

---

**MAJOR OUTSTANDING ISSUES**





## ABORIGINAL OFFENDERS

### Past Challenges:

For many years this Office has underlined the disadvantaged position of Aboriginal offenders at each significant milestone of the corrections process.

We have proposed that an independent review of discrimination toward Aboriginal offenders take place, that a Deputy Commissioner be appointed to direct matters related to Aboriginal offenders, and that there be an early completion and implementation of programs targeting their needs. We have suggested that quarterly reports be prepared to assist CSC senior management in identifying and resolving problems related to Aboriginal offenders. Currently, while 41 percent of non-Aboriginal offenders are

serving their sentences on conditional release in the community, only 31 percent of Aboriginal offenders are on conditional release. This gap is even greater for women offenders and remains basically unchanged over the past decade.

We have supported CSC's approach of fostering partnerships and cooperation on the part of Aboriginal communities in effecting safe release with appropriate programming opportunities in the communities. We have recognized that this is a very difficult process given the means of some communities to provide what is needed.

### Positive Developments

CSC has established working groups and advisory bodies involving Aboriginal organizations to assist the Service in implementing effective community initiatives.

Successful piloting of some Aboriginal programs and specialized living arrangements has taken place.

The Senior Deputy Commissioner has been identified as the official responsible for championing Aboriginal concerns at the Executive Management Committee.

CSC's Policy Division is conducting a complete review of Aboriginal, gender and cultural barriers in order to incorporate the issues uncovered into the CSC operational policy and practice. As part of this review the Division is concentrating initially on issues related to case management and searches of inmates, visitors and staff. This approach is intended to ensure that diversity issues and appropriate solutions are brought to the attention of staff in all operational contexts—not simply in stand-alone policies related to specific groups. CSC expects the review to be completed and policies revised by the end of November 2004.

### Ongoing Challenges

Even though CSC's review of diversity obstacles is a useful step, we continue to advocate an independent review of obstacles to the successful and timely reintegration of Aboriginal offenders. As we have often repeated, with support from the Parliamentary Sub-Committee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights and from Aboriginal organizations, there is a need for a perspective unfettered by competing internal interest before such a review will achieve success.

The successful programs that have been established must achieve continuing funding and new program initiatives must take place as soon as possible. As well, it appears that a disproportionate number of Aboriginal-specific programs are available in minimum-security institutions, while the predominant need for programs is at the medium- and maximum-security levels. In regions where only a small number of Aboriginal inmates are housed in institutions, there is a tendency not to provide programming for small groups.

Our discussions with national Aboriginal organizations indicate that there remains a significant need for funded and effective community programs to

Positive Developments *continued*Ongoing Challenges *continued*

complete the process of successful reintegration that is initiated by effective institutional programs.

In some regions there continue to be operational practices that preclude or limit Aboriginal access to needed Elder support and spiritual practices. While these can be addressed on an ad hoc basis, their existence underlines the tenuous nature of progress in this sector of corrections.

**I recommend that:**

- **the Minister appoint a Deputy Commissioner Aboriginals specifically responsible for Aboriginal programming and liaison with Aboriginal communities, as a permanent voting member of all existing Senior Management Committees, to ensure an Aboriginal perspective and presence in CSC decision-making;**
- **the Minister initiate an evaluation of CSC's policies, procedures and evaluation tools to ensure that existing discriminatory barriers to the timely reintegration of Aboriginal offenders are identified and addressed. This review should be undertaken independent of CSC, with the full support and involvement of Aboriginal organizations, and report by March 31, 2005.**

## WOMEN OFFENDERS

### Past Challenges:

Madame Justice Arbour's Commission of Inquiry into the events at the Prison for Women was a very public and very inclusive process. The Commission's report, issued in April 1996, was a landmark for corrections in this country. Its findings and recommendations focussed our collective attention not only on the potential for Women's Corrections but also on the requirement for openness, fairness and accountability in all correctional operations.

The Correctional Service's response to Justice Arbour's report over the years has not been public or inclusive. The once clear vision for change has become clouded. The "final response plan," which was to detail the most effective means of achieving the objectives that underpin the report's recommendations, has never been produced. Because of the situation this Office has recommended in successive annual reports that the CSC publicly and thoroughly revisit the Arbour recommendations.

The Service's response to our representations has been consistent: "CSC took decisive action on all 87 recommendations/sub-recommendations, with few exceptions. These recommendations were implemented as written or accepted in principle. Four (4) recommendations/sub-recommendations were referred to Justice Canada for review."

The Canadian Human Rights Commission released a report in January 2004 entitled *Protecting Their Rights – A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. The areas of concern identified and the recommendations made by the Human Rights Commission are for the most part consistent with those of Justice Arbour. The same can be said for the reports issued by the Auditor General (April 2003) and the Standing Committee on Public Accounts (November 2003).

The continued currency of these areas of concern raises serious questions about the CSC's claim to having taken "decisive action" on the Arbour

recommendations and speaks directly to our recommendations concerning the requirements for a thorough public revisiting of Justice Arbour's report.

### Positive Developments

The recent opening of the fifth regional facility for women offenders in Abbotsford, British Columbia. Not only will this facility allow minimum- and medium-security women from the Pacific Region to remain close to their families and communities, it will also give these women access to federal correctional programs designed to assist them in safely reintegrating into society at the earliest points in their sentences.

The CSC closed one of its two remaining maximum security women's units that was "temporarily" located in a men's prison. This is the second of three such special units to have been closed over the last 18 months.

In May 2003, the CSC opened a new secure unit for women at l'Établissement Joliette, thereby providing a maximum security facility for francophone women. Prior to this they were being housed outside of the Quebec region.

CSC successfully held a national consultation on community initiatives for women offenders in June 2003. Several key stakeholders were invited to provide expert advice on how best to provide services to women serving their sentences in the community. This national meeting was followed by a series of regional consultations, and will conclude with a specialized consultation targeted towards meeting the needs of Aboriginal women offenders. This Office looks forward to the action plans resulting from these consultations.

The use of force in women's institutions has dramatically changed for the positive. This Office has noted fewer incidents of use of force, and in general, a greater compliance with the policy governing such interventions.

### Ongoing Challenges

Secure units at the Ontario and British Columbia facilities for women are not yet open. Pending this, inmates classified as maximum security will have to be housed in other provinces or, in the case of British Columbia, in provincial institutions.

The CSC's non-action on Arbour-related issues, beyond that detailed above, continues to raise concerns. For example, the recommendations related to sanctions "for correctional interference with the integrity of the sentence" were referred to the Department of Justice in 1996 for review. To date a final decision has not been rendered. I refer readers as well to the section of this report entitled Cross-Gender Staffing for a further example of delay and non-action.

This Office continues to have serious concerns about CSC's use of a security classification system that was designed for men. Our own experience and, most recently, the report of the Canadian Human Rights Commission indicate that this system does not recognize the unique and individual needs of female offenders. As such, it often results in higher than necessary security classifications, particularly for minority group women and those living with disabilities.

**I recommend that:**

- the Minister mandate the early publication of a “final response plan” on Madame Justice Arbour’s recommendations, followed by a consultation process involving all interested stakeholders;
- the Department provide a public response to the Canadian Human Rights Commission recommendations by October 31, 2004.

## ALLEGATIONS OF HARASSMENT AND STAFF MISCONDUCT

18

### Past Challenges:

In the eyes of many offenders, complaining about the conduct of CSC staff involves considerable personal risk without the expectation that the complaint will be investigated in a timely, fair and effective fashion. Whether or not this perception is justified, it stands to reason that redress will be effective only if offenders have confidence that complaints, often on very sensitive matters, will be dealt with in an unbiased way and without retaliation.

Last year we rather reluctantly concurred with the CSC’s view that harassment investigations could meet these criteria without automatically involving participation by outside investigators. Accordingly, we agreed that these investigations be undertaken under a specialized offender grievance review process that would mirror the central elements of the CSC employee grievance policy. To us the most important elements are:

- early and confidential transmission of the complaint to the Institutional Head for decision on whether harassment has occurred;

- a thorough record of the Institutional Head’s decision and the basis for it;
- if harassment is indicated, timely conduct of the investigation by specially-trained staff from outside the institution;
- a complete opportunity for the complainant to receive and respond to the draft investigation response before it is finalized;
- opportunity for the complainant to grieve any adverse outcome as a priority matter.

As well, we believed that offenders should be assured of this Office’s involvement, so we recommended that we be apprised of all complaints and outcomes of investigations.

With respect to complaints of staff misconduct we believed that the process should involve analogous elements of fairness, timeliness, independence, thoroughness and expertise, as well as the guarantee of prompt access to police where the offender believes criminal conduct has occurred.

### Positive Developments

CSC has revised its offender complaints and grievances procedures to incorporate the principles that this Office advocated. It has provided initial training to staff. Based on its monitoring of compliance with the new policy, it has produced two tools which should assist in the effective implementation of the procedures. CSC indicates that these will permit detailed tracking of the progress of individual complaints and will provide clear rules to ensure compliance with the policy.

### Ongoing Challenges

A particular concern that has arisen lately, however, is the availability of specialized training for staff who will be conducting harassment investigations under the new procedures.

**Positive Developments** *continued*

The Service has agreed to give priority to this issue and to enforce complete compliance with the process by October 31, 2004.

**Ongoing Challenges** *continued***I recommend that:**

- **CSC closely monitor the implementation of the revised process for addressing harassment and staff misconduct complaints and initiate an evaluation of its effectiveness, to be completed by March 2005.**

## MONITORING AND INVESTIGATION OF INMATE INJURY AND INSTITUTIONAL VIOLENCE

### Past Challenges:

This year I have combined our review and investigations of inmate injuries and institutional violence, because our concerns and the potential resolution of problems in these two areas are closely integrated.

The timeliness of investigations under s.19 of the *Corrections and Conditional Release Act* into serious injury or death of offenders has been an issue. Of further concern was the ability of CSC to identify injuries that did not fit into the definition of “serious bodily injury” and to demonstrate that these incidents were being appropriately reviewed.

Where information is being gathered, through means such as “climate indicators” a clear analysis of the

causes of violence and injuries continues to be lacking. The report on Health Care Needs Assessment of Federal Inmates in Canada (April 2004) noted that “injuries were common among inmates” with a significant number of the injuries “due to altercations or were self-inflicted”. The report further identifies within the section on Areas of Further Knowledge Development the requirement to have accurate “rates of inmate injuries and contributing factor”.

The absence of this information and the delays in the investigative process hinders management’s ability to reasonably review and take appropriate decisions in limiting inmate injuries and institutional violence.

### Positive Developments

CSC has adopted a new set of timelines for its investigations which should shorten the duration of the process.

CSC has undertaken to provide a summary report on investigations involving death or serious bodily injuries, including the corrective actions taken.

CSC has agreed to focus its investigations on “major injuries,” which it has more clearly

### Ongoing Challenges

The timeliness and coordination of CSC’s investigative process requires the on-going attention of senior management.

Despite anticipated improvements in its recording and analysis procedures, CSC has yet to implement our recommended quarterly reports to the Executive Committee on inmate injuries and institutional violence.



*Positive Developments continued*

identified as a category. CSC will also improve the incident reporting system to ensure that injury data consistently capture all major injuries and their causes.

*Ongoing Challenges continued***I recommend that:**

- **the CSC's investigation process, by the end of 2004, be compliant with the new timelines;**
- **all investigative reports into inmate death or major injury be reviewed nationally, and a summary report of the recommendations and corrective actions taken be produced quarterly.**

## DOUBLE BUNKING

### Past Challenges:

Problems of personal safety, institutional security and effective supervision necessarily arise from double occupancy of cells. CSC has long maintained its intention to eliminate the practice but states that population pressures and financial constraints have rendered this impossible to date. The Service underlines, however, that double bunking is permitted only where absolutely necessary and with the Commissioner's permission (reviewed annually). Moreover, it is not permitted in segregation and mental health units, where the dangers of incidents are more pronounced.

We have taken the view that CSC should at least prohibit double bunking in special units that are neither segregation nor those housing inmates in normal association (the general population). A particular concern has been reception units, where offenders are assessed after their initial admission to penitentiaries and where safety and security risks may not be immediately known to supervising staff.

### Positive Developments

CSC confirms that double bunking is not permitted in hospitals or mental health units (or analogous units housing inmates who may act out or be otherwise stressed by having a cellmate). The level of double bunking declined from April 2001 (11.1 percent) to October 2001 (8.6 percent), after which it increased to 12.1 percent in July 2002. Since then, the level has decreased to 6.3 percent in January 2004, its lowest level in three years. CSC has revised its semi-annual procedure for seeking the Commissioner's permission to double

### Ongoing Challenges

The problem persists in reception units in four regions, where at least 148 cells are authorised for double bunking. Millhaven Institution's assessment unit, for example, is expected to include 64 double-bunked cells for the coming year. We hope that the new semi-annual procedures will permit this situation to be addressed in a timely and reasonable manner. We note as well that double bunking occurs in the Temporary Detention Unit in Pacific Region, where offenders are housed when they are



**Positive Developments** *continued*

bunk certain units. Henceforth this will be based not only on numerical needs for space, but also on an assessment of any risk factors and group needs that might preclude double bunking, given the nature of the unit in question.

**Ongoing Challenges** *continued*

returned to custody from unsuccessful conditional releases. It is reasonable to anticipate that security concerns may have arisen during the releases that might not be known to staff in these units.

**I recommend that CSC take immediate steps to eliminate double bunking in reception and other non-general population units by the end of fiscal 2004–2005.**

## USE OF FORCE

### Past Challenges:

While we have acknowledged significant improvements in the quality and procedural compliance of CSC's reviews of use of force, we continued to have concerns about its effectiveness in gathering and analyzing use-of-force data that would assist management in making systemic change. In

particular we awaited the contribution of Health Services to the analytical function. Finally, we maintained our view that allegations of excessive use of force should be investigated independently by experts from outside CSC.

**Positive Developments**

There has continued to be a significant improvement in CSC's monitoring and review of use of force.

CSC's capacity to gather relevant data and provide comparative analysis regarding use of force between institutions and regions has improved.

Availability of this data has also resulted in a number of specific initiatives directed at particular institutional and regional shortfalls.

CSC has implemented a set of guidelines relating to the role of Health Care in use-of-force incidents.

**Ongoing Challenges**

This Office has spoken with the Service regarding our general satisfaction with the improved quality of use force interventions and the review process in most regions. We remain concerned with recurring problems in the Quebec region with regard to both of these areas.

In response to concerns generated by both this Office and the Security Division at National Headquarters, the Regional Deputy Commissioner has recently developed a comprehensive plan of action with accountability measures to address the concerns identified. We will continue to monitor the impact of the action plan closely and in conjunction with both the Regional and National Headquarters over the course of the next reporting period.

**I recommend that:**

- **CSC implement the recent action plan developed by the Quebec region to ensure compliance with use of force procedures before the end of 2004;**
- **the quarterly reports currently produced on use of force interventions provide more in-depth analyses of the numerical data by the end of 2004;**
- **CSC maintain a record of those initiatives implemented to correct systemic shortfalls identified through the analysis of both use of force data and the actual reviews.**

**STRIP SEARCH POLICY****Past Challenges:**

Last year this Office expressed concern with the preliminary results of the Correctional Service's review of its policies on strip searches. In our view the policy did not address the issues that we had raised in 1999 and onwards. We continued to express particular concern about the undue use of

force (as opposed to alternative search methods) to effect strip searches and the improper grounds that had been used to justify exceptional strip searches of whole living units or institutions under s.53 of the CCRA.

**Positive Developments**

CSC is about to publish a searching reference manual for use by staff carrying out all searches, including strip searches. It is also supporting policy by introducing a new form to be used for the authorisation, review and monitoring of exceptional and emergency strip searches. These changes will be effected by October 15, 2004. CSC undertakes that the documents will address all the concerns we have raised and will preclude the repetition of events such as those on which we sought mediation.

**Ongoing Challenges**

Assuming that the manual meets our concerns, its implementation and accountability for compliance with it will bear ongoing monitoring and review by CSC and by this Office. Principally, there must be broad enough publication that all stakeholders inside institutions and in the community are able to make reference to the manual.

**I recommend that:**

- **CSC publish its materials related to strip searches by October 15, 2004;**
- **CSC develop measures to ensure compliance with the rules set out therein.**

## INMATE FINANCES

### Past Challenges:

It has been several years since inmate allowances for work and program participation have been increased in keeping with the cost of living. This has reduced their ability to purchase items inside institutions, which we believe has given rise to the violence that can accompany competition for scarce commodities in prison. Moreover, it has adversely affected the amount of money that offenders can use to facilitate their integration into society during the initial phase of release.

CSC undertook to review the adequacy of inmate finances and to consult this Office, offenders and

other stakeholders in the process. It maintained, however, that no increase in funding for inmate allowances was anticipated.

A specific concern has been the substantial fees inmates must pay to communicate with family and other significant persons in the community under the Millennium telephone system. It has been seven years since CSC undertook to modify this system so as to reduce its financial burden. Protracted litigation among service providers has prompted CSC to delay implementation of these innovations.

#### Positive Developments

A broadly-based consultation is taking place on offender management of finances. Participants include this Office, offenders and community advocate organizations. The study will seek to identify new means of providing inmates with access to funds and with direct access to goods and services in return for their participation in work and programs. Offenders' skills and attitudes with respect to sound management of their own resources will be an additional focus. CSC has underlined that it intends to address the two problems cited above that result from inadequate funds.

#### Ongoing Challenges

Pending improvements that are occasioned by CSC's actions, offenders and their families will continue to incur the adverse effects of inadequate funds. The challenge will be to ensure that improvements are identified and effected as soon as possible.

In some regions, a lack of employment has exacerbated inmates' lack of access to funds. As well, there has been a general reduction in pay levels that inmates receive for participation in work and other programs. This trend is very disturbing. Although litigation on the Millennium System is complete, delays in implementing a fairer system persist.

#### I recommend that:

- **CSC immediately review inmate pay levels, access to employment, availability of funds on conditional release, and produce action plans to address these issues before December 31, 2004;**
- **a telephone system with rates comparable to those in the community be in place by March 31, 2005.**

## CASE PREPARATION AND ACCESS TO PROGRAMS

### Past Challenges:

The areas of concern associated with this issue have focussed on the ability of CSC to provide responsive programming and prepare offender cases in a thorough and timely fashion for conditional release consideration.

The Office's previous recommendations in an attempt to begin addressing this issue have called for a review in the following areas:

- current program capacity, the extent of waiting lists and measures required to address deficiencies,

- the specific reasons for the high number of waivers, postponements and adjournments of National Parole Board hearings,
- the causes for the dramatic decline in unescorted temporary absence and work release programming, and
- the factors impacting on the continuing disadvantaged position of Aboriginal offenders in terms of timely conditional release.

24

#### Positive Developments

CSC has conducted a review of the current availability of programmes, the extent of the waiting lists and the accuracy of their existing data base in reasonably identifying timeliness of access to programmes. This is a useful first step in developing a system which ensures timely program access.

A joint working group, with representatives from this Office, the Correctional Service and the National Parole Board was convened in July of 2003. The mandate of the working group was to identify factors that contribute to cases being delayed in going to the National Parole Board and identify ways of reducing this pattern. The working group report is expected to be finalized in July of 2004.

#### Ongoing Challenges

The timely provision of inmate programming continues to be a problem.

There is overcrowding at the medium security levels while there are significant vacancies at the minimum security levels.

Delays in the preparation of cases for conditional release consideration remain unreasonably high.

Work release and unescorted temporary absence programming, particularly at the medium security level, continue to decline.

Aboriginal offenders remain at a disadvantaged position in terms of timely conditional release.

**I propose to meet with the Chair of the National Parole Board and the Commissioner, on completion of the joint working group's report to identify what specific actions need to be taken to address these issues.**

## TRANSFER OF OFFENDERS

### Past Challenges:

CSC provided us with preliminary results of its audit of the transfer process. We found that these did not address two factors:

- the continuing presence of large numbers of inmates in institutions classified at higher security than the inmates' individual classifications;

- the quality of data used for monitoring the transfer process

### Positive Developments

CSC has produced a management control framework that will permit monitoring of institutions' compliance with all rules involved in law and policy on transfers.

A system is now in place to permit senior management across the country to work with applicable staff and to effect transfer decisions for inmates in long-term segregation situations. As a result, spaces will be cleared to permit relocation of over-classified inmates.

### Ongoing Challenges

There remain an unacceptably high number of inmates in institutions that do not correspond to their security classification and, specifically, in segregation awaiting transfer.

As well, we have voiced our concerns on two specific problems:

- delays in actually effecting transfers after they have been approved;
- delayed response by potential receiving regions to requests for inter-regional transfers.

CSC has undertaken to address these issues in the near future.

**I recommend that CSC aim to achieve the following measurable results by the end of 2004:**

- **reduction to one week of the period during which inmates must await implementation of approved transfers;**
- **complete compliance with the statutory period of 60 days between an inmate's transfer request and the resulting decision, even in the case of inter-regional transfers;**
- **a 50 percent reduction in the number of inmates who are over-classified and who are in segregation for more than 60 days pending achievement of transfers.**

## INMATE GRIEVANCE PROCEDURES

### Past Challenges:

For several years we have underlined two major concerns on how CSC fulfills its obligations regarding the offender redress systems:

- ongoing significant delays in responding to grievances, especially at the Regional and National Headquarters levels;

- failure to use grievance results as a management tool by producing quarterly reports, as CSC specifically promised to issue on aboriginal, women offenders and health service issues.

### Positive Developments

CSC has produced a new staff manual on complaints and grievances that incorporates many, but not all, of the suggestions OCI made when consulted.

Significant improvements have been made to procedures governing complaints of harassment and staff misconduct.

CSC has applied extra resources in an attempt to clear backlogs at the regional and national headquarters levels.

New information technology applications have been developed to permit the regular monitoring of frequently shifting indicators on important aspects of the grievance process. These include analysts' caseloads, the designation of grievances as high priority and the timing of corrective action.

CSC and OCI have sponsored two very promising mediations (facilitated discussions) on systemic issues. We plan to organize others in 2005.

### Ongoing Challenges

Timeliness remains a significant issue. It will be necessary for CSC to recognize that this is a problem requiring accountable managerial attention. Identifying and allocating multiyear funding to address timeliness issues must be made a priority.

While some quarterly reports are beginning to appear, it is unclear whether CSC management is using them to identify the circumstances leading to upheld grievances and rectifying these areas of concern.

CSC has agreed to discuss the issue of how complaints and grievances are analyzed, particularly from an evidentiary perspective. This is based on our preliminary view that the identification of relevant information and the assessment of its probative value may warrant a closer review.

The promising system of assigning institutional mediators to attempt early, informal resolution of complaints, which appeared to be making progress in Alberta and Quebec facilities, appears to be losing momentum. Managerial and resourcing support of these positions seems to have dropped off considerably. This is unfortunate, as the approach goes a long way towards providing effective redress and avoiding unnecessary use of more costly formal procedures.

**I recommend that:**

- **CSC make timeliness of grievance responses a priority for all senior managers with any involvement in the process:**
- **before the end of 2004, CSC identify and provide the human resources necessary to assure timeliness on an ongoing basis;**
- **CSC ensure that the publication of all previously agreed-upon quarterly reports on grievances be instituted and that these reports be considered part of the agenda of all institutional and regional management committee meetings, as well as of CSC Executive Management Committees.**

## YOUNGER OFFENDERS

### Past Challenges:

Although a minimal number of minors are admitted to penitentiaries under the former *Young Offenders Act* or the current *Youth Criminal Justice Act*, the position of this Office has been that persons under 18 years old should never be so imprisoned in federal penitentiaries. We recommended that CSC take this position whenever the courts sought its advice on whether to place a minor in a federal institution. Moreover, we have held the view that CSC should provide special services and programs to inmates under the age of 21. These offenders, numbering more than 400 at any given time, very often find themselves in disadvantaged situations—segregation, abuse by other inmates, low access to and success in programming, gang affiliations, and delayed conditional release.

CSC stated that it was not prepared to adopt a position that minors should never be admitted to penitentiaries, but that it would provide staff appearing before the Courts with appropriate information on anticipated concerns in penitentiaries.

In June 2003 CSC held a meeting on young offenders that examined, among other items, whether these inmates should be provided with programs tailored to their specific needs. As well, there was to be a follow-up meeting on ensuring that the CSC was in compliance with the new *Youth Criminal Justice Act*.

#### Positive Developments

CSC has agreed to research and document the adverse effects of federal incarceration on inmates under 21 as compared to others. Such effects would relate to elements such as:

- delays in achieving release
- access to/completion of programs
- disciplinary offences
- time in segregation
- involvement in major incidents
- injuries
- gang involvement

#### Ongoing Challenges

CSC continues not to recognize the need to provide special housing, programming or other services for younger offenders. Their position is that programs available to all inmates can be adapted to meet the needs of younger offenders.

We continue to await comprehensive follow-up to last June's meeting, particularly as this involves interaction with other jurisdictions on how to meet younger offenders' needs.



**Positive Developments** *continued*

Based on this information CSC will review whether any special programs, services or placements should be offered to younger offenders. Herein CSC will work closely with an inter-jurisdictional group of corrections officials that was formed at the June 2003 meeting.

**Ongoing Challenges** *continued*

The challenge is to provide a correctional environment that is safe, humane and offers relevant programming opportunities to ensure that younger offenders are speedily and successfully reintegrated into society.

**I recommend that:**

- **CSC identify the obstacles to successful reintegration for younger offenders and develop action plans to meet identified problems before the end of 2004;**
- **these action plans be implemented by March 31, 2005;**
- **CSC work closely with representatives of other jurisdictions to determine the appropriate venues for provision of needed placements and programs and the best practices for dealing with younger offenders.**

## CSC POLICY ON CLASSIFICATION OF OFFENDERS SERVING LIFE SENTENCES

### Past Challenges:

Known colloquially as “the two-year rule,” this CSC policy amends the Custody Rating Scale so that newly admitted offenders serving life sentences will automatically serve at least their first two years in a maximum-security facility.

This is contrary to the *Corrections and Conditional Release Act* and has exacerbated problems of overcrowding and conflict. Moreover, CSC has failed to show its willingness and capacity to override placement decisions in deserving cases without delay. Again in 2003–2004 we encountered numerous examples where inmates who are clearly unsuitable for maximum security placement have either been refused relief or have encountered excessive delays in achieving reasonable reconsideration of their placement.

This issue has been an ongoing source of fundamental dispute between this Office and the Correctional Service since the implementation of the policy in February of 2001. With the support of a number of community stakeholders we have consistently called for the repeal of this policy. The Canadian Human Rights Commission in its January 2004 Report added its voice to this call:

It is recommended that Policy Bulletin No. 107, which requires offenders, serving a minimum life sentence for first or second degree murder be classified as maximum security for at least the first two years of federal incarceration, be rescinded immediately in favour of a fair and balanced individual assessment.<sup>1</sup>

<sup>1</sup> Canadian Human Rights Commission. 2004. *Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, Special Report, p. 33, January.

### Positive Developments

CSC is implementing a process that will permit a consistent and timely review of classification decisions, both maintaining and recommending exemption from the two-year policy.

### Ongoing Challenges

The rule remains contrary to law, in our view, and continues to produce the population management problems that arise from unnecessary placement of some inmates in higher security settings than their circumstances require.

Assuming the policy is not repealed, the new review procedure must be implemented in a manner that will ensure compliance at an early date.

### I recommend that:

- **the policy concerning the security classification of offenders serving life sentences be repealed;**
- **the Minister initiate an immediate review on both the legality of the policy and its impact on individual offenders over the preceeding three years;**
- **in the interim, CSC ensure that a revised review procedure for exemptions to maximum security classifications is implemented by August 31, 2004.**

## CONFIDENTIALITY OF HEALTH INFORMATION

### Past Challenges:

For several years this Office has participated actively in CSC's attempt to promulgate a policy that would address the need to protect the confidentiality of health services information. CSC's initial disposition of this matter underlined the distinction between information collected for treatment purposes and that collected to assess risk. In the former case the information would not normally be disclosed, unless it was necessary to do so to protect the offender or another person, or if a statutory obligation required disclosure. In the latter case the

inmate was deemed to have no right to confidentiality as s/he would have been informed of the non-medical purpose of the collection of information before s/he provided it and would have confirmed this in writing. In the past year, however, the Service has apparently revised its position, maintaining that all information on the health services file is the property of CSC and will be disclosed if the CCRA requires this for risk assessment or supervision purposes.

### Ongoing Challenges:

We continue to have grave concerns regarding the proper control of health information provided by offenders. If they cannot be assured that this information will only be disclosed with their consent, the willingness of other inmates to seek treatment and to be candid with health care providers could be affected.

Our most recent discussions with Health Services Branch officials have not led to progress. They appear disinclined to adopt any new measures that would enhance protection of health information beyond the measures currently identified in policy. In particular, CSC maintains that it would hesitate to provide new protections where these would

require additional resources or would complicate current procedures involving the use of psychological information in case management.

In our view this conflicts with the principle that medical privacy is a fundamental entitlement that

should be violated only by express, informed consent or when demonstrably justified objectives, such as public safety, necessitate exceptions. Administrative convenience and cost are interests that cannot stand in the way of the basic right to privacy.

**I recommend that CSC implement a system that will:**

- **place all health information, irrespective of the purpose of its collection, under the custody and control of health service professionals;**
- **require express written consent of offenders before they provide health information to CSC staff for risk-assessment purposes;**
- **prohibit disclosure of health information without the offender's consent except where the disclosure is necessary to prevent serious, immediate harm to an identified person ( the same standard that applies to the general public);**
- **provide offenders the opportunity to be apprised of health information that CSC intends to disclose and the opportunity to make representations about the disclosure;**
- **provide offenders with a description of all health information that is disclosed without their consent.**

## INFECTIOUS DISEASES

### Past Challenges:

In 1996, the Expert Committee on Aids in Prison (ECAP), which was established by CSC, reported on the increasing incidence of infectious diseases. ECAP found the causes of disease to include the use and sharing of contaminated drug paraphernalia and, to some extent, unsafe tattooing practices. By 2003 most of the Committee's recommendations for education, treatment and harm-reduction had been implemented. No progress had been made, however, on the recommendations for setting up authorised safe tattooing locations in institutions and for making clean needles available to inmates for exchange. This Office has repeatedly recommended full implementation of the ECAP recommendations.

Clear issues arise from the fact that non-medical drug use is illegal and a definite security concern within institutions. Moreover, CSC staff voiced concerns that injection and tattooing instruments could be used as weapons.

ECAP's view was that the dangers of disease transmission outweighed legal and security concerns. CSC's Health Services Branch essentially supports this view, as does the 2004 Report on Offender Health of the Canadian Public Health Association<sup>2</sup> and the 2004 Report of the Canadian Human Rights Commission on federally sentenced women<sup>3</sup>.

<sup>2</sup> Canadian Public Health Association. 2004. "A Health Care Needs Assessment of Federal Inmates in Canada", *Canadian Journal of Public Health*, Volume 95, Supplement 1, March/April.

<sup>3</sup> Canadian Human Rights Commission. 2004. *Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, Special Report, January.

### Positive Developments

CSC's Methadone Maintenance Treatment Program has been functioning relatively smoothly and effectively. While I would prefer that access to the program be provided to a greater number of inmates, I commend CSC for this initiative.

On a further positive note, CSC Health Services Branch will soon implement a pilot project to provide access to safe tattooing in a manner partially paid for by inmates. Numerous features of the plan address safety concerns.

### Ongoing Challenges

There remains no movement on needle exchanges despite ongoing indications, both in Canada and abroad, that underline the health advantages of such programs.

The essential facts remain that:

- interdiction of drugs and drug paraphernalia, albeit an extremely important objective, has not succeeded in eliminating illicit drug use;
- the prohibition of drug injection, and the resulting clandestine use of scarce injection tools, have resulted in great harm.

### I recommend that:

- **CSC introduce, before March 31, 2005, a safe needle exchange program based on thorough consultation with medical and security experts, offenders, CSC staff and concerned community organizations.**
- **failing a positive response from CSC, the Minister direct the introduction of such a program.**

## USE OF ISOLATION IN MENTAL HEALTH TREATMENT

### Past Challenges:

We were concerned that the use of isolation for treatment purposes (behaviour modification) might be occurring without proper regard for the patient's right to consent to such procedures in full

knowledge of the consequences of the refusal. As well, we sought assurances that the use of isolation complies with the rules governing administrative segregation where applicable.

### Ongoing Challenges:

CSC has implemented a protocol that addresses our previous concerns in this area. All inmate patients

(and their representatives) and health services staff are informed of the terms of the protocol.

## INMATE ACCESS TO COMPUTERS

### Past Challenges:

Last year, based upon its review of reports on a series of incidents involving misuse of in-cell computers, CSC decided to prohibit the further introduction of computers to individual cells. The Service recognized the importance of inmate access to computers, however, and stated its intention to make computers in designated areas outside cells available for inmate use. These areas would be supervised and would make use of equipment that was secure from misuse.

Inmates, this Office and a number of community stakeholders voiced concerns about the necessity for the measures taken and the serious impact of reducing access to computers on offender programs, reintegration and personal uses (e.g. litigation or recreation). Providing sufficient outside-of-cell computers has proved extremely problematic for CSC. Far fewer computers are currently available than would be necessary for adequate inmate access.

32

### Positive Developments

At the behest of a number of stakeholders the Senior Deputy Commissioner mandated a facilitated discussion aimed at maximizing inmate access to computers while maintaining security. The discussion took place at Kingston Penitentiary on March 26, 2004. Participants included senior staff from CSC National Headquarters, representatives of prisoner advocacy organizations, institutional managers and staff, our own General Counsel and, most importantly, inmates from Kingston Penitentiary, Joliette Institution for Women and Matsqui Institution.

The discussion resulted in the formation of a working group, composed of representatives from all the sectors at the March 26 meeting. The mandate of this group is to provide tangible, early solutions that will permit broad access to computers for all inmates in a safe and secure fashion.

It is expected that the group will submit recommendations on an ongoing basis and that solutions will be implemented during the current fiscal year.

### Ongoing Challenges

Optimizing access to computers pending new developments arising from the facilitated discussion will be difficult.

CSC has to monitor any tendencies to “overzealous” supervision and confiscation of currently existing in-cell computers.

The supply of computers for centralized use shows no sign of growing sufficiently to meet needs, as more and more offenders enter the system without access to their own computer. Pressures on the current use of institutional computers for programs and employment will increase.

### I recommend that:

- the solutions proposed by the working group be prioritized for implementation, so that the matter may be substantially resolved in the current fiscal year
- these solutions include providing effective access to all inmates who wish to acquire computer skills and to benefit from the information technology of the 21st century.

## THE ION SCAN AND OTHER NON-INTRUSIVE SEARCHES OF VISITORS

### Past Challenges:

This Office had received many complaints from inmates and visitors about inaccurate results of visitor ion scan testing. As well, great concerns were expressed that visits were being restricted or suspended based purely on the results of the test—without any corroborating information to indicate that a visitor might introduce drugs. CSC agreed that the matter deserved review, at least with respect to the fairness of ion scan procedures and the adequacy of risk assessments on which decisions to restrict visits were being made.

CSC and this Office agreed to hold a facilitated discussion of the issue. This discussion was held at Matsqui Institution on October 14-15, 2003. The discussion was attended by a wide range of CSC managers and staff from the institution and from National Headquarters, as well as a representative from this Office, experts from the company supplying the ion scan technology, and inmates. The discussion centred on the case of a Matsqui inmate and his spouse whose problems with the system had given rise to a third-level grievance.

### Positive Developments

As a result of the discussion the Correctional Service agreed to promulgate new policy guidelines to clarify how ion scan testing and resulting threat risk assessments and visit decisions should be conducted. The procedure was based in great part on a document that inmates at Matsqui had drafted to ensure fairness and accuracy in arriving at visit decisions. Under the procedures any restrictions on visits would be proportionate to the degree of risk disclosed by a complete review of the circumstances, including the views of the visitor involved.

CSC also agreed to review the effectiveness of the ion scan and of all other forms of non-intrusive searches—principally drug dogs and metal detectors. This will take place in the coming year and our Office is to be consulted on the terms of reference.

### Ongoing Challenges

The promulgation of the new procedures has been delayed because CSC wishes to complete a thorough consultation process. Implementation is not anticipated before July 2005. We consider this an unnecessarily protracted process, given the consultation and planning that has already occurred.

In any event, once the policy is implemented, the challenge will become to ensure that all CSC staff comply substantially with the rules. My staff will monitor this process carefully and closely review any concerns raised by inmates and their visitors.

As to the evaluation of the effectiveness of non-intrusive searches, the key will be to ensure that such mechanisms disclose the reasonable belief that is the required basis for any decisions restricting visits. Moreover it will be necessary to demonstrate that the intrusion on personal privacy occasioned by these measures, and the expense of implementing them, produce commensurate results in restricting the flow of drugs into penitentiaries.

**I recommend that CSC implement its new ion scan procedures and conduct its review of the effectiveness of non-intrusive searches by the end of December 2004.**

