ANNUAL REPORT OF THE CORRECTIONAL INVESTIGATOR

2000-2001

Cat. No. JA1-2001
ISBN 0-662-65837-X

Internet: www.oci-bec.gc.ca

June 29, 2001

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 28th Annual Report of the Correctional Investigator.

Yours respectfully,

R.L. Stewart
Correctional Investigator

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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 organisation and reporting to the legislature through a single Minister. The "function" of the Correctional Investigator, as with all Ombudsman mandates, is purposefully broad:

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

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

In the course of an investigation, the Office is afforded significant authority to require the production of information up to, and including, a formal hearing involving examination under oath. This authority is tempered, and the integrity of our function protected, by the strict obligation that we limit the disclosure of information acquired in the course of our duties to that which is necessary to the progress of the investigation and to the establishing of grounds for our conclusions and recommendations. Our disclosure of information, to all parties, is further governed by safety and security considerations and the provisions of the Privacy 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 or fact" or that a discretionary power has been exercised, "for an improper purpose, on irrelevant grounds, on the taking into account of irrelevant considerations, or without reasons having been given".

The Act at Section 178 requires that where in the opinion of the Correctional Investigator a problem exists, the Commissioner of Corrections shall be informed of that opinion and the reasons therefore. The practice of the Office has been to attempt to resolve problems through consultation at the institutional and regional levels in advance of referring matters to the attention of the Commissioner. While we 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 it's ability to thoroughly and objectively investigate a wide spectrum of administrative actions and present its findings and recommendations to an equally broad spectrum of decision makers, inclusive of Parliament, which can cause reasonable corrective action to be taken if earlier attempts at resolutions have failed.

A significant step in this resolution process is the provision at Section 180 of the Act which requires the Correctional Investigator to give notice and report to the Minister if, within a reasonable time, no action is taken by the Commissioner that seems to the Correctional Investigator to be adequate and appropriate. 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 Issues by the Correctional Investigator.

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

All complaints received by the Office are reviewed and initial inquiries made to the extent necessary to obtain a clear understanding of the issue in question. After this initial review, in those cases where it is determined that the area of complaint is outside our mandate, the complainant is advised of the appropriate avenue of redress and assisted when necessary in accessing that avenue. For those cases that are within our mandate, the complainant is provided with a detailing of the Service's policies and procedures associated with the area of

complaint. An interview is arranged and the offender is encouraged to initially address the concerns through the Service's internal grievance process. Although we 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 three hundred meetings with various offender organizations, including inmate committees, lifer groups, black inmate associations, native brotherhoods and sisterhoods.

The vast majority of the concerns raised on complaints by inmates are addressed by this Office at the institutional level through discussion and negotiation. In those cases where a resolution is not reached at the institution, the matter is referred to regional or national headquarters, depending upon the area of concern, with a specific recommendation for further review and corrective action. If at this level the Service, 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 8405 complaints. The investigative staff spend 375 days in federal penitentiaries and conducted in excess of 3,100 interviews with inmates and half again that number of interviews with institutional and regional staff. These numbers are measurably up from last year. I will take this opportunity to publicly acknowledge and thank my staff for their dedication and professionalism in managing this ever increasing workload. The areas of complaint continue to focus on those long standing issues which have been detailed in past Annual Reports. A specific breakdown of the areas of complaint, dispositions, institutional visits and interviews are provided in the statistics section of the Report.

Issues Under Review

Introduction

This has been a productive and challenging year. Not only has the volume of offender complaints measurably increased, but we currently have more Issues under review with the Correctional Service than at any time in the Office's history.

The Correctional Service of Canada is a direct service agency whose policies and decisions impact directly and immediately on the offender population. The Service therefore must ensure that its review and decision-making processes 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 on some issues, I suggest that the 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 offender 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. As well, I have 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.

I have provided in this year's Report a brief detailing of the Issues under review with specific recommendations designed to address the areas of concern associated with the Issue. I have invited the Commissioner of Corrections to comment on the recommendations and look forward to reviewing with the Commissioner the Service's response.

1. Special Handling Unit (SHU)

The SHU is the Service's highest security level institution and is located at the Regional Reception Centre in Ste-Anne-des-Plaines, Québec. On March 31, 2001, the Unit housed ninety inmates, up from sixty-five in March 1998.

The stated policy of the SHU 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".

An offender is determined by the Service to be "dangerous if his behavior is such that it causes serious harm or death or seriously jeopardizes the safety of others".

The Service's Regional Deputy Commissioners are authorized to transfer an offender to the SHU for the purpose of assessment. The offender, by policy, prior to their transfer to the SHU for assessment, is housed at a maximum security institution, in segregation, within their home region . This period of segregation, for a variety of reasons including outside charges, can extend well beyond a year.

Until recently, the final decision-making authority on all placements in the SHU, subsequent to the offender's assessment of "dangerousness" and transfers from the SHU, was the National Review Committee (NRC). The NRC was chaired by an Assistant Deputy Commissioner. Other members of the NRC included a minimum of two Wardens from maximum security institutions and the Assistant Warden of the SHU.

A policy change in February 2001 now identifies the Senior Deputy Commissioner as the final decision-making authority on an offender's placement in and transfer from the SHU. The NRC has been re-named the SHU Advisory Committee with a mandate to review individual cases and provide recommendations to the Senior Deputy Commissioner. The inmate grievance process has also been changed, identifying the Commissioner as the level of redress on SHU decisions.

The specific areas of concern raised by this Office over the years have focused on:

- *the overall effectiveness of the existing SHU policy in meeting its stated objective;*
- *the traditional low level of inmate participation in programming at the SHU;*
- *the absence of specific programming designed to address the identified needs of the SHU population;*
- *the fairness of the decision-making and redress offered SHU inmates; and*
- *the number of inmates being released directly from the SHU to the community.*

I continue to have serious questions about the effectiveness of the Service's policy of placing all "dangerous inmates" in one facility. This practice, as I have previously stated, has had the effect of labelling these offenders as the "worst of the worst" and creating a solidarity amongst this population which undermines the stated objective of the policy. This sense of solidarity has in part lead to the continuing low level of participation in the programs currently offered in the SHU.

The Service to date, despite the 1999 recommendation of its own Study Group, has not developed programming specific to the SHU. I have been advised that a program officer has recently been appointed "to develop a needs base for inmate programming at the SHU and to develop a funding strategy". No time frame for this undertaking has been identified.

With respect to the concern of inmates being released directly from the SHU to the community, I am advised that a procedure is now in place that will "trigger more active considerations of transfer" in advance of the offender's release date. The Service further states that "every effort has been and will continue to be made to ensure that offenders are transferred to a maximum security institution in the Region of release no later than four months prior to their release date".

Decisions with respect to the SHU, including those taken by the Regional Deputy Commissioners, have a significant impact, not only on an offender's conditions of confinement but also on the timing of their eventual release to the community. The Service, in 1996, in response to concerns raised with the fairness and objectivity of SHU decision-making, altered their policy to afford offenders the right to appear before the decision-making authority. The Parliamentary Committee Report of May 2000 on the Review of the Corrections and Conditional Release Act *in further promoting objectivity and fairness in the SHU process recommended representation from outside the Correctional Service on the NRC. The Government Response of November 2000 supported the Committee's recommendation, stating that "further openness and accountability is an effective means to ensure administrative fairness". The NRC at the time of the Committee's recommendation and the Government's response was the SHU decision-making authority.*

The recent policy change shifting the decision-making authority to the Senior Deputy Commissioner does not provide the offender with the right to make representations directly to the decision-maker, nor does it allow for outside representation on the decision-making body.

I see this as a step back from the fairness provisions introduced in 1996 and inconsistent with the Parliamentary Committee recommendation.

The Service in commenting on the matter stated:

> "The principle of administrative fairness remains in place as offenders may request to be personally interviewed by two members of the NRC prior to a decision being taken, and/or may provide written submissions to the NRC on this matter… The results of the interview by NRC members and any other submissions are shared and considered by the SDC in making decisions… The issue of outside representation on the National

Review Committee will be examined in the near future along with other needed policy changes. As part of our ongoing efforts to make SHU hearings more open and transparent, Citizen Advisory Committee (CAC) members regularly participate in the reviews and are free to participate in the discussions."

In addition to my concerns with the provision of administrative fairness, I have questions about the appropriateness of involving CAC members in this process. The policy on Citizen Advisory Committees does not currently include within their mandate the review of individual offender cases or access to confidential or personal information without the individual's consent.

I recommend that the Service's current examination of the SHU policy focus on:

- **the effectiveness of the SHU in meeting its current stated objective;**
- **the level of program participation and the relevance of current programming to the identified needs of the SHU population;**
- ***the resource requirements necessary to meet the programming needs of the existing population;***
- ***the appropriateness of involving Citizen Advisory Committee members in the review process;***
- ***the fairness, openness and accountability of the decision-making process, inclusive of a clearly defined avenue of timely redress; and***
- ***the development of a monthly independent review process for offenders housed in segregation awaiting transfer to the SHU for assessment.***

I further recommend that the results of the examination be published and that policy addressing the above areas be issued by October 2, 2001.

2. Inmate Pay

Inmate wages have been maintained at their 1986 level yet the cost of canteen items has nearly doubled. In addition, over the past decade a number of health care and personal hygiene items, which were provided by the Service, must now be purchased by the inmates.

The areas of concern raised by this continuing situation are two-fold:

- *first, with respect to institution operations; inadequate pay levels assist in promoting and maintaining an illicit underground economy.*
- *second, with respect to the offender's release; inadequate pay levels negate the saving of sufficient funds to support reintegration.*

The Service, in acknowledging this situation, proposed three years ago the "increasing of all pay levels, introducing annual indexing into the inmate pay system and increasing offender purchasing power to off-set the cost of personal hygiene and health care products".

I was recently advised that as of April 1, 2001, inmates will be provided with a $4.00 per pay period credit to purchase basic health and hygiene products. Although this is of some relief to the inmate population it hardly addresses the areas of concern associated with the issue of inmate pay. I was also advised that the Service considers this matter closed and no further action will be taken.

Although it is evident from the Service's response that they are not prepared to pursue their proposal of increasing pay levels and introducing annual indexing, I have been provided with no rationale for their change of position.

I again recommend that the Service initiate:

- ***an immediate across-the-board increase in inmate pay levels, inclusive of indexing provisions; and***
- ***a review of the adequacy of the funds currently available to offenders on their release to the community.***

An additional area of concern associated with inmate pay was the Service's implementation of the Millennium Telephone System in January 1998. The introduction of this system, which is essentially a security system, substantially increased the cost of telephone communications for inmates and their families. For example, in some regions the cost of local calls went from 25 cents to $2.00.

A formal request from the Service for tenders on the continued provision of this system was made in January 2000. I was advised that the submissions under review would bring the cost of telephone calls in line with those paid in the community. I suggested last year, given that the matter had been under review for two years, that it would be reasonable for the Service to subsidize the cost of inmate telephone calls until the implementation of the revised system was completed.

The Service, in response, indicated that the decision on awarding the contract for the new offender telephone system is under appeal and stated, "There are no plans to subsidize the cost of offender telephone calls in the interim".

The delay caused by the appeal in implementing a revised telephone system with reasonable rates is hardly the fault of the offender population and their families. It has now been in excess of three years since the introduction of the Millennium Telephone System.

I recommend that the Service provide an immediate subsidy to the ***inmate population to bring the cost of telephone communications in line with community standards.***

3. Inmate Grievance Procedure

The Corrections and Correctional Release Act *requires that the Service provide a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner of Corrections. The legislation further mandates that every offender shall have complete access to the grievance procedure without negative consequences.*

This Office, as I have previously stated, has a vested interest in ensuring that the Service's internal redress procedures are both fair and expeditious in resolving individual offender concerns and in identifying and responding to systemic areas of concern. With in excess 20,000 federal offenders, we cannot be, nor were we ever intended to be, the primary reviewer of offender complaints. The Service's grievance process, to be effective, must be and be seen by the offender population as timely, thorough and objective in responding to their complaints.

While acknowledging improvements in the system's operation, the areas of concern with the Service's grievance process have focused on:

- *the continuing instances of excessive delay in responding at the institutional and regional levels of the process;*
- *the limited evidence of management analysis of the grievance data or senior management direction to address identified problems;*
- *the rejection of Madame Justice Arbour's recommendations designed to ensure that the Commissioner and Deputy Commissioner for Women either personally respond to grievances brought to their attention or refer the grievances to a source outside the Correctional Service for disposition; and*
- *the effectiveness of the current procedure in addressing the concerns of Women and Aboriginal offenders.*

Although the Service has recently initiated reviews on some of these matters, the areas of concern remain.

I recommend that:

- ***the Service initiate action immediately to clear up the backlog of outstanding grievances;***
- ***policy direction be issued to ensure, on a quarterly basis, a thorough analysis of grievance data is undertaken by the Health Care, Aboriginal and Women Offender sectors;***

- ***the rejection of Madame Justice Arbour's recommendations concerning senior management accountability and external review within the grievance process be revisited;***
- ***the current review of the process undertaken by the Aboriginal Issues Branch, when finalized, be provided to all inmate aboriginal organizations; and***
- ***a review, independent of the Women Offender's sector, be initiated to determine how effectively inmate complaints are being managed in institutions housing women offenders, with specific focus on the women housed in male penitentiaries.***

I recommend that the above actions be finalized by October 31, 2001.

I have recently been advised that the Service's Performance Assurance Sector is finalizing an audit on the grievance system. It is expected that the Audit Report will be available by the end of June 2001. I look forward to reviewing this report with the Service.

I recommend that the Service's Audit Report due June 2001 on the grievance system be provided to all Inmate Committees for their comments.

4. Case Preparation and Access to Programming

The areas of concern associated with the Issue focus on the ability of the Correctional Service to provide responsive programming and prepare offender cases in a thorough and timely fashion for conditional release consideration.

I have acknowledged the complexity of the Issue, the inter-relationship between the numerous variables at play and their impact on the provision of effective case management and programming. I have also acknowledged, over the years, the various initiatives undertaken by the Service in an attempt to address these issues. Yet our review of offender complaints, and our review of the data collected by the Service, leads me to conclude that despite the numerous policy and operational changes initiated over the years, the situation remains as it was.

Last year's Annual Report detailed a number of observations related to waiver and postponement rates for National Parole Board reviews, the number of offenders incarcerated past their parole eligibility dates and the length of waiting lists for programs. I also highlighted the disadvantaged position of Aboriginal Offenders in terms of timely conditional release. I concluded last year's Report by stating that: "the Service's responses on the issue of case preparation and timely 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 Service again this year in responding has provided no detailing on the impact of their previous efforts or the anticipated results of proposed actions. The situation detailed last year has not improved:

- *the Full Parole Waiver and Postponement rates have increased.*
- *the Full Parole Waiver rate for Aboriginal Offenders has increased and stands at 31.6% as compared with 20.3% for Non Aboriginals.*
- *of the 2,753 reviews for full parole scheduled in the fourth quarter of 2000-2001, 1,250 were either waived or postponed.*
- *the number of offenders incarcerated past their full parole eligibility date is virtually unchanged although the percentage of women offenders in this category has increased by five percent*.
- *the percentage (73%) of Aboriginal Offenders incarcerated past their full parole eligibility date, as of January 2001, was significantly higher than the percentage of Non Aboriginal offenders (58%)*
- *the number of offenders involved in unescorted temporary absence and work release programs has decreased significantly and Aboriginal Offenders are measurably under-represented in these programs.*

The Service, in response to our concerns related to timely access to programming and the negative impact of extensive program waiting lists on conditional release decisions, indicated that a reporting system on program activity should be completed early in the summer of 2001.

I recommend that the Service initiate immediately a review of program access and timely conditional release focused on:

- **current program capacity, the extent of waiting lists and specific measures required to address deficiencies;**
- **the specific reasons for waivers, postponements and adjournments and the actions required to reduce their numbers;**
- **the reasons for the decline in unescorted temporary absence and work release programming and the specific measures required to increase participation in this programming; and**
- **the reasons for the disadvantaged position of Aboriginal Offenders in terms of timely conditional release and a specific plan of action to address this disadvantage.**

I further recommend that this review, inclusive of detailed action plans, be finalized by November 15, 2001.

5. Double Bunking

I recommended last year, as I had in previous Annual Reports, that the Service immediately cease the practice of double bunking inmates in non-general population cells.

The Commissioner responding on the matter in March of this year stated:

> "All efforts to eliminate double bunking for administrative segregated inmates remains a priority. In this regard, plans to eliminate double bunking have been developed and are presently being reviewed. Double Bunking and the capacity to double bunk inmates in administrative segregation will be eliminated by September 2001. There is no double bunking in mental health units at this time; however, it is being used in some reception units.
>
> As part of the Service's overall review of double bunking practices, specific plans are being developed and reviewed to reduce and eliminate double bunking in these units".

This is a positive step. I acknowledge the Commissioner's efforts in this area and we look forward to reviewing with the Service their plans to eliminate double bunking in reception areas.

6. Transfers

Transfer decisions are potentially the most important decision taken by the Correctional Service during the course of an offender's period of incarceration. Whether it's a decision taken on initial placement, a decision taken on an involuntary transfer to higher security or the denial of a transfer to lower security, these decisions affect not only the inmate's access to programming and family, they also impact directly on decisions concerning conditional release.

I concluded last year's Annual Report on this issue by stating that I was not at all convinced that the Service was in a position to ensure either that the process leading to inmate transfer decisions was thorough, objective and timely, or that the process was reasonably monitored to ensure compliance with the administrative fairness provisions detailed in its transfer policy.

The Service made significant revisions to its transfer policy in October of 1999. I recommended last year that the Service immediately initiate an evaluation of the new procedure. The specific areas of concern associated with this Issue have focused on:

- *the excessive periods of time offenders were spending in reception units prior to their 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;*
- *the continuing questionable quality of the transfer data used by the Service to monitor the process; and*
- *the number of Aboriginal involuntary transfers.*

An additional area of concern that has emerged recently is the backlog on actioning inter-regional transfers. Many offenders, who have been approved for inter-regional transfer, are spending excessive periods of time housed in segregation units prior to actually being transferred.

The Service in responding to my recommendation of last year for an immediate evaluation, advised in March 2001 that an assessment of the transfer process would be completed by March 2002.

The Service, despite our request, has provided no details with respect to the proposed assessment framework or what specific aspects of the transfer process they intend to assess. I have serious concerns, given the continuing questionable quality of their transfer data[*]*, as to whether or not the Service is in a position to reasonably assess its transfer process.*

I recommend with respect to the transfer process that the Service:

- ***immediately initiate an audit of its transfer data to determine its current validity and what actions need to be taken to ensure its future accuracy;***
- ***develop a framework for the assessment of the transfer process to specifically address the previously noted areas of concern by September 20, 2001; and***
- ***finalize its assessment of the process by December 20, 2001, inclusive of the development of specific action plans.***

I further recommend that this Office be kept advised of the Service's progress on this Issue.

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[*] C.S.C. Corporate Results Book June 2001:

"The quality of transfer data has long been in question. One problem area is the lack of a clear definition for "voluntary" and "involuntary" transfers. Some of the other obvious problems are warrants issued and not executed or cancelled (327 in the 2000-2001 fiscal year), transfers from reception facilities for reasons other than penitentiary placement (259), decisions made before an application (184), decisions made more than 120 days after.

7. Preventive Security Standards Guidelines

The areas of concern associated with this Issue have centered on the absence of any clear national direction concerning the coordination, verification, communication and correction of preventive security information. There is also no clear identification of who is responsible and accountable for ensuring the accuracy of the information.

Over the years this Office has received a significant number of complaints from offenders concerning the security information used by the Service in support of its decisions. This information, which the offender does not have access to, often negatively impacts on decisions related to visits, transfers, segregation and conditional release.

I recommended in 1996 that the Service develop Preventive Security Standards and Guidelines. The Service acknowledged the absence of clear national direction in the area and undertook to produce guidelines by the Fall of 1997.

I was advised in March 2001 that Preventive Security Guidelines would be issued by July 2001.

I recommend that in conjunction with the issuing of the Preventive Security Guidelines the Service initiate a training program to ensure that the responsibilities and accountabilities detailed in the Guidelines are clearly understood.

8. Use of Force

The 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 also be an ongoing review and analysis of these incidents, independent of the institution, to ensure that violations are addressed and that appropriate policy direction is issued to keep use of force incidents to a minimum.

The Service in 1997, in response to a recommendation from Madame Justice Arbour, initiated policy which required that all videotapes of use of force incidents and supporting documentation be forwarded to this Office and the Service's National Headquarters. The Service revised its policy in June 2000 and from a procedural perspective the policy addresses the majority of the concerns identified over the past three years. What remains at issue is the full implementation of the policy and its effect on use of force practices.

This Office reviewed videotapes and supporting documentation on over 400 use of force incidents over the past year. Despite the above noted policy change, which has introduced a more rigorous review of use of force incidents at the Service's regional and national levels, we continue to find unreasonably high levels of non-compliance in the areas of:

- strip-searching and privacy procedures;
- authorization and use of gas;
- decontamination procedures following use of gas;
- post incident health care interventions;
- use of force in support of mental health interventions;
- authorization and use of restraint equipment;
- timeliness and thoroughness of reviews undertaken by Health Care and Women Offender sectors; and
- recording and consideration of inmate representations during post incident review.

These areas of concern have been and will continue to be addressed with those responsible within the Service for the review and analysis of use of force incidents. To date, despite previous commitments, the Service is currently not in a position to measure its level of compliance with use of force policies. Nor is its performance in this area presently being monitored on a systemic basis by the Service's Executive Committee.

I have recently been advised that the Service has implemented an improved information system on use of force incidents. The monitoring of this data will be done on a quarterly basis beginning in June 2001. I have as well been advised that the Service's Performance Assurance sector will produce reports on Use of Force, beginning in the summer of 2001. These reports will be available for review and discussion at the Service's Executive Committee meetings. I acknowledge the Service's recent efforts in this area and look forward to reviewing the results of their monitoring process.

I recommend, following the Service's Executive Committee review of the Use of Force Report in June of 2001, that an Action Plan be developed focused on:

- **mandatory training requirements for both those who authorize the use of force and those involved in using force;**
- **reducing the number of instances of non-compliance with policy;**
- **limiting the number of incidents resulting in the use of force; and**
- **ensuring that thorough, timely, written reviews are undertaken by Health Care and Women Offender sectors.**

I recommend that this Action Plan include measurable target levels with respect to the number of incidents, the number and type of policy violations and the establishment of specific time frames in terms of meeting training requirements.

This Action Plan should be finalized by the end of November 2001.

9. Inmate Injuries and Investigations

There are four inter-related areas of concern associated with this Issue: institutional violence, inmate injuries, suicides and the Service's internal investigative process. I concluded last year's Annual Report on this Issue stating that there needed to be a clear focus brought to these areas of concern, which have been under review for a number of years, with specific and immediate action taken. "The Service must commit itself to the development of a review and investigative process that is responsive to incidents of institutional violence, inmate injuries and death so as to ensure that they are kept to an absolute minimum consistent with their legislative responsibilities of maintaining a safe and healthful environment".

There is limited tangible evidence that these areas of concern are being reasonably addressed.

a) Institutional Violence

The Correctional Service in 1998 acknowledged that institutional violence was a serious concern. They agreed at that time to expand their reporting of institutional violence to include a wider range of indicators to provide a more representative picture. The Service also indicated that their data would be analysed and appropriate actions would be taken.

The Service in April 2000 acknowledged "the importance of monitoring a wide spectrum of information such as assaults, use of force incidents, inmate injuries and involuntary transfers as these could be indicative of institutional pressures and problems". They also committed to "improving the automated information system by revisiting issues of accuracy of data and types of information recorded".

In responding to this issue in March 2001, the Service made no reference to either its information system on institutional violence or their commitment to monitor and report on institutional violence. Our subsequent request for information on the specifics of the data being collected, and the reports and analysis produced to date on institutional violence was met with silence.

The information the Service currently collects is neither specific to, or reflective of, institutional violence. For example, the Corporate Results Report for 2000-2001 indicates that there were 53 major inmate assaults, yet from a review of individual incidents we know there were three to four times that number of assaults that resulted in offenders receiving medical attention in outside hospitals. The Service produces no report specific to institutional violence,

provides no analysis of the data it does collect and there is no evidence of Senior Management comment or direction on institutional violence.

In short, despite their previous commitments, institutional violence does not appear to be viewed by the Service as an area of serious concern.

I recommend that the Service take immediate steps to fulfill their previous commitments to the monitoring of institutional violence through:

- ***the implementation of an information system capable of capturing accurate and reflective data;***
- ***the production on a quarterly basis of analytic reports; and***
- ***the review of these reports, as a standing item, at the Executive Committee.***

I recommend that Institutional Violence become a standing item at the Service's Executive Committee commencing September 2001.

b) Inmate Injuries

The Service does not have a national policy on the recording, reporting and review of inmate injuries. The Commissioner of Corrections in 1994, in part as a response to a recommendation from this Office, issued an Interim Instruction on the Recording and Reporting of Offender Injuries. The stated objective 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 willful acts involving injuries.*

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

Currently the Service has no clear picture of how many offenders were injured during the past year as a result of work or program activities, assaults, drug overdoses, use of force incidents, attempted suicides, or institutional disturbances. The Service as well has undertaken no review of inmate injuries associated with any of the above. I have recently been advised that the Service has initiated a "comprehensive review of the ways in which offender injuries are

captured, reported and analyzed as part of our mandate to provide safe and secure custody of incarcerated and supervised Canadians."

This review is scheduled to be completed by the end of May 2001.

Although I acknowledge the Service's most recent commitments in this area, I believe inmate injuries should be a clearly defined priority issue for the Service.

I recommend that the Service implement a national policy on the Reporting, Recording and Review of Offender Injuries to ensure:

- ***the timely and accurate recording of injuries and the circumstances leading to those injuries;***
- ***the quarterly analysis of the information collected on offender injuries; and***
- ***the review by the Service's Executive Committee of the quarterly reports on offender injuries.***

I recommend that the Service's policy on the Reporting Recording and Review of Offender Injuries be issued by October 30, 2001.

c) Suicides

I stated in last year's Annual Report that the Service's approach to the early identification and treatment of potentially suicidal individuals was uncoordinated and ineffective. I concluded that "the delay in implementing national policy, procedures and training programs in the area of suicide prevention was inexcusable".

The Service's "draft" policy on the Prevention and Management of Suicide and Self-Injury has been in consultation for three years.

I recommend that the Service immediately implement national policy on the Prevention and Management of Suicides and Self-Injury.

I recommend that the Service immediately initiate a review of the staff training needs associated with the implementation of this policy and provide the necessary resources to meet those needs.

I recommend that all incidents of attempted suicide and self-injury be investigated and that a psychologist, independent of the institution, be a member of the investigative team.

I recommend that all the investigations of suicides, attempted suicides and self-injury be reviewed nationally on a quarterly basis and that the results of these reviews be a standing agenda item for the Service's Executive Committee.

d) Investigations

The areas of concern associated with the Service's investigative process over the years have centered on:

- *the excessive delays in both finalizing investigative reports and initiating corrective action in response to the report's recommendations;*
- *the interpretation of what constitutes "serious bodily injury" as per S.19 of the* Corrections and Conditional Release Act*; and*
- *the thoroughness and coordination of reviews at the national level of investigations into incidents of inmate death and serious bodily injury.*

This Office has continued to encounter, over the course of this year, incidents where the Service took six to eight months to finalize an investigation. We also continued to find situations where corrective action in response to recommendations from investigations were pending more than a year after the completion of the investigation report. The Service has acknowledged problems in these areas and has recently introduced a new process for national investigations. This new process calls for the completion of the investigative report within 45 working days and the verification of the action plans on the report's recommendations no later than six months after the incident. I am advised that the regions have adjusted their process to meet these expectations and that the new procedure will be monitored on an ongoing basis.

I recommend that the specific time frames for the completion of Investigative Reports and the Verification of Action Plans be incorporated into the Service's policy on Investigations.

I recommend that the results of the Service's monitoring of the Investigative Process be reported on a quarterly basis and reviewed by the Executive Committee.

I recommend that all investigative reports into inmate death or serious bodily injury be provided to this Office no later than 45 working days after the incident.

Section 19 of the Corrections and Conditional Release Act *requires that the Service convene an investigation when an inmate dies or suffers "serious bodily injury". The Act further requires that a copy of the investigative report be forwarded to the Commissioner or designate and this Office.*

The Service has defined serious bodily injury as: "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".

I have had concerns since the enactment of the legislation in 1992 with the inconsistent and limiting nature of the Service's interpretation of what constituted "serious bodily injury". The Service in response to these concerns introduced a "protocol" in February 2000, developed jointly by the Security and Health Services Divisions. The protocol, by involving Health Services in identifying when an inmate has sustained "serious bodily injury" and implementing a monitoring process at the national level, was to ensure a consistency in the application of the policy. Their protocol has not worked. Again this year we have reviewed a number of cases where inmates have sustained broken bones, multiple stab wounds causing damage to internal organs resulting in emergency surgery which the Service concluded were not serious bodily injuries.

I have recently been advised, as a result of our referral of these cases to the Service's attention that "a revision to the serious bodily injury definition is being considered".

In addition there is limited evidence that even within the parameters of the Service's current interpretation of what constitutes the convening of an investigation pursuant to S.19 of the CCRA that the Service has a tracking system for these investigations or that these investigations are being thoroughly reviewed at the national level.

I recommend, with respect to serious bodily injury and investigations convened pursuant to Section 19 of the* Corrections and Conditional Release Act*, that the Service take immediate steps to ensure that:

- ***a reasonable definition of "serious bodily injury" and guidelines on the interpretation of that definition are provided to the field;***
- ***the determination on the seriousness of the injury is made by a licensed health care professional;***
- ***all S.19 boards of investigation include a health care professional independent of the institution where the incident occurred;***
- ***a tracking system is in place at the national level for all investigations of incidents resulting in death and serious bodily injury (S.19 investigations);***
- ***all S.19 investigations are reviewed nationally with a summary report on the recommendations and corrective actions produced quarterly; and***
- ***quarterly reports on S.19 investigations are provided to the Commissioner.***

I suggested last year with respect to the areas of concern associated with institutional violence, inmate injury and death and the Service's review and investigative processes that there was a need for a re-focusing. I suggest this re-focusing needs to begin at the Senior Management level of the Service and needs to begin immediately.

I recommend, to further emphasize my position on these matters, that the following be standing agenda items at all Senior Management meetings:

- **offender suicides and attempted suicides;**
- **offender death and serious bodily injury;**
- **institutional violence; and**
- **investigations and systemic reviews of incidents resulting in injuries, death and institutional violence.**

10. Sharing of Information with Police on Release of an Offender

Issue: Whether the Service is legally obliged to inform an inmate and to permit the inmate to make representations before the Service shares information about the inmate with police at the time of his/her release.

Sub-section 25(3) of the CCRA provides:
(Service to give information to police in some cases)
(3) Where the Service has reasonable grounds to believe that an inmate who is about to be released by reason of the expiration of the sentence will, on release, pose a threat to any person, the Service shall, prior to the release and on a timely basis, take all reasonable steps to give the police all information under its control that is relevant to that perceived threat.

In September 1998, an offender complained to us that a significant amount of file information had been transmitted to the local police without the offender having been forewarned of this action or given any opportunity to comment on the disclosure. For the offender, the issue was not only the lack of notice but the absence of any indication of precisely what files had been disclosed and what personal and sensitive material may have been included therein.

In our subsequent communications with the Service we took the position that there should be careful consideration of the relevance of information whose disclosure is proposed to the belief that a threat to some person exists.

Moreover, we stated that the offender involved should have the right:

- *to be notified of the information that the Service proposes to disclose*
- *to make representations about what should be disclosed before a final decision is taken*

Our position on offender representations is based on the traditional common law duty of administrative fairness that the Courts have recognized in circumstances where individuals are faced with decisions that may adversely affect their rights. This common law duty is clarified in s.27 of the CCRA.

Beyond legal considerations is the simple point that disclosure of information in such cases is liable to have significant effects on the offender in the community. Moreover, the offender can never be sure what might be disclosed, and to whom, by the police. This is all the more problematic if some of this information is inaccurate, incomplete or otherwise misleading.

Given these concerns, permitting an offender to make representations before disclosure is a reasonable approach. The importance of ensuring accuracy and of avoiding disclosure other than as strictly required in such cases cannot be overstated.

The Service's response to our recommendations has evolved in stages.

As of February 2000, the Service had agreed to require staff to review the proposed information package under ss. 25(3) very carefully in order to ensure relevance of the information, particularly where health care information is to be disclosed. Nevertheless, the Service retained its view that no notice or opportunity to make representations was required.

By December 28 2000, the new Commissioner had agreed to provide notice to offenders of the information to be disclosed. This undertaking was implemented in an Interim Instruction that was issued on February 6, 2001. This instruction requires staff to notify the offender of the information to be disclosed at least 90 days prior to release on warrant expiry, the same juncture at which the package is to be sent to police forces.

Offenders are to be notified of their right to complain about the disclosure through the inmate grievance procedure, a complaint to the Privacy Commissioner or a complaint to our Office.

Very recently, the Commissioner agreed to provide offenders with the opportunity to comment on the information that the Service proposes to disclose before the disclosure takes place. This will give offenders a reasonable opportunity to comment on the appropriateness of the disclosure.

As a result of this agreement, we withdrew our request that the matter be referred to a third party for dispute settlement.

We are pleased that this matter appears to have been resolved and ***I recommend that, at its earliest possible convenience, CSC implement its policy that, before taking any decision to disclose information pursuant to ss.25 (3) of the CCRA the Service:***

- ***identify to the offender concerned the information to be disclosed and***
- ***provide the offender with a reasonable opportunity to make representations on the appropriateness of disclosing any of the information.***

11. Allegations of Staff Misconduct

Issue: The need for a consistent, distinct process to ensure that inmate complaints of staff misconduct are investigated in a timely, thorough and fair manner

Inmates often express their reluctance to complain to institutional management about inappropriate, even criminal behavior by staff. There is a perception, warranted or not, that such complaints will not be conscientiously and promptly reviewed by a person in authority and that appropriate action will not be taken if a complaint is upheld.

In September 1999 our Executive Director wrote to the Director General of Offender Affairs on this subject and stated:

"What I wish to bring forward is the issue of fairness and timeliness in such cases as a matter of policy. Accordingly, we offer the following suggestions for further discussion.

Inmates should be encouraged to report any case of abuse, threat or physical harm by staff, as soon as this occurs, to the Deputy Warden or the person in charge of the institution. There should be procedures in place for this to be done in a confidential fashion and for the complaint to be forwarded (or an interview convened) immediately.

On receipt of the complaint, the designated staff member, above, should inform the inmate of his/her immediate right to lay a complaint with the police and to consult legal counsel. The inmate should also be encouraged to record the following information [or provide information so that it may be recorded*]:*

- The precise facts of the incident and any other events or information which may have led to it

- Any witnesses to the incident or to any other events which might support the inmate's version
- Any written records which may exist relevant to the incident
- Any bodily harm caused by the incident

Where an inmate claims to have been injured he/she should be immediately referred to the Health Services Centre and the appropriate report of inmate injury should be filled out. The inmate will receive a copy of all the above information.

I recommend that there be consideration of whether to keep the inmate away from the accused staff member until the matter is resolved.

Police should be provided with all the above information when they attend.

Whether or not a complaint is laid with the police, the Warden, on reading the information which is gathered, above, should determine whether to convene an investigation into the matter, or to suggest that such an investigation be convened by the Regional Deputy Commissioner or the Commissioner.

There should be at least one community representative on the Board of Investigation into such allegations.

All complaints and resultant inquiries should be forwarded to our Office.

On a final point, it is clear that investigations into such matters and the staff disciplinary process might come into conflict at some point with respect to employee obligations to provide information, administrative fairness and the like. These elements would have to be considered in framing any new procedures".

Following months of discussions and correspondence, CSC believes the matter to be resolved, in that they have taken steps to ensure that:

- *Direct inmate access to police to lodge complaints is provided*
- *A new process for investigating complaints of sexual harassment by staff will soon be in force*
- *Improvements have occurred to the process of reporting and recording inmate injuries*

Beyond these specific measures CSC believes that current policy and practice otherwise addresses our recommendations.

My objective throughout our discussions with the Service has been to provide a distinct, coherent and inclusive system to which inmates may refer and have access in order to achieve timely and fair investigation and appropriate redress.

This system should ensure confidentiality and be perceived to protect against reprisals, while, at the same time, sanctioning vexatious, frivolous or bad faith complaints.

I do not believe that the Service responses, viewed as a whole, provide what I have recommended.

First, as we have pointed out on more than one occasion, the specific measures advanced by the Service in no way cover the broad range of staff misconduct that might occur.

Second, a number of the measures that CSC states exist in other policies do not provide the timeliness and informational thoroughness that we advocate.

Finally, there are gaps in the issues and facts that are considered in the policies.

Moreover, even if the "aggregate" of current policy were sufficient, this would not provide the self-contained process that is required. It is essential that inmates not be required to sift through a variety of policies in order to achieve an effective remedy.

The effectiveness of the investigation and the willingness of inmates to seek redress will surely be enhanced if a visible, fair and complete mechanism is made readily available for the review of serious and sincere complaints.

I recommend that the Service fashion a separate and well-publicized policy for investigation of inmate complaints of staff misconduct that will include the elements that we suggested in September 1999, including, at least:

- **early recording by the complainant of relevant information**
- **timely referral of the complainant to Health Services in applicable cases**
- **isolation of the complainant from the accused staff member during the investigation**
- **provision of complete information to police at an early juncture**
- **a timely decision by the Institutional Head on whether to convene an investigation**
- **community representation on investigation panels**
- **copying of all documentation to our Office.**

12. Involuntary Transfer and Consent to Mental Health Interventions

Issue: Whether the involuntary placement of inmate in a psychiatric hospital for extensive assessment by psychiatrists constitutes unlawful treatment without consent

An inmate was transferred from a medium security institution to a psychiatric hospital operated by the Correctional Service. The stated purpose of the transfer was for an assessment of risk for use at an upcoming National Parole Board determination of whether the inmate should be detained until Warrant Expiry, rather than being released after 2/3 of the sentence had been completed.

The inmate did not wish to participate in any assessment and, indeed, had expressed the wish to remain in custody until the end of the sentence.

Our Office expressed its objection to the transfer because we found that the placement in the hospital (a maximum-security institution) violated s. 88 of the CCRA, which provides that inmates must not be treated without their informed consent. The Service responded that the assessment that was the object of this transfer was not "treatment" for the purposes of the CCRA.

I wrote to the Commissioner on December 4, 2000, and re-iterated our view, based on our review of case law and legislation, that the intended procedure was indeed treatment and that, in any event, CSC policies underline that consent is required for assessments.

The Assistant Commissioner Corporate Services responded on February 2, 2001. He stated that it was "widely recognized" that assessment of risk in a correctional context is distinguished from assessment or treatment in a medical context. The risk assessment was conducted at the hospital by observing the inmate's conduct and by reference to relevant files. Only thereafter would assessment or treatment in a medical context be instituted, and these would require the patient's consent.

He also stated that the transfer constituted the least restrictive way of achieving the legitimate correctional objective of assessing risk prior to release consideration by the National Parole Board.

We maintain our view of the matter. The prolonged duration of the observation and review, conducted as it was by psychiatric experts, clearly rendered it an assessment within the scope of medical treatment. Compelling an inmate to undergo this process without consent cannot be considered a legitimate correctional objective. Nor can it be considered the "least restrictive measure" given the maximum security environment in which it took place.

This case sets an unfortunate policy precedent. The Service is permitted to circumvent the statutory requirement of informed consent to medical treatment and, in doing so, to increase an inmate's institutional security level. The Service does so simply by characterizing a "risk assessment" a procedure that, by any reasonable standard is a medical procedure.

I recommend that the Service:

- ***rescind its policy of involuntarily transferring inmates to psychiatric hospitals under the guise of "risk assessment"***
- ***clarify that all procedures involving significant, and more than transient, treatment, assessment, observation or evaluation by physicians or health care professionals is to be considered treatment for the purposes of s.88 of the* Corrections and Conditional Release Act *, and is thus subject to the informed consent of the inmate involved***
- ***ensure staff compliance with the provisions of the CCRA and applicable Provincial health services legislation in all matters governing the admission and treatment of inmates in psychiatric institutions.***

13. Critical Incident Stress Intervention for Inmates

Issue: The timely and consistent provision of professional intervention for offenders following crisis situations.

A Correctional Service of Canada Investigation into the murder of an inmate in April 1999 recommended that: "The Service study how to improve critical incident stress management interventions with inmates. The policy and procedures for managing critical incident stress intervention with staff now appears to be well developed and working effectively. By comparison, the management of critical stress intervention for inmates is insufficiently articulate in defining the expectations on staff called to support inmates following a crisis."

The failure of the Service to reasonably manage interventions with offenders following crisis situations had been previously noted by both this Office and the Service's own investigations. In response to the April 1999 recommendation the Service undertook to prepare a document " which describes in appropriate detail the nature of the services to be provided to offenders following critical incidents, who is to provide them, and when the services are to be provided". It was projected that this document would be completed by January 15, 2000.

In June 2000 we were informed that a policy had not yet been finalized and were provided with a draft. In August 2000, following our review of the draft, we provided the Service with the following findings:

- *The Service's failure to have clearly articulated policy and procedures for managing critical stress intervention with inmates, 16 months after the incident, is unreasonable and totally inconsistent with the Service's stated Policy Objective on Investigations: "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."*
- *The current draft policy on intervention fails to define in appropriate detail, the nature of the service to be provided to offenders, who is specifically to provide them and when.*

I recommend that national direction be issued immediately which:

- ***ensures that critical incident stress management services are mandatorily offered to offenders, and***
- ***provides a clear detailing of the specific services to be available, who is to provide these services and when they are to be provided.***

A further draft of the policy was forwarded to our attention in October 2000. While the proposed changes to the policy addressed the specifics of our recommendation with respect to content, no date on the proposed implementation of the policy was provided. In December 2000 we were advised that; "If the Policy Committee recommends acceptance of the policy, the earliest it could be in force would be by early summer 2001."

In January 2001, we restated our recommendation for immediate national direction on this matter and concluded that the Service's delay in taking corrective action was beyond unreasonable.

In March 2001, the Service offered the following comment; " Your concerns with regard to the delay in promulgating the policy on this issue are duly noted. As you were advised in earlier correspondence, the implementation of this policy, as well as others, was deferred following the establishment of the EXCOM Policy Committee in March 2000. The policy Committee has now reviewed the CISM policy (February 22, 2001) and recommends that Personnel and Training proceed with the EXCOM signoff of the policy. As previously mentioned, the earliest this policy can be in place would be the summer of 2001. A four month time frame is accounted for by the six to eight weeks required for EXCOM signoff, a month to resolve any issues raised during signoff, and a month for a final editing and review by Directives Management, Legal signoff and transmittal for signature by the Commissioner."

It has now been more than two years since the Service's Board of Investigation made its recommendation on critical incident stress intervention for inmates. Both the Service's investigative process and this Office over the past

two years have noted further specific incidents where the Service continues to fail to provide reasonable intervention. Yet, to date, no action has been taken.

14. Inappropriate and Demeaning Strip Search Procedure

Issue: **The excessive delay in admitting inappropriate action and offering an apology**

In May 1999, following an institutional disturbance, inmates were strip searched on return to their units. In one unit the procedure required uncircumcised inmates to retract their foreskin.

We wrote the Service questioning this practice and were advised that a regional investigation had been convened into the disturbance and that the strip searching procedure in question would be reviewed within the context of the investigation.

A copy of the investigative report was received in December 1999 and provided no comment on the strip searching procedure. We again wrote the Service in January 2000 requesting the Senior Deputy Commissioner's comments and a detailing of the actions taken in response to the inappropriate and demeaning strip search procedures previously noted.

The Service's initial position on this matter was that the procedure in question was conducted in accordance with the training afforded staff within that region. We were further advised that subsequent training had been provided "with respect to the searching of inmates to ensure that the very essence of the law and our policy is respected".

As the Service's comments on this matter were less than clear we wrote the Service again in March 2000 asking: "Is it the Service's position that requiring inmates to pull back their foreskin is an authorized element of a strip search? Under what circumstances is such action authorized?"

The Senior Deputy Commissioner responded in April 2000 stating, "I would like to make it clear that the Service does not condone this particular searching technique under the circumstances that it occurred …To avoid similar incidents from being repeated a memorandum has been issued to institutional heads to ensure that staff are not routinely asking uncircumcised inmates to retract their foreskin, unless there are specific and reasonable grounds to believe that contraband is hidden in this manner. A copy of this memorandum was sent to your office as verification of the Region's commitment to stop this unauthorized strip searching practice".

We wrote the Service again in May 2000 asking whether the inmates who were subject of the strip search had been notified that the technique was not condoned and offered an apology for the Service's inappropriate action. The Senior Deputy Commissioner responded in July of 2000 stating that "having reviewed these issues, we have concluded that notification and apologies are not required in this situation".

In support of this position the Service offered the following: "Section 45 of the *Corrections and Conditional Release Regulations* requires inmates to, among other things, bend over or otherwise enable staff to perform the visual inspection. Given the wording of section 45, it would not be unreasonable for staff to believe in good faith that they had the legal authority to make this type of request. Based on these facts, the Service is not prepared to concede that their action was inappropriate".

The Senior Deputy Commissioner was advised in August 2000 that we found the Service's decision on the offering of an apology and their unwillingness to concede the inappropriateness of the strip search procedure to be unreasonable. I further reviewed these matters with the Commissioner in November 2000 and was advised in December 2000 that she had asked the Regional Deputy Commissioner to issue an apology to each offender that was subjected to the irregular search. An apology was issued to each offender on January 29, 2001.

While I appreciate the Commissioner's personal review of this matter and the timeliness of her corrective action, it should never take 20 months to admit an error and offer an apology.

15. Mental Health Services for Female Offenders

Issue: The provisions of mental health programming in a coordinated, responsive and timely fashion by qualified professionals

A female offender housed within a maximum security unit of a male penitentiary committed suicide after 51 consecutive days in segregation. Following our review of the circumstances associated with this tragic incident, inclusive of the Service's internal investigation, the results of the Coroner's Inquest and offers to meet with the Service to review concerns raised by this case, we provided the Service with the following finding:

> **The Correctional Service of Canada failed this individual. This failure was not the result of an absence of effort or caring by front line staff. This tragedy speaks directly to the Service's failure:**

- ***to adequately resource the Women's Maximum Security Unit, given its increase in population and programming requirements;***
- ***to establish standards for the certification and training of mental health professionals working with high risk, high need female offenders;***
- ***to reasonably resource, implement and monitor their Mental Health Strategy for Women Offenders as approved by the Service in 1997;***
- ***to operationalize their Regional Intensive Healing Program for Federally Sentenced Women designed to co-ordinate the assessment and programming efforts of the Regional Psychiatric Centre and the Women's Maximum Security Unit; and***
- ***to finalize a national policy on the Prevention and Management of Suicide and Self-Injury, a policy which has been in consultation for three years.***

In summary: The subject's psychiatric diagnosis of October 1999, while in the provincial correctional system, raised significant mental health concerns. She was transferred to the federal system in November 1999. This diagnosis was not documented on any file at the federal institution. The Intake Assessment Report completed by the Service states "no mental health concerns or previous suicide history". The psychology file is bereft of relevant information with the first reference to suicidal ideation's or self-injury not mentioned until January 21, 2000. The subject is placed in Administrative Segregation on December 16, 1999, and commits suicide February 5, 2000, following 51 consecutive days in segregation, "with no sight", according to the Service's Board of Investigation, "as to when she would be released".

The psychological assessments and reports required by the Service's Intake and Segregation policies were inadequate. The "Psychologist" assigned these responsibilities was new to the Service, had received no training and was unaware of her responsibilities in these areas. There is no evidence that the Warden, responsible for administrative segregation placements, or the Independent Chairperson, responsible for punitive segregation sentences, were aware of or advised of any mental health concerns associated with this case. The "Mental Health Nurse" who last met with subject in Segregation had been employed for only three weeks, with no specific training having been provided in terms of high risk, high need female offenders, self-injury or suicide prevention. There is limited, if any in-house training provided to mental health staff related to the assessment and treatment of high risk, high need female offenders.

The professional registration and supervision standards required by the Service for those providing psychological services were not met by those identified as "Psychologists" within the Board of Investigation Report. The term "Mental Health Nurse" used by the Board of Investigation throughout its Report reflects the

nurse's work location, Health Care Centre vs Mental Health Unit, not their training or professional qualifications. There are no requirements for nurses assigned to the Mental Health Unit to be registered psychiatric nurses. The Board of Investigation through the unqualified use of the terms "Psychologist" and "Mental Health Nurses" has, perhaps unintentionally, left the impression of a level of professional mental health services beyond that which was actually available.

Although the subject was seen by numerous staff members who were obviously concerned with her well being, their efforts were, at best, uncoordinated. One of the "Psychologists" for example, after having two counselling sessions in segregation with her during early December, went on holidays. There is no evidence that anyone followed-up. The next recorded counselling session with the "Psychologist" is February 4, 2000, the day before the suicide. There is no documented evidence of any consultation or case planning between the psychiatrist, psychologists, nursing staff or elder. There is no evidence of any follow-up on the recommended transfer to the Regional Psychiatric Centre. In short, no one appears to be in charge of this case.

The Warden wrote the Regional Deputy Commissioner in January 2000 saying she did not have adequate resources to reasonably operate the Women's Unit. These Maximum Security Units, in male penitentiaries, by the Service's own account house high-risk, high need women. The Service has no staffing formulae for the provision of mental health services and programming within these Units, despite the fact that they have been in existence for four and a half years.

The bottom line was that a young woman died, in part, because the interventions, resourcing, staff training, programs and policies designed to address her needs remain on the bureaucratic drawing board.

I recommend that the Service immediately initiates an Audit of the mental health programming provided to Women Offenders and that the Audit Team:

- ***include mental health professionals from outside the Service;***
- ***focus on the standards for the certification and training of mental health professionals providing the services;***
- ***pay specific attention to the mental health services being provided at existing Women's Maximum Security Units; and***
- ***meet with representatives from this Office during the Audit.***

I further recommend that the Audit be finalized by November 15, 2001.

A recent response from the Service does not address the specifics of either our findings or the recommendation.

16. Sexual Harassment Policy

***Issue**: The absence of a sexual harassment policy inclusive of a thorough, independent and timely mechanism for addressing offender complaints*

The Correctional Service of Canada in 1995 lifted its restrictions on male employment in women's prisons. Specifically the Service decided that men could fill the roles of Primary Workers in the regional facilities, including the supervision of women inmates in their living units.

Madame Justice Arbour in her 1996 Report with respect to cross-gender staffing recommended, in addition to the development of explicit protocols, selections and training processes, that:

- *The sexual harassment policy of the Correctional Service be extended to apply to inmates;*
- *A woman be appointed to monitor and report annually, for the next three years, on the implementation of the cross-gender staffing policy and on any related issues, including the effectiveness of the extension of the sexual harassment policy to the protection of inmates.*

The Service's initial response to Justice Arbour's recommendation on the extension of its sexual harassment policy was; "Accepted in Principle-Research into specific sexual harassment policies to protect offenders has begun. A draft issue paper will be completed by May 30, 1997."

A Cross-Gender Monitor, independent of the Correctional Service, was appointed in January 1998, with a mandate consistent Justice Arbour's recommendation. The Cross-Gender Monitor's Third Annual Report was provided to the Correctional Service in September 2000. With respect to the extension of the Service's sexual harassment policy the Report states: "As recommended in our First and Second Annual Reports, it is recommended that CSC develop a sexual harassment policy that clearly prohibits sexual harassment of inmates by staff. This policy must clearly articulate (a thorough, independent and timely) mechanism for handling such complaints".

This Office has been communicating with the Correctional Service of Canada for a number of years in an attempt to promote the development and implementation of a sexual harassment policy. Our last representations were provided to the Service in February of this year in response to yet another draft policy on Investigations of Allegations Made By An Offender Of Sexual Harassment On The Part Of An Employee Or Contractor.

In response to our latest representations we were advised that "once the consultation results have been evaluated the Service will further articulate a response to your concerns and/or incorporate them into future drafts of the policy."

It has now been five years since the Service accepted in principle the recommendation of Justice Arbour. Our review of the Service's management of sexual harassment complaints from offender indicates clearly the need for national policy and direction for the investigation of such complaints. The time for "future draft policies" has long passed.

I recommend that the Service immediately implement a policy on the Investigation of Allegations made by an Offender of Sexual Harassment which provides:

- ***that investigations are convened by the Deputy Commissioner of Women or if the complainant is male the Regional Deputy Commissioner;***
- ***that a copy of all convening orders is forwarded to this Office;***
- ***that all members of the Board of Investigation are trained in managing sexual harassment complaints;***
- ***that at least one Board member is from outside the Correctional Service and that all Board members are independent of the facility where the complaint was filed;***
- ***that complainants are consulted both during the investigation and prior to finalizing the report in order to provide additional information and comment which will be recorded as part of the final report;***
- ***that a copy of all finalized reports is provided to both complainants and this Office in a timely fashion; and***
- ***that responsive follow-up action by the convening authority is initiated in a timely fashion.***

17. Classification of Offenders Serving Life Sentences

Issue: Whether the Service can require all offenders serving life terms to serve at least the first two years of the sentence in maximum security institutions

On February 23, 2001, the Correctional Service issued a new policy to the above effect.

The policy change was accomplished by a simple mathematical mechanism. The "Custody Rating Scale" a tool which assigns values to the three

elements of offender security classification - Public Safety Risk, Escape Risk and Institutional Adjustment - was revised so that a life sentence automatically results in a prohibitively high Public Safety rating for a two-year period.

As a result, irrespective of any other considerations "lifers" must serve their first two years in a maximum-security setting. Only in exceptional cases, by decision of the Assistant Commissioner Correctional Operations and Programs may the placement be "overridden" and the offender placed at lower security.

Obviously this change will have a serious effect on offenders who are sentenced to life terms. This is all the more the case because the frequency of review of their security classification has also been revised under the new policy. This will occur every two years, throughout their sentences, contrary to the annual reviews that will take place for other offenders.

The adverse consequences of the new policy are not limited to those directly affected. As maximum security populations grow - recent data indicate that half of the target group would normally be placed in lower security - this will give rise to increased expenses and staffing needs, for example for housing, security, supervision, programming and case preparation purposes.

Moreover the effect of being housed in the strictly controlled and, to say the least, stressful maximum-security environment will produce special challenges and disadvantages for young, aboriginal, older and disabled offenders. Attempts to resolve these issues will again require added resources.

The current situation of Women Offenders will produce more even drastic results. More women will be housed in the unacceptable circumstances of maximum-security units in men's institutions. In Ontario, where no such units exist, women will be effectively exiled to other Regions.

Notwithstanding the severity of the above consequences, perhaps the most prominent casualty is the Service's avowed commitment to compliance with the law.

It is not simply that this policy flies in the face of the CCRA requirement to determine the classification and housing of offenders on an individual, case-by-case basis, according to a whole range of factors - not simply the offence committed. It is not simply that the policy patently ignores the statutory requirement of the least restrictive custody, introducing the goal of retribution to a legislative scheme that specifically disallows such a consideration.

The real problem is that this was done virtually on the spur of the moment, targeting, for no apparent urgent or valid purpose, a small element of the correctional process. The real problem is that this occurred in marked

contradiction of the Service's purported response to the Arbour Commission's strong recommendations that CSC make compliance with the law its priority.

If this kind of measure can be adopted in such a hasty and unconsidered fashion over such a discrete aspect of the correctional system, what message does this send:

- *to the line staff person who has been told, since Arbour, to observe the spirit and the letter of the law in his/her every action, even where this is extremely inconvenient?*
- *to the inmate who wants to believe that his/her expectations about basic aspects of custody and release will not be suddenly modified for no apparent reason?*
- *to the community representative whose ability to effect solutions in cooperation with the Service must be based on some reasonable assurance the rule of law will not be ignored?*

My Office has heard, directly or indirectly, numerous complaints about the new policy from members of all these groups. In particular, I wish to share some of the comments that we have received from non-governmental organizations.

From the Canadian Association of Elizabeth Fry Societies:

" This policy imposes an arbitrary standard that flies in the face of CSC's over-arching responsibilities to utilize the least restrictive correctional interventions and environments consistent with public safety. It also will necessarily raise unfounded questions regarding the value and importance of progressive community-based programs."

From the John Howard Society of Canada:

" Aside from the apparent illegality of this policy, we also feel that it is fundamentally bad correctional policy. It justifies the unnecessary use of maximum security and that is abuse. The courts have already upheld, in other circumstances, that unnecessarily high levels of security are in themselves wrongful detention"

From the Church Council on Justice and Corrections:

"*We find the decision draconian in nature. We believe it is a violation of Correctional Service of Canada's mission statement and corrections policy developed over many years. It could be a violation of the law, which remains to be seen, and it certainly is a serious undermining of the values and spirit of so many who work within [CSC]".*

From the St. Leonard's Society of Canada:

" *The policy has no apparent foundation in research or evidence. It neither furthers public safety nor the rehabilitation of the prisoner. In fact, it may have the opposite effect by developing in the correctional service a precedent for unfair treatment of prisoners based on a very superficial framework of offence based management. Arbitrary prison placement cannot be justified and should not be tolerated. Denunciation is not the mandate of Corrections either in law or theory."*

I brought our concerns, and those of the various community groups, to the Commissioner on April 9, 2001. Pursuant to s.177 -179 of the CCRA I found that the Service's decision to create the policy was:

a) contrary to law
b) unreasonable
c) improperly discriminatory to specified offenders groups

I recommended that the policy be immediately reversed.

The Commissioner responded on April 30, 2001. The essence of the rationale for declining my recommendations and maintaining the policy was as follows:

"It is important that CSC determine a security classification for the offender by taking into consideration, amongst other factors, the seriousness of the offence and the sanction imposed. In the case of murder and the minimum life sentence, we are facing the most serious offence and sanction that can be dealt with under our criminal law. This is reflected in CSC's determination of the initial security classification of the offender."

In my view the Commissioner fails to address the specific points that I raised in my letter. Moreover, she provides no link between the classification issues that she cites and the need to implement the specific, onerous measures contained in the policy. At the very least, one is left wondering why this specific sanction was so suddenly necessary. As compared to

- *the "seriousness" of all other offences and*
- the classifications imposed for the same offences on the day before the new policy was issued

…why was two years in a maximum-security prison now an automatic requirement? What problems had so suddenly arisen with the normal way of classifying offenders that it became necessary to change course in mid-stream?

I have recommended that this matter be referred to dispute resolution under the Memorandum of Understanding between my Office and the Correctional Service.

Nevertheless I am including the matter in my Annual Report because I wish to preserve the opportunity for it to be addressed by the Minister and Parliament at the earliest possible juncture.

As to the argument that a retributive measure such as this policy is only just and appropriate I can only say that this argument does not appear to reflect the intentions of Parliament in enacting the CCRA. As well, it just doesn't make sense in the context of a reasonable and coherent approach to corrections.

Beyond this, I will simply draw your attention to the following:

"We must not forget that when every material improvement has been affected in prisons, when the temperature has been adjusted, when the proper food to maintain health and strength have been given, when the doctors, chaplains and prison visitors have come and gone, the convict stands deprived of everything that a free man calls life. We must not forget that all these improvements, which are sometimes salves to our consciences, do not change that position."

Winston Churchill, 1910

I recommend that the policy of adjusting the Custody Rating Scale to ensure that offenders serving life sentences for first- and second-degree murder are placed in maximum security penitentiaries for at least two years be immediately rescinded.

18. Women Offenders

The position of this Office, at the time of the decision in 1996, to place maximum security women and women with serious mental health problems in male penitentiaries, was that it was inappropriate. I indicated that such placements, despite the Service's identification of these women as "high risk, high need", were discriminatory and that regardless of the accommodations made it was in reality a form of segregation. The women were not only removed from association with the general population of the institution they were housed in, they were as well segregated from the broader general population of the women's regional facilities. I argued that this form of segregation, based on security classification and mental health status placed these women, in terms of their conditions of confinement, at a considerable disadvantage to that of the male offender population.

I was initially advised in September 1996 that these placements were "temporary" and that the women would be returned to the Regional Facilities as soon as possible. In September 1999 the Service announced the development of an Intensive Intervention Strategy. This strategy called for the modification and expansion of enhanced units at the regional facilities to accommodate

women offenders classified as maximum security. The strategy as well called for the development of Structured Living Environment houses for women with mental health needs. The projected completion date for these changes, which would allow for the closing of Women's Units in male penitentiaries, was September 2001. I am now advised that the closing of these Women's Units is expected in the Spring of 2002.

This continuing situation remains totally unacceptable. These units in male penitentiaries were neither intended nor resourced to manage high risk, high need women offenders. The Service has never established a staffing formula for these units, the staff were not initially selected with regard to established criteria for working with women offenders and specific training on the management of high risk, high need women offenders has been limited.

The end result has been high staff turnover, burnout, a significant increase in security incidents, and low staff morale.

I recommend, in addition to the Audit of Mental Health Programming for Women, that an immediate review be initiated of the Women's Units in Male Penitentiaries, focused on:

- ***resource levels and staff training requirements to ensure the existence of a safe, secure and humane living and working environment; and***
- ***the provision of programming, cultural and recreational activities consistent with those available within the regional facilities.***

I identified in last year's Annual Report a number of matters which in my opinion required immediate attention:

- the Service's 1997 Mental Health Strategy for Women had not been fully implemented;
- the verification of the Service's security classification tools for Women and Aboriginal offenders had not been finalized;
- *the Service's review of factors predictive of suicidal behavior and self-injury had not been initiated;*
- *the failure of the Service to provide a minimum security environment for women offenders consistent with that provided to male offenders;*
- *the inordinantly high number of visible minority women incarcerated (40%); and*
- *the disadvantaged position of Aboriginal offenders which represented 23% of the incarcerated population, yet only 11% of those on community supervision.*

These areas of concern were further detailed in a Report on Federally Sentenced Women's Issues provided to the Deputy Commissioner for Women in October 2000. This report concluded that "the failure of the Correctional Service

of Canada to fully implement Madame Justice Arbour's recommendations, in particular that the position of Deputy Commissioner for Women be one that has full line authority over women's corrections, has stalled the implementation of comprehensive policies and procedures to address the systemic issues that affect all Federally Sentenced Women. Madame Justice Arbour's hope that the Service would be creative in responding to the unique needs of women has not been fulfilled".

I recommend that the Service develop an Action Plan with specific performance measurements and time frames to address:

- ***the full implementation of the Service's 1997 Mental Health Strategy for Women;***
- ***the verification and implementation of the security classification tools for Women and Aboriginal offenders;***
- ***finalizing their review of factors predictive of suicide and self-injury;***
- ***the provision of a minimum security environment for women consistent with the least restrictive principle of the legislation;***
- ***the high number of visible minority women incarcerated in federal institutions; and***
- ***the continuing disadvantaged position of Aboriginal Women Offenders in terms of timely conditional release.***

I recommend that this Action Plan be finalized and presented to the Service's Senior Management Committee by November 2001.

I recommend that the Service re-visit its rejection of Madame Justice Arbour's recommendation that, the "women's facilities be grouped under a reporting structure independent of the Region, with the Wardens reporting directly to the Deputy Commissioner for Women".

There are currently significant challenges facing the Women's sector. As I have detailed there are a number of previous commitments yet to be actioned, the population continues to increase and the eventual placement of maximum security women at the Regional Facilities will measurably change their correctional environments. The Deputy Commissioner for Women added to her responsibilities a year ago those of the Service's Senior Deputy Commissioner. I believe that both of these Deputy Commissioner positions are full time jobs. I further believe that without full time focused leadership and an acceptance of the responsibilities recommended by Justice Arbour the challenges will not be met.

I recommend that the Deputy Commissioner for Women be staffed on a full time basis.

19. Aboriginal Offenders

The discriminatory impact of our criminal justice system and the resulting disadvantaged position of Aboriginals caught up in that system has been known for decades. While Aboriginals make up approximately 3% of the general Canadian population they represent nearly 20% of the federal prison population.

The areas of concern associated with this Issue, go beyond over-representation and require a focusing on what happens to Aboriginal offenders while in the care and custody of the Correctional Service of Canada. A Task Force report more than a decade ago indicated that Aboriginal offenders were less likely to be granted temporary absences and parole, were granted parole later in their sentence and were more likely to have their parole suspended or revoked. This unfortunately remains the reality despite a decade of effort.

I recommend that the Service monitor on an on-going basis the impact of their decisions on the Aboriginal Offender population, focusing on:

- ***Segregation***
- ***Transfers***
- ***Discipline***
- ***Temporary Absence/Work Release***
- ***Waivers, Postponements and Adjournments of Parole Reviews***
- ***Detention Referrals***
- ***Suspensions and Revocations of Conditional Release***

I recommend that the results of this monitoring be reported on a quarterly basis and reviewed by the Service's Executive Committee.

A number of years ago I made two recommendations intended to be a first step in addressing the continued disadvantaged position of Aboriginal offenders. First was that the Service ensure that a senior manager, specifically responsible and accountable for Aboriginal programming and liaison with Aboriginal communities, was a permanent voting member of existing senior management committees at the institutional, regional and national levels. Second, that the Service's policies and procedures be independently reviewed to ensure that systemic discriminatory barriers to timely reintegration were identified and addressed.

The Service in response to the first recommendation indicated that "Aboriginal Issues is now (as of March 2001) a standing item on its executive committee agenda". They further state that "the creation of a Director General position for Aboriginal Issues ensures that relevant issues are discussed and considered at the executive level".

The objective of my recommendation was not the introduction of "Aboriginal Issues" at the executive level, but rather that an Aboriginal perspective be part of all considerations and decisions taken by the Service's executive committees at all levels within the organization. Further, the Director General is not a permanent member of the national executive committee and the Service has provided no comment with regard to the regional and institutional levels of the organization.

In response to my second recommendation concerning an independent review of policies and procedures, the Service advised that the Office of the Auditor General "will be conducting an inter-departmental audit of the Aboriginal Justice System". Although I support this undertaking, given the information provided by the Service to date, it is not clear that the audit design, when finalized, will address the discriminatory aspects of the Service's policies and procedures. We will be meeting with the Auditor General's staff to review this matter.

I do not believe that the Service's responses to date have addressed either the specifics or the intent of my earlier recommendations. I further believe that my position on these matters is consistent with the intent of the Parliamentary Committee[*] recommendations concerning the appointment of an Aboriginal Deputy Commissioner and the evaluation of the reintegration processes available to Aboriginal Offenders.

I recommend, given the gravity of this Issue and the continuing disadvantaged position of Aboriginal Offenders, 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.***

[*] A WORK IN PROGRESS:
The *Corrections and Conditional Release Act*
Sub-committee on *Corrections and Conditional Release Act* of the
Standing Committee on Justice and Human Rights

Status of Case Summaries from 1999-2000 *Annual Report*

Cases Involving Strip Searches

ISSUE 1: ***Use of force to facilitate a rectal examination in the course of a strip search without appropriate authorization or reasonable grounds***

ISSUE 2: ***Authorization to conduct a strip search on all offenders in a facility in contravention of law and policy***

On October 18, 2000, I spoke to the new Commissioner about these cases, reiterating the points that we raised in the 1999-2000 Annual Report.

The Commissioner responded December 28, 2000.

Regarding the forced strip search (issue 1) she indicated:

- *that she agreed that the procedures used were inappropriate****
- *that the inmates were issued a partial apology.*
- *that a Task Force on Strip Searches would be struck to ensure that these were carried out properly in future*

[*It should be noted that, in admitting that the searches were inappropriate, the Commissioner did not mean that they should not have taken place or that they were not justified. She meant only that the inmates should have been warned, and given the opportunity to comply, before force was used to effect the searches.]***

The Commissioner invited this Office to assist in developing the scope and terms of reference for the Task Force on Strip Searches. A preliminary meeting was held in February 2001. The specific terms of reference and time frames are being finalized.

With respect to the exceptional search (issue 2), the Commissioner stated that the Service had acknowledged deficiencies regarding the preparation of post-search documentation and had taken action to address them.

I wrote back to the Commissioner on January 30, 2001 reiterating our previous findings and recommendations on the two cases. I expressed my interest in establishing a dispute-settlement mechanism to bring closure to all three matters.

In March 2001 we received letters from the Assistant Commissioner Corporate Development reiterating the Commissioner's December 28, 2000 position and stating that it did not consider dispute-resolution an appropriate mechanism for attempting to resolve legal issue.

In late March 2001, I met again with the Commissioner and urged that at least one case be submitted to dispute-settlement. I underlined the importance attributed to such mechanisms in the Memorandum of Understanding between the CSC and OCI. It was agreed that one issue would be selected by the Service and then another issue would be selected by the OCI for submission to dispute-settlement.

Status of the cases

Our Office maintains its view that all disputes between ourselves and the Correctional Service can be resolved by dispute settlement procedures including, but not limited to the examples cited in the Memorandum of Understanding:

- 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

We believe that disputes as to law and legal interpretation clearly fall within the subjects that could be referred. I am pleased that the Commissioner has agreed to submit two cases to dispute resolution. I am confident that this exercise will vindicate the use of the dispute resolution process.

Pending further developments, nevertheless, I maintain the following recommendations in these cases:

A. Use of force to effect a strip search

That the Service acknowledge:

- ***that the provisions of s.50 and 51 of the* Corrections and Conditional Release Act *should have been considered before a decision was taken to authorize the use of force.***
- ***that the use of force was illegal and unreasonable in that, pursuant to s.50 and 51 there were no reasonable grounds to believe that the inmates were carrying contraband in a body cavity.***

That the Service take measures, including, but not restricted to its proposed Task Force on Strip Searches, to ensure that, within two months, such searches are effected in accordance with law and policy.

B. Exceptional strip search

That the Service acknowledge:

- ***that the search was authorized unreasonably and in a manner contrary to law and to established policy***
- ***that the contents of the post search report were prepared in a manner which is contrary to law***
- ***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.***

That the Service take measures to ensure that, within two months, all such searches be authorized and documented in accordance with law and policy, to be confirmed by a compliance audits of all institutions effected within one year.

Meeting the Needs of Disabled Offenders

ISSUE 1: ***Inadequacy of preparation to provide disabled offenders with an appropriate release plan***

ISSUE 2: ***Inadequacy of facilities to meet the needs of disabled offenders***

ISSUE 3: ***Access of Correctional Investigator to information considered in Canadian Human Rights Commission proceedings***

This matter, initially reviewed in last year's Annual Report, arose from our investigation of the complaints of two disabled inmates. We found that the Service did not procure accessible accommodation for the inmates until after they were entitled to be released to the community.

We wrote to the Service on these cases and on the broader issue of the Service's failure to provide accessible accommodation despite being aware of the problem for several years.

The Service replied to our representations in early January 2001, indicating that CSC was currently deficient with respect to accessibility but would meet its requirements by end of March 2001. Unfortunately the precise nature of these commitments was unclear, so we wrote for clarification on January 30, 2001, and received a response on March 8, 2001.

In essence, the response was that:

CSC had one institution accessible in each Region for each Security level and provisions of accessibility in mental health facilities. Unfortunately there was no guarantee that more than one institution per Region would be accessible at each security level.

We find that this could create problems for inmates:
a) who, for security reasons, are not able to integrate populations at the accessible institutions or
b) who would have better access to community support or to programmes if they were placed in the non-accessible institutions

As well, not all Regions had more than one accessible Community Residential Facility [residences administered by non-governmental agencies under contract with CSC].

On the two specific cases the Service continued to decline dealing with us pending completion of a review by the Canadian Human Rights Commission on the same subject. The Service felt that the confidentiality of the CHRC process precluded discussion with our Office.

Status of the case

The Service's standard for what is meant by "accessible" remains unclear. In the course of recent discussions with staff from the Older Offenders Division we were provided with descriptions that seem to clarify what is necessary in this regard.

Under "Accommodation Planning", the Division's draft report recommends the implementation of "accessibility" and "specialized areas".

In the former category the Report sets the goal:

That there be sufficient CSC facilities of all types, in each region, that are fully accessible and equipped to provide the necessary living aids for offenders with disabilities and age-related impairments or ailments at the institutional and community level, according to the size of the population.

"Specialized Areas" is defined as

…a fully accessible unit/range/house staffed and resourced to meet the special needs (physical, mental, psycho-social, emotional and spiritual) of an aging population and those with conditions that prohibit them to adequately function independently in a regular correctional setting (institutional and community).

We endorse these descriptions and I **recommend that the Service create accessible environments, as described in the Report of the Older Offenders Division, in CSC premises before the end of 2001.**

I further recommend that the Service take measures to ensure that accessible facilities are available in a sufficient number of Community Residential Facilities to meet needs within the same period.

As to numbers of accessible units, we find that providing only one accessible institution per region at each security level is inadequate. This will not meet special needs of inmates who may be unable to integrate the population of the specified institutions or who would otherwise not meet the criteria required under s. 28 of the CCRA if placed in such an institution.

I recommend that, by the end of 2002, all institutions be rendered accessible to the extent necessary to permit all inmates with disabilities to be placed in institutions in accordance with the criteria for placement of the CCRA and the needs of the offenders concerned.

Finally, we continue to disagree with the Service's decision not to address our concerns on the two specific cases in view of the matter being before the Canadian Human Rights Commission. We are convinced that, if necessary, through consultation with the Service and the Commission, we could identify items whose consideration might be deferred while still permitting us to exercise our mandate.

That being said, we find that we have the statutory authority to compel the Service to provide us with information on the issue and that nothing precludes the Service from discussing the matter with us.

I recommend that the Service respond at an early juncture to our inquiries in the matters that are currently before the Canadian Human Rights Commission.

Housing of Minors in Penitentiaries

ISSUE 1: ***The inappropriateness of placing Young Offenders in penitentiaries in association with adult offenders***

ISSUE 2: ***The role of CSC representatives at Court hearings considering placement of Young Offenders in federal custody***

As of our last Annual Report we had expressed our view to the Service that minors should never be admitted to penitentiaries in association with adult offenders. We urged that CSC staff who appeared at hearings to decide whether

to house young offenders in penitentiary should express this view in a proactive fashion. Pending needed changes to legislation to conform to international law prohibiting co-confinement of adults and children, we urged the Service to put into place programs and processes aimed at meeting the needs of young offenders.

We received a reply from the Commissioner to our reporting letter on May 16, 2000. Unsatisfied with the response, we indicated that we intended to raise the matter with the Solicitor General on June 16, 2000.

With the appointment of a new Commissioner in September, I decided to re-visit the matter with her and did so on October 18, 2000, reiterating the concerns that we had expressed to her predecessor.

The Commissioner responded on December 28, 2000, indicating that CSC

- *will manage young offenders on case-by case basis*
- *recognizes rights of the Courts to direct federal incarceration of young offenders*
- *had tasked Human Rights division of CSC with establishing guidelines for appearance at hearings by CSC staff where federal custody of minors is at issue.*

The Commissioner invited us to contact the Justice Department, through the Solicitor General, with our suggestions on the issue.

I wrote to the Solicitor General January 30, 2001, recommending that young offenders never be housed in federal institutions with adult offenders unless the adults were family members.

The Minister responded March 20, 2001, indicating that the government will only use penitentiaries for the most serious cases, where all other alternatives have been exhausted. He indicated that Bill C-7 [Youth Criminal Justice Act] addresses many of our concerns.

In April we received information on the Service's information package for CSC staff appearing at young offender hearings. This package has three flaws, in our view:

- *The document instructs CSC representatives to provide only information and not opinions. The Act, on the contrary, requires the Court to consider CSC* ***recommendations****. This we interpret as creating a positive duty to provide opinions - findings and recommendations based on the facts*
- *The document retains a weak approach on whether CSC considers it unacceptable to place youth in penitentiaries - the Services does not encourage this but respects the right of the Courts to require it*
- *The document vacillates on options available for young offenders in penitentiaries, indicating concern but nothing definite on programming or placement.*

A very recent concern has been the newly introduced CSC policy of requiring inmates convicted of First or Second Degree Murder to spend at least two years in maximum security. This could result in severe consequences for young offenders who are required to serve time on federal custody under the current or the proposed legislation. I wrote to the Commissioner on this matter on April 9, 2001, recommending that the policy be immediately rescinded.

Status of the Case

In our view, Bill C-7 does not address our concerns. In fact, it could permit custody of a greater number of young offenders, at a younger age than under the current legislation.

We remain convinced that it is never appropriate to house minors in federal penitentiaries and that the Service, to date, has done very little to address the needs of young offenders within its walls.

I recommend that the Service and the Solicitor General urge amendments to young offender legislation that would prohibit their placement in penitentiaries in association with adults.

Pending the above amendments I recommend that the Service create housing, programming and case management policy and procedures to meet the specific needs of young offenders who are placed in penitentiaries.

I recommend that, when appearing in Court for a determination of whether young offenders should be placed in a penitentiary, Service representatives:

- ***make it clear that the position of the Service is that placement in penitentiary is never appropriate***
- ***underline the lack of specific housing or programming currently available for young offenders***
- ***make recommendations to the Court with respect to the above in proactive fashion rather than respond only to direct questions.***

Access to Traditional Aboriginal Healers (Policy Inertia)

ISSUE: Implementing measures to provide access to traditional healers for aboriginal inmates

In our last annual Report we sought a clear policy from the Service which would make health service staff more aware of the role of Traditional Aboriginal Healers and facilitate inmate access to Healers. At the time of our last Annual

Report the Service had indicated that its project in this matter had been delayed and completion was expected in the spring of 2001.

Early in the new fiscal year, we made further inquiries on progress with this project.

On October 16, 2000, the Service responded that the time frames had been adjusted in order to provide a process that would meet the cultural perspectives and expectations of native representatives.

On January 2, 2000, we asked for a meeting with CSC to review the issue.

On February 16, 2001, the Service responded that a meeting between Service representatives and Healers would take place in early March 2001, to which our Aboriginal specialist had been invited. It stated further that "we may, indeed, meet to discuss this issue".

On May 25, 2001, the Service indicated that they were developing an action plan to implement directions given by Elders and Healers who participated in the March meeting and that concrete steps will now be taken to meet the objectives of providing inmates access to medicines and Healers.

Considering the delays that have already taken place in this matter, ***I recommend that the CSC action plan for providing access to Aboriginal Healers be completed and the measures implemented by October 1, 2001.***

Works In Progress

Issues Currently under Consultation between the Correctional Investigator and the Correctional Service

This year I have decided to provide information on subjects that we have been discussing at some length with the Service. While these discussions are not yet complete, we believe we should comment on them for a number of reasons.

- *They are topics of great importance to offenders*
- *They illustrate how we interact with the Service in policy development and in working groups that target generic problems*
- *Definite trends have been identified and it is helpful for us to clarify our views on the progress that has been made and on our expectations.*

I emphasize that our purpose is not to provide conclusive findings or recommendations. I simply wish to describe and to acknowledge the work being done and to provide a fair indication of what might become findings and recommendations in future Reports.

a) Administrative Segregation

It has been almost six years since Madame Justice Arbour recommended major adjustments to the administrative segregation system - in particular heightened compliance with law and independent review of segregation placements. It has been more than four years since the Task Force on Administrative Segregation produced its report and the Service instituted major reforms to internal policies and practices.

These changes were intended to improve procedural compliance with law and policy and, more important, to improve the ***effectiveness*** *of the administrative segregation review system - in other words to minimize the number and duration of placements by maximizing reintegration options and alternatives to segregation.*

On one issue, the Service declined the Task force's recommendation - pilot projects involving independent review of administrative segregation.

In the past 18 months we have noticed "slippage" on many of the procedural rules that the Service put into place. Moreover, we have found that progress has been singularly lacking on many fundamental "effectiveness" objectives - significant reduction in admission and duration of segregation placements.

Finally, the problem of double-occupation in segregation has remained.

In May 2000 the House of Commons Sub-Committee reviewing the CCRA recommended that independent review be adopted. In October the Government responded by calling for enhanced internal review with external membership.

To her credit, the new Commissioner of Corrections recognized the problems that we have identified, above, and appointed Mr. Jim Laplante to coordinate solutions.

To date there had been significant movement on some fronts.

- *The Service expects to have eliminated double occupancy in segregation by September 2001*
- *A pilot program involving the participation of a person from the community in 30-day segregation reviews, geared toward improving effectiveness of the segregation process is to be in operation in the fall and completed by March 2001*
- *Within the Pilot Project the role of Regional Segregation Oversight Managers in promoting effective review and reintegration will be reviewed*
- *Mr. Laplante and Health and Legal Services are reviewing the status of "isolation" of inmate patients in a mental health care context and how this should be related to segregation under the CCRA*
- *The status of institutional units that are intended as alternatives to traditional segregation will be examined*

I am hopeful that these initiatives will result in:

- *a reduction in unnecessary segregation ("quasi-segregation") placements and in minimizing their duration, through fair review*
- *more humane conditions of confinement for segregated inmates*

While our Office continues to hold the view that only a completely independent review by an outside expert will fully address these purposes, I look forward to reviewing the success of the Service's initiatives.

b) Confidential Medical Information

A troublesome problem for many years has been the competing objectives of confidentiality in the health services relationship and providing necessary information for risk assessment purposes.

In the context of infectious diseases, for example, the guarantee of confidentiality about a patient's condition is considered by many experts to be essential to promoting treatment and sound disease-prevention practices (see, for example, the Report of the Expert Committee on Aids Prevention, 199-). On the other hand there may be circumstances where the safety of others persons,

including staff, could be endangered if the existence of disease were not disclosed.

In the mental health context, the need to promote candor among participants in programs may be at odds with the Service's obligation to provide release decision-makers with information bearing upon potential risk to public safety.

The Service has established a working group and a consultation process in order to clarify rules to govern these issues in a way that will balance the competing interests.

It is expected that this policy will be adopted in the coming fiscal year. To date the Service has consulted broadly with staff and community experts on the subject. My own staff has been actively involved.

Our position is that any such policy should emphasize treatment and disease prevention as valid risk reduction measures. The objective must be to attain these objectives in a way that will ensure public safety and effective reintegration of offenders to the community. As well, as much as possible, offenders should be able to provide informed consent before disclosing personal health information and should be consulted before disclosure to persons outside the health services sector occurs.

I hope that the Service is sympathetic to these objectives and will succeed in issuing this long-needed policy before my next Report.

c) Older Offenders

Currently older offenders represent 16% of the overall federal population, a figure that is expected to increase rapidly. The Service defines older offenders as those 50 years old and over because

> "…research indicates that the aging process is precipitated by approximately ten years in the correctional system due to factors including socio-economic status, access to medical care and the lifestyle of most offenders"

In early 2000, the Commissioner put into place an Older Offenders Division with a mandate to develop a strategy to deal with the needs of older offenders. This spring the Division completed its report, which addressed a broad range of issues, including:

- *Institutional accommodation planning*
- *Community Corrections (supervision and programs on release)*
- *Health Care and Mental Health (including palliative care)*

- *Staffing (professional and volunteer) and training to address older offender needs*
- *Targeted and adapted programs*
- *Employment, education, vocational needs and recreational and leisure activities*
- *Assessment, case management and release planning*
- *Public Outreach*

We consider the Report a landmark document which, if its recommendations are implemented, will go far in addressing the problems of this group. The recommendations are too numerous to describe adequately in this Report. I will emphasize, however, that an essential feature of the document is that the Service should adopt a global perspective on the whole spectrum of older offender needs - not only health care but all of the problems that affect our aging Canadian population.

d) Infectious Diseases

The Service's Health Service Division has embarked on a process to improve the treatment and prevention of diseases, many of which are transmitted in substance abuse contexts. This is a welcome and long-anticipated development. It has been eight years since the Expert Committee on Aids produced recommendations that are still relevant to what has truly become a crisis.

My staff, along with many community stakeholders, has actively participated in this initiative.

Among the topics being discussed are:

- *The early implementation of a Phase II to the Service's methadone program, which would provide access to suitable patients who had not participated in such programs before admission to the federal prison system*
- *The opportunity for offenders to obtain clean needles*
- *Opportunity for offenders to purchase professionally-applied, clean tattoos*
- *Specialized initiatives for federally sentenced women and aboriginal offenders*
- *Peer education programs*

The Service is to be commended for attempting to resolve these long-standing problems. Some of the solutions are controversial, it is true, but the alternatives, given the current escalation of the problem, are simply unacceptable. We can no longer afford the luxury of seeing drug abuse simply as a matter of security, rather than treatment.

We will continue to offer our complete support to this process.

Conclusion

Progress has been made this year on a number of Issues. I am encouraged by the Commissioner's commitment and personal approach to dealing with offender concerns brought to her attention by this Office. This having been said the response of the Service, at levels below the Commissioner's Office continue in far too many instances, to be excessively delayed, overly defensive and absent of commitment to specific timely corrective action.

I am hopeful that by providing specific recommendations on the Issues that the process of excessive review, consultation and endless study can be replaced with actions that address in a measurable way the identified areas of offender concern. I look forward to the Commissioner's response.

Summary of Recommendations

Special Handling Unit

I recommend that the Service's current examination of the Special Handling Unit policy focus on:

- **the effectiveness of the SHU in meeting its current stated objective;**
- **the level of program participation and the relevance of current programming to the identified needs of the SHU population;**
- ***the resource requirements necessary to meet the programming needs of the existing population;***
- ***the appropriateness of involving Citizen Advisory Committee members in the review process;***
- ***the fairness, openness and accountability of the decision-making process, inclusive of a clearly defined avenue of timely redress; and***
- ***the development of a monthly independent review process for offenders housed in segregation awaiting transfer to the SHU for assessment.***

I further recommend that the results of the examination be published and that policy addressing the above areas be issued by October 2, 2001.

Inmate Pay

I again recommend that the Service initiate:

- ***an immediate across the board increase in inmate pay levels, inclusive of indexing provisions; and***
- ***a review of the adequacy of the funds currently available to offenders on their release to the community.***

I recommend that the Service provide an immediate subsidy to the inmate population to bring the cost of telephone communications in line with community standards.

Inmate Grievance Procedure

I recommend that:

- ***the Service initiate action immediately to clear up the backlog of outstanding grievances;***

- ***policy direction be issued to ensure, on a quarterly basis, a thorough analysis of grievance data is undertaken by the Health Care, Aboriginal and Women Offender sectors;***
- ***the rejection of Madame Justice Arbour's recommendations concerning senior management accountability and external review within the grievance process be revisited;***
- ***the current review undertaken by the Aboriginal Issues Branch when finalized be provided to all inmate aboriginal organizations; and***
- ***a review, independent of the Women Offender's sector, be initiated to determine how effectively inmate complaints are being managed in institutions housing women offenders, with specific focus on the women housed in male penitentiaries.***

I recommend that the above actions be finalized by October 31, 2001.

I recommend that the Service's Audit Report due June 2001 on the grievance system be provided to all Inmate Committees for their comments.

Case Preparation and Access to Programming

I recommend that the Service initiate immediately a review of program access and timely conditional release focused on:

- **current program capacity, the extent of waiting lists and specific measures required to address deficiencies.**
- **the specific reasons for waivers and postponements and the actions required to reduce the number of waivers and postponements**
- **the reasons for the decline in unescorted temporary absence and work release programming and the specific measures required to increase participation in this programming**
- **the reasons for the disadvantaged position of Aboriginal Offenders in terms of timely conditional release and a specific plan of action to address this disadvantage.**

I further recommend that this review, inclusive of detailed action plans, be finalized by November 15, 2001.

Transfers

I recommend with respect to the transfer process that the Service:

- ***immediately initiate an audit of its transfer data to determine its current validity and what actions need to be taken to ensure its future accuracy;***
- ***develop a framework for the assessment of the transfer process to specifically address the previously noted areas of concern by September 20, 2001; and***
- ***finalize its assessment of the process by December 20, 2001, inclusive of the development of specific action plans***

I further recommend that this Office be kept advised of the Service's progress on this Issue.

Preventive Security Guidelines

I recommend that in conjunction with the issuing of the Preventive Security Guidelines the Service initiate a training program to ensure that the responsibilities and accountabilities detailed in the Guidelines are clearly understood.

Use of Force

I recommend, following the Service's Executive Committee review of the Use of Force Report in June 2001, that an Action Plan be developed focused on:

- **mandatory training requirements for both those who authorize the use of force and those involved in using force;**
- **reducing the number of instances of non-compliance with policy;**
- **limiting the number of incidents resulting in the use of force; and**
- **ensuring that thorough, timely, written reviews are undertaken by Health Care and Women Offender sectors.**

I recommend that this Action Plan include measurable target levels with respect to the number of incidents, the number and type of policy violations and the establishment specific time frames in terms of meeting training requirements. This Action Plan should be finalized by the end of November 2001.

Inmate Injuries and Investigations

a) Institutional Violence

I recommend that the Service take immediate steps to fulfill their previous commitments to the monitoring of institutional violence through:

- ***the implementation of an information system capable of capturing accurate and reflective data;***
- ***the production on a quarterly basis of analytic reports; and***
- ***the review of these reports, as a standing item, at the Executive Committee.***

I recommend that Institutional Violence become a standing item at the Service's Executive Committee commencing in September 2001.

b) Inmate Injuries

I recommend that the Service implement a national policy on the Reporting, Recording and Review of Offender Injuries to ensure:

- ***the timely and accurate recording of injuries and the circumstances leading to those injuries;***
- ***the quarterly analysis of the information collected on offender injuries; and***
- ***the review by the Service's Executive Committee of the quarterly reports on offender injuries.***

I recommend that the Service's policy on the Reporting Recording and Review of Offender Injuries be issued by October 30, 2001.

c) Suicides

I recommend that the Service immediately implement national policy on the Prevention and Management of Suicides and Self-Injury.

I recommend that the Service immediately initiate a review of the staff training needs associated with the implementation of this policy and provide the necessary resources to meet those needs.

I recommend that all incidents of attempted suicide and self-injury be investigated and that a psychologist, independent of the institution, be a member of the investigative team.

I recommend that the investigations of suicide, attempted suicides and self injury be reviewed nationally on a quarterly basis and that the results of these reviews be a standing agenda item for the Service's Executive Committee.

d) <u>Investigations</u>

I recommend that the specific time frames for the completion of Investigative Reports and the Verification of Action Plans be incorporated into the Service's policy on Investigations.

I recommend that the results of the Service's monitoring of the Investigative Process be reported on a quarterly basis and reviewed by the Executive Committee.

I recommend that all investigative reports into inmate death or serious bodily injury be provided to this Office no later than 45 working days after the incident.

I recommend, with respect to serious bodily injury and investigations convened pursuant to Section 19 of* Corrections and Conditional Release Act*, that Service take immediate steps to ensure that:

- ***a reasonable definition of "serious bodily injury" and guidelines on the interpretation of that definition are provided to the field;***
- ***the determination on the seriousness of the injury is made by a licensed health care professional;***
- ***all S.19 investigations include a health care professional independent of the institution where the incident occurred;***
- ***a tracking system is in place at the national level for all investigations of incidents resulting in death and serious bodily injury (S.19 investigations);***
- ***all S.19 investigations are reviewed nationally with a summary report on the recommendations and corrective actions produced quarterly; and***
- ***quarterly reports on S.19 investigations are provided to the Commissioner.***

I recommend, to further emphasize my position on these matters that the following be standing agenda items at all Senior Management meetings:

- **offender suicides and attempted suicides;**
- **offender death and serious bodily injury;**
- **institutional violence; and**

- **investigations and systemic reviews of incidents resulting in injuries, death and institutional violence.**

Sharing of Information with Police on Release of an Offender

I recommend that, at its earliest possible convenience, CSC implement its policy that, before taking any decision to disclose information pursuant to ss.25 (3) of the CCRA the Service:

- ***identify to the offender concerned the information to be disclosed and***
- ***provide the offender with a reasonable opportunity to make representations on the appropriateness of disclosing any of the information.***

Allegations of Staff Misconduct

I recommend that the Service fashion a separate and well-publicized policy for investigation of inmate complaints of staff misconduct that will include the elements that we suggested in September 1999, including, at least:

- **early recording by the complainant of relevant information**
- **timely referral of the complainant to Health Services in applicable cases**
- **isolation of the complainant from the accused staff member during the investigation**
- **provision of complete information to police at an early juncture**
- **a timely decision by the Institutional Head on whether to convene an investigation**
- **community representation on investigation panels**
- **copying of all documentation to our Office**

Involuntary Transfer and Consent to Mental Health Interventions

I recommend that the Service:

- ***rescind its policy of involuntarily transferring inmates to psychiatric hospitals under the guise of "risk assessment"***
- ***clarify that all procedures involving significant, and more than transient, treatment, assessment, observation or evaluation by physicians or health care professionals is to be considered treatment for the purposes of s.88 of the* Corrections and Conditional Release Act*, and is thus subject to the informed consent of the inmate involved***
- ***ensure staff compliance with the provisions of the CCRA and applicable Provincial health services legislation in all matters governing the admission and treatment of inmates in psychiatric institutions.***

Critical Incident Stress Intervention for Inmates

I recommend that national direction be issued immediately which;

- ***ensures that critical incident stress management services are mandatoraly offered to offenders and***
- ***provides a clear detailing of the specific services to be available, who is to provide these services and when they are to be provided.***

Mental Health Services for Female Offenders

I recommend that the Service immediately initiates an Audit of the mental health programming provided to Women Offenders and that the Audit Team:

- ***include mental health professionals from outside the Service;***
- ***focus on the standards for the certification and training of mental health professionals providing the services;***
- ***pay specific attention to the mental health services being provided at existing Women's Maximum Security Units; and***
- ***meet with representatives from this Office during the Audit.***

I further recommend that the Audit be finalized by November 15, 2001.

Sexual Harassment Policy

I recommend that the Service immediately implement a policy on the Investigation of Allegations made by an Offender of Sexual Harassment which provides;

- ***that investigations are convened by the Deputy Commissioner of Women or if the complainant is male the Regional Deputy Commissioner;***
- ***that a copy of all convening orders are forwarded to this Office;***
- ***that all members of the Board of Investigation are trained in managing sexual harassment complaints,***
- ***that at least one Board member is from outside the Correctional Service and that all Board members are independent of the facility where the complaint was filed;***
- ***that complainants are consulted both during the investigation and prior to finalizing the report in order***

to provide additional information and comment which will be recorded as part of the final report;

- *that a copy of all finalized reports are provided to both complainants and this Office in a timely fashion; and*
- *that responsive follow-up action by the convening authority is initiated in a timely fashion.*

Classification of Offenders Serving Life Sentences

I recommend that the policy of adjusting the Custody Rating Scale to ensure that offenders serving life sentences for first- and second-degree murder are placed in maximum security penitentiaries for at least two years be immediately rescinded.

Women Offenders

I recommend in addition to an independent Audit of Mental Health Services, that an immediate review be initiated of the Women's Units in Male Penitentiaries, focused on:

- *resource levels and staff training requirements to ensure the existence of a safe, secure and humane living and working environment; and*
- *the provision of programming, cultural and recreational activities consistent with those available within the regional facilities.*

I recommend that the Service develop an Action Plan with specific performance measurements and time frames to address:

- *the full implementation of the Service's 1997 Mental Health Strategy for Women;*
- *the verification and implementation of the security classification tools for women and aboriginal offenders;*
- *finalizing their review of factors predictive of suicidal and self-injury;*
- *the provision of a minimum security environment for women consistent with the least restrictive principle of the legislation;*
- *the high number of visible minority women incarcerated in Federal institutions; and*
- *the continuing disadvantaged position of Aboriginal Women Offenders in terms of timely conditional release.*

I recommend that this Action Plan be finalized and presented to the Service's Senior Management Committee by November 2001.

I recommend that the Service re-visit its rejection of Madame Justice Arbor's recommendation that, the "women's facilities be grouped under a reporting structure independent of the Region, with the Wardens reporting directly to the Deputy Commissioner for Women".

I recommend that the Deputy Commissioner for Women be staffed on a full time basis.

Aboriginal Offenders

I recommend that the Service monitor on an on-going basis the impact of their decisions on the Aboriginal Offender population, focusing on:

- ***Segregation***
- ***Transfers***
- ***Discipline***
- ***Temporary Absence/Work Release***
- ***Waivers, Postponements and Adjournments of Parole Reviews***
- ***Detention Referrals***
- ***Suspensions and Revocations of Conditional Release***

I recommend that the results of this monitoring be reported on a quarterly basis and reviewed by the Service's Executive Committee.

I recommend, given the gravity of this issue and the continuing disadvantaged position of Aboriginal Offenders, 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.***

Recommendations on Case Summaries

Cases on Strip Searches

A. Use of force to effect a strip search

That the Service acknowledge:

- ***that the provisions of s.50 and 51 of the*** **Corrections and Conditional Release Act** ***should have been considered before a decision was taken to authorize the use of force.***
- ***That the use of force was illegal and unreasonable in that, pursuant to s.50 and 51 there were no reasonable grounds to believe that the inmates were carrying contraband in a body cavity***

That the Service take measures, including, but not restricted to its proposed Task Force on Strip Searches, to ensure that, within two months, such searches are effected in accordance with law and policy

B. Exceptional strip search

That the Service acknowledge:

- ***that the search was authorized unreasonably and in a manner contrary to law and to established policy***
- ***that the contents of the post search report were prepared in a manner which is contrary to law***
- ***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.***

That the Service take measures to ensure that, within two months, all such searches be authorized and documented in accordance with law and policy, to be confirmed by a compliance audits of all institutions effected within one year.

Meeting the Needs of Disabled Offenders

I recommend that the Service create accessible environments, as described in the Report of the Older Offenders Division, in CSC premises before the end of 2001.

I further recommend that the Service take measures to ensure that accessible facilities are available in a sufficient number of

Community Residential Facilities to meet needs within the same period.

I recommend that, by the end of 2002, all institutions be rendered accessible to the extent necessary to permit all inmates with disabilities to be placed in institutions in accordance with the criteria for placement of the CCRA and the needs of the offenders concerned.

I recommend that the Service respond at an early juncture to our inquiries in the matters that are currently before the Canadian Human Rights Commission.

Housing of Minors in Penitentiaries

I recommend that the Service and the Solicitor General urge amendments to young offender legislation that would prohibit their placement in penitentiaries in association with adults.

Pending the above amendments I recommend that the Service create housing, programming and case management policy and procedures to meet the specific needs of young offenders who are placed in penitentiaries

I recommend that, when appearing in Court for a determination of whether young offenders should be placed in a penitentiary, Service representatives:

- ***make it clear that the position of the Service is that placement in penitentiary is never appropriate***
- ***underline the lack of specific housing or programming currently available for young offenders***
- ***make recommendations to the Court with respect to the above in a proactive fashion rather than respond only to direct questions.***

Access to Traditional Aboriginal Healers (Policy Inertia)

I recommend that the CSC action plan for providing access to aboriginal healers be completed and the measures implemented by October 1, 2001.

STATISTICS

TABLE A
CONTACTS [1] BY CATEGORY

CATEGORY	CASE TYPE I/R [2]	INV [3]	*TOTAL*
Administrative Segregation			
Conditions ……..	42	57	99
Placement/Review ……	145	175	320
Total ……	**187**	**232**	**419**
Case Preparation			
Conditional Release ……	169	123	292
Post Suspension ……	31	13	44
Temporary Absence ……	49	49	98
Transfer ……	176	141	317
Total ……	**425**	**326**	**751**
Cell Effects……	**186**	**168**	**354**
Cell Placement ……	**62**	**43**	**105**
Claims Against the Crown			
Decisions ……	28	32	60
Processing ……	52	35	87
Total ……	**80**	**67**	**147**
Community Programs/Supervision ……	**10**	**8**	**18**
Conditions of Confinement ……	**132**	**149**	**281**
Correspondence ……	**58**	**40**	**98**
Death or Serious Injury	**4**	**2**	**6**
Decisions (General) - Implementation	**26**	**9**	**35**
Diet			
Medical ……	16	21	37
Religious ……	13	18	31
Total……	**29**	39	68
Discipline			
ICP Decisions ……	30	15	45
Minor Court Decisions ……	25	14	39
Procedures ……	36	31	67
Total ……	**91**	**60**	**151**
Discrimination ……	**39**	**13**	**52**
Employment ……	**91**	**71**	**162**
File Information			
Access - Disclosure ……	121	69	190
Correction ……	183	52	235
Total……	**304**	**121**	**425**
Financial Matters ……			
Access ……	27	39	66
Pay ……	124	39	163
Total……	**151**	**78**	**229**

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

CATEGORY	CASE TYPE I/R [2]	INV [3]	*TOTAL*
Food Services	**18**	**27**	**45**
Grievance Procedure	**157**	**194**	**351**
Health Care			
Access	225	421	646
Decisions	167	149	316
Total	**392**	**570**	**962**
Mental Health			
Access	10	18	28
Programs	8	5	13
Total	**18**	**23**	**41**
Official Languages	**11**	**4**	**15**
Operation/Decisions of the OCI	**28**	**19**	**47**
Other	**59**	**15**	**74**
Penitentiary Placement	**111**	**84**	**195**
Programs			
Access	117	123	240
Quality/Content	58	39	97
Total	**175**	**162**	**337**
Release Procedures	**33**	**44**	**77**
Safety/Security of Offender(s)	**124**	**86**	**210**
Search and Seizure	**21**	**22**	**43**
Security Classification	**105**	**71**	**176**
Sentence Administration-- Calculation	**41**	**36**	**77**
Staff Responsiveness	**280**	**141**	**421**
Telephone	**83**	**90**	**173**
Temporary Absence Decision	**79**	**88**	**167**
Transfer			
Decision—Denials	143	104	247
Implementation	61	79	140
Involuntary	206	142	348
Total	**410**	**325**	**735**
Urinalysis	**28**	**22**	**50**
Use of Force	**14**	**26**	**40**
Visits			
General	167	184	351
Private Family Visits	109	112	221
Total	**276**	**296**	**572**

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

CATEGORY	CASE TYPE I/R [2]	INV [3]	*TOTAL*
Outside Terms of Reference			
Conviction/Sentence—Current Offence ……	**17**	**-**	**17**
Immigration/Deportation ……	**11**	**-**	**11**
Legal Counsel-- Quality ……	**6**	**-**	**6**
Outside Court-- Access ……	**20**	**-**	**20**
Parole Decisions ……	**199**	**-**	**199**
Police Actions ……	**17**	**-**	**17**
Provincial Matter ……	**16**	**-**	**16**
GRAND TOTAL ……	**4630**	**3775**	**8405**

(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
Women's Facilities			
Edmonton Women's Facility ……	39	19	3
Regional Reception Centre (Québec)	22	9	4
Grand Valley ……	168	90	10
Isabel McNeill House ……	6	0	0
Joliette ……	156	67	8
Okimaw Ohci Healing Lodge ……	18	11	2
Nova ……	86	33	4
Prison for Women ……	1	0	0
Regional Psychiatric Centre (Prairies)	28	14	3
Saskatchewan Penitentiary… …….	44	18	3
Springhill ……	64	19	4
Total …….	**632**	**280**	**41**
ATLANTIC			
Atlantic ……	276	122	11
Dorchester ……	323	130	13
Springhill ……	136	58	9
Westmorland ……	47	24	5
Region Total …….	**782**	**334**	**38**
ONTARIO			
Bath……	140	42	5
Beaver Creek ……	76	25	3
Collins Bay ……	120	30	3
Fenbrook ……	399	145	18
Frontenac ……	49	36	4
Joyceville ……	362	100	11
Kingston Penitentiary ……	581	234	21
Millhaven ……	209	38	6
Pittsburgh ……	43	10	2
Regional Treatment Centre ……	35	18	3
Warkworth ……	323	131	13
Region Total……	**2337**	**809**	**89**
PACIFIC			
Elbow Lake ……	19	12	3
Ferndale ……	29	12	2
Kent ……	177	42	4
Matsqui ……	66	14	2
Mission ……	91	24	2

TABLE B (cont'd)
CONTACTS BY INSTITUTION

Region/Institution	# of contacts	# of interviews	# of days spent in institution
Mountain ……	129	46	3
Regional Health Centre ……	106	44	3
William Head ……	68	35	6
Region Total …….	**685**	**229**	**25**
PRAIRIE			
Bowden ……	286	97	18
Drumheller ……	202	80	17
Edmonton ……	330	110	12
Grande Cache ……	188	82	10
Pê Sâkâstêw Centre ……	9	4	4
Regional Psychiatric Centre ……	125	69	5
Riverbend ……	34	12	3
Rockwood ……	21	7	3
Saskatchewan Penitentiary ……	323	92	10
Stony Mountain ……	277	102	12
Region Total……	**1795**	**655**	**96**
QUEBEC			
Archambault ……	176	46	5
Cowansville ……	214	101	8
Donnacona ……	152	93	8
Drummondville ……	170	61	9
Federal Training Centre ……	138	78	6
La Macaza ……	189	147	13
Leclerc ……	298	108	10
Montée St-François ……	84	33	4
Port Cartier ……	282	98	11
Regional Reception Centre/SHU Québec	280	81	9
Ste-Anne des Plaines ……	81	32	3
Region Total …….	**2064**	**878**	**86**
GRAND TOTAL ……	**8295***	**3185**	**375**

**Excludes 64 contacts in CCC's and CRC's and 46 contacts in provincial institutions*

TABLE C
COMPLAINTS AND INMATE POPULATION - BY REGION

Region	Total number of contacts (*)	Inmate Population (**)
Maritimes …….	*782*	*1154*
Québec ……	*2064*	*3361*
Ontario ……..	*2337*	*3290*
Prairies ……	*1795*	*3118*
Pacific ……...	*685*	*1813*
TOTAL ……..	***7663***	***12736***

(*) Excludes 742 contacts from CCC/CRC's, provincial institution and FSW facilities.

(**) As of 13 March 2001, according to April, 2001 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 ……*	*2383*
	Outside mandate ……	*286*
	Pending ……	*59*
	Premature ……	*867*
	Referral ……	*791*
	Withdrawn ……	*244*
Total		***4630***
Investigation	*Assistance given ……*	*1020*
	Information given ……	*976*
	Pending ……	*276*
	Premature ……	*206*
	Referral ……	*455*
	Not justified ……	*383*
	Resolved ……	*312*
	Unable to Resolve ……	*66*
	Withdrawn ……	*81*
Total		***3775***
GRAND TOTAL		***8405***