ANNUAL REPORT
OF THE
CORRECTIONAL INVESTIGATOR

1999-2000

Cat. No. JA1-2000
ISBN 0-662-65145-6

Internet : www.oci-bec.gc.ca

June 29, 2000

The Honourable Lawrence MacAulay
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 27th Annual Report of the Correctional Investigator.

Yours respectfully,

R.L. Stewart
Correctional Investigator

The Correctional Investigator is mandated by Part III of the Corrections and Conditional Release Act as an Ombudsman for federal offenders. The primary function of the Office 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 complaints to ensure that systemic areas of concern are identified and appropriately addressed.

The notion of righting a wrong is central to the Ombudsman concept. This involves measurably more than simply responding to specific legal, policy or technical elements associated with the area of concern under review. It requires the provision of independent, informed and objective opinions on the fairness of the action taken so as to counter balance the relative strength of public institutions against the individual. It, as well, requires responsiveness on the part of public institutions which are and are seen to be fair, open and accountable.

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OPERATIONS

The Office of the Correctional Investigator is mandated as an Ombudsman for federal offenders. Part III of the Corrections and Conditional Release 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:

> *[T]o 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 Act and Access to Information Act.

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 our 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 and improperly

discriminatory; or based wholly or partly on a mistake of law of 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, in 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, this provision clearly indicates 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 investigate thoroughly and objectively a wide spectrum of administrative actions and present its findings and recommendations to an equally broad spectrum of decision makers, including 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 found in 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. Sections 192 and 193 of the legislation continue 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 complaints to ensure that systemic areas of concern are identified and appropriately addressed.

All complaints received by the Office are reviewed and initial inquiries are 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 initially to address the concerns through the Service's internal grievance process. Although we endorse 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. We had, over the course of this reporting year, in excess of two hundred meetings with various offender organizations, including inmate committees, lifer groups, black inmate associations, and native brotherhoods and sisterhoods.

The vast majority of the concerns raised in 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, in the opinion of the Correctional Investigator, fails 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 5282 complaints. The investigative staff spend 364 days in federal penitentiaries and conducted in excess of 2,800 interviews with inmates and half as many interviews with institutional and regional staff. The areas of complaint continue to focus on those long-standing issues which have been detailed in past Annual Reports. A specific breakdown of areas of complaint, dispositions, institutional visits and interviews is provided in the statistics section of the Report.

The Sub-Committee of the Standing Committee on Justice and Human Rights finalized its comprehensive review of the provisions and operations of the Corrections and Conditional Release Act during the course of this reporting year. The Committee's Report, A Work In Progress, was tabled on May 29, 2000. The Office was an active participant in this review process, and we look forward to the further discussion that will be generated by the Report's detailed commentary and thoughtful recommendations.

I was encouraged by the Report's recommendations on two matters of ongoing concern directly related to this Office's operations, namely our reporting relationship and resource base.

> *The Sub-committee recommends that sections 192 and 193 of the Corrections and Conditional Release Act be amended so that the annual and special reports of the Correctional Investigator are submitted simultaneously to the Minister and to Parliament.*
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> *The Sub-committee recommends that section 192 and section 193 of the Corrections and Conditional Release Act be amended so that the annual and special reports of the Correctional Investigator are automatically referred to the standing committee of the House of Commons responsible for considering the activities of the Office of the Correctional Investigator.*
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> *The Sub-committee recommends that the budget of the Office of the Correctional Investigator be increased in order to expand the number of investigators and cover directly related expenses such as office equipment, communications, and travel required to conduct investigations.*

SYSTEMIC ISSUES

I provided in last year's Annual Report an overview of those systemic issues which had been detailed in previous Annual Reports. The Report identified the specific areas of concern associated with each of the issues and presented a series of recommendations designed to assist in addressing the areas of concern.

I, as well, included in last year's Report the Response of the Correctional Service of Canada to each of the issues, to ensure that a balanced and accurate record was presented. The Service's comments, while providing clarification on a number of the issues, indicated general agreement with the areas of concern. The Service's Response further identified a number of operational and policy changes to be undertaken in addressing the areas of concern.

I received on February 7, 2000, from the Senior Deputy Commissioner, an updated report of the Service's response to the issues raised in my Annual Report. The covering letter indicated that the up-date outlined "the issues of concern as described by your office and presents the actions taken, as of November 1999, by the Correctional Service of Canada in response to each issue". The Service, as well, requested our written comments on its up-date, which we provided on February 29, 2000. Our comments focused on those areas of concern where we felt that further specific information or discussion was required in terms of the Service's previous undertakings. We, as well, stated that our objective was to present in this year's Annual Report a specific detailing of both the actions taken by the Service in addressing the areas of concern and the results of those actions.

A meeting with CSC officials chaired by the Senior Deputy Commissioner was held on March 9, 2000 to review the comments provided by this Office. I received on April 17, 2000 the Service's Final Response on the issues raised in my 1998-99 Annual Report.

Although progress has been made on a number of issues, I am quite frankly disappointed in the results of the Service's efforts to address these systemic areas of concern. While I believed last year that our agencies had come to an agreement on what needed to be done to begin addressing these issues, the Service's undertakings appear to have been overwhelmed by a bureaucratic process of excessive review, consultations and endless study.

I signed, in October of 1999, a Memorandum of Understanding with the Commissioner of Corrections, a copy of which is provided in Appendix A to this Report. One of the objectives of this Memorandum is to ensure that "timely corrective action in relation to valid offender concerns is taken by the Correctional Service of Canada". Evidence to date does not indicate that this objective is being met.

I stated in my Annual Report a decade ago that "the Correctional Service of Canada is a direct service agency whose policies and decisions impact directly and immediately on the offender population. There is a need, and an urgent need for the Service to take steps to ensure that its review and decision-making processes, especially at the national level, are capable of responding to and resolving issues in a timely fashion. There is also a need for the Service to ensure that the information upon which it is basing its decisions reflects the reality of its own operations. Although there has been progress in some areas…I suggest that the current bureaucratic and operational realities speak to the need for the Service to be measurably more responsive in addressing those areas of concern raised by or on behalf of offenders".

The concerns of the offenders tend to be forgotten at times during the review of these Issues. I believe it is imperative that these concerns be central to the process. The primary function of this Office is to investigate and attempt to 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 addressed in a timely fashion.

The positive impact on the offender population of the Service's efforts to address these systemic issues over the past year, I suspect, has been negligible.

1. SPECIAL HANDLING UNIT

The Special Handling Unit (S.H.U.) is a separate facility housing those inmates which the Service has identified as dangerous offenders. There are currently 75 inmates at the S.H.U.

Decisions on placement in and release from the S.H.U. are made by the Service's National Review Committee. As indicated in previous Reports, the Service has measurably improved both the fairness provisions associated with the decision-making process and the administrative efficiency of the National Review Committee.
That having been said, the position of this Office, since the inception of the S.H.U., has been that the policy of placing all dangerous offenders in one facility is ill-designed.

This practice labels offenders as the "worst of the worst" and creates a solidarity amongst these offenders that effectively negates the stated objective of the policy, which is *"to create an environment in which dangerous inmates are motivated and assisted to behave in a responsible manner so as to facilitate their integration in a maximum security institution".*

There are three interrelated areas of concern associated with this issue, as detailed in last year's Annual Report:

- the overall effectiveness of the Service's current policy of placing all dangerous offenders in one facility;

- the low level of participation in treatment programming designed to address violent behaviour, due in part to the felt solidarity of the population; and

- the significant number of inmates released directly from the S.H.U. to the street, due in part to the absence of participation in programming.

The Service, in responding last year, acknowledged the importance of enhanced reintegration programming. It indicated that *"to address this issue a Task Force had been commissioned to review programming at the S.H.U. and to suggest methods of program improvement...the final report of the Task Force is currently in preparation".* In addition, the Service indicated that it had established an initiative with the United Kingdom *"to develop a strategy for the management of dangerous and persistently violent offenders".*

The Task Force Report was finalized in November of 1999. The Report noted that participation in programming related to violent and sexual behaviour was extremely low, and recommended that *"the Correctional Service should develop a program designed specifically for the Special handling Unit".* With respect to direct releases to the community, the Report stated that *"the Working Group members were of the unanimous opinion that release from the S.H.U. on Warrant Expiry or Statutory Release should be avoided at all costs".*

The Office was advised in February of this year that no decision would be taken on how to proceed with the Report until the end of March, 2000. With respect to the reasons why no decision has yet been taken, the Service offers the following:

> *The recommendations in the Report have significant resource and staffing implications that require a series of determinations and consultations.*
>
> *No decision on how to proceed with this Report will be taken until all the consultations have been completed.*

For example, the Report was discussed at the National Review Committee (N.R.C.) on April 4, 2000. The N.R.C. will submit a letter outlining their position on the recommendations of the Report.

The National Review Committee Report for the period April through December, 1999 indicates that program participation numbers have not improved and the number of direct community releases from the S.H.U. have increased.

The areas of ongoing concern detailed in last year's Annual Report remain areas of concern. The Service, over the course of this reporting year, has provided virtually no comment or information specific to either program participation or direct community release from the S.H.U. Its international efforts, while producing commitments to work together in addressing the needs of dangerous and persistently violent offenders, do not appear to have resulted in "the development of an operational strategy". Finally, decisions on how to proceed with the Task Force Report await further internal consultation.

2. INMATE PAY

There are two areas of inmate concern associated with this issue.

First, the inadequate level of inmate pay: wages have been maintained at their 1986 level, despite the fact that costs have increased by nearly 80 per cent. In addition, over the past decade, a number of health care and personal hygiene items which used to be provided by the Service now must be purchased by the inmates.

Second, the introduction of the Millennium Telephone System in January, 1998, which has significantly increased the cost of inmate telephone calls, from 25¢ to $2.00 in some places for local calls.

With respect to the matter of pay levels, we were advised last year that the Service would include proposals within the National Capital Accommodation and Operational Plan for further improvements to the Inmate Pay System. "These proposals include increasing all pay levels; introducing annual indexing into the inmate pay system; and increasing offender purchasing power to off-set costs for certain products and services that inmates must currently pay for".

The Office was advised in February, 2000 that the Service "is currently reviewing the issues involved in the level of pay. Treasury Board has been informed that CSC is considering the possibility that in the near future, it will be asking for a mechanism to be put in place to index the level of pay of the inmates".

In response to our question of what exactly Treasury Board had been informed of, we were advised in April of 2000 that:

> *CSC informed TB that the purchasing power of inmates had diminished considerably over the past 10 years because of the fact that wages have been maintained at their 1986 and 1989 levels, the increase in the cost of items purchased by inmates and the number of additional items that inmates must now purchase themselves. CSC indicated to the TB that it wanted to increase the purchasing power of inmates by providing them with the equivalent of a value of $4 per pay period for personal hygiene and health products. This proposal has been endorsed by TB and CSC has obtained an amount of $1.5M for this initiative. CSC expects to put this increase into effect early in the new fiscal year.*

It would appear that the Service's undertaking last year to put forth a proposal that included "increasing all pay levels and introducing annual indexing into the inmate pay system" in addition to offsetting the cost of health care and personal hygiene items is not being pursued.

These less-than-half measures will not reasonably address this area of concern. As such, I return to my decade old recommendation for an immediate across-the-board increase in inmate pay levels. I further restate that the impact of inadequate pay levels is two-fold:

- *First, on institutional operations: inadequate pay levels promote and maintain an illicit underground economy; and*

- *Second, on the inmate's release: inadequate pay levels negate the saving of sufficient funds to support reintegration.*

With respect to the Millennium Telephone System, we were advised last year that the Service's Executive Committee had reviewed a number of options to reduce the cost of inmate-dialled calls, and that a "formal request for submissions would be issued by January 31, 2000 in order to identify a successful provider for the Service".

We were subsequently informed that a contractor would be selected by early April, 2000 and that the submission would address the following:

- *Inmates will have the choice of using either Direct Dial (debit) or collect calling options.*

- *Local Direct Dial calls by inmates will be at the same price as calls from payphones in the adjacent community. This means 25 cents in all provinces except Alberta where it is 35 cents.*

- *The long distance rate for inmates must be uniform across the country.*

- *The long distance director dial rate must reflect the comparative realities in the market place.*

The Office was, as well, advised that an implementation plan would be developed with the selected provider, which may take three to ten months. No projected date of implementation was provided.

Although the Service has taken steps over the past year to address the areas of concern associated with this matter, I feel it would be reasonable at this point for the Service to subsidize the cost of inmate telephone calls, consistent with the terms of the submission, until the implementation of the new telephone system is completed, given that this matter has been under review for two years.

3. INMATE GRIEVANCE PROCEDURE

This Office has a vested interest in ensuring that the Service's internal grievance procedure is both fair and expeditious in resolving individual offender complaints and identifying systemic areas of concern. With in excess of twenty thousand federal offenders, we cannot be nor were we ever intended to be the primary reviewer of offender complaints. The grievance process, to be effective, must be and be seen by the offender population to be thorough, objective and timely in responding to their complaints.

While there have been significant improvements in the system's operations over the years, significant areas of concern remain:

- *continuing instances of excessive delay in responding at the institutional and regional levels of the process;*

- *limited evidence of management analysis of grievance data or senior management direction to address identified problems;*

- *the non-acceptance by senior management of the responsibility and accountability for specifically addressing offender concerns as recommended by Madame Justice Arbour; and*

- *the effectiveness of the current procedure in addressing the concerns of Female and Aboriginal offenders.*

In terms of delays in responding last year, the Service indicated that 48 per cent of the grievances at the regional level were late. We are advised that this year 33 per cent of the regional level grievances were late. Although this is an improvement, having one in three grievances responded to outside of the established timeframe, a timeframe which has been extended by fifteen working days, is unreasonable and does little to promote offender confidence in the process.

No information was provided by the Service with respect to the percentage of delays at the complaint and first level of the system, and the Service did not comment on whether any improvement had been noted at these levels during the cours e of this year. We continue to find evidence at the institutional level of excessive delays in responding to inmate complaints.

With respect to our concern on the absence of management analysis and direction, the Service advises that it does "not concur with the statement as there are several ways in which the data are being used by different Sectors". In support of its position, the Service referred us to its Corporate Results Report and provided copies of its Quarterly production of grievance data for women offenders and Quarterly production of grievance data for health care issues.

There is no doubt that the Service collects data. The question is, what is done with the data? The Service's Corporate Results Report provides limited analysis and management direction on the statistics presented. The Quarterly grievance reports received on female offenders and health care issues provided no analysis of the data.

In terms of senior management responsibility and accountability for the operation of the grievance procedure, I referred in last year's Report to the recommendations of Madame Justice Arbour. Justice Arbour concluded that the Service's grievance procedure had failed the offenders miserably, specifically on issues referred to the Commissioner's level. Her final Report put forth a series of recommendations to ensure that the Commissioner and Deputy Commissioner for Women personally responded to grievances brought to their attention or referred the grievances outside of the Service for a binding disposition. The Service rejected all of these recommendations.

Given our ongoing concerns with both the operation of the procedure and the offender population's perception of its fairness, I recommended last year that a reconsideration of the Service's position be undertaken. In response, the Service stated, "regarding the recommendations by Justice Arbour, these have been examined and responded to by CSC more than two years ago. Our position has not changed".

With respect to the effectiveness of the grievance procedure in addressing the concerns of female offenders, I noted last year that only nine grievances were referred to the national level. Given these small numbers and the Service's rejection of Justice Arbour's recommendations, I recommended that a thorough review be undertaken of how inmate complaints are being managed at penitentiaries which house women, taking into consideration the views of the women in terms of how effectively they believe their concerns are being addressed.

This recommendation was also rejected by the Service, which stated, "there is no statistically discernible difference between male and female use of the complaint and grievance process. Given the comparable use of the system by male and female offenders, and the ongoing monitoring by the Deputy Commissioner of Women, there is no basis for further review".

I note during the first half of this reporting year that one female offender grievance was referred to the national level, while five hundred and seventy male grievances were referred to the national level during the same time period. To a statistician, this may not be a "discernible difference"; however, to me, 570 to 1 is indicative of a situation that needs to be reviewed. I further note that fifty percent of the complaints filed by female offenders at the institutional level came from female offenders housed in male penitentiaries. I have serious concerns as to whether or not these offender concerns are being reasonably addressed within the Service's policy framework on Federally Sentenced Women.

With respect to Aboriginal offenders, a review of the Service's grievance data indicates a measurably lower use of the procedure. In response to our query as to whether or not there had been any analysis of this matter, I was advised by the Service that "the low level of use has been noted. There has been no national level review of the causes".

The legislation requires that there "shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner". Given the above-noted concerns, I am not confident that the existing procedure, as currently managed, is meeting this mandate.

4. CASE PREPARATION AND ACCESS TO PROGRAMMING

The areas of offender concern associated with this issue centre on the ability of the Service to provide responsive programming and to prepare inmates' cases in a thorough and timely fashion for conditional release consideration. The Office, during our review of this issue over the years, has acknowledged its complexity and the inter-relationship of the numerous variables that impact on the provision of programming and effective case management. The Office has as well acknowledged and encouraged the various initiatives undertaken by the Service in attempting to address this Issue.

I presented in last year's Annual Report a number of observations, drawn from the Service's data, that were reflective of the areas of inmate concern associated with this Issue:

- *full parole waiver and postponement rates are virtually unchanged over the last year;*

- *the Aboriginal full parole waiver rate is almost double that of non-Aboriginals;*

- *the number of Offenders incarcerated past their full parole eligibility date remains unchanged;*

- *the percentage of Aboriginal offenders incarcerated past their full parole eligibility date is measurably higher than non-Aboriginals;*

- *the completion of the intake assessment process continues to take longer than provided for by policy; and*

- *the number of suspension warrants issued, while decreasing slightly, was significantly higher for Aboriginal offenders.*

The Service, in responding last year on these matters, stated that it "shared our desire for timely case preparation and access to programming". It further stated that "Operation Bypass, a project aimed at streamlining the case management process was implemented in February 1999. The major changes brought about by Bypass should ensure the accurate identification of dynamic risk and need factors along with proper matching of programs at the front end of the sentence. This will improve the chances of safe and successful re-integration to the community at an earlier point in the sentence. At this time, it is too early to determine the effectiveness of Bypass. As we measure the immediate and final results of the implementation of Bypass, this information will be shared with the Correctional Investigator".

In terms of the disadvantaged situation of Aboriginal offenders, I was advised last year that a "review of the case management practices and programs will be undertaken to determine what changes could be made to improve their timely and safe re-integration".

A review of the Service's most recent Corporate Results Report indicates that, with the exception of the intake assessment process, there has been no measurable progress in the areas of observation noted last year.

In terms of the effectiveness of Operation Bypass, the Service, in February, 2000, while providing further information on changes currently underway and proposed, provided no information on the results to date or anticipated results from these changes. With respect to the matter of waivers and postponements, I was advised that "changes to OMS to improve the recording of reasons for waivers is expected to occur by April, 2000 which will make analysis of this issue much quicker and easier to accomplish". I was, as well, told that "during the fiscal year 2000-2001, CSC will develop an improved system for monitoring and managing program capacity, so that more offenders can participate in programming at the optimal time and place".

With respect to the provision of community services aimed at maintaining safe re-integration for offenders, an audit was commenced in January, 2000 ("At the present, data analysis is being conducted"). In addition, a Working Group completed a draft report in February, 2000 entitled "Consolidated Review of Suspension and Revocation Practices and Process: Framework for Action". To date, we have not been advised as to what action will be taken on the draft Report's recommendations.
The Service, in commenting on its commitment last year to conduct a review of case management practices and programming for Aboriginal offenders, advised in April of 2000 that the review is still ongoing. In response to our questions as to the results of the review to date and the specific changes anticipated, we are advised only that they "will include changes to intake assessment to ensure it is more responsive to cultural differences". In addition, the Service indicates, "A research project is being finalized for the development of an Aboriginal offender custody rating scale to ensure more reliable custody assessment and a pre-assessment orientation program is being developed to prepare Aboriginal inmates for the case management intake assessment". With respect to the anticipated effect of these yet-to-be actioned changes, research projects and program development, I was advised in April of 2000 that "these actions are comprehensive and are currently ongoing; effects can not be measured until all changes are in place".

The Service's responses on the issue of case preparation and access to programming over the past decade have always been phrased in the future tense, with no clear indication provided as to the impact of previous changes or the expected results of proposed changes. Things have not changed.

The Office continues to receive a significant number of inmate complaints related to this issue, and program waiting lists are not getting any shorter. As mentioned earlier, the Service's information does not indicate any measurable progress in these areas, nor

have we been provided with a detailed analysis as to why progress has not been achieved or evidence of specific management direction on what needs to be done to ensure that individual cases are presented in a thorough and timely fashion for conditional release consideration.

5. DOUBLE-BUNKING

There are two areas of stated agreement with the Service on this Issue. Double-Bunking is "inappropriate as a permanent accommodation measure within the context of good corrections" and "segregation cells shall not be used to accommodate two inmates".

The Service's inmate accommodation policy (Commissioner's Directive 550) was promulgated in November of 1998. The Objective of this policy is:

> *To contribute to the protection of society through the provision of reasonable, safe, secure and humane accommodation that supports correctional intervention and the reintegration of offenders as law-abiding citizens.*

The policy provides, under the Principles section, that:

> *Single occupancy accommodation is the most desirable and correctionally appropriate method of housing offenders.*

With respect to Cell Utilization, the policy states:

> *Subject to paragraphs 27 and 28, the following cells shall not be used to accommodate two inmates or more...segregation cells.*

Paragraph 27 provides that:

> *other than in an emergency situation, any exceptions to this policy as it relates to housing more that one inmate in a cell must be included in CSC's Accommodation Plan and approved by the Commissioner.*

Last year, the Commissioner approved exemptions, pursuant to paragraph 27, for over twenty medium and maximum security institutions. I have not been advised as to the number of exemptions authorized by the Commissioner for the fiscal year 2000-2001.

During the course of this reporting year, the percentage of federal inmates double-bunked increased from 21.2 per cent to 23.1 per cent. Although the Service advised that "systemic double-bunking in segregation has been eliminated in three regions", I note that the percentage of segregated inmates double-bunked over the course of this year increased from 12.9 per cent to 15.7 per cent. I note as well that the number of inmates

admitted to segregation has measurably increased and that a significant number of inmates in segregation have been double-bunked for well in excess of thirty days.

The Service stated last year that "the national responsibility for segregation related issues have recently become the responsibility of the Institutional Reintegration Operations Division at NHQ. This division is currently developing further direction for the Regional Segregation Oversight Managers. This direction will re-enforce the Service's commitment to minimize, and to the extent possible, completely eliminate the practice of double bunking in segregation cells".

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 unfortunately continues to be the reality for many inmates. I again recommend that the Service immediately cease this practice of double-bunking inmates in non-general population cells. I further recommend that the exemption provided for in paragraph 27 of the policy be eliminated and that a follow-up review by the Task Force on Segregation be immediately undertaken to examine the reasons for the increase in the use of segregation.

6. TRANSFERS

The number one concern of the offenders raised with this Office, again this year, relates to transfers. As I have stated in the past, transfer decisions are potentially the most important decisions taken by the Service during the course of an offender's period of incarceration. Whether it is a decision taken on initial placement, a decision taken involuntarily to transfer an offender to higher security or a decision taken on an offender initiated transfer application, such decisions affect not only the offenders' access to family and programming, but also affect their potential for favourable conditional release consideration.

The areas of concern associated with this Issue as detailed in previous Annual Reports centre on:

- *the excessive periods of time offenders were spending in reception centres prior to initial placement;*
- *the thoroughness, objectivity and timeliness of the process leading to transfer decisions;*
- *the number of offenders housed at a higher security level than called for by their security classification; and*
- *the questionable quality of the transfer data used by the Service to monitor the process.*

The Office's position for years has been that the transfer process has to be centrally managed and supported by an information system capable of producing data relevant to the performance of the process.

With respect to the delay on the placement of offenders following reception, I am advised by the Service that significant improvements have been achieved. "For the first 7 months of 1999-2000, over two-third of penitentiary placement transfers were executed within 10 days of the decision. The application and decision on penitentiary placement occurs as soon as possible after completion of the Correctional Plan". I do note, though, that during the third quarter of this year, almost 30 per cent of the nearly seven hundred Correctional Plans were not completed on time.

In terms of the efficiency of the process leading to transfer decisions, the Service agreed last year "that offenders have a right to timely transfer decisions". The Service as well last year referred to a "preliminary report indicating that 87% of transfer decisions are made within the prescribed timeframes". The Service promulgated a new policy on transfers in October of 1999. In responding this year on the efficiency of the transfer process, the Service again referenced the preliminary report from last year as evidence of reasonable timeliness. Given the introduction of the new policy, I recommend that the Service immediately initiate an evaluation of the effectiveness of the new procedure.

In response to the concern raised by the number of offenders housed at a higher security classification than called for, the Service last year said that about 6 per cent were so housed. We noted in correspondence to the Service, in February, 2000, that the percentage for the first three quarters of this year ranged from 8.8 to 9.5. This represents between 900 to 1000 inmates housed at a security level beyond that required. As of this date, I have received no comment from the Service on this increase.

I was advised last year, in response to the concern regarding the quality of the Service's transfer data, that it was "steadily improving as we continue to do in-depth reviews of sample cases, identifying discrepancies and take action to resolve them." In February of this year, we asked the Service for the results of its in-depth review and a detailing of the specific actions taken to resolve the discrepancies. The Service's response of April, 2000 states,

> *For example, the following changes were implemented in OMS on March 31, 2000 to make the process easier to record and monitor:*
> - *Transfer warrants cannot be entered unless there is a locked decision on the transfer application, except for emergency transfers,*
> - *Penitentiary placements is a type of decision separate from voluntary or involuntary transfer.*

Furthermore, several new reasons are being added so staff can more accurately identify reasons.

One of the Service's "Strategic Objectives" states "CSC will ensure that involuntary transfers are kept to a minimum". We noted in our comments of February, 2000 on the Service's up-dated Response to last year's Annual Report that there had been a significant increase in the number of involuntary transfers and that the number of Aboriginal inmates involuntarily transferred between the fourth quarter of 98/99 and the second quarter of 99/00 had tripled. We asked if the Service had undertaken any review or analysis of the increase or initiated any corrective action. As of May 1st, 2000 no response has been received.

I am not at all convinced that the Service is in a position to ensure either that the process leading to inmate transfer decisions is thorough, objective and timely or to reasonably monitor the process' compliance with the administrative fairness provisions detailed in the transfer policy.

7. PREVENTIVE SECURITY STANDARDS/GUIDELINES

This Office continues to receive a significant number of complaints from offenders concerning the accuracy of information used by the Service to support its decisions. Preventive Security Information, to which the offender does not have access, often negatively impacts on decisions related to visits, transfers, segregation placement and conditional release.

The area of concern centres on the absence of any clear national direction concerning the coordination, verification, communication and correction of this information or who is responsible and accountable for the accuracy of this information. I recommended in 1996 that Preventive Security Standards and Guidelines be developed so as to bring some clarity to this matter. The Service at the time acknowledged that there was no clear national direction regarding the management of preventive security information and undertook to produce guidelines by the Fall of 1997.

I was advised by the Service last year that "the area of Preventive Security is a priority for the Service and that Preventive Security Standard Operating Practices (SOP) are in draft form and we are now proceeding with our consultation process".

On March 8, 2000, representatives from this Office met with the Service's Security Division to review draft policy. I am now advised that "it is anticipated that these SOP's will be presented for approval to the Service's Executive Committee by the Fall of 2000". It has now been four years since the Service's initial commitment to produce guidelines and standards in this area.

8. USE OF FORCE

I stated last year, in summarising the Office's position on this issue, that "Use of Force against an inmate is a significant action. It is an action that should only be taken as a last resort and an action that should be thoroughly and objectively reviewed to ensure full compliance with law and policy. There should as well be an ongoing review and analysis of these incidents, independent of the institution, to further ensure compliance and to provide reasonable and timely decisions so as to keep these incidents to a minimum".

CSC's use of force statistics, for the first half of this year, recorded five hundred and fifty one use of force incidents. These incidents resulted, according to the Service, in one hundred and twenty five inmate injuries. The Service's analysis of this Report states that "the present method of entering the Use of Force statistics is not without its problems and requires significant amendments".

The Service, in responding last year to the concerns that we raised once again on the reliability of its database, committed itself to providing a means for information contained in the Use of Force Report to be entered into the Offender Management System (OMS). "This is a significant task consisting of the collection, recording, reviewing, analysis and sharing of information on a national basis. To that effect, we have expanded our planned changes to the existing incident report screen to include the capacity to produce additional information related to Use of Force". These changes were planned for February, 2000.

I have recently been advised that these changes to OMS are now planned for the Summer of 2000.

The Service, as well, indicated last year that it had developed a draft procedure dealing with the provision and review of videotapes on use of force incidents "to clarify specific responsibilities and accountabilities within the Service for ensuring that these incidents are thoroughly and objectively reviewed". This procedure and the proposed revisions to the Use of Force Report have yet to be finalised.

The Service, in response to our observation last year that use of force incidents very seldom result in the convening of an investigation, advised that "Performance Assurance drafted guidelines on when an investigation is to be convened as a result of use of force incidents". A draft of these guidelines is currently in the consultation process.

The Service's 1997 Interim Policy on Videotapes, in response to Madam Justice Arbour's recommendation, requires that all videotapes of use of force incidents and supporting documentation be forwarded to this Office and the Service's National Headquarters within fifteen days of the incident. During the course of a year, we review in excess of three hundred incidents involving the use of force.

This Office's review of these incidents has noted a disturbingly high rate of non-compliance with the Service's policy related to the use of force. Our findings have been shared with the Service and, in large part, are not inconsistent with the results of its own review. A recent CSC internal memorandum, in commenting on a specific incident, noted:

> *The staff in the Security Division who review incidents involving use of force have indicated repeatedly the areas of non-compliance. While there have been*

> *some improvements in dealing with incidents of use of force, it seems this incident underscores the fact that there are serious problems with respecting basic rights of inmates.*

While it is encouraging that the Service acknowledges that there are serious problems, it is obvious that its current review process is neither ensuring compliance with policy nor reducing the number of incidents resulting in the uses of force. The process is not working, in part, because senior line managers do not see themselves as either responsible or accountable for ensuring compliance with law and policy. When the review process leaves the institution, the identified areas of non-compliance become discussion points between regional and national functional staff, rather than action points resulting in specific direction from senior line authority at the regional and national level.

I recommend that the Service take immediate action to:

- *finalize and implement the policy and procedural changes currently pending;*
- *establish a review process that is thorough, objective and timely, with the authority to address areas of concern related to management responsibility and accountability; and*
- *put in place an information system regionally and nationally on use of force incidents that allows for a thorough review and analysis to ensure that such incidents are kept to a minimum.*

I further recommend that the Service immediately initiate a national investigation to determine its current level of compliance with law and policy related to use of force. Discussions with this Office should be part of this investigation.

9. INMATE INJURIES AND INVESTIGATIONS

There are four interrelated areas of concern associated with this issue: institutional violence, inmate injuries, suicides and investigations.

a) Institutional Violence

The Service agreed last year that violence in federal penitentiaries was a serious concern and that the Security Task Force would address this issue in its December, 1999 report.

This Office was provided, in April of 2000, with a copy of Framework for Decisions by the Executive Committee--Report of the Task Force on Security and Executive Committee Decisions Concerning the Recommendations on the Task Force on Security. The Task Force made in excess of seventy recommendations. The Service, in referring this document to our Office, did not identify which recommendations, or for that matter, which decisions taken on the recommendations, were seen as addressing the issue of institutional violence. I do note that those recommendations that appear to be related to institutional violence call for further research to be undertaken.

The Service, as well, stated last year that

> *[a]s a result of discussions with the Office of the Correctional Investigator, we have proposed to expand our reporting of institutional violence to include a wider range of indicators. This should result in a more representative picture of violence within our institutions. In addition to broadening the indicators for institutional violence, the Service will ensure that the data are analysed and that appropriate actions are taken. To this end, a multi-sectorial group of individuals who have involvement in the area of violence has been formed to analyse each report that is produced.*

A meeting of the multi-sectorial group was held in June of 1999. This Office was advised in July of 1999 that a wider range of violence indicators would now be recorded, with the first report being produced by early September and the analysis completed by late September. The Service, in response to our request for a copy of the violence report, stated in November of 1999:

> *This report will be reviewed by a committee…to determine the best way to analyse and distribute the information. We will forward a copy of the report to your office once this committee has reviewed it to determine whether or not it meets the needs of all concerned. I expect you will receive the report no later than December 17, 1999.*

The Office was advised in January of 2000 that the *"report continues to be difficult to produce due to the vast amount of complex and diverse information"*. We attended a meeting with the Service at the end of March, 2000 to review this matter further. The Service, in correspondence dated April 17, 2000, provided the following:

> *This will confirm that on March 28, 2000, you met with a number of staff from the Correctional Service of Canada (CSC) and were given a demonstration of our recently developed automated system for the statistical reporting of institutional violence. Concerns were raised regarding the quality of the information and the ability of the system to actually assist staff in predicting institutional violence. You noted the importance of monitoring a wide spectrum of information such as inmate injuries, voluntary segregation and involuntary transfers as these could be indicative of institutional pressures and problems.*
>
> *As further action to address this matter, CSC has committed to improving the automated system by revisiting issues of accuracy of data and types of information recorded. In addition, the Research Branch, with the assistance of knowledgeable staff, will develop an instrument whereby the stability and vulnerability of operational units can be assessed systematically. This system will include information currently collected in standard reporting systems, multivariate statistics, and a review of methods used in other countries.*

The Service's commitments to expand its reporting of institutional violence to include a wider range of indicators and to ensure that the data is analysed have not been actioned.

A review of the information that the Service does collect indicates an increase this year in inmate murders, hostage takings, major assaults on inmates, major inmate fights and major disturbances.

b) Inmate Injuries

There is currently no national policy on the recording and reporting of inmate injuries.

The Commissioner of Corrections in 1994, partly in response to a recommendation from this Office, issued an Interim Instruction--Recording and Reporting of Offender Injuries. The stated Objective of this policy was:

- *to establish a consistent framework for reporting and recording injuries to offenders;*
- *to provide for the systematic review of the circumstances of injuries in order to ensure that these causes are subject to appropriate review and to investigate, where required by law; and*
- *to contribute to the maintenance of healthful and safe living and working conditions through corrective actions taken to prevent the incidents and recurrence of accidents and wilful acts involving injuries.*

A draft Commissioner's Directive with the same stated Objective was circulated by the Service for consultation in 1996, but was never promulgated.

I recommended again in last year's Annual Report that the Service develop and implement a national policy on the recording, reporting and review of inmate injuries. The Commissioner's response, detailed in last year's Report, stated:

> *The service acknowledges that the absence of adequate direction for the recording and reporting of inmate injuries has been a longstanding issue and there is a need for policy direction in this area.*
>
> *In order to ensure that a coordinated approach to recording and reporting inmate injuries is in place, a commitment was made to the CI in late March 1999 to implement policy specific to this issue. Policy development will ensure that all injuries are reported and recorded and that those injuries categorized as serious bodily injuries are investigated as per s. 19 of the CCRA.*

The Office received, in December of 1999, a copy of the Service's draft policy inviting our comments. A review of the draft indicated that the focus of the policy had been narrowed to the development of "a protocol to identify when an inmate had sustained Serious Bodily Injury and how to record this information in the Security Incident Report". We noted this concern in correspondence to the Service in January of 2000 and referred it to the broader policy objectives detailed in its Interim Instruction of 1994 and draft Commissioner's Directive of 1996. As of this date, the Office has not received further comment from the Service on the status of its policy development in this area.

c) Suicides

I voiced my concern in last year's Annual Report regarding the increase in inmate suicides from nine in 1997-98 to sixteen in 1998-99. The number of inmate suicides this fiscal year is recorded by the Service as eleven. In addition, one inmate is identified as having died of a drug overdose and, in four cases, the cause of death is identified as "unknown".

The Commissioner, in responding to last year's Report, stated that "the Service shared the Correctional Investigator's concerns for the lives lost through suicides".

One of our longstanding areas of concern centred on the absence of a timely responsive review, at the national level, of individual suicide investigations. The Service has recently established an NHQ Suicide Review Committee to examine the findings and recommendations from individual suicide investigations and to bring summary recommendations to the attention of the Service's Executive Committee. The Committee will, as well, be mandated to ensure national consistency in the implementation of recommendations. The Service anticipates that "the change in procedure will expedite a more timely review of suicide investigations and will provide a mechanism for the dissemination of information and direction, as well as possible corrective action to the field". I was advised in April of 2000 that the Committee is operational and is currently meeting twice a month to review the 1998-99 suicide reports and action plans.

The Service, in responding last year to my Annual Report on the Issue of Suicide, provided the following:

- *Commissioner's Directive 843, Prevention of Suicide and Self-Inflicted Injuries, is being revised, based in large part on the recommendations of a recent independent external review of our policies and practices with respect to suicide prevention.*

We are now advised that the policy is expected to be promulgated by the end of 2000. The referenced "recent independent external review" was completed in January of 1998.

- *A standard Operating Practice will also provide even greater specificity to our institutional and community personnel with respect to issues of intervention and prevention.*

This policy and procedural direction will, as well, not be finalized until the end of 2000.

- *The Service's Executive Committee has committed to implement one of the strongest recommendations of the independent Report: National implementation of a peer support program.*

The national guidelines to assist with the implementation of this 1998 recommendation will be finalized in the spring of 2000.

- *In 1999/2000 CSC will also review the safety of inmate housing as well as determine the training requirements of its front line staff.*

We are now advised that this review will be incorporated into "the proposed Audit and Evaluation work plan for 2000/01".

- *Health Services will consult with the Security Division regarding the appropriateness of stripping, special gowns, isolation and camera observation.*

We are now advised that these consultations will take place during the summer of 2000. No indication is given on when decisions might be taken to address these matters.

- *An in-depth investigation of the factors predictive of suicidal behaviour and self-injury by federally sentenced women will be undertaken in the new fiscal year.*

We were recently advised that this study is in the development stages and no firm deadline has been set.

The reality of the Service's uncoordinated and ineffective approach to the early identification and treatment of potentially suicidal individuals was tragically evident recently at the Federally-Sentenced Women's Unit at Saskatchewan Penitentiary. The delay in implementing national policy, procedures and training programs in the area of suicide prevention is inexcusable.

d) Investigations

The Service's investigative process is excessively delayed. The finalization of Board of Investigation Reports, at the national level, can take up to a year. The development of "approved" action plans and follow-up on the Report's recommendation can take an additional six months. These time lines are totally unacceptable for a process with the stated Objective of

> *[e]nsuring that investigations into incidents are carried out with integrity in a timely and fair way and that they are independently credible, reliable and thorough [for the purpose of] establishing the facts relating to a specific incident, including the cause and outcome, to present relevant and timely information, that will help prevent similar incidents in the future and to demonstrate the Correctional Service of Canada's accountability.*

With respect to areas of concern raised with timeliness in last year's Annual Report, the Service indicated that it had reviewed its investigative process and made a number of changes which "have assisted in expediting the finalizations of investigations". I have seen no improvement over the course of the last year.

The Service, as well, stated last year that the "Director General, Incident Investigations is currently conducting a comparative review of other investigative agencies' milestones as part of CSC's analysis of the timeliness of national investigations. This will be shared with the C.I." In response to our request as to the status of this review, we were advised by the Service in April of 2000 that "it had been tabled with the Assistant Commissioner, Performance Assurance and it will be forwarded to the Commissioner by early April 2000".

Discussions are currently ongoing with the Service in an attempt to identify a process which will provide this Office with a detailing of findings and recommendations of Boards of Investigation in advance of the finalization of the Report. The process would, as well, hopefully provide a clear indication as to the Service's intended follow-up actions on the Report's findings and recommendations.

Section 19 of the Corrections and Conditional Release Act requires that the Service forward to this Office a copy of its investigations into incidents of inmate death or serious bodily injury. In addition to not receiving those investigations in a timely fashion,

I have raised concerns about the Service's level of compliance with this section of the legislation. I stated in last year's Annual Report that a recent list of section 19 Investigations provided by the Service did not include a number of incidents which had resulted in the death or serious injury of an inmate. The Service, in responding last year, stated that it was "undertaking an analysis in the area of the discrepancy between section 19 investigations received by the C.I. and those received at NHQ. Results of this analysis will be shared with the C.I." The results of this analysis have not been shared with this Office.

The Service, in response to our concerns on what was being classified as a "serious bodily injury" and who was doing the classifying, has developed a protocol "to identify when an inmate has sustained serious bodily injury and how to record this information in the security incident report". The protocol, which was developed jointly by the Service's Security and Health Services Divisions, requires that "when a major injury due to a security incident or an accident occurs, the Correctional Supervisor will contact Health Services and obtain a determination from a Health Care Specialist as to whether or not a serious bodily injury has occurred. Serious Bodily Injury - refers to any injury which endangers life or which results in permanent physical impairment, significant disfigurement or protracted loss of normal functioning. It includes, but is not limited to, major bone fractures, severing of limbs or extremities and wounds involving damage to internal organs". We have been advised that the protocol was issued to the field on February 8, 2000 and that the process will be monitored by the Service, on an ongoing basis, to determine how well it is working.

I stated in last year's Report that the current definition of serious bodily injury, as applied by the Service, was inconsistent with both the intent of the legislation and any reasonable person's concept of what constitutes a serious bodily injury. Although I am hopeful that the protocol will bring a more consistent and reasoned approach to the classifying of inmate injuries, we will be meeting with the Service over the next few months to review the impact of this new procedure.

I concluded last year's Report on the Issue of Inmate Injuries and Investigations by stating that there needed to be a clear focus on these matters, which have been on the table for a number of years, with specific and immediate action taken. The Service must commit itself to a review and investigative process that is responsive to incidents of use of force, inmate injuries, institutional violence, death and suicides so as to ensure that they are kept to a minimum. I suggest a re-focusing is in order.

10. FEDERALLY-SENTENCED WOMEN

The placement of maximum-security women and women with serious mental health problems in male penitentiaries is inappropriate.

I indicated last year that such placement was discriminatory and that regardless of the accommodations made, it was, in fact, a form of segregation. These women are not only removed from association with the general population of the institution they are housed in; they are, as well, segregated from the broader general population of female offenders housed at the women's regional facilities. This segregation based on security classification and mental health status places these women, in terms of their conditions of confinement, at a considerable disadvantage to that of male offenders.

The Service, in responding on this matter last year, stated that "the conditions of confinement for maximum security women do not meet the legal requirements of segregation i.e., only out of cell for showers and one hour exercise daily". I am not in agreement with the Service's position as to what constitutes segregation, but the issue here is not "legal requirements"; it's the conditions under which these individuals have to live. These units in male penitentiaries unreasonably isolate women and are discriminatory and inappropriately resourced to address the identified needs of those housed there. Further, some of these units, at times, have been occupied by a single female offender. Is this not segregation?

I stated last year that the "temporary placement" of female offenders in male penitentiaries, which began in August of 1996, had gone on for far too long. I recommended that immediate action be taken to address this totally unacceptable situation. I was advised, last year, that the Service was developing an Intensive Intervention Strategy which would allow the Service to move forward on its commitment to implement a long-term strategy that will see the closure of the co-located units (Women's Units in male penitentiaries).

The Intensive Intervention Strategy was announced in September of 1999. The strategy calls for the modification and expansion of the existing enhanced units of the regional facilities to accommodate women offenders classified as maximum security. As well, Structured Living Environment houses would be constructed at each of the regional facilities to accommodate women who have mental health needs that require more intensive support. This would permit the units in men's institutions to be closed. The projected completion date is given as September, 2001.

While this may be seen as a long-term solution to the housing of female offenders in male penitentiaries, it does not address the existing situation. The Service, in responding to our concern that it would be at least another year and a half before the female offenders are moved out of the male institutions, offered the following in March of 2000:

With respect to the co-located units, I can only re-iterate that CSC was determined to develop a solution to maximum security and special needs women that is a response to their needs and security requirements. Research and consultation were initiated immediately. However, the intensive analysis and developmental process took time and, as you are aware, the decision was not announced until September 3, 1999. As the facilities to implement the Intensive Intervention Strategy at regional facilities must be constructed and additional staff hire and trained, it is inevitable that further time will be required before the new units are operational. However, as you know, this issue remains a high priority for the Correctional Service of Canada and every effort is being made to ensure that construction and operational, for example, selection and training of staff, implementation proceed without delay. I would also note that, in addition to the co-located units, CSC established two intensive mental health treatment programs and implemented staff training in DBT. I can assure you that we will continue to support the women offenders and the staff at the co-located units and implement additional or different programs as required, until transition to the regional facilities is completed.

The number of female offenders housed in male penitentiaries has increased. I have noted only limited implementation of additional or different programming to meet the needs of these women. The situation, especially at Saskatchewan Penitentiary, remains totally unacceptable.

I further note that:

- *the Service's 1997 Mental Health Strategy for Women has not been fully implemented;*
- *the verification of the Service's security classification tools for women and aboriginal offenders has not been finalized;*
- *the Service's review of factors predictive of suicidal behavior and self-injury has not been initiated;*
- *the number of incarcerated female offenders has increased;*
- *a number of the regional facilities are currently at or beyond rated capacity;*
- *there is only one minimum-security facility for women with a rated capacity of ten, yet nearly half of the two hundred plus inmates housed at the regional facilities are classified as minimum-security;*
- *only 56 per cent of the Federal female incarcerated population is identified as Caucasian;*
- *Aboriginal women represent 23 per cent of the incarcerated population but only 11 per cent of the community supervision population;*
- *Aboriginal offenders make up nearly 50 per cent of the federal female incarcerated population in the Prairie region; and*

- *there are nearly as many Aboriginal women incarcerated in male penitentiaries as there are at the Service's Aboriginal Healing Lodge for women.*

These are matters which require immediate attention. This Office will be meeting with the Deputy Commissioner for Women to initiate a review of these issues inclusive of our information on areas of inmate concerns and the findings and recommendations of the most recent report from the Service's Cross Gender Monitor. I will, following that review, provide to both the Commissioner and the Minister a detailing of our position on Federally-Sentenced Women's Issues.

11. ABORIGINAL OFFENDERS

Last year's Annual Report focused on two areas of concern which had been consistently identified by Aboriginal inmates as systemic problems:

- *the discrepancy in the availability, the level of co-ordination and the acceptance of Aboriginal programming within the Service; and*

- *the failure of the Service to provide timely and culturally-sensitive case management in support of effective re-integration of Aboriginal offenders.*

Aboriginals, as we all know, are grossly over represented in our federal penitentiaries. While they are in the care and custody of Correctional Service of Canada, they are less likely to be granted unescorted temporary absences, work releases or parole, and are more likely to be placed in segregation, involuntarily transferred, referred for detention or have their conditional release revoked than non-aboriginal offenders. As clearly stated by an inmate, "The reality is, if it's bad and you're an Indian, it will happen".

This reality remains unchanged, unacceptable and discriminatory. The existing policies and procedures of the Service have not measurably altered this reality and, in fact, appear to work against the stated objective of decreasing the level of Aboriginal incarceration.

I made two recommendations last year:

> *First, the Correctional Service must ensure that a Senior Manager, specifically responsible and accountable for Aboriginal Programming and liaison with Aboriginal Communities, is a permanent voting member of existing senior management committees at the institutional, regional and national levels.*

Second, given the continuing disadvantaged position of Aboriginal offenders in terms of timely conditional release, it is imperative that the Service's existing policies and procedures be immediately reviewed to ensure that discriminatory barriers to reintegration are identified and addressed. This review should be independent of the Correctional Service of Canada and be undertaken with the full support and involvement of Aboriginal organizations.

The Service's initial response, as recorded in last year's Report, was, "CSC agrees with the C.I. that over-representation by Aboriginal offenders is a high priority for continued action, and will review his recommendations carefully."

I was advised in February, 2000 that the Service had rejected my recommendations. In support of its decision, the following was provided:

> *The Director General, Aboriginal Issues, carries the major responsibility for Aboriginal offender issues at National Headquarters. She is not a member of the Executive Committee, nevertheless, she acts as the senior advisor to the Service on Aboriginal issues. There are no plans to change her status.*
>
> *The Prairie Region has a Regional Administrator, Aboriginal Programming, who can attend the Regional Senior Management Committees at his discretion.*
>
> *In all other regions, the Regional Program Co-ordinators are not members of the Regional Senior Management Committees. There are no immediate plans to change their status. The Service expects to meet Aboriginal programming objectives with the current structure.*
>
> *The Correctional Service of Canada does not perceive a need for the independent review proposed by the Correctional Investigator, however, initiatives are underway to address the disproportion number of Aboriginal offenders on conditional release.*

The Office responded to the Service's position on these matters on February 29, 2000, stating that we did not find the rationale provided in rejecting our recommendations convincing. We re-emphasized the fact that although the Service had measurably increased Aboriginal programming over the years and had appointed a Director General of Aboriginal Affairs, the clearly-identified problems of a decade ago remain. The data presented in the Service's Corporate Results Report, almost without exception, show no improvement and, in some areas, a worsening of the situation. It was as a result of the long-standing, systemic nature of the problem that we had recommended last year that an independent review of the Service's policies and procedures be

undertaken, and that the senior management positions be established, specifically responsible and accountable for the management of aboriginal programming, at all levels within the Service. We concluded that, in our opinion, the recommendations had not been reasonably addressed and, as such, would be re-submitted.

The Service's Final Response, received in April, 2000, passed no further comment on this matter. Given the gravity of this issue and the continuing disadvantaged position of Aboriginal offenders under the care and custody of Correctional Service of Canada, I recommend that:

- *a Senior Manager, specifically responsible and accountable for Aboriginal Programming and liaison with Aboriginal Communities, be appointed as a permanent voting member of existing senior management committees at the institutional, regional and national levels; and*

- *the Service's existing policies and procedures be immediately reviewed to ensure that discriminatory barriers to reintegration are identified and addressed. This review should be independent of the Correctional Service of Canada and should be undertaken with the full support and involvement of Aboriginal organizations.*

CONCLUSION

In summary on these systemic issues, I wish to re-emphasize that these identified areas of concern impact directly on the inmate population of our federal penitentiaries.

I do not raise these issues year after year for the purpose of scoring points or to promote make work projects for Corrections. I raise these issues because inmates, their families and those who work with offenders consistently identify these as significant areas of concern. I follow up on these issues because this Office's investigations, and to a large extent the Service's own reviews of these issues, support the need for corrective action in these areas.

The Service's failure to address these areas of concern reasonably undermines the stated purpose of federal corrections as defined by the Corrections and Conditional Release Act, which is:

> *to contribute to a just, peaceful and safe society by*
>
> *(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and*
> *(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.*

The Service, in leaving these issues either unaddressed or in a perpetual state of review, is not fulfilling its mandate.

CASE SUMMARIES

Our Office's principal function is to address the problems of individual offenders in a fair, effective and timely fashion. Most of our investigations are initiated in response to individual concerns.

Accordingly, I have decided to provide summaries of our actions in response to some of these individual concerns. This, I hope, will provide greater insight into our everyday interactions with the Correctional Service.

Each case involves a problem that we have brought to the attention of CSC National Headquarters in the hope of achieving timely resolution in accordance with the our Memorandum of Understanding with the Service.

USE OF FORCE TO FACILITATE A STRIP SEARCH

The incident

In an effort to find drug-related contraband, a Warden ordered a general strip search of all inmates on a range. Two inmates refused to submit to the rectal inspection that forms part of a strip-search under s. 45 of the CCRA. They otherwise complied with all aspects of the search.

The Institution decided to admit them to segregation two days later on the grounds that their refusal represented a danger to safety or security. Incident to the admission, a routine strip search was conducted pursuant to s. 48, para. (b) of the CCRA, which permits strip searches when inmates are moved into, or out of, segregation. During this search, they again refused to submit only to the rectal inspection. Officers who had been summoned in case this occurred used force to carry out the inspection.

The course of our investigation

Our Office reviewed the videotape of the incident. It disclosed that as soon as the inmates refused to comply, the Institutional Emergency Response Team immediately wrestled the inmates into a position in which the inspection could be effected. Other than the initial order to submit to a search, there was no dialogue or warning beforehand.

In December, 1998, we wrote to the Service expressing our serious concern about this pre-planned and automatic use of force. Following receipt of further documentation from the Service, we concluded in May, 1999 that "the authorized use of force to facilitate a visual inspection of the rectum in these cases was excessive, contrary to policy and unreasonable". My Executive Director recommended that:

- *an apology be offered to the inmates; and*
- *the Service immediately review its policies and procedures related to the use of force and strip-searching and issue clear direction to the field with respect to:*
  - *the considerations to be given prior to authorising the use of force to facilitate a strip search, inclusive of options;*
  - *the utility of a visual inspection of the rectum in finding contraband;*
  - *the requirement for specific written authorisation, with reasons, from the Warden; and*
  - *the provision of these reasons to the inmate prior to using force, and the role of medical staff in both the authorisation process and the use of force itself.*

The Service replied that there was no requirement for specific risk assessment or authorization at the time of the use of force as the searches were "routine" (requiring no "individualized suspicion" of contraband) under s. 48 of the CCRA. Previously, the Service had stated that a risk assessment had been conducted, in effect, when the Warden had authorized the initial, general strip search of the range, two days before.

This response did not address our recommendations. Accordingly, in July, 1999, the Executive Director requested a meeting to review our concerns further. At the meeting, in September, 1999, we clarified our position regarding the lack of authorization and justification for the forceful searches, adding that the Service should have followed the exceptional procedures set out in ss. 50 and 51 of the CCRA if it had reasonable grounds to believe the inmates were carrying contraband in a body cavity. Under these provisions, a Warden may authorize confinement to a "dry cell" or seek the inmate's permission to use an X-ray where there is a belief that an inmates has ingested contraband or inserted it in a body cavity. If the Service did not have reasonable grounds then the use of force was unreasonable. We again referred back to our specific recommendations.

The Service responded in December, 1999, stating in part that "without admitting that the force used was unreasonable or excessive, the Service does recognize that the matter should have been handled differently". The Service referred to a letter written to each inmate stating that there should have been "better communication" at the time of the incident. Nevertheless, the Service indicated that the special procedures of ss. 50 and 51 were not necessary, as there was no reasonable belief that the inmates were concealing contraband in their bodies. Finally, the Service indicated that "a review of the

videotape by National Headquarters staff, including legal counsel" concluded that the use of force was lawful in the circumstances.

In response, in December, 1999, the Executive Director reiterated his previous recommendations, which I adopted in my January 21 letter to the Commissioner under s. 177 of the CCRA.

Prior to the Commissioner's response, the Director General of Offender Affairs replied to our Executive Director's letter. He underlined, in part, that rectal examination was a "statutorily mandated" aspect of strip searches which should never be a part of the routine strip searches that occur on an inmate's admission to neglected segregation.

The Commissioner responded to my letter on March 20, 2000. The gist of the Service's position is that:

- *strip searches are defined as including the requirement to submit to rectal inspection;*
- *strip searches on entering segregation are routine under the CCRA, and require no specific authorization;*
- *even if it were determined that the Service should make a risk evaluation prior to using force, this had already occurred at the time the Warden had ordered a strip search of all inmates on the range;*
- *given the above, to require the Service to consider or use other, less forceful, measures to search for contraband in the circumstances would be much more than the law requires in any jurisdiction;*
- *the use of "dry cell" or voluntary X-rays are mandated as alternatives only where it is believed that an inmate has taken contraband into his body, as opposed to simply concealing contraband between his buttocks.*

The Service agreed that the inmates should have been entitled to a warning that force would be used if they did not comply with the order to submit to a complete strip search. Indeed, the Service has revised its policy to underline this principle and has provided training for staff based upon the revision. Nevertheless, it maintains its position that the use of sufficient force is legal and appropriate in the circumstances of this case.

Despite the Service's response, our position remains as stated in my January 21, 2000 letter. I wrote back to the Commissioner and emphasized the following points:

- *the Service acknowledges "that there were no reasonable grounds to believe that either inmate had ingested contraband or was carrying contraband in a body cavity";*

- *the inmates complied with all aspects of the strip search except for the visual inspection of the rectum;*

- *the decision to use force was taken two days after the inmates' initial refusal to comply with this aspect of the search;*

- *despite the Service's assertion that a "strip search on admission to the segregation area should never, as a matter of fundamental safety and security practice, policy and law, neglect to include a visual inspection of the rectal area", evidence clearly indicates that discretion has been and continues to be exercised in the application of the requirement; and*

- *the decision to use force was taken to enforce compliance with a direct order not to address safety or security concerns.*

In short, there were no reasonable grounds to believe that either inmate was concealing contraband in his rectal area, and the decision to deploy the IERT to facilitate the visual inspection of the rectum was unreasonable and the force used excessive.

I have suggested that we refer the matter to non-binding dispute resolution, as permitted by the Memorandum of Understanding between CSC and our Office.

REPORTING AND INVESTIGATION OF INJURIES TO AN INMATE

The incident and our investigation

An offender was admitted to a maximum-security institution after a suspension from conditional release. He was placed in the general population after staff conducted a check for incompatible inmates using the computerised Offender Management System (OMS). This check revealed that none of his known incompatibles were at the institution.

Within 90 minutes the inmate was assaulted and stabbed several times in his cell by a number of inmates, and soon after was assaulted again.

He was stabilized by institutional Health Services staff and sent by ambulance to the local hospital. Here he received treatment for a collapsed lung, a suspected fractured nose, and numerous stab wounds to his arm and back.

*On **June 29, 1998**, four days after the event, our Office received a Security Incident Report which indicated that "[the inmate's] injuries are serious (approximately 30 wounds) but not life threatening".*

Almost three months after the event, the Warden convened a local investigation into the circumstances surrounding the incident.

*The investigation was completed **November 2, 1998** and was forwarded to this Office and to CSC National Headquarters on **December 10, 1998** by the applicable Regional Headquarters pursuant to s. 19 of the CCRA. This provision requires the Service to investigate all instances of offender death or "serious bodily harm" and to forward the reports on such investigations to our Office.*

In essence, the Report, as approved by RHQ, indicated that:

- *there were no pre-indicators for the incident;*
- *all staff involved complied completely with law and policy; and*
- *reports were timely and thorough.*

*We wrote to the Assistant Commissioner, Performance Assurance in **May of 1999** requesting the results of his review of the investigation. His response was received on August 17, 1999. It stated,*

> *Our review of the above noted report consisted of three elements: the quality control, the issues of non-compliance and what may be learned from a national perspective. As a result of our review we are satisfied with the report.*

*We wrote to the Assistant Commissioner on **August 30, 1999**, outlining numerous concerns and concluding that the investigation had not been thorough, objective or timely. In particular, we contended that:*

- *the person who investigated at the institution was the same person who had drafted the Incident Report, which indicated that there would be no problem with the inmate's placement in general population;*
- *the Investigative Report added no new information to the Incident Report;*
- *totally unreasonable delays occurred between the incident and the completion of review of the investigation;*
- *there was no list of persons interviewed or documentation reviewed;*

- *there was no detailing of injuries beyond what was recorded on the day of the incident;*
- *there was no indication of who had concluded that the injuries did not seem to be life threatening (and, in particular, whether this person was a health services expert); and*
- *there was no reference to s. 19 of the CCRA in either the Convening Order or the Investigation Report, despite s. 19 being referenced in the initial forwarding of the report to our Office.*

*The Assistant Commissioner responded on **November 10, 1999**. He indicated that:*
- *investigations should indeed be convened as soon as possible;*
- *"local" investigations are meant to provide additional information to managers;*
- *it is not unusual for the IPSO to conduct investigations;*
- *the Service "ha[s] not required that local investigations include…interviewee lists, or document lists…. for reasons of practicality and due to the very nature and audience of local investigations"; and*
- *the injuries in this case did not meet the CSC policy definition of "serious injury". Mistakes were still being made, despite the advice of CSC Headquarters, that resulted in non-serious injuries being identified as serious.*

In essence, then, the Assistant Commissioner did not consider the incident, or those involving similar injuries, to fall under the requirements of s. 19.

*The file was referred to me and, after detailed review with staff, I wrote to the Commissioner under s. 177 of the CCRA, on **January 29, 2000,** indicating my dissatisfaction with the quality and timeliness of the investigation. As well, I took issue with the Service's decision that the individual's injuries did not constitute "serious bodily injury" as set out in s. 19 of the CCRA.*

The Issues

In our correspondence with the Service we have reiterated our concerns that the investigation should have taken place far more quickly; that it should have been done by persons not involved in the events surrounding the injuries; and that persons with medical expertise should have determined the seriousness of the injury.

On the matter of the definition, it is my view that the fact that the inmate suffered a lung puncture placed him within the ambit of s. 19. Notwithstanding this, there remains the larger issue, which I believe Parliament had in mind when it enacted s. 19.

I believe that s. 19 was intended to include a broader range of cases than those covered by the Service's definition. The issue is not the clinical nature of the injuries so much as their seriousness, as a matter of monitoring and preventing injuries that denote significant violations of offenders' entitlement to safe and humane custody and of their rights to security of the person under the Constitution.

The Status of the Case

The Commissioner's reply was received April 7, 2000.

He informed us that an investigation under s. 19 of the CCRA had now been convened thanks to the "new evidence" which we had provided-- namely the hospital report of a punctured lung. (This information was acquired from documents that the Service provided to us).

He agreed that there might be a perceived bias in permitting the Acting IPSO to investigate matters arising, in part, from a report that he had written in the first instance.

The Commissioner did not, however, accept that a new definition of serious bodily injury was required.

I have reserved further comment on this case until we receive the Board of Investigation Report.

EXCEPTIONAL SEARCH

The incident

A resident of a CSC-operated community facility was found in the tool shop, lying beside a band-saw table, with a severe neck wound. A short time later, the institutional head authorized a general strip search of all residents under ***s. 53 of the CCRA.***

This section provides:
(1) Where the institutional head is satisfied that there are reasonable grounds to believe that

> ***(a) there exists, because of contraband, a clear and substantial danger to human life or safety or to the security of the penitentiary, and***

(b) a frisk search or strip search of all the inmates in the penitentiary or any part thereof is necessary in order to seize the contraband and avert the danger,

the institutional head may authorize in writing such a search, subject to subsection (2).

(2) A strip search authorized under subsection (1) shall be conducted in each case by a staff member of the same sex as the inmate.

Section 58 of the Corrections and Conditional Release Regulations governs reports respecting searches and seizures. It provides, in part, that:

(3)A post-search report shall be in writing and shall contain…
(g) in the case of a post-search report [regarding a s. 53 search], the facts that led the institutional head to believe that the presence of contraband constituted a clear and substantial danger to human life or safety or to the security of the penitentiary, and an indication of whether the danger was averted.

In reviewing this incident, we noted that the search authorization form and the post-search report seemed to indicate that the purpose of the search had been to discover evidence to assist police with their investigation of the matter, rather than to find dangerous contraband, as required by the CCRA. Moreover, the post-search report indicated no facts in support of a belief in dangerous contraband.

The Service's regional Investigation Report on the matter included the following statements:

> *All inmates were ordered to return to the living unit and an emergency count was undertaken. The inmates were subsequently strip searched in an attempt to determine if anyone had injuries or signs of being involved in a physical dispute with an inmate. The search was authorized by the Institutional Head as, at the time of the authorization, it was uncertain whether or not the incident was an attempted murder or attempted suicide.* ***The search was to assist the police in gathering evidence or identifying possible suspects*** *[emphasis added].*

We referred this seeming breach of the CCRA to CSC National Headquarters on May 3, 1999. In its July 22, 1999 response, the Service stated that the Regional official who reviewed the Investigation Report had had concerns with the appropriateness of the search based on this wording. He had contacted the Chairperson of the Board of Investigation. This person explained that the search was conducted because it had not been initially clear whether the incident was an attempted suicide or an attempted murder, and this was the reason for the search. The Regional Official indicated, based

on a legal opinion which he had sought, that in the aftermath of almost any serious incident of this kind, it was not unreasonable to conclude that the reasonable grounds required by s. 53 existed.

I disagreed with this conclusion, and wrote to the Commissioner on December 6, 1999, pursuant to s. 177 of the CCRA, expressing my view, based on the information contained in the search authorization and the Post-Search Report:

1. *that the search was authorized unreasonably and in a manner contrary to law and to established policy;*
2. *that the contents of the Post-Search Report were prepared in a manner which is contrary to law; and*
3. *that the contents of documentation surrounding the search, including the required authorization and reports, were produced in a manner that was contrary to established policy and unreasonable.*

I recommended:

1. *That the decision to conduct the search be rectified by having the Service:*
   a) inform all offenders and staff who were involved that the search should not have been conducted;
   b) apologize to the inmates concerned; and
   c) correct any reference to the search on any offender's file, underlining the illegality of the search;

1. *That the Service review the Post Search Report document form to clarify that the facts leading to a belief that dangerous contraband exists must be indicated on the form and that the completed form be sent to the Regional Deputy Commissioner; and*

3. *That CSC staff be instructed in the proper procedures to ensure that searches are properly authorized, carried out, documented and reviewed in future.*

The Commissioner responded on February 11, 2000. He acknowledged that irregularities had occurred in the documentation of the search and that the relevant forms should be revised to underline the need to provide the information required by s. 53. He indicated that policy required staff to be aware of the rules governing such matters and that staff were being trained in the conduct of investigations. He did not, however, accept that the search should not have been conducted, or that it was conducted in a manner contrary to law.

The Issues

The general strip search of all offenders, in all or part of an institution, is a very exceptional measure which is very intrusive to the inmates involved. As such, the law requires very specific preconditions to such a search that must be considered where an institutional head is taking a decision.

We maintain our position that the search and the related reports were contrary to law and unreasonable because:

- *there was insufficient evidence to conclude that such preconditions existed or that such considerations occurred;*
- *the search was intended to assist a police investigation--a purpose not contemplated by s. 58; and*
- *the Service's documentation did not conform to the requirements of the CCRA and the Regulations.*

Parliament intended, in my view, that designated public servants not only comply with strict rules regarding intrusive procedures, but also demonstrate that they have done so.

The Status of the Case

We believe that the legal issue here is an important one and have suggested that it be submitted to dispute-resolution under the Memorandum of Understanding. Otherwise, we have attempted to bring closure to the matter by means of policy modifications that will ensure that extraordinary searches are ordered only for appropriate and well-documented reasons.

MEETING THE NEEDS OF DISABLED OFFENDERS

In a prison context, no less than in any other milieu, the disabled have the right under the Charter of Rights and Freedoms, and numerous other statutes, to be afforded treatment equal to those of sound mind or body. The CCRA specifically provides, at s. 4, that:

The principles that shall guide the Service in achieving the purpose referred to in section 3 are

(h) that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements.

The CCRA further provides, at s. 76, that:

The Service shall provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community.

Accordingly, disabled offenders are entitled not only to access to services in the penitentiary that accommodate their handicaps, but also to post-release programming in accessible circumstances.

The incident and our investigation

Two disabled offenders were not permitted to leave their minimum-security facility on their day parole release dates because no handicapped accessible residences existed in the community. Moreover, even when later released, they were initially placed in residences where the programming addressed needs unrelated to their correctional treatment plans.

This occurred despite the Service having been aware for months of their specific needs and for years of the requirement to provide accessible community correctional facilities.

We became aware of the problem of both offenders after one of them complained to us that he was not going to be released to a day parole facility because there was no wheelchair-accessible accommodation for day parole in the Edmonton area.

After lodging a number of inquiries, we were eventually informed that both offenders had been sent to a non-governmental community residence centre. While the residence was accessible, it was a treatment-oriented facility intended for aboriginal offenders. Neither offender was aboriginal or had need of the treatment programme. The placement took place a few days after the release date of one offender and several weeks after that of the other.

There ensued a series of correspondence between the Service and our Office. In April, 1999, my staff indicated their finding that the decisions and delays that had taken place in this matter were unreasonable. We recommended that the offenders receive apologies and compensation for the Service's failure to provide them with appropriate release conditions at the time these were needed.

In addition to the specifics of the cases, we referred to documents on file that disclosed that the Service had undertaken to provide accessible housing for disabled offenders in CSC-run facilities in the early 1990's.

The Service indicated that its accessibility plans were initially only preliminary and that more specific plans had taken a long time to develop. Further, delays in opening accessible facilities had been caused by problems in negotiating agreements with the provincial government.

With respect to the two cases, the Service said:

- *that the delays in accommodating the offenders had not been unreasonable;*
- *that staff had applied due diligence in attempting to find facilities and had succeeded in effecting the placement in the treatment facility only towards the end of the process;*
- *that this was done on an exceptional basis, considering the lack of treatment needs in both cases; and*
- *that the minimum-security facility in which they were housed was also designated as a community facility and, accordingly, the offenders were legally provided day parole despite being retained in that institution.*

In late August, 1999, our Executive Director wrote to the Service confirming our position as set out above and indicating that any delay in affording release to disabled inmates based on their disability was unacceptable. Further, in his view, to contend that maintenance in a minimum-security facility somehow constituted a "release" was unacceptable. Finally, he suggested that the delays in the Service's attempts to meet its human rights objectives over the years did not reflect its stated commitment to accommodate the needs of those with disabilities.

It was not until late January, 2000, that we received a reply from the Service, essentially confirming its previous position.

I have since written a report under s. 177 of the CCRA, reiterating our findings and recommendations. This was sent on March 3, 2000.

As of May 1, 2000, we had not received a reply.

For even two identified offenders to lose just a few days of access to appropriate conditional release activities based only on their disabilities is unreasonable and probably contrary to law. Worse still is that this should occur when a reasonable opportunity to anticipate and resolve their problems was missed and when the issue was one of long-standing concern to the Service.

On a related matter, during the course of our discussions with the Service on this case, the Service undertook to revise its Community Residential Facility Directory to ensure that information regarding accessibility was included. We were advised that the Directory would be revised by October, 1999. I was subsequently advised in January of

2000 that the Service had been unable to meet the target date and that it now hoped to be in a position to issue a completed directory by July, 2000.

HOUSING OF MINORS IN PENITENTIARIES

Our Office has consistently voiced the opinion that minors should never be housed in penitentiaries and that the Service has not provided minor inmates with the services and protections that they require when housed in penitentiaries.

Section 37 (c) of the United Nations Convention on the Rights of the Child prohibits the placement of minors with adults other than family members in prison. Canada has lodged a Reservation to this provision. This states that Canada reserves the right ***not*** *to keep children separate from adults in prison where this is "****feasible and appropriate."***

The Young Offenders Act (YOA) permits 16- and 17-year-old offenders to be placed in adult facilities if convicted of certain serious offences in adult court. Before this occurs, however, experts, including representatives of CSC, are to be afforded the opportunity to comment on any such placements.

In November, 1998, we received a copy of correspondence from a Non-Governmental Organization addressed to the Solicitor General concerning the continued housing of children in federal penitentiaries. We referred the concerns to the CSC's Human Rights Division.

CSC's response indicated that they did not consider housing of minors in penitentiaries to be "a desirable practice" but that, in essence, not much could be done when the Courts order transfer to federal custody under the YOA.

In February, 1999, we replied, asking if the Service had made representations before the Courts, as the YOA permits, and recommending:

- *that the cases of all young offenders who were then in penitentiaries be reviewed in order to initiate appropriate placement outside the federal correctional system; and*
- *that measures be put in place to ensure that appropriate recommendations be made to the Courts at the time of sentencing and in follow-up representations mandated under the YOA.*

As of September 30, 1999, we had not received a response addressing our recommendations. Accordingly, our Executive Director wrote to the Service, asking it to provide a response to outline its plans to deal with young offenders.

On December 29, 1999, the Service wrote to indicate that it had reviewed all cases and could find no reason to re-visit the appropriateness of the assignment of any of the young offenders currently in federal prisons. The Service reiterated its view that it had a very limited opportunity to address the Courts on placement of young offenders at the time of sentencing.

The Service also provided a draft issue paper on the subject which confirmed the Service's opinion that the placement of young offenders in penitentiary "is inappropriate" and that a collective effort should be mounted towards "preventing youth from being sentenced to federal penitentiaries".

In January, 2000, we wrote to the Service relating the results of our preliminary review of the circumstances of young offenders in federal custody. Here are some excerpts from that review:

- *all but one of these individuals is non-white; eight are aboriginal, one is black;*
- *all are security classified at either medium (5) or maximum (5);*
- *none have been placed at an Aboriginal Healing Lodge;*
- *many have been double-bunked;*
- *with the exception of the two youth serving indefinite sentences, all others have passed eligibility dates without benefit of conditional release;*
- *some have spent considerable time in segregation;*
- *a number of the individuals have been housed in three different penitentiaries while in the federal system;*
- *five of the individuals serving a sentence of three-and-a-half years or less have passed their full parole eligibility dates;*
- *one individual who entered the federal system at age 16 serving a sentence under three years has been detained, and another individual who entered a federal penitentiary at the age of 16 with a sentence of two years in October of 1988 remains incarcerated at Stony Mountain, awaiting his statutory release date of February 18, 2000; and*
- *during the first half of this fiscal year, eight offenders under the age of eighteen began serving time in federal penitentiaries.*

Based on these concerns and our position that continued placement runs contrary to the International Convention, I wrote to the Commissioner under s. 177 of the CCRA on March 5, 2000 and recommended that the Service take all means at its disposal:

1. *to advocate amendments to the Corrections and Conditional Release Act [CCRA], the YOA and Bill C-3 which would prohibit the placement of young offenders in penitentiaries; and*
2. *to attempt to convince the Courts, under s. 16.1 of the YOA, to reject all referrals of young offenders to federal penitentiaries.*

As of May 1, 2000, we had not yet received the Service's reply.

The Issues

In a number of contexts, the Service has stated that it is not appropriate to place minors in penitentiaries in association with adult inmates. Nevertheless, its position appears to be that it is relatively powerless to prevent such placement, given the authority of the Courts to place young offenders in penitentiaries under the YOA. The Service indicates that:

- *its representations to partners in the administration of justice have resulted in Bill C-3 (the revisions to the young offender legislation) being modified to provide a presumption in favour of placement in youth facilities; and*
- *it is attempting to improve the identification, case management and treatment of young offenders, especially aboriginal offenders, in penitentiaries.*

In my letter to the Commissioner, I took the position that the Service's view that it is never appropriate to place young offenders in penitentiaries is a complete answer to Canada's Reservation under the international treaty.

I went on to state that the Convention, and numerous other United Nations provisions, are firm in their protection of children in the correctional context. The Service's experience and knowledge, and ours, makes it patent that young people should not be placed in penitentiaries, both as a matter of effective protection and programming, and as a matter of clearly ***acknowledging that society must distinguish between adults and children.***

To those who would argue, despite the Service's position, and ours, that some distinction may be made regarding the nature of minors – their danger to other minor inmates, for example – I would respond that:

- *it is never impracticable, with sufficient will, to meet such considerations in a youth-centered context; and*
- *the impact of penitentiary placement always justifies such alternatives.*

It is my hope that the trend towards more punitive and restrictive confinement of young offenders will be reversed, at least insofar as this involves placing them in association with adult offenders.

I note that legislation has recently been enacted in the United Kingdom which promotes separation of younger offenders from older ones, even up to the age of 24, and that an oversight body has been put in place to monitor the situation of young people in the justice system. As a matter of sound corrections, we might learn from our British colleagues.

EXCESSIVE USE OF FORCE

The Service's current policy, in response to a recommendation from Madam Justice Arbour, requires that this Office be provided with a copy of all videotapes and supporting documentation related to Emergency Response Team interventions and cell extractions where force is deployed.

We have noted, through our review of these videos, numerous ongoing violations of both law and policy related to the use of force. We have also noted a reluctance on the part of the Service to convene investigations into these incidents. These violations have been the subject of ongoing discussions with the Service, and for a detailing of this matter, I refer you to the systemic issues section of the Report.

I referred two use of force incidents to the attention of the Commissioner for his review and comment, pursuant to s. 177 of the Corrections and Conditional Release Act. The videotapes in both incidents raised serious questions with respect to the Service's compliance with law and policy. In neither case had the Service, subsequent to its review, convened an investigation into the incident.

The first incident occurred on March 24, 1999. The videotape clearly showed an inmate who was locked in a cell being beaten on the hands with a baton. This same inmate, later, during the course of being moved to another cell, was gassed. He was then left naked, wet and chained, in an apparently semi-conscious state, on a slab of cement. The accompanying documentation, in addition, left a number of unanswered questions concerning the level of health care attention provided to this inmate. The documentation further indicated that the Warden, following his review of the video, concluded that only the necessary amount of force was used, and that an investigation was not required. The Service's regional headquarters appeared to support that conclusion.

This Office, subsequent to our review of the material, forwarded to the Senior Deputy Commissioner on April 27, 1999 a detailing of our concerns, with a recommendation that a national investigation be immediately convened to:

- *investigate the Service's actions specific to this incident, and*
- *investigate the level of compliance with the current policies and procedures of the Service with respect to use of force incidents.*

We further recommended that the Board meet with representatives from this Office during the course of the investigation.

The Service advised us in May of 1999 that a "national review" would be convened. In July of 1999, we were further advised that this had not occurred. A meeting was held with the Service in August, where we provided a further detailing of our concerns with the Service's handling of this case. The Senior Deputy Commissioner responded in September, rejecting our recommendation for a national investigation. She finalized the Service's position in correspondence dated December 23, 1999, which stated, in part:

> *The purpose of investigations is to establish the facts relating to a specific incident, including the incident's cause and outcome, to present relevant and timely information that will help prevent similar incidents and to demonstrate the Correctional Service of Canada's accountability. In this instance, the video and supporting documentation clearly indicated deficiencies in the handling of this incident and an investigation would have provided no further information likely to prevent further similar incidents. It was deemed more relevant and important to address corrective measures through a general review.*

I note that this "general review", which initially did not specifically focus on the incident in question, and the eventual corrective measures taken occurred well after the fact.

The second incident occurred in January, 1999. The Service's policy requires that a copy of the videotape and supporting documentation be forwarded to this Office and the Service's NHQ within fifteen days of the incident. This material was received four months after the incident. On November 2, 1999, we received the results of the Service's NHQ review of the videotape and documentation, which noted "serious breaches of policy".

The videotape showed two inmates being moved to segregation, strip-searched and left naked, chained to a bed in a cell without a mattress. At one point, an officer appears to have punched one of the inmates, then turns to the camera operator and says "turn it off", and the taping stops. The accompanying documentation raised a number of questions related to the provision of health care to these inmates. The documentation, as well, clearly indicated that the Warden had decided, subsequent to his review, that no investigation was necessary. The Service's regional headquarters appears to have supported this determination.

The Service's review at NHQ, while noting "serious breaches of policy," had, as well, not convened an investigation. On November 12, 1999, this Office recommended to the Assistant Commissioner, Performance Assurance that a national investigation be immediately convened to:

- *review the Service's actions specific to this incident, inclusive of the failure to report this incident as per existing policy; and*

- *review the Service's level of compliance with current policies and procedures related to use of force incidents.*

The Service responded on January 19, 2000, rejecting our recommendation and advising that a decision had been made to convene a regional investigation into the circumstances surrounding the incident. This Office responded to the Assistant

Commissioner on January 27, 2000, indicating that the actions taken by the Service did not address the specifics of our recommendation or provide any rationale for the Service's decision to turn the matter back over to the region for further review a year after the incident. Our response advised that the details of this case, inclusive of our recommendations, may be included in a Report by this Office under sections 192 and 193 of the Corrections and Conditional Release Act inviting further comment from him on any aspect of the case. The Assistant Commissioner was, as well, advised that the matter had been referred to my attention for further examination.

Following my examination of both incidents, I wrote the Commissioner on March 3, 2000 reiterating my Office's findings, and concluding that a national investigation should have taken place in both cases.

I further found that the Service's decision to convene a regional investigation into the second incident was inappropriate, given

- *the importance of the issues that I believe need to be addressed; and*

- *the fact that certain difficulties and delays in reasonably managing this incident were caused at the regional level.*

I recommended that a nationally-convened investigation into the second incident be undertaken and, in addition to the Service's management of the specifics of this case, that the investigation include a thorough review of staff compliance with the law and policy on use of force and its reporting within the Service.

The Service must ensure that incidents of excessive force and non-compliance with law and policy are addressed in an objective, thorough and timely fashion. Both the law and CSC policy demand this.

The Service has recently put forth a number of proposals to improve its process of reviewing and investigating use of force incidents. Policy is pending on videotape reviews and the convening of investigations. Changes have also been proposed to the documentation requirements on use of force incidents to promote accountability.

I nevertheless find that these incidents, and others that we have examined, disclose the need to ensure that investigations be carried out in a timely fashion at the level that most promotes transparency, accountability, and compliance with legal and policy requirements across the Service.

I hope that the resolution of these cases and our ongoing discussions with the Service will meet this goal.

As of May 1, 2000, I have not received a response from the Commissioner.

DELAY AND LACK OF COORDINATION IN CSC'S INVESTIGATIVE PROCESS

The Office received on November 25, 1998 a copy of a Use of Force Report concerning an incident that occurred on November 16, 1998. The Report indicated that the incident had been videotaped and that a Regional Investigation had been convened "in light of medication being administered without consent".

The Service's policy requires that all videotapes are to be forwarded to this Office within fifteen days of the incident. The videotape was received at this Office in February of 1999.

In January of 1999, we were provided with the results of the Service's Security Division Review, which concluded,

> *There was some concern about administering medication (by Hypodermic needle X2) without inmate's consent. The region convened an investigation into this aspect of the incident. This is not an issue regarding Use of Force and therefore, should not be pursued by NHQ Security Division.*

The Office also, in January of 1999, received a copy of the Regional Convening Order dated December 2, 1998 for an investigation into use of force/violation of rights. The Board of Investigation was to deliver a report by December 31, 1998.

In February of 1999, subsequent to our review of the videotape, we requested a copy of the Investigative Report. The Office was advised that "as soon as the investigation report is made available, it would be forwarded". The Report was received July 16, 1999, eight months after the incident.

The Board of Investigation found that:

> *the administration of intra-muscular medication to the inmate, against his will, was contrary to the provisions of the Corrections and Conditional Release Act, the Service's policy and the Mental Health Act.*

The Board recommended that:

> *immediate action be taken to ensure all staff at the treatment facility are knowledgeable of the Mental Health Act and its provisions.*

In addition to the specifics of this case, a number of more general areas of concern involving the use of restraints and the involuntary administration of medication to inmates with mental health problems were forwarded by this Office to the Service's attention in April of 1999.

The Service's response to both the specific violations of law and policy identified in the November, 1998 incident and the associated areas of concern raised in April of 1999 has been excessively delayed and uncoordinated.

While three divisions at the Service's National Headquarters--Security, Performance Assurance and Health Care--were aware in December of 1998 that a regional investigation had been convened into a use of force/violation of rights incident involving forced medication, no action was taken to ensure that Service policy was consistent with the law and understood by staff in other regions. Security saw it as not their concern. Performance Assurance and Health Care were waiting for the completion of the regional investigation.

The regional investigation, which was convened in December of 1998, was not forwarded to the Service's National Headquarters until July of 1999, and was not reviewed by Performance Assurance until September of 1999, ten months after the incident. Health Care forwarded correspondence to the Region and Performance Assurance expressing "serious concern about the incident" in December of 1999, more than a year after the incident. In January of 2000, this Office received confirmation that action had been taken on the Board of Investigation's recommendations related to the November, 1998 incident.

A detailing of this Office's concerns with the Service's management and follow-up on this matter was forwarded to the Senior Deputy Commissioner on January 20, 2000. A meeting was held in February of this year with senior Correctional Service officials to discuss areas of concern related to health care treatment situations involving the use or potential use of force, including those forwarded to their attention in April of 1999.

A response was received from the Senior Deputy Commissioner on March 29, 2000, providing the following:

- *CSC recognizes the importance of sharing with national and regional management, in a timely manner, information that is collected from the videotapes;*
- *the Commissioner has emphasized that the Director General, Security has the authority to review and suggest corrective actions associated with the use of force that impact on the safety and security of staff and inmates;*
- *where force has been used to provide medical treatment, the video and supporting documents are forwarded to the Director General, Health Services, for further review;*
- *the distribution of the Use of Force Review Log has been changed to identify issues that have to be examined by other Divisions, including Deputy Commissioner for Women, the Director General, Offender Affairs, Investigations and Health Services;*
- *a security bulleting on the use of force involving medical intervention will be finalized by March 31, 2000;*
- *at the next meeting of the Health Service Council, scheduled for April, 2000, the Director General, Health Services will advise the Chiefs, Health Service and Psychology to include in their statement of qualifications a requirement for knowledge of Provincial Mental Health Acts;*
- *a review of Institutional policies relating to consent and involuntary treatment to ensure that they reflect the law (CCRA) and a review of Health Service's policy and provincial mental health legislation will be completed by March 31, 2000; and*
- *the provisions of training on the relevant Provincial Mental Health Acts is now provided in all CSC mental health facilities.*

I am hopeful that the above-noted policy and procedural changes will assist in ensuring that significant breaches of law and policy are both identified and acted upon in a coordinated, objective, thorough and timely fashion.

ACCESS TO TRADITIONAL ABORIGINAL HEALERS (POLICY INERTIA)

A number of concerns were raised with this Office relating to the absence of clear policy relating to inmate access to Traditional Aboriginal Healers. The Correctional Service of Canada's Health Service's Manual under the heading Health Needs Of The Aboriginal Offender states:

> *All health professionals shall be aware of the useful and complementary role that traditional medicine can play in the rehabilitation of the offender and shall be encouraged to seek counsel of elders and native liaison workers, as appropriate.*

In March of 1998, we wrote to the Aboriginal Issues Branch at CSC National Headquarters, asking if the Service had a specific policy regarding access to Traditional Healers. We were advised in April of 1998 that the matter raised relates to more than one policy: "I shall consult with my colleagues and write again with a reply to your query".

In June of 1998, in referring to the above noted section of the Health Services Manual, the Office was told that the "Manager, Health Services Operations, Policy and Administration, advised all regional officials responsible for Health Services to ensure that this issue is discussed at their regular meeting with the Chief Nurses in order to increase staff awareness of this policy and to identify training needs that may be needed". The Health Services Manager's memo to regional officials reads, in part: "at this time, I have no reading on how this (Service policy) has been translated into practice in the field".

On September 1, 1998, the Office was advised that "[i]n order to ensure that this issue is addressed nationally, the Manager, Health Services, has included CSC's policy on Aboriginal healers as an agenda item at the upcoming meeting of the Health Services Council which has two delegates from each region. A representative from Aboriginal Programs has also been invited to attend this meeting which is scheduled for late November 1998".

On December 17, 1998, this Office wrote to the Service, asking to be advised of the results of the Health Services Council's review of this issue. On January 20, 1999, we were provided with a copy of an Issue Sheet designed to promote and direct discussions and decisions on this issue. We were, as well, advised at that time that "[u]nfortunately, the heavy agenda for the meeting [of the Health Services Council] required that the issue be postponed to the next meeting of the Council, which is scheduled for February".

This Office wrote to the Service in March of 1999, requesting to be advised of the results of the Council's discussions in February. The Service responded in May of 1999, providing a detailing of its ongoing consultations, and concluding that they estimated "that the thorough consultation process required for this matter will not have reportable results until September of the current year".

The Office wrote again in October, 1999, asking to be provided with the results of their consultation process. A response was received from the Service in December of 1999, saying, "our objective remains the facilitation of reasonable access to healers; however, our research and analysis have revealed a number of factors that must be addressed in the resolution of this issue….To bring about resolution of this matter, I have been advised that a member of the Aboriginal Issues Branch will consult with a cross-section of Elders and Service providers in Aboriginal communities and identify factors that must be considered in developing options for providing the desired safe access, as well as the sensitive mater of compensation. That consultation will be completed by the end of February 2000. Consultation with Correctional Service staff will follow with the objective of distributing policy proposals to the Executive Committee by the end of April 2000".

Further correspondence was received from the Service. Dated March 30, 2000, the correspondence stated, in part, "[d]ue to budgetary constraints, the travel required to conduct these consultations has been extended into the next fiscal year. This contingency, together with the immense complexity and sensitivity of the issue, has resulted in our extending the completion of this project to the spring of 2001".

This "project" has now extended through three fiscal years. Two years after raising the issue, the Service still has no policy on the matter, and the offenders still do not have reasonable access to Traditional Aboriginal Healers.

CONCLUSION

I have attempted in this Annual Report to bring both a clear focus to those systemic areas of concern raised by offenders, and to provide examples of individual areas of concern and the protracted process involved in addressing those concerns.

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's mandate is to investigate complaints from an independent and neutral position, to consider thoroughly the Service's action and the reasons behind it, and to either endorse or explain that action to the complainant, or, if there is evidence of unfairness, to make appropriate recommendations concerning corrective action. The interest of the Correctional Investigator lies in ensuring that offender concerns are objectively and fairly addressed in a timely fashion. This interest cannot be met without a consistent level of responsiveness on the part of the Correctional Service to these concerns that is and is seen to be fair, open and accountable. The Service's responses to offender concerns, raised by this Office, continue to be excessively delayed, overly-defensive and absent of commitment to specific corrective action.

STATISTICS

TABLE A
CONTACTS [1] BY CATEGORY

CATEGORY	CASE TYPE I/R [2]	CASE TYPE INV [3]	TOTAL
Administrative Segregation			
Conditions	24	33	57
Placement/Review	91	90	181
Total	**115**	**123**	**238**
Case Preparation			
Conditional Release	164	174	338
Post Suspension	36	39	75
Temporary Absence	43	64	107
Transfer	85	126	211
Total	**328**	**403**	**731**
Cell Effects	**115**	**103**	**218**
Cell Placement	**45**	**18**	**63**
Claims Against the Crown			
Decisions	24	17	41
Processing	40	23	63
Total	**64**	**40**	**104**
Community Programs/Supervision	**4**	**4**	**8**
Conditions of Confinement	**79**	**37**	**116**
Correspondence	**53**	**24**	**77**
Death or Serious Injury	**4**	**1**	**5**
Discipline			
ICP Decisions	20	12	32
Minor Court Decisions	12	9	21
Procedures	58	22	80
Total	**90**	**43**	**133**
Diet			
Medical	14	15	29
Religious	12	5	17
Total	**26**	**20**	**46**
Discrimination	**23**	**12**	**35**
Employment	**57**	**34**	**91**

File Information			
Access - Disclosure ……	59	50	109
Correction ……..	214	39	253
Total ……	**273**	**89**	**362**

TABLE A (cont'd)
CONTACTS [(1)] BY CATEGORY

CATEGORY	CASE TYPE I/R [(2)]	INV [(3)]	TOTAL
Financial Matters ……			
Access ……	26	28	54
Pay ……..	94	39	133
Total ……	**120**	**67**	**187**
Food Services ……..	**14**	**4**	**18**
Grievance Procedure ……..	**67**	**66**	**133**
Health and Safety--Inmate Worksites/Programs ……	**3**	**2**	**5**
Health Care			
Access ……..	149	219	368
Decisions ……	142	109	251
Total ……	**291**	**328**	**619**
Mental Health			
Access ……..	10	19	29
Programs ……	5	8	13
Total ……	**15**	**27**	**42**
Official Languages ……..	**7**	**11**	**18**
Operation/Decisions of the OCI ……..	**10**	**5**	**15**
Other ……..	**9**	**2**	**11**
Penitentiary Placement ……..	**39**	**15**	**54**
Programs			
Access ……..	94	89	183
Quality/Content ……..	31	28	59
Total ……	**125**	**117**	**242**
Release Procedures ……	**10**	**9**	**19**
Safety/Security of Offender(s) ……	**48**	**39**	**87**
Search and Seizure ……..	**14**	**6**	**20**

Security Classification …….	**67**	**48**	**115**
Sentence Administration-- Calculation …….	**28**	**19**	**47**
Staff Responsiveness ……..…	**231**	**71**	**302**

TABLE A (cont'd)
CONTACTS [1] BY CATEGORY

CATEGORY	CASE TYPE I/R [2]	INV [3]	TOTAL
Telephone …….	**52**	**52**	**104**
Temporary Absence Decision ……	**32**	**36**	**68**
Transfer			
Decision—Denials …….	111	96	207
Implementation ……..	19	52	71
Involuntary ……..	148	65	213
Total ……	**278**	**213**	**491**
Urinalysis ……...	**26**	**12**	**38**
Use of Force …….	**9**	**17**	**26**
Visits			
General ……...	108	132	240
Private Family Visits ……..….	90	96	186
Total ……	**198**	**228**	**426**
Outside Terms of Reference			
Conviction/Sentence—Current Offence ……	**15**	**-**	**15**
Immigration/Deportation ……..…	**10**	**-**	**10**
Legal Counsel-- Quality ……..	**1**	**-**	**1**
Outside Court-- Access ……...	**19**	**-**	**19**
Outside Litigation …….	**15**	**-**	**15**
Parole Decisions ……..	**30**	**-**	**30**
Police Actions ……...	**9**	**-**	**9**
Provincial Matter ……..	**14**	**-**	**14**

GRAND TOTAL ……	**3082**	**2345**	**5427**

(1) See Glossary
(2) I/R: Immediate Response - see Glossary
(3) INV: Investigation - see Glossary

GLOSSARY

Contact: *Any transaction regarding an issue between the OCI and an offender or a party acting on behalf of an offender. Contacts may be made by telephone, facsimile, letter, and during interviews held by the OCI's investigative staff at federal correctional facilities.*

Immediate Response: *A contact where the information or assistance sought by the offender can generally be provided immediately by the OCI's investigative staff.*

Investigation: *A contact where an inquiry is made to the Correctional Service and/or documentation is reviewed/analyzed by the OCI's investigative staff before the information or assistance sought by the offender is provided.*

Investigations vary considerably in terms of their scope, complexity, duration and resources required. While some issues may be addressed relatively quickly, others require a comprehensive review of documentation, numerous interviews and extensive correspondence with the various levels of management at the Correctional Service of Canada prior to being finalized.

TABLE B
CONTACTS BY INSTITUTION

Region/Institution	# of contacts	# of interviews	# of days spent in institution
FSW			
Edmonton Women's Facility ……	34	30	6
Regional Reception Centre (Québec) ……...	10	6	1
Grand Valley ……..	30	24	4
Isabel McNeill House ……	6	4	3
Joliette ……...	105	55	13
Okimaw Ohci Healing Lodge ……..	7	4	3
Nova ……	45	20	5
Prison for Women …….	40	26	5
Regional Psychiatric Centre (Prairies) ……..	24	12	5
Saskatchewan Penitentiary …….	41	22	7
Springhill ……	20	6	4
Region Total ……..	**362**	**209**	**56**
MARITIMES			
Atlantic ……	359	168	11
Dorchester ……	252	120	9
Springhill ……	152	65	5
Westmorland …….	67	26	4
Region Total ……..	**830**	**379**	**29**
ONTARIO			
Bath …….	71	43	6
Beaver Creek ……	19	15	4
Collins Bay …….	167	130	13
Fenbrook ……	68	59	7
Frontenac ……...	45	43	4
Joyceville ……	132	46	8
Kingston Penitentiary ……...	251	78	8
Millhaven ……	51	44	6
Pittsburgh ……...	15	5	3
Regional Treatment Centre ……	33	16	3
Warkworth ……..	129	94	8
Region Total ……..	**981**	**573**	**70**
PACIFIC			
Elbow Lake ……	10	4	4
Ferndale …….	32	11	3
Kent …….	164	84	7
Matsqui ……...	29	23	7

Mission	83	58	7
Mountain	60	43	6
Regional Health Centre	49	33	5
William Head	75	50	8
Region Total	**502**	**306**	**47**

TABLE B (cont'd)
CONTACTS BY INSTITUTION

Region/Institution	# of contacts	# of interviews	# of days spent in institution
PRAIRIE			
Bowden	330	146	16
Drumheller	194	85	14
Edmonton	228	161	15
Grande Cache	100	73	7
Pê Sâkâstêw Centre	45	29	5
Regional Psychiatric Centre	119	68	6
Riverbend	31	14	4
Rockwood	30	5	2
Saskatchewan Penitentiary	232	114	10
Stony Mountain	167	31	2
Region Total	**1476**	**726**	**81**
QUÉBEC			
Archambault	161	57	7
Cowansville	64	44	7
Donnacona	128	83	8
Drummondville	54	18	5
Federal Training Centre	72	53	6
La Macaza	113	99	8
Leclerc	184	119	12
Montée St-François	29	20	5
Port Cartier	225	142	15
Regional Reception Centre/SHU Québec	67	20	5
Ste-Anne des Plaines	34	15	3
Region Total	**1131**	**670**	**81**
GRAND TOTAL	**5282***	**2863**	**364**

* Excludes 88 contacts in CCC's and CRC's and 57 contacts in provincial institutions

TABLE C
COMPLAINTS AND INMATE POPULATION - BY REGION

Region	Total number of contacts (*)	Inmate Population (**)
Maritimes	858	1141
Québec	1135	3285
Ontario	998	3424
Prairies	1525	3209
Pacific	506	1733
TOTAL	**5022**	**12792**

(*) Excludes 405 contacts from CCC/CRC's and FSW facilities.

(**) As of 13 March 2000, according to April, 2000 Performance Measurement Report issued by the Correctional Service of Canada.

TABLE D
DISPOSITION OF CONTACTS BY CASE TYPE

CASE TYPE	*DISPOSITION*	**# OF COMPLAINTS**
Immediate Response	Information given ……..	1236
	Outside mandate ……..	113
	Pending ……..	45
	Premature ……..	878
	Referral ……..	599
	Withdrawn …….	261
Total		**3132**
Investigation	Assistance given ……...	468
	Information given ……..	584
	Pending ……..	128
	Premature ……..	92
	Referral ……..	297
	Not justified ……	304
	Resolved ……	322
	Unable to Resolve ……	46
	Withdrawn …….	54
Total		**2295**
GRAND TOTAL		**5427**

APPENDIX A

MEMORANDUM OF UNDERSTANDING
between
THE OFFICE OF THE CORRECTIONAL INVESTIGATOR
and
THE CORRECTIONAL SERVICE OF CANADA

PURPOSE OF MEMORANDUM OF UNDERSTANDING

This memorandum of understanding (MOU) describes the framework and protocol for the working relationship between the Office of the Correctional Investigator (OCI) and the Correctional Service of Canada (CSC). It provides a structure for interaction between the two agencies during the course of the OCI's investigations into offender concerns. This document reflects a shared understanding of, and commitment to, establishing a cooperative and productive working relationship that may facilitate the timely resolution of offender concerns. The CSC and the OCI believe that openness, good faith, respect, cooperation and effective communication characterize a good working relationship.

The CSC and the OCI recognize and respect the different mandates, roles and functions of their respective agencies. The Mission Document affirms that CSC is committed to working cooperatively with the OCI and that CSC will be open and responsible in all interactions with the OCI. The OCI shares the commitment to working cooperatively, and with openness and responsibility, when dealing with the CSC. It is recognized that there will be issues where there will be fundamental disagreement. Nevertheless, the parties believe that the timely resolution of offender problems is almost always attainable within the context of the mission of both agencies.

The procedures outlined in this document will ensure that the following objectives are met:

- that the CSC provide accurate information in a timely manner to the OCI in response to requests which stem from matters under the OCI's jurisdiction. The information will be provided in either electronic or in hard copy format;

- that timely corrective action in relation to valid offender concerns is taken by the CSC; and

- that both agencies are committed to the clear and objective identification of offender concerns and the early resolution and closure of issues of concern to offenders.

MANDATES

The mandates of each agency are outlined in the Corrections and Conditional Release Act (CCRA).

ROLE OF THE CORRECTIONAL INVESTIGATOR OMBUDSMAN

The parties recognize that the role of the OCI is inquisitorial and not adversarial. The OCI's mandate as outlined in the CCRA is to gather information pursuant to a complaint by an offender or pursuant to an investigation or on the initiative of the CI. This information is then analyzed and presented in an objective and thorough fashion without any predisposition with respect to the position of the Service or the complainant in any given investigation. It is only after an investigation is completed that the OCI will adopt a position with respect to the resolution of a problem. The interest of the OCI is in arriving at reasoned and supportable findings with respect to the problem, whether or not these support the complainant or the Service, in order to achieve timely resolution of offender problems.

The parties are aware that the OCI process operates notwithstanding any other investigative or judicial process and that the CCRA contains provisions that protect information acquired during OCI investigations from disclosure in other proceedings.

Accordingly, given the distinct nature of the OCI's relationship with the CSC, as compared to that of persons or organizations outside the Public Service who interact with the CSC in other contexts, the OCI and the CSC agree:

1) that in reporting findings and recommendations to the CSC, the OCI make its best effort to ensure that reports are complete and reasoned and contain all of the information, analysis and submissions that are necessary to understand the case;

2) that the findings and recommendations of the OCI will be reviewed by the CSC in an open and non-adversarial fashion, irrespective of the CSC's treatment of the applicable facts and circumstances in other investigative or litigious contexts; and
3) that the OCI will be conscious of this undertaking in observing the provisions of the CCRA with respect to disclosure of information.

In accordance with the mandates of each agency, the CSC and the OCI have agreed on the following protocols to guide their working relationship.

COMMUNICATION

A. The Process of Communications

The following principles will govern communication between the parties:

a) the CSC has the statutory right and obligation to manage its own affairs, including the maintenance of a coordinated and informed approach to communication with the OCI;

b) during the course of an investigation, the OCI has the statutory right and obligation to require any person to provide information with respect to matters under investigation, that in the opinion of the OCI the person may be able to provide;

c) for the purpose of timely resolution of offender problems, and of managerial accountability, findings and recommendations submitted by the OCI shall be treated by the CSC official(s) with the authority and responsibility to respond to the issue; and

d) for the purpose of timely and coordinated responses from the CSC to the OCI, the OCI will generally correspond through the office of the DGOA, except as otherwise indicated in this Agreement.

With these principles in mind and to enhance effective communication, the parties will communicate in writing as follows:

1. Correspondence to the Commissioner will be signed by the Correctional Investigator, and vice versa.

2. OCI staff other than the Correctional Investigator may correspond with any CSC official they deem appropriate, other than the Commissioner, but will copy National Headquarters level correspondence to the Office of the DGOA. The CSC Official in question will respond to the OCI unless the Service determines that another Official with analogous line authority over the matter should respond instead or should share in the response.

3. Subject to the above, the OCI will normally correspond with the Service, as follows

a) When requesting information from the Service , OCI will direct inquiries as follows:

i) Investigators:
Institutional and Parole Office staff including institutional heads;
Regional staff other than Deputy Commissioners and Assistant Deputy Commissioners; and the Office of the DGOA, and staff at National Headquarters below the level of the DGOA.

ii) Executive Director, Legal Counsel, Directors of Investigations and Coordinators of Aboriginal and FSW Issues:
The staff set out above, the Regional Assistant Deputy Commissioners and Regional Deputy Commissioners, the Deputy Commissioner for Women and the Director General Offender Affairs

b) When reporting findings and recommendations on an investigation to a CSC Official at National Headquarters, OCI staff may correspond directly with the official who has authority over the matter.

B. Meetings

The parties agree to schedule regular business meetings to discuss issues of concern, the agendas of which shall be a collaborative effort between the two agencies. In particular, the Executive Director of the OCI and the Director General, Offender Affairs, will make best efforts to meet at least every two months.

During the course of investigating an offender-related issue, the OCI shall first deal with the head of the institution/parole office or applicable staff members unless the subject-matter is one which is under discussion or subject to decision at a higher level or one which has been previously resolved.

During the course of investigating an issue, both agencies have the right to refer an issue to a higher level within the other agency, if resolution is not forthcoming or if the decision at issue was taken at the higher level. If either agency chooses this course of action, they shall first provide written notification to the other agency. Written notification shall normally be provided to the level at which the issue is being investigated.

C. Content and Timeframes of Communications

i) General provisions on time frames and requests for information

- Each agency shall respond to the other's inquiries, requests, findings and recommendations in a timely manner, but normally within 30 days. If the receiving agency cannot meet its time frame, the requesting agency shall be provided with an interim response outlining steps taken to date and providing a target date for the final response. The requesting agency may refer an overdue matter to a higher level of the other agency and so inform the intended respondent.

- Requests from both agencies shall normally be provided in writing and shall provide clear and precise details regarding the type of information requested.

ii) Specific information requests

- Requests for draft reports of CSC's national investigations shall be submitted in writing from the Correctional Investigator to the Commissioner.

- The CSC Official designated to respond to OCI requests for legal opinions is the Assistant Commissioner Corporate Development.

iii) Informing the Service of findings and recommendations

The method of informing the CSC of findings and recommendations will be in accordance with sections 170-180 of the CCRA.

- **General provisions**:

Upon notification by the OCI of a concern or upon receipt of recommendations, the CSC shall respond to the OCI on a timely basis. The response will include background information and statistics relevant to the matter under review. The CSC may consult with the OCI to determine the corrective action that will be taken upon investigation of the problem.

Upon receiving CSC's response and/or corrective action to a problem, the OCI shall acknowledge the CSC's response and shall provide the CSC with an assessment of the response and/or corrective action.

- **Specific provisions on statutory reports:**

With respect to ss. 177-179 of the CCRA, the OCI shall present the Commissioner with a clear and concise description of a problem(s) and subsequent recommendations. Background information and other relevant data gathered by the OCI during the course of their investigation shall also be provided at the same time to assist the CSC to respond to the problem or recommendation in a meaningful way.

On receipt of a report under ss. 177-179 of the Act, the Service may, normally within one week, seek clarification of any information contained in the report and the OCI will provide this as soon as possible, normally within one week.

The normal time frame for a response to a report under ss. 177-179 shall be 30 days, unless the parties agree to a longer period. If it appears that the Service will not be able to respond within the normal or agreed-upon period, the Service will notify the OCI of this and provide reasons for the delay. Where the Service does not respond within the normal period or any agreed-upon period, the OCI may decide to refer the matter under s. 180 and, if so, will inform the Service of their intent to do so.

With respect to s. 180 of the CCRA, in the event that the CI refers an issue of concern to the Minister, the CI shall notify the Commissioner of their intention to refer the matter. Similarly, the Commissioner shall also notify the CI of his intention to refer a matter to the Minister.

REVIEW OF DISPUTES AND CLOSURE OF INVESTIGATIONS

Before the OCI issues findings and recommendations on a matter to the Commissioner, the Minister or Parliament, as applicable, the OCI may decide, or the parties may agree, that an attempt should be made to bring closure to the matter.

The meaning of "closure"

“Closure” refers to an agreement between the parties with respect to the measures, if any, which the Service will take to resolve a problem of offenders. Based upon this agreement:
a) the OCI refrains from making further inquiries, findings or recommendations on the matter until new circumstances occur which permit the matter to be re-opened; and
b) offenders may seek expedited redress in order to benefit from the Service's undertakings.

Note: Circumstances permitting re-opening of a matter include those described in this MOU and those to which the parties may specifically agree at the time of closure.

No closure agreement can supersede the OCI's statutory obligation to report findings and recommendations where it determines that a problem of offenders exists, or persists.

Accordingly, even after closure has been attained, the OCI may take further steps on the matter in question if it becomes clear:

a) that the Service's solution is not being effectively implemented or is not resolving the issue; or
b) that matters on which the OCI has agreed to forego further action are giving rise to problems that must be addressed.

To the extent that agreed-upon solutions are inadequate or not implemented, or that an incomplete or premature resolution occurs, real closure will not be achieved. From this perspective, closure means describing circumstances which will maximize the period during which the parties may realistically set aside a matter under investigation.

Terms of closure agreements

The parties will make their best efforts to apply the following principles in bringing resolution to a matter:

- no problem, or element of a problem, should remain unresolved where it can be addressed through open, thorough discussion and review;
- no problem is, in fact, resolved if offenders continue to experience the problem notwithstanding the purported solution;
- points of agreement on resolving problems should be maximized, even where complete agreement is not achieved;
- all agreed-upon solutions should be implemented in an effective, timely and reliable fashion;
- areas of disagreement should be re-visited only in circumstances where this is reasonable and useful to both parties, or necessary in order for the OCI to fulfil its mandate; and
- abiding by the terms of agreement necessarily implies that new complaints which indicate that offenders have not benefited from the solution must be addressed immediately.

With these principles in mind, before closing a matter, the parties will attempt to draft closure terms including, but not restricted to, the following provisions:

- an outline of the information, issues, findings and recommendations upon which the parties agree, or disagree;
- with respect to points of agreement, the measures which the Service will take to implement resolution of the matter, expressed in measurable, operational terms, with time-frames for accomplishing resolution and means of evaluating results at identified junctures;
- the role, if any, of the OCI in this process;
- with respect to points not agreed upon, the circumstances, if any, under which these may be re-visited and when/how this may occur*;
- the information on the above which will be communicated to offenders and identified staff of each party and the means of ensuring effective communication; and
- the level at which complaints or grievances based upon the agreement may be lodged and the measures taken to ensure that these will be addressed in a timely fashion.

*Note: In considering the re-opening of a matter, an important factor will be the extent to which a problem reoccurs despite the solution which has been identified and implemented.

The parties may agree to divide the matter and to bring closure to some elements while allowing the OCI to proceed with a report on other elements.

Review of Disputes

The parties may decide to attempt resolution of points on which agreement has not been achieved by agreeing to the non-binding mechanisms which follow, or to any others that they deem appropriate:

- Mediation, facilitation , non-binding arbitration or other alternative dispute resolution mechanism
- Review by an expert from outside the parties, the department, or the government
- Joint on-site investigation at the location where the problem arose
- Formal or informal hearings
- Supplementary research
- Consultation with persons and stakeholders

The Officials authorized to undertake such measures are:

- Prior to the submission of a report to the Commissioner under s. 177, the Director-General of Offender Affairs and the Executive Director of the OCI.
- Prior to submission of a report to the Minister under s. 180, the Commissioner and the Correctional Investigator.
- Prior to the submission of a Report to be tabled in Parliament, the Commissioner and the Correctional Investigator, in consultation with the Minister.
- Any costs incurred in such procedures will be shared between the OCI and the CSC.

Time frames for closure

The parties will attempt to complete the process of closure within 30 days.

Where either party concludes that the closure process will not effectively resolve the matter, either party may terminate the procedure. Before doing so, it may issue a final proposal for closure of the matter. Within one week, or at an agreed-upon later date, the other party may produce its own final proposal.
At this juncture, if agreement is still not attained, the final proposals of the parties and any other joint record that was produced (including records of dispute-settlement attempts) may be referred to by either party in the context of subsequent reports by the OCI.

Re-opening of a matter

Matters on which closure is achieved, and substantially similar matters, will remain closed and the parties will abide by the terms of closure until:

a) the terms of the closure agreement permit re-opening;
b) a substantial or urgent change in circumstances occurs which necessitates re-opening of the matter**;
c) it becomes clear to the OCI that the problem of offenders in question has become, or remains, a matter of substantial concern;
d) the parties agree to re-open the matter.

**Note: "substantial change of circumstance" includes, without limiting the generality of the expression:

- a significant change in the law or the Service's policy or practice with respect to the matter; or
- a major incident or an incident involving serious injury or death to which the policies, practices or law contained in the closed matter are relevant and at issue.

Where the OCI decides to re-open a matter, it will inform the Service in writing of its decision, and of the reasons for this. Within one week, or other agreed-upon period, the Service may respond to the decision. The record of this exchange will form a part of any subsequent report on the matter.

Expedited Redress

Where a matter has been closed, the Service will communicate the terms of the closure agreement to all institutions and Parole Offices and will ensure that offenders have the opportunity to be apprised of the agreement. Thereafter, where an offender experiences a problem that the parties intended to resolve in the agreement, he/she may make use of the grievance procedure, or may address his/her complaint directly to the OCI based on the terms of the agreement. The complaint or grievance may be lodged at the level to which the parties agreed within the closure agreement.

CONSULTATION

The CSC may consult with the OCI and/or the OCI may make unsolicited or ad hoc recommendations to the CSC on proposed or existing offender-related policies or any amendments thereto. The CSC shall direct requests for feedback to the Executive Director of the OCI and outline a time frame for providing feedback. The OCI will inform the CSC if it does not wish to provide feedback or of any expected delay in providing written feedback. The CSC will give consideration to the recommendations of the OCI.

The CSC may request the OCI's participation on working groups or task forces. The Service will notify the OCI of upcoming working groups or task forces in which the OCI may wish to participate. Where the CSC has requested such participation, participation or contribution by the OCI shall not be construed as full endorsement of any or all of the findings and recommendations arising from the collaborative effort.

ANNUAL REPORT PROCEDURES

The parties recognize the importance of attempting to resolve matters which may be included in the Annual Report of the OCI. They concur that, if complete resolution is not possible, the positions and undertakings of the parties respecting their interactions to date and the steps to be taken in future should be reflected in the Annual Report. This will permit the Correctional Investigator to provide informed findings and recommendations on all subjects.

To these ends, in a given reporting year:

1. Except as otherwise indicated in this section, the normal procedures, time frames and other rules indicated in this agreement will govern the parties. In particular, the parties will attempt to reflect the closure and dispute settlement procedures included in this agreement in their consideration of Annual Report matters.

2. At any time during the reporting year that the OCI determines that it may report on a matter in the Annual Report, it will indicate this to the Service when it provides findings, recommendations and supporting information on the matter.

3. Before the end of March, the OCI will update the Service in writing on its position on matters raised under paragraph 1 and will similarly apprise the Service of any other items that it intends to raise in the Annual Report. The Service will provide any response in writing before the end of April.

4. When providing information findings and recommendations on any matter under paragraphs 1, 2 and 3 the OCI where applicable, will provide notice pursuant to s. 195.

5. The OCI will provide its report to the Minister, with copy to the Commissioner of Corrections before the end of June. The Report will contain a fair and accurate depiction of the Parties' comments and positions on each subject, including, as applicable, information on closure and dispute-settlement attempts.

6. The Correctional Investigator and the Commissioner of Corrections will normally meet, with appropriate staff, in early May to review their positions on Annual Report items and to attempt to resolve as many matters as possible in line with the closure provisions of this agreement. They may also agree to meet at other times to the same end. The Executive Director of the OCI, or his delegate[s], may meet with the DGOA, the CSC managers to whom the OCI would normally address findings and recommendations, or other appropriate CSC staff, in order to:

    a) prepare for meetings between the Agency Heads;
    b) implement agreements arising from the meeting; and
    c) otherwise facilitate the Annual Report process.

COMMUNICATION WITH OFFENDERS

- The CSC shall assist the CI to communicate the functions of the OCI through avenues such as the initial institutional orientation for inmates, the offender handbook, information pamphlets on access to the grievance process and informal networking with inmate committees.

INFORMATION AND RESOURCES

- The CSC shall provide the OCI with access to some of CSC’s electronic information systems. Details and paramaters describing the access to information systems are outlined in a separate Letter of Understanding on Access to Electronic Information.

- The CSC shall share with the OCI, on a regular basis, any status reports on Commissions of Inquiry and Task Force Recommendations as they relate to the OCI's mandate.

FINANCIAL COSTS RELATED TO AGREEMENT

- The parties agree they are responsible for bearing their own costs related to the administration of this agreement.

DURATION OF AGREEMENT

- This memorandum of understanding shall commence on, and take effect from the date on which it is signed and shall remain in force unless terminated by either party in accordance with the termination clause.

TERMINATION OF AGREEMENT

- Either party, upon 30 days written notification to the other party, may terminate this agreement.

AMENDMENTS

- This agreement may be amended at any time by mutual written consent.

APPENDIX B

CORRECTIONAL SERVICE COMMENTS OF JUNE 12, 2000

On May 23, 2000 our Office provided the Commissioner of Corrections with a copy of our draft Annual Report.

Virtually all of the information in the Report had already been brought to the Service's attention in last year's Annual Report or in letters and reports that we sent to the Service during the reporting year. In our view the Service had had the opportunity to make representations on this information, consistent with the requirements of s. 195 of the CCRA.

Nevertheless, the Service communicated further responses on June 12, 2000. These are reproduced below.

The following comments are made with respect to s. 195 of the CCRA.

I was disappointed to note that the Annual Report often characterizes facts, opinions and comments in a substantially different way than that which was reflected in the individual Correctional Service of Canada (CSC) communication. Where and when portions of selected responses from the Service have been included, they are sometimes inadequate in conveying the substance and intent of the Service's position. Due regard for financial and other considerations often formed a significant part of the Service's position and have not been reflected in the Report.

Inmate Pay-- Millennium Telephone System

Your suggestion that CSC subsidize the cost of inmate telephone calls pending the completion of the contract tendering process for a new service provider has not been raised with the Service prior to this draft Report. For your information, the tendering process has been completed and the agreement with the new provider is expected to be signed in June. I note that CSC currently bears the entire cost of a significant number of inmate telephone calls by allowing the use of administrative telephones in special circumstances.

Inmate Grievance Procedure

With respect to delays at the complaint and first level stages, the Assistant Commissioner, Corporate Development, issued data reports for 1998/99 containing graphs depicting the average completion rates for these levels. The overwhelming majority of institutions reported average completion rates that were well within the stipulated timeframes. The average completion rate for institutional complaints was reported at 14 days and for first level grievances, 15 days. The graphs measured performance over the last five years. During 1999/2000, 12 per cent of complaints and 16 per cent of first level grievances were late. A total of 577 complaints and 153 first level grievances (4 per cent and 5 per cent of the overall totals respectively) were completed more than 25 days beyond the due date. While this record could be improved, these figures do not reveal a systemic problem. The only area of concern noted was in grievances at the second level in two regions. This has been addressed with the regions involved.

Transfers

You have suggested that CSC "immediately initiate an evaluation of the effectiveness" of the new transfer procedure. As this procedure was implemented as recently as October, 1999, I would suggest that it is premature to "immediately initiate" an evaluation. Furthermore, I note that your concerns for the transfer process are not generally reflected by the Service's relative success in defending individual court challenges to the process.

Use of Force

In your report, you include a portion of a "recent CSC internal memorandum" that commented on a use of force incident that "underscores the fact that there are serious problems with respecting basic rights of inmates". I note that this comment, which lacks context, is being generally characterized as the Service's position rather than an expression of the author's opinion.

In addition, I take exception to your generalization that "senior line managers do not see themselves as either responsible or accountable for ensuring compliance with law and policy". Senior line management takes action to address issues raised using various accountability mechanisms such as discussing issues at Executive Committee meetings, training of staff, and using the principles of progressive discipline where appropriate.

Please note that the use of force interim policy was promulgated on May 26, 2000.

Suicides

I now refer to your comment that "the reality of the Service's uncoordinated and ineffective approach to the early identification and treatment of potentially suicidal individuals was tragically evident recently at the FSW unit at Saskatchewan Penitentiary". This reference to a specific incident should not be interpreted as demonstrating a general state of affairs. To do so is unfair and unreasonable in the context of the Annual Report. Furthermore, it would appear that this comment is based on information gleaned from a draft National Investigation Report, in circumstances where a Coroner's Inquest is pending, and misstates the tentative findings and conclusions of the Board of Investigation.

Inmate Injuries and Investigations

In the Case Summaries section of your draft Report, you note your belief of what Parliament had in mind when it enacted s. 19. You suggest that Parliament "intended to include a broader range of cases than those covered by the Service's definition. This issue is not the clinical nature of the injuries so much as their seriousness, as a matter of monitoring and preventing injuries that denote significant violations of offenders' entitlement to safe and human custody and of their right to security of the person under the Constitution." Your interpretation of the intent of the legislation does not elaborate on what information your belief is based on.

Furthermore, under the heading "Investigations", you state that "the current definition of serious bodily injury, as applied by the Service, was inconsistent with both the legislation and any reasonable person's concept of what constitutes a serious bodily

injury." I would like to stress that the Service's definition of serious bodily injury is based on the Criminal Code and other related definitions. CSC is not prepared, at this time, to revisit this definition.

The draft Report obtusely mentions the Service's protocol to identify when an inmate has sustained a Serious Bodily Injury (SBI) and how to record this information in the Security Incident Report. This comment does not adequately reflect the intent of the protocol and the implementation of the new procedures that will ensure that a Health Care professional will be making the determination of SBI rather than a staff member who may not have a medical background.

Use of Force to Facilitate a Strip Search

The first case is a summary concerning the use of force on two inmates to conclude a strip search by requiring them to "bend over" for a visual inspection of their rectal areas prior to placement in administrative segregation. Your position has been that "there were no reasonable grounds to believe that either inmate was concealing contraband in the rectal area…." CSC reiterates its position that reasonable grounds to believe that an inmate is concealing contraband in the rectal area are not a legal prerequisite for the routine strip search of inmates being admitted to segregation.

Exceptional Search

The case summary concerning the exceptional strip search of inmates after the discovery of a severely injured inmate in an institutional tool shop is based on your office's reasoning that because the written documentation was inadequate and misleading, the search was therefore contrary to law and unreasonable. CSC maintains its position that reasonable grounds existed to believe a clear and substantial danger could have been presented by contraband.

Meeting the Needs of Disabled Offenders

In the cases of the conditional release of two disabled offenders and their placement in wheelchair accessible facilities, you

conclude that "to lose just a few days of access to appropriate conditional release activities based only on their disabilities is unreasonable and probably contrary to law". CSC maintains its position that the conditional release of these offenders met with the requirements of the law. These cases are currently the subject of a complaint to the Human Rights Commission.

Please note that on May 11, 2000, CSC responded to your letter that was sent to us on March 3, 2000 (copy attached).

Housing of Minors in Penitentiaries

In your Report, you indicated that as of May 1st, you had not received a response from the Commissioner. Please refer to the attached letter which was sent to you on May 15, 2000, and addresses many of the concerns and issues identified in your draft Report.

Excessive of Force

In your Report, you have indicated that as of May 1st, you had not received a response from the Commissioner. Please note that I signed a response on his behalf on May 26, 2000 (copy attached).

If you have any questions concerning our additional representation, we would be pleased to discuss them with you and your staff.

WOMEN OFFENDERS SECTOR

RESPONSE TO DRAFT 1999/00 CORRECTIONAL INVESTIGATOR (CI) ANNUAL REPORT

The March response makes a number of points which are not referenced by the Office of the CI (OCI):

The Deputy Commissioner for Women (DCW) reviews all third-level grievances from women offenders before they are signed off by the delegated authority.

We reviewed the quarterly grievances reports and investigated further through a sampling of one of the top grievance areas: staff performance and staff harassment. The results of this review were shared with the OCI. In March, we also agreed that in future we would share the results of our reviews of the quarterly reports.

The OCI also makes no reference to the fact that women offenders have traditionally used many other avenues to voice their concerns, including the monthly visit from the OCI investigator; visits from local, regional and national E. Fry; in the past three years, visits from the Cross Gender Monitor; and meetings, telephone and mail contact with the DCW and Women Offender Sector staff.

It is clear that CSC and the OCI will continue to differ on the need for further review of women offenders' frequency of use of the grievance system.

FEDERALLY-SENTENCED WOMEN

The OCI is well aware of the **Intensive Intervention Strategy**, which reflects the results of two years of discussion, consultation and research. The Strategy is based on the conclusion that maximum-security women present a different risk and need level, and describes the accommodation and operational interventions required by this group of offenders. The announcement also noted the target date for full operation and CSC's commitment not to transfer maximum-security women until the new units are fully operational, consistent with our mandate for public safety. The project is on schedule.

The suggestion that the co-located maximum-security units for Federally-Sentenced Women constitutes segregation is inconsistent with the law and policy.
CSC has the authority in law, under s. 30 of the CCRA, to separate different security levels, and separation is not segregation.
The concern with respect **to programs and services for maximum-security women offenders** during the construction/implementation period are noted. Resources were and continue to be provided to the co-located units to ensure that core programs

(counselling and elder services as well as recreation, etc.) can be delivered. Programs are disrupted as a consequence of incidents and when program staff, whether contract or permanent, move on to other employment.

The **number of maximum-security women** remains stable at approximately 30 offenders. However, the population of the co-located units has increased due to general population increases. CSC is acting to address the population increase through additional construction at the regional facilities. However, until the new houses are available, the only accommodation option is to use the co-located units. Regions have been advised to establish objective criteria for transfers of medium security women to the co-located units. For example, in Atlantic Region, where population pressures have resulted in a need for this accommodation alternative, population pressures at Nova will be managed through a policy that there will be no new admissions to Nova whenever the population exceeds 40.

The **Mental Health Strategy** was completed in 1997 with a three-year implementation timeframe. Since that date, there have been significant changes as a result of the Strategy, including an increase in the resource standard for psychological services [ratio changed from 1/45 to 1/25], as well as the training plan and implementation of Dialectical Behaviour Therapy and the RPC Intensive Treatment program.
The regional facilities are the nationally-approved accommodation standard for minimum- and medium-security women offenders. The Okimaw Healing Lodge is the national standard for minimum- and medium-security women offenders who are committed to following aboriginal teachings and the aboriginal healing path. This national standard was purposely designed for women offenders, and differs from the national accommodation standard for minimum- and medium-security male offenders.

In the past year, individuals have suggested that accommodation for minimum security women offenders should be constructed outside the secure perimeter. CSC is examining this issue within the context of the annual accommodation planning exercise. The planning exercise requires the development of a detailed analysis, which would include a population analysis and program/operational plan for a minimum security house. This type of detailed analysis is required for any accommodation proposal.

Finally, the issues which the OCI proposes to review further are all issues which have received, and continue to receive, constant attention by CSC. They are not issues, however, which are easily and quickly resolvable.

APPENDIX C

CORRECTIONAL INVESTIGATOR RESPONSE TO CSC COMMENTS

We thank the Service for its views.

Certain elements of the response refer to events that took place beyond the time at which we presented our draft Report to the Commissioner of Corrections. In this regard, I believe it would be inappropriate to reproduce or to comment upon letters that CSC sent us so many weeks after the reporting year ended, and even longer after the time frames for reply had passed under the Memorandum of Understanding.

Most of the Service's other comments are straightforward and require no further reply, having been addressed at some length in our communications with the Service over the reporting year. I leave it to the reader to evaluate the relevance and impact of these comments on the discussion of the issues involved.

Nevertheless, I do offer a few observations.

Millennium Telephone System

The Service indicates that it was not until we issued our draft Report that we raised the issue of CSC subsidizing the cost of inmate calls pending completion of the contract. This is true. It occurred only because we did not receive the Service's Final Response to last year's Report until April of this year. Our suggestion on subsidization arose from our consideration of that response.

For clarification, we did not recommend subsidization until the tendering process is complete. We recommended this pending complete implementation of the new system.

We note that the Service provided no other response on our proposal.

Transfers

Surely it is not too soon to begin evaluation of a system after it has been in operation for eight months.

Suicides

The overall comment in the Annual Report with respect to the issue of suicides is that

the Service has failed to complete a number of undertakings, all of which were designed to ensure timely, responsive and coordinated efforts in identifying and managing potential suicide cases. The case specified by the Service tragically speaks directly to the results of that failure. To claim, as the Service does, that "reference to a specific incident is unfair and unreasonable in the context of the Annual Report" is difficult to understand. In addition, our conclusion was based on our review of the documentation relevant to this incident and shared with the Service's Board of Investigation prior to our receipt of the draft report.

Inmate Injuries and Investigations

For the first time in five years, the Service refers to something other than its own, internal definition of serious bodily harm. It will be interesting to discover the relevance of definitions from other sources to the intent of Parliament in enacting s.19 of the CCRA.

Federally-Sentenced Women

Our focus was the way in which the Service responds to complaints from women in penitentiaries--effective redress and follow-up. The formal grievance process is but one aspect of this. What we recommended, two years ago, was a review of how inmate complaints are managed at penitentiaries that house women, including the views of the women in terms of how effectively they believe their concerns are being addressed.

Case Summaries

With respect to certain of our case summaries, the Service states that it "maintains its position" on points of legal interpretation. So do we.

Unfortunately, as of late June, 2000, we have not yet been able to submit legal issues to third-party dispute settlement. To date, the Service has been unwilling to do so.