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Canada



Annual Report  
of the  
Correctional  
Investigator  
1996 - 1997



The Correctional Investigator  
Canada

**ANNUAL REPORT  
OF THE  
CORRECTIONAL  
INVESTIGATOR**



**1996-1997**





The Correctional Investigator  
Canada

275 Slater Street  
Suite 402  
Ottawa, Ontario  
K1P 5H9

L'Enquêteur correctionnel  
Canada

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July 14, 1997

Mr. Andy Scott  
Solicitor General of Canada  
House of Commons  
Wellington Street

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-fourth Annual Report of the Correctional Investigator.

Yours respectfully,

R.L. Stewart  
Correctional Investigator

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## INTRODUCTION

This has once again been an eventful and transitional year for Federal Corrections.

In April of 1996, the Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston was released by the Minister. Madame Justice Arbour's Report, in addition to passing a scathing indictment on the Service's management of female offenders, found "that in terms of general correctional issues, the facts of the inquiry had revealed a disturbing lack of commitment to the ideals of Justice on the part of the Correctional Service".

In June of 1996, there was a change of leadership within the Correctional Service with the re-appointment of Mr. Ole Ingstrup as Commissioner.

In November of 1996, the Auditor General issued a Report on the Reintegration of Offenders which found that the "Correctional Service is not managing its re-integration activities effectively". The Report noted that the Service had "two main responsibilities - the incarceration of offenders and their safe reintegration into the community". In conclusion the Auditor General recommended that "Correctional Service management should focus more attention on reintegration activities, particularly in the areas of developing performance information and implementing standard practices throughout the regions to ensure that the goals of safe reintegration are being consistently and diligently supported across the country".

On a positive note in January of 1997, the Commissioner re-issued the Correctional Service of Canada's Mission document which now clearly reflects the Service's obligations to respect the rule of law in everything they do.

In response to the observations of the Auditor General, the Service has agreed that the weaknesses identified "require that senior management re-emphasize the importance of corporate attention to management practices, operational processes, and roles and responsibilities affecting reintegration".

In addition to significant internal change, there has been an ongoing exercise over the course of this year focused on the five-year Parliamentary review of the *Corrections and Conditional Release Act* scheduled for the Fall of 1997 as required by s. 233 of the legislation.

As I indicated, it has been an eventful year for all parties involved with Federal Corrections. It has provided us with both a challenge and an opportunity to make the changes necessary to ensure that correctional operations are managed with integrity, are open and accountable and are consistent with the legislative provisions that govern them. Whether we collectively meet this challenge and act on this opportunity is dependent on our will to institute meaningful change.

### ANNUAL REPORT ISSUES

The systemic areas of concern raised by individual offenders complaints to this Office have not varied significantly over the past decade. The reports of Justice Arbour and the Auditor General have re-focused attention on many of these issues, specifically in the areas of: Inmate Grievances, Programming, Case Preparation, Double Bunking, Temporary Absences, Transfers, Discipline, Use of Force, Segregation, Inmate Injuries and Internal Investigations.

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In last year's Annual Report, we provided an extensive detailing on the chronology of these long-standing systemic issues inclusive of commentary on the Service's past unfulfilled commitments and failure to reasonably address the areas of concern raised by these matters. I encourage the reader to refer to my 1995-96 Annual Report for a detailing of these issues.

Partly due to the fact that there is very little further to say on these matters, we have opted this year to limit commentary to a brief overview of the concerns associated with these issues, recommendations for needed change and the current position and specific commitments offered by the Service in response to these areas of concern.

Last year's report stated 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".

We have had a number of meetings over the past nine months with the new Commissioner and with the Commissioner's staff on these issues. These meetings have been informative and we have reached agreements in most areas on the problems associated with the specific issues. The Commissioner has committed himself to a detailing by the Service of the specific actions to be taken and the development of a process to measure and evaluate the impact of those actions in addressing the issues. Although there will continue to be areas of disagreement, I believe that a positive step has been taken which will ensure an addressing of these matters and the individual concerns of offenders in a more open, responsive and co-operative fashion.

#### **ADMINISTRATIVE TRIBUNAL**

Although it is gratifying to have other external reviews such as the Auditor General and Madame Justice Arbour reinforce your past findings and recommendations on longstanding areas of systemic concern, it does beg the question as to the effectiveness of an Ombudsman operation within a correctional environment.

A central element of any ombudsman function, in addition to independence and unfettered access to information in the conducting of its investigations, is that the process is by way of recommendation and public reporting, as opposed to decisions that are enforced.

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 or Special Report. In attempting to ensure administrative fairness and accountability within correctional operations, this Office 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.



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Madame Justice Arbour spoke directly to this point in commenting on the accountability of the Correctional Service and the role of this Office:

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.

On the basis of this Office's experience over the years in dealing with the Correctional Service and without in any way limiting the judicial guidance and control called for by Madame Justice Arbour, I believe there is an urgent need for a mechanism somewhere between the Ombudsman function of this Office and the courts, with the legislative authority to order timely corrective action in instances of illegalities, gross mismanagement or unfairness. The correctional environment, the impact of administrative decisions on individuals within that environment and the past track record of the Correctional Service in approaching individual and systemic areas of legitimate concern in an objective, timely and thorough fashion, demands that a timely and responsive binding avenue of redress be available.

So again, as I did in last year's Annual Report, in response to and in support of the findings of Madame Justice Arbour, and in concert with the ongoing review of the *Corrections and Conditional Release Act*, 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.

This recommendation, as I have previously indicated, is intended to support and complement, not attenuate or replace, the function of this Office in ensuring that areas of offender concern are decided on in an objective and timely fashion consistent with the Service's legislative responsibility.

## **ARBOUR COMMISSION**

I undertook in last year's Annual Report, to follow-up, both with the Minister and the Commissioner of Corrections, on the specifics of Madame Justice Arbour's findings and recommendations when the ministerial response is finalized and I can report that some discussions have taken place.

---

It should perhaps be restated that this Office fully supports the Commission's findings and recommendations and is opposed to the involuntary transfer of maximum security women to male penitentiaries. To assist in clarifying our position on the issues raised by Justice Arbour and the Service's policy of housing female offenders in male institutions, I included as Annex A to last year's report, our Submission on Phase II, Arbour Commission, Policy Review dated January 9, 1996. However, the Arbour report speaks for itself, the recommendations are clear, and it is up to the Correctional Service to determine those which it will implement.

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## OPERATIONS

In light of the pending Parliamentary review of the *Corrections and Conditional Release Act*, I have provided within this section of the report, a brief overview of the Office's legislative mandate.

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 Ombudsman 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".

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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 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.

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.

In addition to responding to individual complaints, the Office meets regularly with inmate committees and other offender organizations and makes announced visits bi-annually at each institution during which the investigator will meet with any inmate, or group of inmates, upon request.

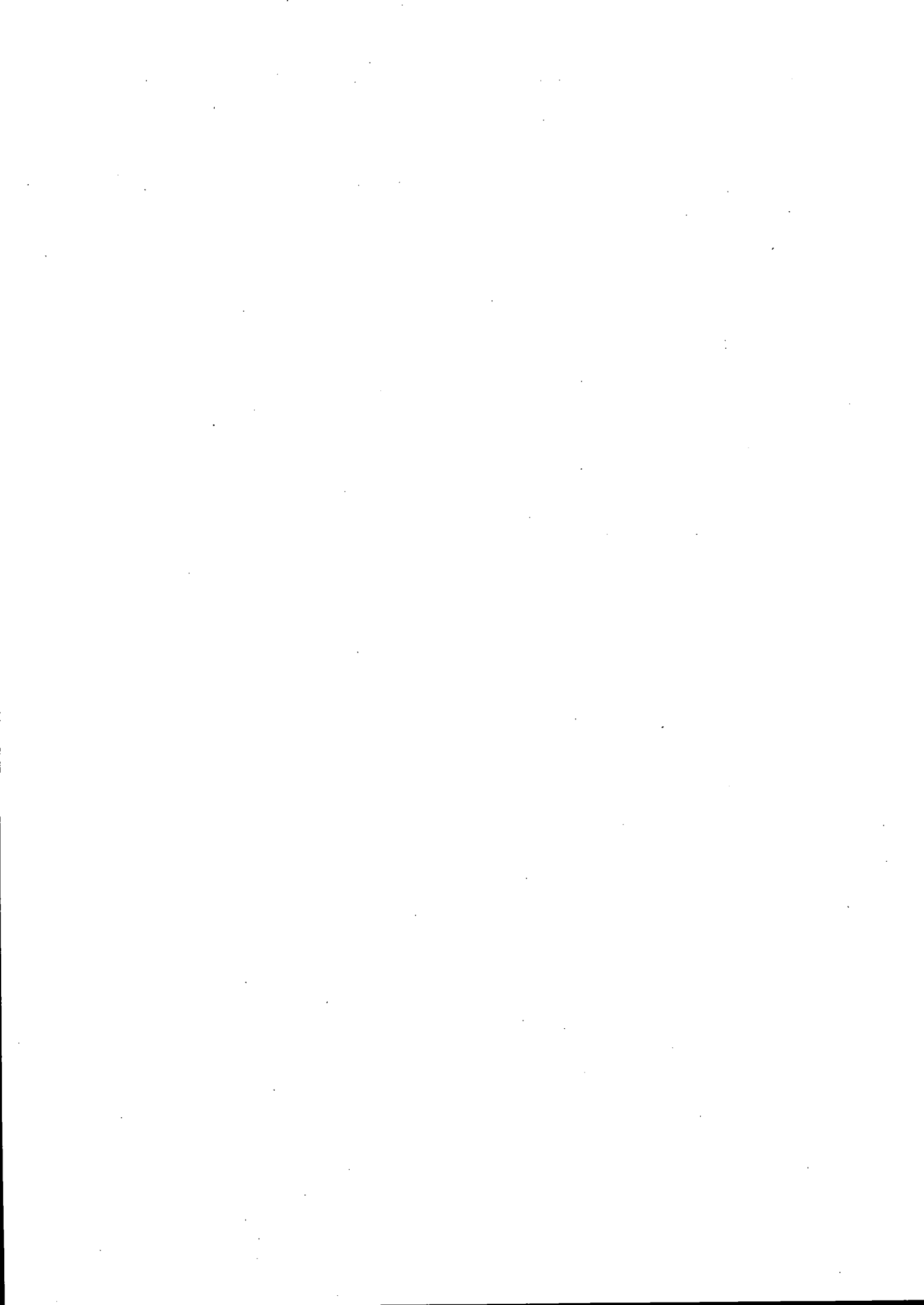
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The vast majority of the issues raised on complaints by inmates are addressed by this Office at the institutional level through discussion and negotiation. In those cases where a resolution is not reached at the institution, the matter is referred to regional or national headquarters, depending upon the area of concern, with a specific recommendation for further review and corrective action. If at this level the Service fails, in the opinion of the Correctional Investigator, to address the matter in a reasonable and timely fashion, it will be referred to the Minister and eventually may be detailed within an Annual or Special Report.

The Office over the course of the reporting year received 6,366 complaints, the investigative staff spent 359 days at federal penitentiaries and conducted in excess of 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 acknowledge and 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 conclusion, it is important for all parties to appreciate that the Correctional Investigator 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 is mandated to investigate complaints from an independent and neutral position, consider thoroughly the Service's action and the reasons behind it, and either endorse and explain that action to the complainant or if there is evidence of unfairness, make an appropriate recommendation concerning corrective action. The interest of the Correctional Investigator lies in ensuring that inmate concerns are objectively and fairly addressed in a timely fashion.



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## STATISTICS





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

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Administrative Segregation	
a) Placement	305
b) Conditions	65
Case Preparation	
a) Parole	399
b) Temporary	106
Absence	
c) Transfer	379
Cell Effects	350
Cell Placement	108
Claims	
a) Decisions	68
b) Processing	51
Correspondence	73
Diet	
a) Food Services	32
b) Medical	21
c) Religious	18
Discipline	
a) ICP Decisions	43
b) Minor Court	22
Decisions	
c) Procedures	143
Discrimination	19
Employment	121
Financial Matter	
a) Access to Funds	67
b) Pay	242
Grievance Procedure	173
Health Care	
a) Access	258
b) Decisions	236
Information	
a) Access	103
b) Correction	251
Mental Health	
a) Access	27
b) Programs	6
Other	54
Pen Placement	91
Private Family Visiting	243
Programs	235
Request for Information	289
Security Classification	110
Sentence Administration	65
Staff	281

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**TABLE A (Cont'd)**  
**COMPLAINTS RECEIVED BY CATEGORY**

---

Temporary Absence Decision	90
Telephone	127
Transfer	
a) Decision	312
b) Involuntary	254
Use of Force	42
Visits	263
 <u>Outside Terms of Reference</u>	
National Parole Board	176
Decisions	
Outside Court	24
Provincial Matter	24
<b>TOTAL</b>	<hr/> <b>6366</b>

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**TABLE B**  
**COMPLAINTS - BY MONTH**

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1996

April	582
May	569
June	500
July	391
August	424
September	561
October	620
November	501
December	566

1997

January	590
February	530
March	532

<b>TOTAL</b>	<hr/> <b>6366</b>
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**TABLE C**  
**COMPLAINTS RECEIVED BY INSTITUTION**

<u>Institution</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>July</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Total</u>
<b><u>Maritimes</u></b>													
Atlantic	28	29	9	4	1	7	34	9	5	5	7	8	146
Dorchester	37	2	2	8	5	4	42	24	6	36	9	9	184
Springhill	48	12	13	13	7	6	24	19	11	19	11	13	196
Westmorland	17	6	1	2	0	0	18	0	2	10	3	4	63
Prov.-Maritimes	0	1	1	1	2	1	1	0	2	6	2	0	17
<b><u>Ontario</u></b>													
Bath	6	13	4	6	16	9	9	48	14	8	39	9	181
Beaver Creek	2	3	3	2	11	4	3	2	1	1	2	1	35
Collins Bay	21	10	3	18	15	24	10	15	8	7	8	40	179
Frontenac	1	1	1	3	1	0	1	0	1	3	1	8	21
Joyceville	41	7	17	17	6	13	24	13	44	38	11	10	241
Kingston Penitentiary	34	11	19	45	21	22	31	18	28	27	14	29	299
Millhaven	18	33	5	10	28	11	9	10	22	14	7	25	192
Pittsburgh	8	1	6	2	0	4	1	1	8	3	2	6	42
RTC	4	1	0	6	4	1	4	2	2	5	4	3	36
Warkworth	4	14	49	5	6	11	45	16	33	31	43	14	271
Prov.-Ontario	2	1	6	6	4	2	7	2	4	5	5	8	52
<b><u>Pacific</u></b>													
Elbow Lake	0	4	1	0	2	5	0	5	3	1	1	1	23
Ferndale	0	3	1	0	5	4	1	0	1	0	0	0	15
Kent	12	37	17	21	20	41	15	10	12	31	16	26	258
Matsqui	9	23	6	1	4	12	1	2	0	15	2	1	76
Mission	8	29	2	4	15	13	12	8	5	16	11	7	130
Mountain	7	12	5	2	3	45	5	5	1	19	5	9	118
Regional Health Centre	4	4	5	6	5	4	12	1	2	9	5	4	61
William Head	1	8	4	2	2	16	3	2	2	6	7	2	55
Prov.-Pacific	1	1	1	2	0	0	0	0	1	1	0	2	9
<b><u>Prairies</u></b>													
Bowden	12	4	57	13	4	12	41	3	7	7	27	19	206
Drumheller	13	9	17	6	3	9	24	7	10	11	18	4	131
Edmonton	10	14	24	3	10	6	7	18	8	13	8	5	126
Grande Cache	5	1	48	4	2	5	4	34	13	40	4	13	173
Riverbend	2	5	0	0	0	5	2	0	9	0	2	1	26
Rockwood	0	30	0	1	0	2	0	0	7	0	0	2	42
RPC	4	17	12	12	3	9	7	1	8	5	1	4	83
Sask Pen	10	34	4	2	1	13	6	1	20	3	5	11	110
SHU Prairies	1	11	3	1	1	5	2	4	9	2	4	3	46
Stony Mountain	12	14	1	14	7	25	3	0	26	4	1	17	124
Prov.-Prairies	5	6	1	3	5	2	1	5	1	1	0	1	31

**TABLE C (cont'd)**  
**COMPLAINTS RECEIVED BY INSTITUTION**

<u>Institution</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>July</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Total</u>
<b>Quebec</b>													
Archambault	39	12	3	5	52	10	10	39	7	12	25	11	225
Cowansville	15	16	13	10	7	6	9	3	41	12	10	8	150
Donnacona	11	12	27	12	8	16	4	32	5	9	6	29	171
Drummondville	8	20	11	20	28	21	26	15	4	33	13	14	213
FTC	13	12	10	13	6	12	26	5	1	3	13	9	123
La Macaza	11	13	13	15	10	20	26	8	12	6	12	19	165
Leclerc	20	25	24	42	20	29	48	7	23	43	24	22	327
Montée St. François	2	6	7	4	0	6	19	3	3	10	23	4	87
Port Cartier	50	4	10	11	9	42	4	10	6	10	57	10	223
Regional Reception Centre	2	10	8	3	4	5	10	5	38	3	5	4	97
SHU	6	1	1	0	4	10	3	1	32	8	19	10	95
Ste-Anne-des-Plaines	3	6	11	6	5	5	2	33	2	7	11	2	93
Prov.-Quebec	1	2	1	1	1	0	2	5	4	1	0	4	22
<b>FSW Facilities</b>													
Burnaby	0	1	0	0	0	0	0	0	0	0	0	1	2
Edmonton	0	9	1	0	0	4	0	2	24	2	2	2	46
Psychiatric Centre	0	0	0	0	0	1	0	1	6	2	1	2	13
Saskatchewan Pen	0	0	0	0	1	0	0	0	13	3	3	1	21
Springhill	0	0	0	0	0	0	6	0	0	1	0	9	16
Healing Lodge	0	0	0	0	0	1	0	0	1	0	0	0	2
Isabel McNeil House	0	0	0	0	0	0	0	0	0	0	1	0	1
Joliette	0	0	0	0	0	0	0	0	0	0	4	1	5
Kitchener	0	0	0	0	0	0	0	0	0	2	0	1	3
Nova	0	3	1	0	16	8	9	2	2	5	4	40	90
Prison for Women	10	5	10	4	34	12	6	45	5	15	10	8	164
<b>CCC's and CRC's</b>	4	1	1	0	0	1	1	0	1	1	2	2	14
<b>TOTAL</b>	<b>582</b>	<b>569</b>	<b>500</b>	<b>391</b>	<b>424</b>	<b>561</b>	<b>620</b>	<b>501</b>	<b>566</b>	<b>590</b>	<b>530</b>	<b>532</b>	<b>6366</b>

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

---

<u>Region</u>	<u>Complaints</u>	<u>*Inmate Population</u>
Pacific	745	1913
Prairie	1098	3313
Ontario	1549	3531
Quebec	1991	3778
Maritimes	606	1346
Federally Sentenced Women	363	282
CCC's and CRC's	14	
<b>TOTAL</b>	<b>6366</b>	<b>14163</b>

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\* Figures provided by the Correctional Service for March 31, 1997

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**TABLE E**  
**DAYS SPENT IN INSTITUTIONS**

---

<u>Institution</u>	<u>Days</u>
Archambault	10
Atlantic	15
Bath	9
Beaver Creek	3
Bowden	7
Burnaby Correctional Centre	1
Collins Bay	11
Cowansville	5
Donnacona	13
Dorchester	11
Drumheller	12
Drummondville	7
Edmonton	6
Edmonton Institution for Women	3
Elbow Lake	4
Federal Training Centre	7
Ferndale	4
Frontenac	5
Grande Cache	5
Isabel McNeil House	1
Joliette	1
Joyceville	9
Kent	7
Kingston Penitentiary	15
Kitchener	2
La Macaza	9
Leclerc	8
Maple Creek	2
Matsqui	6
Millhaven	20
Mission	6
Montée St-François	3
Mountain	5
Nova	5
Pittsburgh	3
Port Cartier	10
Prison for Women	13

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**TABLE E (Cont'd)**  
**DAYS SPENT IN INSTITUTIONS**

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Regional Health Centre, Pacific	5
Regional Psychiatric Centre, Prairies	1
Regional Psychiatric Centre, Prairies, Federally Sentenced Women	3
Regional Reception Centre, Quebec	3
Regional Treatment Centre, Ontario	7
Regional Treatment Centre, Ontario, Federally Sentenced Women	1
Riverbend	5
Rockwood	5
Saskatchewan Penitentiary	6
Saskatchewan Penitentiary, Federally Sentenced Women	2
Special Handling Unit, Prairies	4
Special Handling Unit, Quebec	11
Springhill	11
Springhill, Federally Sentenced Women	3
Stony Mountain	9
Warkworth	7
Westmorland	9
William Head	4
<b>TOTAL</b>	<b>359</b>



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**TABLE F**  
**INMATE INTERVIEWS**

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<b>Month</b>	<b># of Interviews</b>
<b><u>1996</u></b>	
April	195
May	230
June	154
July	92
August	119
September	207
October	167
November	156
December	238
<b><u>1997</u></b>	
January	230
February	147
March	157
<b>TOTAL</b>	<hr/> <b>2092</b>

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**TABLE G**  
**DISPOSITION OF COMPLAINTS**

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Advice given	583
Assistance given	957
Information given	1832
Not justified	471
Not within mandate	185
Pending	274
Premature	1282
Resolved	551
Unable to resolve	81
Withdrawn	150
<b>TOTAL</b>	<hr/> <b>6366</b>

**TABLE H**  
**COMPLAINTS RESOLVED BY CATEGORY**

<u>TYPE</u>	<u>RESOLVED</u>
Administrative Segregation	
a) Placement	10
b) Conditions	27
Case Preparation	
a) Parole	14
b) Temporary Absence	6
c) Transfer	51
Cell Effects	55
Cell Placement	15
Claims	
a) Decisions	8
b) Processing	3
Correspondence	7
Diet	
a) Food Services	2
b) Medical	1
c) Religious	2
Discipline	
a) ICP Decisions	0
b) Minor Court Decisions	2
c) Procedures	17
Discrimination	0
Employment	2
Financial Matter	
a) Access to Funds	10
b) Pay	36
Grievance Procedure	13
Health Care	
a) Access	28
b) Decisions	11
Information	
a) Access	13
b) Correction	17
Mental Health	
a) Access	2
b) Programs	2
Other	4
Pen Placement	12

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**TABLE H (Cont'd)**  
**COMPLAINTS RESOLVED BY CATEGORY**

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Private Family Visiting	31
Programs	16
Request for Information	1
Security Classification	7
Sentence Administration	3
Staff	5
Temporary Absence Decision	12
Telephone	26
Transfer	
a) Decision	36
b) Involuntary	10
Use of Force	0
Visits	32
 <u>Outside Terms of Reference</u>	
National Parole Board Decisions	1
Outside Court	0
Provincial Matter	1
<b>TOTAL</b>	<hr/> <b>551</b>

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## CURRENT SYSTEMIC AREAS OF COMPLAINT

As I indicated in the Introduction, this section provides a brief overview of the concerns associated with each of the issues, this Office's recommendations for needed change and the current position and specific commitment offered by the Service in response to the areas of concern.

### 1. SPECIAL HANDLING UNITS

These Units, which are currently located in the Prairie and Quebec regions, 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. The Service amended its policy governing the operation of these Units in March of 1990 with the stated objective of creating a correctional 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.

Our review of these Units over the years has indicated that they were in reality little more than a form of long-term segregation. Programming and employment opportunities were 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, remained excessively controlled. The provision of psychiatric interventions were 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 were, until recently, not being met, and the National Review Committee's responsibilities in terms of monitoring and overseeing Special Handling Unit operations were inconsistent and poorly focused with limited national direction.

Further concerns have been raised with respect to the objectivity and fairness of the decisions taken by the Service's National Review Committee. The Committee is the decision-making authority on placement in, and transfer from, the Special Handling Unit. The Chairman of the Committee is organizationally subordinate to the decision-making authority which transfers the inmate to the Unit for assessment purposes prior to the Committee's decision on placement. In addition, the Wardens of maximum security institutions, who are voting members on the Committee, are taking decisions on cases that they may have recommended for transfer to the Unit or were transferred to the Unit by their immediate supervisors. Further, given that inmates transferred from the Unit are placed in maximum security institutions, these Wardens have a direct interest in the decision being taken. I believe that the current composition of the National Review Committee leaves open to question the objectivity and fairness of the decisions taken.

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

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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.

The Service, in 1995, decided to centralize their Special Handling Unit operations at one institution in the Quebec region. This decision raised specific concern within the Prairie Unit population as to the ability of the Service within a centralized Unit to ensure that existing mental health and aboriginal programming requirements would continue to be met.

To address these areas of concern the Service might want to:

- a) identify and catalogue the needs of the Special Handling Unit population and ensure that individual programming opportunities are available that specifically address those identified needs related to the return of the offender to a maximum security institution;
- b) ensure that the operation of the centralized Special Handling Unit is capable of meeting the language, cultural and mental health requirements of those individuals transferred to that Unit;
- c) establish a National Review Committee with a senior national presence which has and is seen to have the authority and objectivity required to carry out its functions in a fair and responsive manner; and
- d) establish in policy the requirement that the National Review Committee afford inmates the opportunity to meet with the Committee as part of the decision-making process.

### **Correctional Service Response**

The Commissioner advised that with respect to the programming issues, that a review will be undertaken which will include: the capacity of the Service to identify the needs of the offenders housed in the Special Handling Unit, the ability of the Service to deliver corresponding programs to meet those needs within the Special Handling Unit structure and the Service's ability to address any language issues, needs of aboriginal offenders, as well as the mental health needs of offenders housed in the Centralized Unit. This review is to be completed by July 31, 1997.

With respect to the fairness and objectivity concerns associated with the National Review Committee functions, the Service has advised that the composition of the Committee will not be altered. We have been advised that the Senior Deputy Commissioner will have functional authority over the National Review Committee including the monitoring of Committee decisions.

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In addition, the Service has recently amended their Commissioner's Directive # 551 on Special Handling Units to reflect that "inmates are to be advised of their right to appear before the National Review Committee" and are to be provided notice at least five days in advance of the date and time of the Committee meeting.

## 2. INMATE PAY

I initially raised the issues associated with inmate pay in my 1988-1989 Annual Report, recommending at that time, that an across the board increase be implemented to offset the erosion of the inmates' financial situation. There has not been a meaningful adjustment to the inmate pay rates for a decade.

The concerns raised by this situation are two fold.

First is the impact on institutional operations. If remuneration for authorized activities is inadequate, other avenues of securing income will obviously be found to finance day to day living. Inadequate pay levels promote and maintain an underground economy which in turn significantly increases tension and illicit activities within institutions.

Second is the impact on the reintegration of the offender back into society. Again, if pay levels are inadequate during the period of incarceration, 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.

Additional concerns have been raised over the years with respect to the Service's application of its pay policy, specifically in the areas of unemployment and participation in treatment programming.

The number of unemployed inmates continues to rise, caused in part by overcrowding and an increase in the number of inmates seeking protection and ending up in long-term segregation with no employment opportunities. The rate of pay generally applied to unemployed inmates is \$1.60 a day. This same rate of pay is also applied to those inmates who do not "voluntarily" participate in treatment programming. This practice erodes the principle of informed consent, absence of coercion or inducement, regarding decisions in treatment participation.

To address these concerns, given the Service's acceptance of the fact that \$1.60 a day is not reasonable remuneration, I recommend that the Service establish a reasonable minimum daily allowance and that all inmates, regardless of their status, receive at least that daily minimum.

I believe, as I have stated previously, that the perceived benefits of pay as a motivator for inmate participation, in employment or programming, is far outweighed by the cost of having a portion of the inmate population at a pay level of zero or \$1.60 a day.

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## Correctional Service Response

I have been advised by the Commissioner that the Service is not willing at this time to pursue the matter of an across the board increase in inmate pay.

The Service has established a Review Committee on Inmate Money which is scheduled to report in December of 1997. This Committee will incorporate into its examination of inmate money and other pay-related issues, the concerns raised by this Office.

### 3. GRIEVANCE PROCEDURE

The *Corrections and Conditional Release Act* requires that the Service establish a "procedure for fairly and expeditiously resolving offender grievances". Madame Justice Arbour in detailing the failures of the Service's inmate grievance process concluded: "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".

The comments and recommendations from this Office on the Service's management of the inmate grievance process span a decade and a half. In summary, I offer the following observations:

- the effectiveness and credibility of any levelled redress mechanism is dependent upon a combined front end process which is capable, in a participative fashion, of thoroughly and objectively reviewing the issue at question and subsequent levels within the process that have the courage to take timely and definitive decisions on issues referred to their attention which have not been reasonably addressed by the previous level,
- the difficulties inherent within the operation of the process have been related to an absence of commitment and acceptance of responsibility on the part of those mandated to make the process work,
- specific accountability for the operation of the process must be assigned to senior management,
- beyond the primary function defined by the Act, the grievance process must be viewed as a management tool so as to ensure a consistency in the Service's interpretation and application of its policy in response to concerns raised by inmates, and
- without accurate ongoing information from all levels of the system's operations, it cannot be reasonably managed.

There has been measurable improvement over the past nine months in the system's operations. The key now is for the Service to follow through on its commitments and ensure that the resolution of inmate grievances remains a management priority.



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## **Correctional Service Response**

The Commissioner has advised that changes in the way the Service responds to grievances have been made to address two distinctive needs:

First, the system must have the ability to provide offenders with investigations and responses to their complaints which are meaningful and timely. Second, mechanisms must be put in place which allow the managers of the Service to extract and use the cumulative information from grievances to identify trends, patterns and anomalies which in turn must be analyzed.

In support of these changes, a new Commissioner's Directive and a Standard Operating Practices Manual are to be finalized by July, 1997. A quarterly report on significant grievance decisions is now produced at the national level and regional managers at the regional level have been encouraged to follow this practice. In addition, a comprehensive national statistical report on offender grievances will be produced this Spring and the responsibility for the management of the analysis of this data will rest with the Inmate Affairs branch at National Headquarters.

These changes are designed to effectively improve the value of the grievance system and address the issues put forth in the Correctional Investigator's Annual Reports.

### **4. CASE PREPARATION AND ACCESS TO PROGRAMMING**

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

The key to the Service meeting its primary Corporate Objective and effectively managing its population growth lies in the provision of timely case preparation and access to programming. 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 wherein 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.

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

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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.

I believe the Correctional Service correctly identified in January of 1994 the following 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, by the Service's information base relevant to the above variables, specifically with respect to waiver rates and the timing of programming for release, which 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 suggested 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 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. We have been informed that the Service is in the process of developing performance indicators for a number of components within the case management process.

Third, the Service's programming, while extensive, lacks management control and co-ordination. 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 recommended:

- 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 conditional release and that it as well complements and supports its institutional programming.

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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 suggested 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.

Until such time as the Service is capable of accurately measuring the effectiveness of its case preparation process, their policy development and management decisions in this area will continue to be ad hoc and uncoordinated.

### **Correctional Service Response**

The Commissioner informs this Office that a number of initiatives are underway to address these concerns. The recommendations of the Task Force on Reintegration are being implemented and monitored at each Executive Committee meeting and the Service is about to finalize a National Audit on Case Management operations.

With respect to performance indicators, we are advised that they are currently being developed to monitor performance at the local level. We were also advised that a consolidated performance management system to track and analyse data would be discussed between the Senior Deputy Commissioner and the Regional Assistant Deputy Commissioners and the outcome of this exercise would be shared with this Office by the end of May 1997.

On the issue of waivers and postponements, the Commissioner advised that he and the Chairman of the National Parole Board have agreed to review the legislation given the high number of waivers. He also advised that although regions now collect data about waivers, the Service would ensure that this data is also available on their Executive Information System by May 15, 1997.

We were further advised that the Service has launched "Operation By-Pass" to review and un-complicate the case management process. This exercise is expected to be completed by August, with implementation scheduled for the fall of 1997. The Commissioner also indicated that the Service is strengthening the expertise of the program branch to review the effectiveness of their programs and to ensure that relevant programming is available in the community.

Lastly, we are informed that the Service has created a working group to review the division of labour between CO II's and CMOI's with further discussion scheduled for the June, 1997 Executive Committee.

### **5. DOUBLE BUNKING**

I have been commenting on the negative impact of double bunking on individual offenders and institutional operations since 1984. I have had a standing recommendation since that time that: **The Correctional Service of Canada cease immediately the practice of double bunking in segregation and dissociation areas.**

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There are currently in excess of 4,000 inmates double bunked in cells designed for one person in federal Canadian penitentiaries. The practice of double bunking in segregation and dissociation areas continues. I 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 at either the regional or national level, defies not only any reasonable standard of decency but also the standards of international convention.**

### **Correctional Service Response**

I have been advised by the Commissioner that to address this Office's concerns regarding this issue the following will be undertaken:

- "that a concerted effort be extended by each institution to establish and maintain quality data entry into the Offender Management System (OMS) in relation to cell assignment";
- "that each region extract information from their local OMS database and convert it to an Excel spreadsheet and then forward it to the Senior Deputy Commissioner";
- "that each regional OMS coordinator be asked to review the process and results of a method to extract data on double-bunking from the OMS. This will ensure that the data obtained meets the requirements of the region and provides them with relevant information to form the basis of a regional report which will then be forwarded to the Operations sector of National Headquarters (NHQ). We plan to produce the first quarterly report in October 1997, which will give us an indication of the quality of the information. We will ensure that the reports, along with an analysis, are reviewed by the Executive Committee and that corrective action be taken where necessary";
- "that the NHQ Operations sector receive the regional reports, analyze the data and report any discrepancies back to the regions and operational units";
- "that the Technical Information Management Services (TIMS) sector at NHQ ensure that cell information is included in the weekly Management Information Component (MIC) roll-up of data to allow for extraction and reporting of quarterly data as a performance indicator";
- "that the Performance Assurance sector review the extraction routines at the national level to monitor the quality of data and to prepare quarterly reports on double-bunking".

The Service anticipates that these undertakings will be completed by the end of October 1997.

## **6. TEMPORARY ABSENCE PROGRAMMING**

The problems associated with the significant decline in the use of this program were initially brought to the attention of the Correctional Service by this Office in 1989.

Temporary Absences and Work Release Programs, as I have stated previously, are important programs which directly contribute to the successful reintegration of offenders back into society. They are programs that have been neglected for far too long.

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The Service needs to establish both a clear policy direction to promote the use of these programs and an information system capable of monitoring variances in their use across the Service.

### **Correctional Service Response**

The Service, in response to the decline in the use of these programs, has expanded its monitoring capabilities to include:

- “the number of temporary absences/work releases granted by each institution”;
- “the outcome of each temporary absence/work release (successful, unsuccessful)”;
- “the purpose for the temporary absences and their timing within offenders’ sentences”.

The extraction and presentation of data for analysis will be completed by the end of May 1997.

In addition, in order to promote these programs, a letter was forwarded to the Deputy Commissioners of the regions encouraging them to make use of these programs, where appropriate, and to monitor their use within their regions.

## **7. TRANSFERS**

As I have indicated in previous years, 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 an offender 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 transfer decisions and the processes leading to those decisions represent the single largest category of complaint received by this Office.

I have recommended 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.

The impact of 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. Overcrowding has also caused excessive delays in the penitentiary placement process resulting in massive overcrowding within reception units. As such, any review of the transfer process must incorporate penitentiary placements.

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Furthermore, overcrowding has caused excessive delays in both the processing of transfer applications and the decision-making process itself. Consequently, general population inmates being transferred either laterally or downward in security level for program reasons, are in competition with reception inmates for a diminishing number of cells.

In addition, 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 increased delays and has, as well, caused significant inconsistencies in the detail of information provided to inmates in instances where the transfer is denied.

In short, the Service's transfer and penitentiary placement process is excessively delayed and poorly managed. Too many inmates are housed at a security level above that required by their security classification or are spending unreasonable periods of time in reception units. This fact places the Service at odds with the legislative principle that they "use the least restrictive measures consistent with the protection of society, staff members and offenders" and as well, negatively impacts on their efforts at timely reintegration. The process needs to be centrally managed with the development of an information system capable of providing management with data relevant to the performance of the process.

### **Correctional Service Response**

I have been advised by the Commissioner that a review of the relevant directives governing transfers and penitentiary placements will be undertaken to ensure that the process complies with legislative and policy requirements, including the adherence to timeframes, decision-making and appeals. A monitoring system to track performance will be developed. This work is expected to be completed by the end of June 1997.

### **8. HOSTAGE-TAKING - SASKATCHEWAN PENITENTIARY (1991)**

There are two areas associated with this long-standing issue which require further comment: institutional violence and preventive security guidelines.

With respect to institutional violence, this Office's initial concerns centred on the difficulties identified within the Service's internal investigation of the hostage-taking, associated with the integration of protective custody and general population inmates. The Service's integration efforts in this area have increased over the years in response to both overcrowding and a rise in the long term segregation population and I have noted what appears to be an increase in inmate assaults resulting in serious bodily injury. I remain of the opinion that the Service needs to undertake a review of its integration policy in relation to increased institutional violence. I further suggest that the Service incorporate into this review the impact of its current pay policy, as detailed in the Inmate Pay section of this Report, concerning an increase in illicit activities and tensions within penitentiaries.

With respect to the matter of preventive security guidelines, the initial concerns stemmed from the absence of relevant security information available during the course of the hostage-taking incident. It was noted at the time that the Service had little if any national direction with respect to the co-ordination, verification, communication and correction of preventive security information or the responsibility and accountability of the preventive security officers in relation to this information. As

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such, I had recommended that the Service develop Preventive Security Standards and Guidelines to bring some clarity to this area.

### **Correctional Service Response**

I have been advised that the Service, in response to the issue of institutional violence, does not intend to conduct specific research studies on this issue at this time. I have further been advised that all statistics dealing with institutional violence are reviewed as part of the regular Correctional Results Review by the Senior Deputy Commissioner, and that the Review Committee on Inmate Money will consider our concerns regarding the impact that inmate pay levels may have on illicit activities and institutional violence.

In terms of Preventive Security Guidelines and Standards, the Service has again acknowledged that information contained on preventive security files is not routinely examined to ensure accuracy or to measure its ongoing impact and as such, guidelines will be produced and provided to each Warden by October 1997. With respect to the accessibility of preventive security information related to an offender's previous participation in a violent incident, I am informed that the Service is currently in the process of producing a form to document data concerning such incidents, which will in turn be stored in the offender file in a prominent location.

### **9. MENTAL INCOMPETENCE**

This issue centres on the Service's responsibility to provide independent representation to inmates who are not reasonably in a position to act for themselves on matters of significance which fall under the authority of the Commissioner of Corrections. I wrote the Commissioner on this matter in 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.

I was initially advised that "the procedures for mental incompetence remain a provincial matter and vary significantly within each province. The Correctional Service of Canada is not in a position to consider a national policy until such time that a uniform Mental Health Act is enacted, however, this is unlikely to occur in the foreseeable future".

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As I have indicated previously, I was not acceptant of the Service's position on this matter. I would have thought that the absence of national direction in this area, in combination with the level of mental health problems evident within federal penitentiaries and the fact that a uniform Mental Health Act is unlikely, was reason for the Service to develop national policy in this area.

As a result of further discussions, I was advised in 1995 that:

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 statutes, there is no simple way to ensure a consistent approach across CSC. There is no uniform approach to mental health in Canada, despite the existence of a draft Uniform Mental Health Act.

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

### **Correctional Service Response**

Although I have received no further specific commitments from the Service on this issue, I am advised that additional internal reviews have been undertaken in an effort to address the concerns raised by this matter. Dialogue is ongoing between this Office and the Service's Corporate Advisor on Health Care.

### **10. DISCIPLINARY COURT DECISION**

The issue initially arose in 1992 following our attempt to investigate a complaint regarding a minor court disciplinary conviction. We were advised at that time that the Service did not maintain a record of such hearings.

The Regulations to the *Corrections and Conditional Release Act* at s. 33 (1) require that:

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.



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I therefore recommended at that time that the Service take immediate steps to ensure that all hearings of disciplinary offences were recorded in such a manner as to make a full review of any hearing possible. I further recommended 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 both the Act and its Regulations.

This Office received a copy of the Service's internal audit on Inmate Discipline in December of 1996. Following our review of the audit report a detailing of our continuing concerns with the Service's disciplinary process were forwarded to the Assistant Commissioner, Corporate Development in February of 1997. Discussions have taken place with the Service focussed on the following areas:

- provision of administrative fairness and protection against self-incrimination with respect to the recording of informal resolution procedures;
- lack of compliance to law in proceedings at hearings for minor offenses;
- the use of "behavioural contracts" for correctional programming purposes in a manner which subverts the purposes of the discipline process;
- discrepancies in sentencing among Independent Chairpersons and the appropriateness of pre-sentencing representations at hearings;
- sufficiency and timeliness of the information which is disclosed to the accused inmate prior to disciplinary hearings; and
- effective access of inmates to legal counsel in various jurisdictions.

### **Correctional Service Response**

I was advised in March of 1997 that the Correctional Service would issue a specific direction to the field requiring that all minor disciplinary court hearings were to be audio taped. I was further advised that our ongoing concerns, as detailed in February of 1997, would be reviewed and specifically responded to.

### **11. USE OF FORCE - INVESTIGATIONS AND FOLLOW UP**

The Commissioner's Directive on Use of Force defines 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 stated that:

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

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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.

I recommended in 1992 that amendments, ensuring that all use of force incidents are investigated and that those investigations include input from the inmates affected, were required within the Commissioner's Directive. I further recommended that the Directive specifically detail senior management's responsibilities in ensuring that investigative reports are thorough and objective and that corrective follow-up action including co-ordination and analysis of the results of the investigations at the regional and national level be undertaken in a timely fashion.

The Service, in response to my recommendation, 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 did not solve 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. Accordingly, a high proportion of all use of force incidents are now being identified as "routine". In addition to this, the amended Use of Force Report was not consistently being used, and as such, there was no evidence in those cases that inmates are being advised that they can make representations. Likewise, 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.

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, types of force used, circumstances, number of injuries, etc., for the purpose of review and analysis to

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ensure that such incidents are kept to a minimum. (For example, how many use of force incidents occur over the course of a year?)

The Service, in response to the areas of concern associated with the use of force, acknowledged 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 agreed 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.

The Service further acknowledged that no meaningful analysis was being done on the data collected and proposed 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.

In addition, the Service initiated an internal Audit on the Use of Force last year. This Office received a copy of that audit in March of 1997. The Audit's findings in large part confirm the above-noted areas of concern.

### **Correctional Service Response**

I am advised that the Service is in the process of developing action plans to address the findings and recommendations of the Audit, which will include the establishment of "an information base of variables related to the Use of Force". These action plans are to be completed by the end of June 1997.

## **12. INMATE INJURIES AND INVESTIGATIONS**

I have been commenting within my Annual Reports for over a decade on the deficiencies of the Service's internal investigative process. Our areas of concern have and continue to focus on the objectivity, thoroughness and timeliness of investigations and the management of the process itself.

I will limit my comments in this section to those issues associated with the Service's investigation of incidents resulting in inmate injury or death.

I noted in 1991, following our review of a series of complaints, that the Service's reporting and investigation of inmate injuries was inconsistent and uncoordinated. In response to these observations, the Service undertook to develop a separate Commissioner's Directive on the Recording and Reporting of Offender Injuries. The intent of this policy was "to provide a clear national framework and expectation on actions to be taken when an inmate incurs an injury". I fully supported the development of this Directive and recommended at the time that priority be given to this issue to ensure that previously identified inconsistencies and lack of coordination were immediately addressed. Although I received a draft of the Directive on the Reporting and Recording of Inmate Injuries in the Fall of 1993 and provided detailed comment to the Service, the Directive was never issued.

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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) of the Act requires that:

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

I noted in my 1992-93 Annual Report that although the Act had come into force in November of 1992, I had not received any investigative reports from the Service on incidents resulting in death or serious bodily injury. I recommended at the time that the Service take immediate action to ensure that all investigation reports, inclusive of the Commissioner's comments, called for by Section 19 of the legislation, were forwarded to my attention in a timely fashion.

Over the course of the next two reporting years, I offered the following conclusion: that all incidents resulting in serious bodily injury, as defined by any reasonable person, are not being investigated by the Service as per the requirements of s. 19 and that the quality of those investigations which this Office has received are, in far too many instances, inadequate.

In order to address these concerns, the Service needs to provide clear national direction on the requirements associated with both the recording and reporting of inmate injuries and investigations undertaken pursuant to section 19 of the *Corrections and Conditional Release Act*. The Service further needs to ensure that its investigative process, in addition to being thorough, objective and timely, has the capacity at both the regional and national levels to correlate, analyze and follow-up on the results of investigations in a timely and responsive fashion.

With respect to investigations on suicides specifically, the Service, in June of 1996, delegated the responsibility for investigations into inmate suicides from the national to the regional level. I wrote the Commissioner expressing my concern with this downgrading, as the Service in November of 1995 had taken a decision to move all suicide investigations to the national level so as "to revitalize its suicide prevention strategy and increase the level of attention given to suicide investigations". Although I was assured by the Commissioner that a national review and analysis on a bi-annual basis of suicide investigation reports would continue, the details of this process were somewhat vague. We have further communicated with the Service requesting, clarification of the review and analysis process plus a copy of the bi-annual retrospective study on inmate suicides. I anticipate a response on this matter in the near future.

### **Correctional Service Response**

With regard to the timeliness and quality of national and regional investigations, the Commissioner has detailed, in recent correspondence, various actions taken by the Service to address this Office's concerns. These actions include assigning permanent investigators to national investigations, delivering specific training to create a pool of resource people to participate in national and regional investigations, further quality control by National Headquarters, and that all convening orders for national and regional investigations now require the identification of any area where the Service was

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not in compliance with the law, policy or procedures, as stipulated in Recommendation 10(d) of the Arbour Commission Report.

The Commissioner further stated that a new draft Commissioner's Directive on Investigations was currently in the consultation phase and that responses from interested parties were expected by April 14, 1997. I have also been advised that the Service has recommenced the development of a Directive on Reporting and Recording of Inmate Injuries.

In addition, the Service issued a memorandum on the 21 of March 1997, again informing the regions of their requirements to consistently comply with section 19 of the *Corrections and Conditional Release Act*.

## CONCLUSION

In closing this year's Annual Report, I want to again 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 reintegration 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 inmate concern in an open and co-operative 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 Correctional Service at all levels in an open and co-operative 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 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 to date of the Annual Report as a vehicle of timely resolution, I will, in those instances where the Service has not taken adequate or appropriate action within a reasonable time, refer these issues directly to the attention of the Minister under the provisions provided for by the legislation.

I look forward to the challenges of the coming year and anticipate a continued open and cooperative working relationship with the Service so as to ensure that inmate concerns are addressed in a thorough, objective and timely fashion.

