance indicators for release by the end of June 1996. Staff of both agencies have agreed that the monitoring of Transfers in terms of compliance with the policy and procedures, including all aspects such as adhering to time frames, the decision-making and appeal process is a regional responsibility. The Senior Deputy Commissioner has directed that each region establish a mechanism by April 1, 1996 to ensure that this monitoring is carried out on a regular basis.

Action Taken

The Custody Rating Scale was reassessed and, with some minor modification, validated as the instrument for initial placement decision (February, 1996). Regions will be developing mechanisms to assess/monitor the implementation of the instrument.

As part of this review, Regions will examine the linkages between the instrument and the initial placement decisions. The first assessment will be completed by October 31, 1996, with a full national report being compiled by APM by December 31, 1996.

Work is ongoing in CRD on the development of a tool to objectively and consistently assess inmate security classification throughout the period of incarceration. This will allow for the re-classification of offenders based on the risk factors, which may change. It is expected that this new tool will be fully operationalized by April, 1997. Once fully implemented, the APM Sector will examine the effect of the re-classification process on placement decision, including transfers.

8. PERSONAL EFFECTS (COMPUTERS)

Issue

In the 1994-95 Annual report, the C.I. indicated that, although the revised policy and guidelines on inmate personal effects address many of the initial concerns raised, inconsistencies remain with respect to computers. The report concluded with the hope that a final decision ensuring both reasonable access and consistency on this matter would be taken in the near future.

Response

The Service has undertaken a review of the issue of personal computers and to create an appropriate policy.

Action Taken

Given the rapid expansion of computer technology, and the potential misuse by offenders, the Service has fully reassessed the practice of permitting inmates to have computers in cells. While it was decided that there were important rehabilitation benefits, some form of controls had to be put in place to reduce the risk of misuse, threats to CSC's networks (and other systems as well) and costs. Therefore, a new policy has been approved to permit certain types of computers that have been sealed to prevent abuse. Further, all costs of alterations, repair and purchase are the responsibility of the inmates. The moratorium will be lifted by May 1, 1996.

9. OFFENDER PAY POLICY FOR UNEMPLOYED INMATES

Issue

The issue of adequate compensation for those inmates who are unemployed through no fault of their own has been under discussion since 1991. In the 1994-95 report, the C.I. stated that no action had been taken by the Service to implement the recommendation that a sufficient daily allowance be established and that all inmates, regardless of status, receive at least the minimum. The C.I. also reminded the CSC of its previous commitment to review the case of inmates unemployed through no fault of their own, with a view towards raising their daily allowance.

Response

The Service is planning to adjust the pay policy so that inmates who are unemployed, through no fault of their own, will receive a daily allowance of $2.65 (up from the current $1.60).

Action Taken

As the *CCRA* requires Treasury Board approval to revise pay levels, a Treasury Board submission is being prepared for the Minister's approval. It is anticipated that this proposal will be submitted to the Minister by mid April, 1996. As indicated by the Senior Deputy Commissioner during the business meeting with the C.I. in December, 1995, a minimum allowance for inmates, regardless of status, is not anticipated nor being contemplated by the Service. A representative from the C.I.'s office will discuss the issue of a minimum allowance for inmates directly with the Minister.

10. CRITERIA FOR HUMANITARIAN ESCORTED TEMPORARY ABSENCES

Issue

This issue was originally raised in 1988, as a result of a number of complaints from offenders who had been denied escorted TA's to attend a funeral of a family member. The Annual Report for 1988-89 concluded with the statement that this practice was without reasonable justification, since it was seen to be based primarily on cost.

In his Annual Report for 1990-91, the C.I. acknowledged the fact that the Service had amended its policy to remove the cost factor from the criteria for humanitarian TA's, but cautioned that the policy needed to be widely understood and implemented. In the annual report for 1993-94, the C.I. reiterated his concern that offenders were being denied humanitarian TA's for reasons inconsistent with the policy. These concerns were again addressed in the report for 1993-94, with the recommendation that the policy be clarified and that this be incorporated in the *Offender Rights and Privileges Handbook.*

In the annual report for 1994-95, the C.I. acknowledged that the Commissioner had taken this issue seriously, and that the policy had been clarified to this satisfaction. However, the C.I. was critical of the way in which decisions referred to the Commissioner for review were handled, citing excessive delays, defensiveness and non-commitment on the part of the Service.

Response

In 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 in the granting of ETA's for compassionate reasons. These guidelines, according to the C.I., were clear and reasonably reflected the Service's Policy.

In response to the Annual Report for 1994-95, expressing concerns with the process for reviewing decisions at the Commissioner's level (7 in total since April, 1993), the Service undertook to review the cases in point.

Action Taken

A review of the seven cases was conducted by the Service. Of the seven, three confirmed that the Warden's decision was consistent with the policy, which predated the guidelines. In one case, the Service agreed with the C.I.'s analysis, and reminded the Warden of the intent of the policy, directing a graveside visit. In another two cases, the review concluded that the Warden's decision was consistent with the new guidelines. One case was not reviewed, as it was deemed to be too old.

With respect to the policy, the issue of limiting the number of compassionate ETA's for which an inmate can apply was raised in mid 1995 by senior regional managers. The proposed change to the *CD 790 (section 29)* would limit the granting of a compassionate ETA to either attend the funeral of family member or close personal friend, or visit that person after being diagnosed with a terminal illness. Currently, the language in the CD permits eligible inmates to apply for both types of compassionate ETA's, and the institutional head must approve either or both unless there are security or case management concerns.

In December, 1995 proposed changes to the CD were drafted by the office of the SDC and sent to the Ontario Region to carry forward to EXCOM in 1996.

As noted in the minutes of the business meeting with the C.I. in October, 1995 the concerns of the C.I. regarding this issue are no longer with the policy, but with the process of reviewing the decisions on individual cases. CSC is aware of only two requests this year to review specific cases.

CSC is of the view that the policy is clear, it is being implemented appropriately by the Wardens, and consider this issue resolved.

11. SASKATCHEWAN PENITENTIARY, HOSTAGE TAKING, 1991

Issue

This incident occurred on March 25, 1991 and resulted in the death of two offenders. It is a matter which has been the subject of extensive discussion and correspondence between the OCI and the Service. A number of concerns were raised such as: the decision to use drugs as an item of negotiation; the delayed publication of Preventive Security Standards and Guidelines; the availability of audio-visual surveillance devices; the policy of integrating protective custody offenders into the general population; the availability of information related to a previous hostage taking by one of the perpetrators; and CSC's investigation into the injuries suffered by the surviving hostage taker.

Response

After a further review of all of the material that has been exchanged, the Service has the following comments to offer:

It is acknowledged that drugs were provided under medical supervision during the hostage taking. This was done in order to calm a highly charged environment over which the Warden had not established full control as well as to preserve lives that were under threat at the time. Because only sedative-type drugs were involved in a limited way, this did not violate the intent of the "no drugs" policy of the Government -- a distinction not made, however, in current Service policy. Given this fact and the more recent experience with respect to hostage takings, it is clear that the Service has to re-visit the use of drugs to calm hostage situations.

The involvement of Mr. Harradance did not present a conflict of interest as he was not the negotiator for the Service or the inmates. Rather, he was called to the scene to assist the inmates and provide legal counsel.

The Service acknowledges that there were significant problems associated with the publication of the Preventive Security Standards and Guidelines, however, they have now been rectified.

With respect to the use of audio surveillance equipment, there is a Memorandum of Understanding with the RCMP in place for all institutions across the country. The use of such equipment depends on the circumstances of the incident. However, the capacity is there.

It is true that an undertaking in 1992 to further study the state of integration of protective custody cases was abandoned. Rather, due to limited capacity, it was decided to focus on

a review of the management of violent aggressors. In the late 1980s the Service moved to bring those protection cases that could be out of segregation where they, as victims, were locked up and denied programming and returned them to normal association. For the most part, this has been successful.

It is true that not all information on a 12-year old hostage taking involving one of the offenders was made available to the Warden in a timely fashion. While the reasons for this have been documented, there is a valid need to develop a more disciplined approach to information-gathering to support Wardens in such situations.

The question of the alleged injuries to Mr. Murray has been investigated a number of times. It is acknowledged that he suffered a number of minor injuries over the course of the incident. However, his allegations of a beating by staff have never been substantiated over the course of a medical examination, eye-witness information, an RHQ investigation and a Coroner's Inquiry.

Action Taken

A recent CSC research report revealed that the nature of hostage takings was changing, from the classical view of demand-driven events to more assaultive events, especially involving sexual assault. Therefore, the Service is re-examining the use of drugs in hostage takings and will propose new guidelines as a result of that review.

To avoid further delays in changes, the maintenance of the Service's Security Manual has been vested in the Correctional Policy and Corporate Planning Sector

The Service is preparing a checklist of information that Crisis Managers (Wardens) need in such situations. It will be incorporated in the crisis management policy material.

12. MENTAL INCOMPETENCE

Issue

The issue of representation available to offenders who lack legal capacity pursuant to various provincial statutes governing trusteeship or guardianship was raised in August, 1991. In his Annual Report of 1994-95, the C.I. reported that substantial progress had been made over the course of the reporting year in both focusing the areas of concern associated with this issue as well as establishing future direction. The report concluded with the statement that it looked forward to a cooperative approach to address the issue.

Response

The Service responded by clarifying a number of issues surrounding this general concern: the legal definition of incompetence; the lack of uniformity among provincial statutes regarding legal guardianship; and, assistance to offenders who may be legally competent but who are unable to manage their daily affairs. Regarding the latter, the Service reiterated its plan to build or convert up to 6% of its cell space to accommodate mentally disordered offenders and provide them with the necessary assistance to manage their daily lives.

Staff facilitates proper management of case management through a client-centered approach known as the Case Management Strategies (CMS) Approach. Specific risk/needs and strengths/weaknesses are identified in an attempt to develop differential treatment models for five groups of clients. There are two CMS groups into which mentally incompetent or vulnerable inmates fall. "Environmental Structure" are those who lack social and vocational skills and may have intellectual deficits, and whose offenses usually result from their inability to succeed in the world at large. "Casework/ Control" are those inmates who have experienced a general instability in their life situation and whose offenses stem from serious emotional problems, substance abuse problems and negative self-perceptions.

Action Taken

The Service undertook a survey of all medium and maximum security institutions during July/August of 1994 to determine if there were any cases of offenders who had been declared to be mentally incompetent under provincial legislation. None were found. If there were to be, these offenders would be transferred to a regional mental health facility. Here, the mental health community is involved in the treatment and management of the offender in accordance with the prevailing provincial statute.

In responding in February, 1995 the Service suggested that this issue be explored in three ways. Firstly, the C.I. was requested to note any complaints received in this area, or cases that came to his attention without complaint, and provide the specifics to the

Service for further action. Copies of reports already completed on this issue were also requested. To our knowledge, there have been no cases cited to date.

Secondly, the Corporate Advisor, Health Services, was requested to discuss this issue with the Boards of Directors/Boards of Advisors to the Regional Psychiatric/Treatment Centres, to determine the extent to which the Service should adopt the mechanisms available to patients in the provincial mental health facilities, such as Patient Advocates. This action was subsequently taken. As a result, the general consensus was that current practices are working well and that the CSC need not adopt any additional measures in this area.

Lastly, the Executive Directors of the regional mental health facilities were requested to ensure that, in the future, this issue be discussed with the audit teams during the accreditation process by the *Canadian Council on Health Services Accreditation,* to obtain their assessment.

13. OFFICER IDENTIFICATION

Issue

This issue first arose when the C.I. conducted the *Archambault Inquiry* in 1984. In his 1988/89 Annual Report, the C.I. identified the need for uniformed and non-uniformed CSC employees to wear name tags. In the 1990-91 report, he stated that he could "not accept as reasonable a further eighteen-month delay in implementing a basic policy decision". In his report of 1993-94, the C.I. mentioned that, although a decision had been reached in May, 1993 by EXCOM, he hoped that the matter was resolved. In the 1994-95 report, the C.I. has once again mentioned that " 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."

Response

The Service's current policy on wearing name tags is stated in the *Dress & Deportment Manual*. In May, 1993 a decision was reached by EXCOM that all institutional staff whether uniform or non-uniform, would be required to wear name tags effective July 1, 1993.

Action Taken

In response to this issue again being raised in the C.I.'s report of 1994-95, the Commissioner advised the Deputy Commissioners, at the November 1995 Executive Committee Meeting, that by February 21, 1996, all staff at operational units, including Regional Headquarters, must be wearing name tags. He further noted that National Headquarters staff are now required to wear I.D.

The Commissioner once again raised the issue of name tags at an EXCOM meeting in January 1996. He reiterated that appropriate sanctions need to be taken against employees who do not wear their name tags and Wardens and RDCs are expected to enforce the policy. Senior staff visiting institutions will monitor the results.

14. DISCIPLINARY COURT DECISION

Issue

In 1992-93, a complaint regarding a minor disciplinary court decision revealed the absence of disciplinary hearing records. The C.I. has continued to have concerns that CSC may not be consistently maintaining disciplinary hearing records, which is in contravention of CSC policy and CCRA regulations, and recommended that the Service initiate an audit of their current disciplinary policies and practices to ensure compliance.

Response

The Service is finalizing an audit of Inmate Discipline which began in November 1995 and the C.I.'s concerns/issues were taken into consideration and incorporated, as appropriate, in the audit.

Action Taken

The audit report is planned to be submitted by the end of May, 1996.

15. USE OF FORCE - INVESTIGATIONS AND FOLLOW-UP

Issue

In his 1992-93 Annual Report, the C.I. recommended amendments to CSC's policy to ensure that the incidents of the use of force are thoroughly and objectively investigated, and that timely corrective action is taken. In his report of 1994-95, the C.I. reiterated his concern that many of the incidents involving the use of force are treated as routine events, without being thoroughly investigated. The report concluded with the recommendation that all incidents be thoroughly investigated, and that policy clearly detail senior management's responsibility to ensure the investigations are objective and corrective action taken.

The C.I. also recommended that a database be created to facilitate the monitoring and analysis of these incidents, with the objective of minimizing the number of incidents in which force is used.

1. Not all incidents involving the use of force against inmates are being investigated

Response

Current CSC policy is clear on when an investigation will be conducted into the use of force. CD 042 states that a preliminary investigation shall be conducted as soon as possible after the incident, to provide a summary overview of the incident and identify issues which may be of concern. It also states that a preliminary report shall be made available to the Warden for review and forwarded to the Regional and National Headquarters, to fulfill the requirements for incident reporting and entry into the Security Profile System. It further indicates that the Warden, having reviewed the preliminary report, may decide to initiate a general security investigation. The CD defines the general security investigation, describes where copies are to be distributed, and lists the type of incident requiring a general security investigation.

CD 605 clearly states that an investigation shall be ordered by the institutional head following an incident where force was used. The Operational and Preventive Security Standards and Guidelines also require that every incident involving the use of force shall be reported to the institutional head. The types of force listed include all types of force approved for use by staff, except for verbal commands. The CD further states that a review of this report by the institutional head may constitute an investigation, as required by CD 605.

In three instances, the head does not have the discretion to order an investigation: where an inmate suffers serious bodily harm; where the inmate dies; and, where the head has concerns regarding the type of force employed.

The issue raised by the C.I. does not appear to center around the requirement for an investigation, but rather what constitutes a thorough investigation as outlined in policy. Subsequent discussions with the Manager of Investigations (November 24, 1995) and an earlier C.I. Meeting with CSC (October 18, 1995) have further clarified this issue. At the latter meeting, the Executive Director of the C.I.'s office agreed that an investigation, under the CCRA, was not required in every case. He further agreed that the decision to determine the type of report was at CSC's discretion.

At issue, however, are the timeliness and quality of the investigations. It is expected that these be thorough and comprehensive, with an examination to ensure all required reports have been completed and procedures followed as outlined in the Service's policy. As a result, it is felt that the current CSC policy regarding the use of force is adequate and that no modifications to policy are either required or requested. The Service agrees, however, that procedures need to be in place to monitor and review the quality and timeliness of investigations reports on the use of force, and ensure corrective action is taken where warranted.

Action Taken

The Regional Deputy Commissioners were instructed in a memorandum, dated December 20, 1995, to provide monthly reports on the status of regional investigations. Copies of reports into the use of force causing death or serious bodily harm were also to be sent to the APM Sector. Both these reporting requirements were to commence January 1, 1996. The C.I. receives monthly status reports on all national investigations and copies of all regional investigation reports related to the Use of Force and Serious Injury. In addition, the APM Sector at National Headquarters will perform random audits of investigation reports to determine their thoroughness, timeliness and quality, initiating corrective action when required.

2. CSC does not gather data on incidents involving the use of force and does not maintain a data base permitting an analysis of the data.

Response

The CSC has been collecting data on the use of three (3) types of force since 1984-85 (physical force, gas, firearms). With the introduction of OMS, this data is available electronically, and presented to senior staff as part of the EIS, which is being made available to the staff of the C.I.

The data is broken down by type of force, region, and institution. While OMS is collecting data on eight (8) elements, the system generates information on only those three originally reported on. The Service acknowledges the C.I.'s assertion that no meaningful analysis is done on the data collected, nor is there follow-up.

Action Taken

1. In response to the Service's need for meaningful data collection and analysis on the use of force, the EIS reporting system is being modified to allow for the reporting on all eight categories of use of force.

2. The data on the use of force will be monitored by NHQ on a monthly basis and meaningful analysis of this data will be conducted by the regions on a quarterly basis.

3. The APM Sector at National Headquarters will perform periodic audits of incidents of use of force to determine whether these are appropriately investigated, and to ensure that all the required reports are being completed as per policy. Non-compliance will be pursued with the appropriate manager.

16. INMATE INJURIES

Issue

The Correctional Investigator's major concern relates to implementation of Section 19 of the *Corrections and Conditional Release Act,* which calls for investigations into deaths and serious injuries of inmates. The C.I. reports that, contrary to legislation, not all incidents are being investigated and the quality of those being completed is often inadequate.

The 1994-95 Annual Report concluded that the C.I. was advised that CSC had accepted most of the 71 recommendations contained in the *Fyffe Report: Hard Lessons, A Review of the Correctional Service of Canada's Investigative Process*. However, the C.I. has not, as yet, been advised of any specific policy or procedural changes emanating from the report.

a) Inmate Injuries

Response

Inmate injuries fall into two categories -- those injuries resulting from deliberate acts, whether on the part of the inmate himself, other inmates or staff and those injuries resulting from accidents. A new Commissioner's Directive, *Recording and Reporting of Injuries to Offenders* has been developed but, final approval is delayed while the Service develops a single definition for "serious bodily injury". This term is not defined in the *Corrections and Conditional Release Act* nor the associated regulations, although the term is used in both. There are currently three definitions in use within CSC and the proposed CD would have added a fourth definition.

Those injuries covered by deliberate acts are investigated by virtue of section 19 of the Act. Accidents are investigated in accordance with policy on Health and Safety and Inmate Compensation Examinations into the circumstances of these events and are reviewed monthly by institutional Health and Safety Committees.

Action Taken

An extensive review of past correspondence between the two agencies was completed and the following measures was put into place:

1. The regions were directed that monthly roll-ups of security investigations convened at the regional level to investigate "major injuries" or "serious bodily harm" be sent to the APM Sector at NHQ (memorandum sent to RDC's to this effect dated December 20, 1995).

2. The APM Sector has begun, as of January 1, 1996, to perform random quality control checks on regional investigation reports submitted to NHQ.

3. Representatives from the Investigation Division, Legal Services and Correctional Policy and Corporate Planning met and developed a single definition for "serious bodily injury". This was distributed to Executive Committee Members for approval but unanimous agreement was not received. The issue will have to be discussed, for a consensus approval, at the May EXCOM Meeting.

4. Once the definition is approved, it can be inserted into the new CD and can be signed off and distributed.

5. On February 6, 1996, the Senior Deputy Commissioner advised all Regional Deputy Commissioners to monitor incidents involving serious injuries and to advise that the downgrading of the seriousness of an injury in order to avoid having to conduct an investigation was an unacceptable practice that would not be tolerated.

b) Investigative Process

Response

On January 12, 1995, the *Fyffe Report* was submitted on the investigation process. On March 8, 1995, a copy of the report was sent to the C. I. In April, 1995, EXCOM discussed the report in detail and reached agreement on the Service's response to all 71 recommendations. Most of the recommendations were accepted verbatim, and action plans developed. To date, 43 of the 63 accepted recommendations have been implemented.

Action Taken

In addition to implementing the majority of the *Fyffe Report* recommendations, CSC has completed an in-depth analysis of investigations into inmate murders during the period of April 1993 to December 1994. The results of this analysis have been circulated to senior managers and presented at the Senior Manager's Conference in June 1995. The purpose is to learn whether and how CSC can prevent similar incidents in the future and respond appropriately when they do occur. (similar analysis were also completed on national investigations into hostage-takings and community incidents and the results presented in the same manner as with inmate murders.) CSC will continue analysis of investigations so that the organization can improve its operations. In addition, as recommended by the *Fyffe Report*, the Service will prepare an annual report on national investigations taking place during 1995-96.

CSC also instituted a process whereby it will verify, on-site, that the recommendations of past investigations have been implemented. To date, verification of follow-up has been completed for all investigation reports completed up to March 31, 1994. This verification exercise will be undertaken annually.

17. VISITS TO DISSOCIATION AND ITS DELEGATION

Issue

In his 1992-93 Annual Report, the C.I. mentioned that, in a number of institutions, daily visits to the Dissociation area were not taking place. He further noted that "..the Service has knowingly been in violation of its own policy since November of 1991 and the CCRA since November 1, 1992 and to date has taken no corrective action."

The C.I.'s 1993-94 report states that the Service delegated the responsibility for visiting Dissociation to a senior manager level, down to but not below the Unit Manager. The C.I. felt that Unit Managers could not be considered senior management, and felt that delegation to a lesser level negates the intent of section 36 of the Act.

In his 1994-95 report, the C.I. mentioned the instruction CSC gave on December 22, 1994, which served as a reminder to "Wardens and Deputy Wardens to visit the segregation at least once a week, unless there are convincing reasons to the contrary...", and indicated that this was a positive direction. His question was "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?"

Response

In addition to the requirements of the CCRA, Section 36(2), regarding institutional management visits to segregation units, Wardens have been mandated by senior management to ensure that they, or their Deputies, visit the units not less than once per week. Commissioner's Directive (CD 590) dated August 8, 1994, covers this issue.

Action Taken

Further to the 1992-93 Annual Report, on December 10, 1992, the Acting Commissioner wrote the C.I. and indicated that he personally opposed the policy in question and intended to raise the issue at the Service's EXCOM in January, 1993 with a proposal to delegate the performance of this function to a lower level. Subsequent to that EXCOM meeting, the CD was amended in 1993 to stipulate that the delegation for visiting Dissociation areas will not be below level of the Unit Manager.

A further instruction was given to senior management December 22, 1994, which gave more detail to the issue, with an option to amend the CD if it still remained a troublesome issue.

In January 1996, a notice was sent to all medium and maximum institutions, including the Prison for Women and the new Federally Sentenced Women's Facilities, to report on the visiting schedule to Segregation Units over the past year. A list of visits by Wardens and Deputy Wardens was requested from all appropriate institutions for three weeks selected at random in October and November 1995.

A review and verification of segregation logs indicate that institutions are in compliance with the Act. In addition, for the majority of cases, Wardens and Deputy Wardens are making weekly visits to segregation units in their institutions. There were a few noted exceptions during the time frame that were subject to review. The results of the review were discussed with the Regional Deputy Commissioners during the EXCOM Meeting January 31-February 1, 1996.

All incidents of non-compliance will be discussed with the appropriate Wardens. In February, 1996 the Commissioner wrote to the C.I. informing of the details of the review. A similar review will be conducted in April, 1996.

APPENDIX C

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

Minister of Supply and Services 1995
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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 The Adequacy and Effectiveness of Staff Response: "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) note's 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.*

<u>The video tape of the deployment of the ERT shows a massive display of force being exercised in the face of virtually no resistance</u>. 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.

<u>This exercise was, in my opinion, an excessive use of force and it was without question degrading and dehumanizing for those women involved.</u> 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.*

Annex A

CHRONOLOGY
OFFICE OF THE CORRECTIONAL INVESTIGATOR ACTIVITIES

Prison for Women

Administrative Segregation and Conditions of Confinement following 22 April 1994 Incident

15 April '94	*Correspondence to Warden subsequent to 21-22 March institution visit concerning the administration of "B" range.*
30 April '94	*Executive Assistant and Director of Investigations visit institution, conditions of offenders as observed and reported to the administration:* - *thin/blanket mattress on floor;* - *dressed in quilted security gowns;* - *cell effects = face cloth, security blanket, paper cup;* - *one lit cigarette per hour;* - *toothpaste but no tooth brush;* - *three cold meals per day;* - *no shower since 26 April 1994;* - *ten minute limit on calls to lawyers;* - *Administrative Segregation area cold.* *Remainder of institution on "partial lockdown" according to Deputy Warden, "full" lockdown according to Inmate Committee.*
5 May '94	*Executive Assistant advised that the Chairperson of C.S.C.'s Board of Investigation had called looking for information on our experiences, concerns etc. over last couple of months at Prison for Women (PFW) as she was doing the investigation into the incident. Investigator returned the telephone call and left a message twice. The Chairperson never returned the calls.*
6 May '94	*Five (5) inmates transferred to Regional Treatment Centre.*

11 May '94 — *Telephone interview with Associate Warden of the Regional Treatment Centre re: PFW inmates and their conditions of confinement. He agreed to fax us a copy of their procedures/protocol upon completion. Protocol received 14 May 1994.*

19 May and 20 May '94 — *Director of Investigations and Investigator visit the Regional Treatment Centre and PFW.*

Conditions of confinement at Regional Treatment Centre as reported to Associate Warden;

- *Not receiving 2 free phonecalls to family as at PFW;*
- *No personal effects (had to attend court in coveralls);*
- *Clothed in security gowns, have beds and security blankets;*
- *Exercise in early a.m., no coats - only coveralls, cold;*
- *Canteen only once every 2 weeks, light for cigarettes once per hour;*
- *No TV or radio, restricted library books (one at a time);*
- *Shackled and cuffed for all movement;*
- *No restriction on calls to lawyers, Elizabeth Fry or Correctional Investigator's office;*
- *Writing materials provided but not personal address books.*

Conditions of confinement at PFW-Segregation as reported to Warden;

- *Segregation area extremely dirty;*
- *No personal calls being provided;*
- *Legal calls restricted to 3 per week and calls to our office count as one legal call. Duration of calls restricted to 15 minutes;*
- *No personal effects;*
- *No daily exercise;*
- *Writing materials not consistently provided;*
- *Security blankets have not been replaced or cleaned since provided;*

- *Still no beds in cells;*
- *No ćanteen privileges provided;*
- *Restrictions on cigarette papers and rollers.*

In summary, the inmates at the Regional Treatment Centre were being treated better than those left at PFW. Follow-up letter to Warden sent 24 May 1994.

26 May and 27 May '94 — *Director of Investigations and Investigator visit the Regional Treatment Centre and PFW.*

Conditions of confinement at Regional Treatment Centre as discussed with Associate Warden;

- *Some of previous concerns resolved i.e.: 2 free phone calls now provided, regular canteen in place, cell effects to be provided by following week after personal behavioral contracts are in place (including TV's and radios), lights for cigarettes now every 30 minutes, 2 offenders approved for correspondence courses;*
- *Director advised that shackles would come off for movement to showers next week, longer for movement to yard. Male behaviour being addressed and monitored while women were in the yard, exercise to be changed to afternoon;*
- *Issue of bedding raised for Director's review (sheets, blankets and pillows).*

Conditions of confinement at PFW-Segregation as reported to Warden;

- *Inmates required to go to exercise (tennis court) in pyjamas - male construction workers in area;*
- *Still no beds or pillows;*
- *Still no personal calls and limited lawyer calls;*
- *No lighters for some inmates;*
- *Still restrictions on rollers;*
- *Security blankets still dirty;*
- *They had received sheets and blankets, canteen although items were limited per shift, stamps, envelopes and writing materials, restraints being removed in yard.*

30 May '94 — *Telephone call with inmates in Segregation;*

- *They had received a memo from the Warden as a result of our visit indicating that they can have correspondence courses, personal calls, cigarette lighters for those without with the exception of two inmates, cigarette rollers, writing material, canteen although only 2 items per shift (cannot retain in cell), Bed for one inmate provided;*
- *Still not provided, pillows, beds, cleaning in unit.*
- *In addition, legal calls are still being restricted to 3 per week and they are still in pyjamas for yard which is only 1/2 an hour per day.*

2 June '94 — *Letter received from Warden PFW advising;*

- *Protocol for segregation developed and attached;*
- *Written direction to be issued by Unit Manager to clarify phone privileges, exercising etc., Unit Manager to visit segregation daily to ensure items actionned;*
- *2 offenders from population hired to clean Segregation;*
- *Personal calls being provided as per Standing Order, no restriction on legal calls, clarification to be issued vis à vis calls to our office;*
- *Personal effects to be reinstated as per Standing Order;*
- *Exercise now being provided one hour per day;*
- *Writing material provided;*
- *Blankets are now clean and being exchanged regularly;*
- *Full canteen allowed with exception of pop cans;*
- *Cigarettes no longer restricted;*
- *Beds have been returned to cells.*

16 June '94 — *Investigator visited Regional Treatment Centre and PFW.*

Conditions at Regional Treatment Centre - meeting with Associate Warden 16-06-94;

- *All previous issues resolved. Radios provided;*
- *Exceptions and issues he agreed to review were; still not entire personal effects released i.e.: clothes for court,*

shackles still applied, nightly confiscation of toothbrush hairbrush and pens, selections of books and provision of TV's, cleaning of unit, apparent restriction of lawyer calls;

Conditions at PFW discussed with Warden 17-06-94;

- *Most outstanding issues addressed. Mainly review of Segregation protocol and our recommendation that copy of protocol be provided to segregated offenders once promulgated;*
- *Also discussed and contested was issue of continued retention in segregation for three of the inmates;*
- *Issues followed up by letter to Warden dated 20 June 1994.*

21 June '94 — *Telephone follow up with A/Associate Warden of Regional Treatment Centre;*

- *All personal effects being sent over today, to be kept on range;*
- *Shackles to be resolved this Friday, although in meantime they would take women to yard by elevator rather than stairs;*
- *TV's to be given out once cell effects received;*
- *Cleaning is being done by the inmates themselves;*
- *Newspapers being provided on a daily basis.*

23 June '94 — *Our letter to Regional Deputy Commissioner requesting a copy of the investigation, convened to review the 22 April incident and subsequent transfer of the offenders to Regional Treatment Centre, inclusive of the two video tapes*

6 July '94 — *Letter from Warden providing segregation reviews for the three inmates contested, Warden's decision to retain in segregation.*

18 July '94 — *Telephone conversation with Warden - Transfers to Regional Treatment Centre quashed by appeal and women to be returned to PFW.*

21 July and 22 July '94	*Investigator visited PFW.* *Conditions of confinement as discussed with Warden on 22 July and followed up by letter dated 25 July 1994;* - *Provision of a fan and ice to offset heat was requested;* - *Problems with personal effects received discussed;* - *Still problems with calls to our office vs lawyers;* - *Continued use of shackles on women returned from Regional Treatment Centre raised and a review requested;* - *Lack of televisions for cells;* - *Continued retention in segregation of the three inmates was again raised, as was our intention to raise the issue regionally if it was not resolved.*
27 July '94	*Telephone call from PFW Liaison advising that Warden's decision is as follows; the three inmates are not to be released and shackles to be retained for another 2 months prior to re-review.*
28 July '94	*Letter to Regional Deputy Commissioner re: retention in segregation of the three inmates referred and conditions of confinement i.e.: shackles and recent installation of grill work on cells.*
2 August '94	*Letter from Warden advising that Unit Manager is reviewing issue of ice and correcting all issues related to clothing and canteen. Fans difficult to provide. Policy regarding phone calls to our office again addressed with the Correctional Officers. Shackles reviewed and decision taken to re-review after one month.*
8 August '94	*Response received from Regional Deputy Commissioner supporting retention in segregation of the three inmates as well as the continued use of shackles and installation of grill work.*
31 August and	*Investigator visited PFW - follow up letter to Warden dated*

1 September '94	*9 September 1994.*
13 September '94	*Letter to Regional Deputy Commissioner contesting his reply of 8 August 1994 re: one inmate and shackles (the other two had already been released).*
15 September '94	*Letter from Warden advising of her retirement and regarding issues, that shackles have been removed for movement within the Unit (showers) and contingent upon positive behaviour, will be re-reviewed for further lessening of the policy.*
11 October and October '94	*Duplicate response from Regional Deputy Commissioner upholding the inmate's segregation and the continued use of shackles.*
27 October and 28 October '94	*Investigator visited PFW - follow up letter to A/Warden dated 31 October 1994 raising the following segregation issues;* - *Lack of winter clothing personal effects;* - *Policy for opening and closing of meal slots (newly installed);* - *Continued lack of TV's and radios;* - *Restriction on "erasers" for school work;* - *Problems with breakfast time on weekends, i.e.: time taken deducted from exercise period;* - *Lack of provision of canteen on rounds contrary to Segregation protocol;* - *Provision of sanitary napkins;* - *Continued camera monitoring.*
7 November '94	*Correctional Investigator's letter to Commissioner on continued retention of the offenders from the 22 April incident in Segregation and the conditions of confinement (specifically shackles, lack of TV and radios and constant camera monitoring). Also raised was lack of Senior manager visits to segregation on a daily basis as per legislation and Commissioner's Directives.*

9 November and 10 November '94 — *Investigator visited PFW.*

15 November '94 — *Letter from Warden advising of;*

- *Policy with respect to meal slots;*
- *Wiring for segregation would be completed by 15 November and TV's would then be allowed;*
- *Copy of segregation workshop and program for segregated women enclosed and requesting our review and comments;*
- *Corrective action taken on erasers, breakfast time, exercise time, canteen and sanitary napkins;*
- *Cameras in segregation to remain on.*

18 November '94 — *Letter to Assistant Commissioner Executive Services requesting copies of the 3rd level grievance responses and a copy of the video tape of the ERT incident.*

23 November '94 — *Letter to the Warden requesting all observation/officer reports, offense reports, security reports and Use of Force reports for the period of 22 April to 26 April 1994.*

30 November and 1 December '94 — *Investigator visited PFW, first meeting with the new Warden. Warden advised of her release plans for the segregated women (starting 14 December with Inmate "D" and culminating by end of January 1995). Investigator provided her with office's comments on her segregation program/protocol.*

In addition, Investigator advised her of the continued anomalies observed within segregation the evening before regarding canteen as well as observations from the logs and the segregated inmates that the Unit Manager had not been up in Segregation for over a month.

The issues discussed were followed up by letter dated 2 December 1994.

5 December '94	*Letter from Warden advising that the TV's and radios were installed 5 December 1994.*
13 December '94	*Letter from Warden providing follow-up to segregation issues and providing new segregation policy/protocol, amended to address our concerns.*
19 December '94	*Meeting with Commissioner; non-response to Correctional Investigator's November 7, 1994 correspondence and access to video tape were raised. Commissioner advises that Minister to be briefed and response to "C.I. concerns will be addressed in due course". Commissioner further advised that video tape still not available.*
6 January '95	*Update obtained from Deputy Warden re: status of segregated women. Two inmates released prior to Xmas, one inmate offered release before Xmas but declined and released this date. Another inmate to be released 11 January, another inmate 17 January, and last inmate 19 January.* *All shackles removed prior to Xmas, handcuffs during movement removed gradually for each offender approximately one week prior to release. Only one inmate still handcuffed as of this date and she was no longer to be handcuffed starting 9 January 1995.*
13 January '95	*Response from Commissioner - fails to address issues raised in 7 November 1994 letter from Correctional Investigator.*
23 January '95	*All inmates released as planned.*
27 January '95	*Review of ERT intervention video tape.*
31 January '95	*Interview with Citizen Advisory Committee member who was present at the Prison for Women segregation area April 27, 1995 to witness the body cavity searches of inmates.*

2 February '95	*Meeting with lawyers representing a number of the women involved in the April 1994 incident. Meeting with one of the women involved. Second review of the ERT intervention video tape.*
3 February "95	*Meeting with the Chairman of the Citizen Advisory Committee who was present in the segregation area in the late afternoon of April 26, 1994, the day the ERT was called in.*

APPENDIX D

9 JANUARY 1996

Commission of Inquiry into Certain Events at the Prison for Women in Kingston
Phase II: Policy Review

Submission: Correctional Investigator Canada

Commission of Inquiry into Certain Events at the Prison for Women in Kingston
Phase II: Policy Review

Submission: Correctional Investigator Canada

The Office of the Correctional Investigator approached Phase II of the Commission of Inquiry with a degree of trepidation. The Office, despite its years of experience in the field of Federal Corrections, does not view itself nor has it ever presented itself as an expert on the issues specifically associated with Federally Sentenced Women.

The Office's hope for Phase II was two fold; first, that we would be able to reasonably contribute to the discussions based on our experience, and second, and more importantly, that we would gain a better understanding and appreciation of those issues central to the management of Federally Sentenced Women. The Office's concern was that Phase II would be dominated by the Correctional Service of Canada, as self-appointed experts, to promote, unchallenged, their view of how Federally Sentenced Women should be managed.

The array of knowledge, talent, experience, dedication and passion that was brought to the table during Phase II was truly impressive and reflective of the importance of the issues under review. Through both the formal and informal format of Phase II, our hope was more than realized and our concern put quickly to rest.

This submission contains a brief commentary and series of recommendations consistent with the position taken by the Office of the Correctional Investigator over the course of Phase II and is provided for the consideration of the Commission during its review of these issues.

INTRODUCTION

The federal prison population has increased dramatically over the past three years. Although the number of new admissions from the courts has remained relatively stable, there has been a measurable decrease in the number of inmates being conditionally released in a timely fashion and a measurable increase in the number of inmates having their conditional release revoked. The end result being that more inmates are spending longer periods of time in prison.

This Office does not believe that the solution to excessive overcrowding lies in the expansion of current institutional capacity or resources. The Correctional Service of Canada over the years, with the proliferation of its institutional programming, has become dependent upon the extended period of incarceration, between parole eligibility and statutory release, to provide programming. There is evidence of a growing reluctance on the part of the Service to give reasonable consideration to early conditional release until such time as all identified programming is completed. It is our view that many of those programs could and should be completed under supervision in the community. The current population increase, caused in part by inmates remaining in institutions to complete programs, has further delayed timely access to these programs by increasing the waiting lists which in turn further extends the period of incarceration and adds to the population growth.

This cycle is unlikely to be interrupted until such time as the Service accepts and takes action on the principle that the protection of society is best served through the timely reintegration of offenders as law abiding members of the community. An initial step in addressing the issue of excessive overcrowding is to ensure that community resources and programming are readily available and reasonably responds to the identified needs of the offender population. An immediate

investment in community corrections will assist in decreasing both the length of time inmates spend in federal institutions and the number of conditional release revocations.

A continuation of business as usual in this area will only promote further population growth. Excessive overcrowding impacts measurably on; the viability of the Service'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.

Federally Sentenced Women have not been immune from this cycle of population growth. The Commission was advised during the course of Phase II that the current capacity of the newly constructed Regional Facilities has already been surpassed by the population increase in incarcerated Federally Sentenced Women.

To avoid a continued increase in the number of federally incarcerated women and the inevitable negative impact of excessive overcrowding, attention needs to be focused immediately on the processes of conditional release and community based programming.

RECOMMENDATION

1. ***That the Wardens of the Regional Facilities be specifically responsible and accountable for;***

   a) ***the implementation of institutional conditional release programming which ensures that inmates are returned to the community in a timely fashion consistent with their eligibility dates,***

b) ***the development and maintenance of community based programming within their region, that is responsive to the identified needs of the inmate population, and***

c) ***the establishment of an ongoing liaison with the judiciary, crown counsel offices and the National Parole Board, to ensure that the realities of federal incarceration are understood and appreciated.***

2. ***That a National Coordinator of Conditional Release and Community Corrections, reporting directly to the Commissioner of Federally Sentenced Women, be charged with the responsibility of ensuring consistent and equitable access to community related programming for all Federally Sentenced Women.***

<u>SECURITY CLASSIFICATIONS</u>

*There appeared to be two generally accepted themes that emerged from the sessions on **<u>Managing Violence and Minimizing Risk</u>** and **<u>Crisis Management in Women's Prisons</u>**.*

First, that the existing security classification instruments employed by the Service to identify risk were designed for and tested on male inmates. Although the validity of this assessment process as it applied to male inmates was a point of considerable debate, there was consensus that its relevance was basically lost when applied to female and aboriginal inmates.

Second, that the Prison for Women, because of its numerous limitations in terms of its history, structure, geography and management style, was and continues

to be an environment that generates and maintains aberrant behaviour. In fact, the Prison for Women environment was portrayed throughout Phase II as that which needed to be avoided within the development of the new Regional Facilities.

The proposed "Security Management Model" for the Regional Facilities on the other hand is rooted in and reflective of the Service's previous approaches to managing Federally Sentenced Women. As such, the model provides for far too convenient a bridge with the past for those currently mandated to implement the Service's "Vision" for the Regional Facilities.

If it is accepted that past security classification processes have not worked effectively and that the Prison for Women's environment negatively impacted upon the effective management of the inmate population, it seems only reasonable that any proposed Security Management Model would encourage a clean break with past practices and facilitate a management system which deals with individuals as individuals rather than as pre-defined security groups.

RECOMMENDATION

3. ***That the proposed "Security Management Model" be scrapped.***

4. ***That each Regional Facility, including the Healing Lodge, accept inmates based on individual needs, not security classifications.***

5. ***That programming within the Regional Facilities be available to all inmates housed in that facility.***

6. ***That administrative action, if required to address security concerns, be incident specific, corrective rather than punitive, and lifted at the earliest***

possible time to ensure continued full participation of the individual in all aspects of correctional programming.

ALTERNATIVES TO SEGREGATION

*Segregation is overused, for excessive periods of time, has limited if any benefit for the individual and is excessively punitive. The **Corrections and Conditional Release Act** clearly defines the purpose and parameters of Segregation and establishes procedures to ensure administrative fairness in its application.*

Segregation practices within the Correctional Service of Canada and specifically at the Prison for Women, show limited evidence of an understanding or appreciation of these legislative requirements.

Segregation at the Prison for Women currently and traditionally has housed, in conjunction with those administratively and punitively placed in isolation, those who require protection, those who self-injure and those who present mental health concerns. The management of the segregation unit, besides being based on tradition rather than law, has seldom displayed evidence that the individual needs of these inmates were being addressed through their placement in segregation.

The new Regional Facilities will have within their populations, inmates who are disruptive, who require protection, who self-injure and present serious mental health concerns. One of the major contributing factors to the misuse of segregation at the Prison for Women was the perception that there were no alternatives other than placement in segregation for managing these women.

Although the Service prefers to speak in terms of "enhanced units" rather than segregation, the reality is that past practices will re-emerge if clear alternatives are not established. The first step in causing the Service to think in terms of

alternatives would be for the Service to ensure that its segregation practices are consistent with the legislative provisions governing Administrative Segregation and Discipline. A further step would be to ensure that for those individuals placed in segregation, an immediate strategy is developed to address the specific areas of concern that caused the placement with the clear objective of returning the individual to general population at the earliest appropriate time. The segregation review process must be fair, allowing for input from the individual inmate, timely and objective.

RECOMMENDATION

7. ***That a training program be immediately undertaken for all institutional staff (including the Wardens) to ensure that the provisions of the Corrections and Conditional Release Act, sections 31 through 44 governing Administrative Segregation and Discipline, are understood and appreciated.***

8. ***That institutional policy clearly reflect not only the procedural requirements of the legislation but as well emphasize the principles of "returning the inmate to the general population at the earliest appropriate time" and "inmates shall not be disciplined otherwise than in accordance with the legislation", as provided for in sections 31(2) and 39 respectively.***

9. ***That a detailed strategy be developed clearly identifying the specific areas of concern that led to the placement in segregation and the actions proposed to return the individual to general population. This strategy should be provided to the Warden within two working days of the placement.***

10. That the institutional Independent Chairperson chair the Segregation Review Board in the case of any inmate segregated for ten days and be given the authority to order the inmate's return to general population.

ABORIGINAL OFFENDERS

The Final Report by the Task Force on Aboriginal Peoples in Federal Corrections was published in 1989. Although the Aboriginal communities have embraced the majority of the Report's findings and recommendations, Federal Corrections has on far too many of the issues yet to take decisive action.

*Section 80 of the Corrections and Conditional Release Act enacted in November of 1992 boldly states that **"the Service shall provide programs designed particularly to address the needs of aboriginal offenders"**. As was evident from the sessions on Federally Sentenced Aboriginal Women in Prison and the Healing Lodge the Aboriginal community, inclusive of the inmate population, do not believe that these needs are being addressed. Equally evident from these sessions was the willingness of the various Aboriginal groups to actively involve themselves in the provision of the required programming. Section 81 of the Act further provides:*

"81. (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

(2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.

(3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community."

The Healing Lodge concept, as presented, is a major step forward for Federal Corrections and is reflective of a consultation process driven by a will to cause meaningful change within a system that for far too long has paid only lip service to its responsibilities in this area. The Healing Lodge is a tribute to those, both inside and outside of the Service, who had the will and tenacity to move the correctional bureaucracy beyond a vision to create a reality.

The challenge now for Federal Corrections is to ensure that programming designed to meet the needs of aboriginal offenders is not limited to the confines of the Healing Lodge. There is a need to ensure that all incarcerated Federally Sentenced Women, regardless of location, have access to such programming. There is further a requirement to fund and develop community based programming so as to promote the timely reintegration of offenders back into their home communities. There is a danger, as stated earlier, of the penitentiary, in this case the Healing Lodge, being viewed as the best placement option available in the absence of strong community based programming. The goal is <u>not</u> to increase the number of Federally Sentenced Aboriginal Women in Prison.

<u>RECOMMENDATION</u>

11. That all Federally Sentenced Women's Facilities establish an Aboriginal Advisory Committee and in consultation with this Committee the Wardens establish and maintain programming specifically designed to address the needs of Aboriginal inmates.

12. ***That the Warden's responsibility and accountability for conditional release and community based programming, as detailed in Recommendation #1, include aboriginal programming.***

13. ***That a National Aboriginal Advisory Committee to the Commissioner of Federally Sentenced Women be established.***

14. ***That a National Coordinator of Aboriginal Programming, reporting directly to the Commissioner of Federally Sentenced Women, be charged with the responsibility of liaising with Institutional and National Aboriginal Advisory Committees and ensuring the equitable development of and access to both institutional and community programming.***

15. ***That the Commissioner of Federally Sentenced Women vigorously exercise the authority provided for within section 81 of the Corrections and Conditional Release Act to expand the provision of correctional services provided by aboriginal communities so as to ensure that timely conditional release is a viable option.***

CROSS GENDER STAFFING

The United Nations' Standard Minimum Rules For The Treatment Of Prisoners provides that:

> *"53. (1) In an institution for men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.*

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women."

For nearly forty years, the Service's policy and practice in this area has complied with this Standard Minimum Rule. The rationale for the Service's change of policy in 1994, allowing for the employing of male front line staff in the Regional Facilities, despite the opportunities provided through Phase II, remains without reasonable explanation.

RECOMMENDATIONS

16. That the Correctional Service of Canada establish and implement immediately an employment policy for the Federally Sentenced Women's Facilities that is consistent with the United Nations' Standard Minimum Rule #53 For The Treatment Of Prisoners.

MOTHER/CHILD PROGRAM

The Service's claim of a need for "further consultation" on this issue is indefensible. The failure to take decisive action, on a matter of such importance to the women affected, raised serious questions as to the overall commitment the Service has to the concept of real change and the principles provided for in the Report of the Task Force on Federally Sentenced Women.

RECOMMENDATION

17. That the mother/child program be implemented, without further delay, in all Regional Facilities.

HEALTH CARE

The provision of Health Care Services within a penitentiary has and continues to be an area of serious concern for the inmate population. These concerns tend to centre around a belief that;

- *the level of service provided, in part because of the limited access to second opinions and specialists, is less than that provided in the community.*

- *the medical staff work for the institution not for the inmate and as such their individual interests are overshadowed by the administrative interests of the institution.*

- *the confidentiality of medical records are not reasonably maintained, and*

- *there is no responsive avenue of redress for grievances associated with medical decisions.*

Given the institutional environment these concerns are not unfounded. To address these issues, the Service must establish a process of consultation and delivery of medical services that is viewed as credible by the inmate population. This credibility in large part will be dependent upon the seen separation and independence of health care services from institutional administration.

A further area of concern given prominence during the session on Health Issues for Federally Sentenced Women focused on the decision of the Service not to provide twenty-four hour on-site nursing care. The basis of this decision appears to have been fiscal. The institutional environment, in conjunction with the past history of the population in terms of self injury and the pending introduction of the mother/child program all reasonably speak to the need for twenty-four hour service. The financial savings associated with this decision, in our opinion, are far outweighed by the benefits of returning to twenty-four hour on-site nursing care.

RECOMMENDATION

18. That each Regional Facility establish a Medical Advisory Committee, inclusive of representation from the inmate population, mandated to;

- **monitor the Health Care Service contracts signed by the Facility, and**

- **review and make recommendations on all medical grievances submitted by inmates.**

19. That Health Care Service contracts be signed with medical clinics rather than individual practitioners so as to ensure reasonable access to second opinions.

20. That both the development of and any subsequent changes to Health Care policy or procedure provide the inmate population with the opportunity to contribute to these decisions as required by section 74 of the *Corrections and Conditional Release Act.*

21. ***That the Commissioner, in consultation with the National Health Care Advisory Council and the Privacy Commissioner, issue immediately a clear policy statement on the issues surrounding ownership, confidentiality and access to inmate medical records.***

TRANSFERS

The issue of transfers, specifically involuntary transfers, came up on numerous occasions during Phase II. Concerns were expressed with respect to the Service's position on involuntary transfers in response to the existence of incompatibles, disciplinary concerns and overcrowding. The Service's position on this matter was never clearly enunciated.

The provisions governing transfers, including the administrative fairness requirements associated with involuntary transfers, are detailed at sections 28 and 29 of the Corrections and Conditional Release Act *and sections 11 through 16 of the* Regulations*. In addition to the above noted legislative provisions on transfers, there is a requirement for the Service to establish clear policy which reflects a position on transfers that is consistent with the objectives ascribed and the mandate given to the Regional Facilities.*

RECOMMENDATION

22. ***That all Inter-Facility transfers be based on facilitating individual identified needs and that the purpose and expectations of the transfer be fully detailed prior to the move.***

23. ***That there be no Inter-Facility or Inter-Jurisdictional involuntary transfers to address overcrowding.***

24. That all involuntary Inter-Facility and Inter-Jurisdictional transfers, including those initiated at the Prison for Women, be authorized by the Commissioner, only when all other options have been exhausted, and that this authority not be delegated.

GRIEVANCE PROCEDURE

*The "Principles" detailed at section 4 of the **Corrections and Conditional Release Act** designed to guide the Service in achieving its "Purpose", states; "that correctional decisions be made in a forthright and fair manner, with access by offenders to an effective grievance process." The Act further provides at sections 90 and 91 that: "There shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner" and, "Every offender shall have complete access to the offender grievance procedure without negative consequences."*

*The importance of a fair and expeditious inmate grievance procedure is well recognized within the **Corrections and Conditional Release Act**. This Office's position, that the current Correctional Service of Canada grievance process is dysfunctional, is well known and has been commented upon extensively within our Annual Reports for the past decade. The evidence provided during Phase II while lending support to our position, more importantly, highlighted the lack of credibility the current procedure has with the inmate population.*

*The effectiveness of a grievance procedure in fairly and expeditiously resolving offender concerns, is not dependent upon the procedure's structure. It is dependent upon the commitment of senior management to make the procedure work and the willingness of the Service to objectively and thoroughly review the concerns raised. The principle enunciated within the **Corrections and Conditional***

Release Act/ concerning correctional decision-making and an effective grievance procedure, will not be met until such time as specific responsibility and accountability in these areas is accepted by senior management.

RECOMMENDATION

25. ***That the responsibility and accountability contracts between each of the Wardens and the Commissioner specifically identify the effective resolution of inmate grievances as a key variable in the rating of their performance.***

26. ***That an information system be established at the institutional and national levels to provide management with reliable data on the specific areas of inmate concern raised and the effectiveness of the procedure in addressing those concerns.***

27. ***That quarterly reports from all levels of the procedure, be issued providing a thorough and objective analysis of the information collected, with specific attention focused on the effectiveness of the procedure's operation and the need for any required adjustments to Service policy or procedure identified through the resolution of the grievances.***

28. ***That Inmate Grievance Committees be established at each Regional Facility, mandated and encouraged, to be actively involved in the resolution of inmate grievances.***

29. ***That a copy of the Service's quarterly reports be provided to all Inmate Grievance Committees.***

CONCLUSION

This Office was most impressed, as indicated earlier, with the level of discussion and the substantive proposals that emerged from Phase II of the Inquiry. What was measurably less impressive was the Service's contribution and comments related to the various policy issues under review. The "Vision" presented by the Service, while generally reflective of the principles detailed in Creating Choices: Report of the Task Force on Federally Sentenced Women, tended to attenuate as the sessions progressed.

This Office acknowledges both the complexity of the issues associated with the management of Federally Sentenced Women's programming and the inter-relationship of these issues with the broader area of Federal Corrections. This having been said, we cannot help but note the excessive delay on the part of the Correctional Service of Canada in taking reasonable action in addressing these matters.

The Commission, during Phase I of the Inquiry, heard extensive evidence, from a variety of sources, indicating that national policies, program initiatives and staff training have for decades failed to address the unique requirements of Prison for Women.

The base document for Phase II of the Inquiry, the Task Force Report on Federally Sentenced Women, was published in 1990. The Perron Report on Long-Term Offenders and The Final Report by the Task Force on Aboriginal Peoples in Federal Corrections were finalized in 1991 and 1989 respectively. The underlying principles and recommendations, so clearly enunciated within these Reports, remain to be reasonably incorporated into the policies and, more importantly, the practices of the Correctional Service of Canada.

In short, the existing senior bureaucracy of the Service has failed to create either the will or the mechanisms necessary to responsively address the significant, long-standing areas of concerns associated with Federally Sentenced Women's issues. This failure has perpetuated, for far too long, a systemic inequity of treatment and programming for Federally Sentenced Women.

<u>RECOMMENDATION</u>

30. That a Commissioner, independent of the Correctional Service of Canada, for Federally Sentenced Women be appointed.

31. That the Commissioner be responsible for all Federally Sentenced Women, inclusive of those under supervision in the community and housed in provincial jurisdictions.

32. That existing exchange of service agreements with other jurisdictions for the housing or supervision of Federally Sentenced Women be reviewed to ensure equality of opportunity for all Federally Sentenced Women.

33. That the Wardens of the Regional Facilities report directly to the Commissioner.

34. That the Commissioner be supported by a National Advisory Board on Federally Sentenced Women.

35. That the National Advisory Board be mandated to submit a report annually on their operations to the Standing Committee on Justice and Legal Affairs.

We would again like to extend our appreciation for the opportunity to have participated in Phase II of the Inquiry and if there are any questions concerning the foregoing, do not hesitate to contact our Office directly.