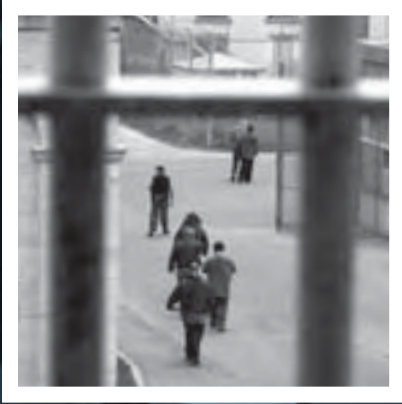




The Correctional Investigator  
Canada

L'Enquêteur correctionnel  
Canada

# Annual Report of the Office of the Correctional Investigator 2005-2006



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## THE PILLARS OF EFFECTIVE CORRECTIONS:

1. The absolute necessity of fostering a strong culture of human rights within the Correctional Service of Canada.
2. The need for correctional staff and senior managers to be accountable in their administration of law and policy.
3. The requirement to assist offenders to ensure their timely, safe reintegration into the community.





## CORRECTIONAL INVESTIGATOR'S INTRODUCTION

### *Work in corrections demands passion, commitment and optimism.*

Canadians are fortunate that the Correctional Service of Canada is staffed by individuals who overwhelmingly possess these characteristics. The men and women of the Correctional Service strive to conduct themselves with a high level of professionalism and competence.

Unfortunately, there are individual exceptions and systemic and structural challenges. Corrections is after all a human enterprise and there will be failures and mistakes.

My report, which reflects upon the problems of offenders, necessarily focuses upon the exceptions, failures and structural challenges.

In my last Annual Report 2004-05, I highlighted three pillars of sound correctional practice: the protection of human rights, the acceptance of accountability, and safe, supported, timely reintegration. Adherence to these basic principles is key to the Correctional Service meeting its two statutory obligations of safe, humane custody and assisting offenders, through rehabilitative programming and supervision, to return to their communities as law abiding citizens.

First, respecting and preserving fundamental human rights and freedoms should form the backbone of any correctional endeavour. The regular duties and functions of all correctional staff – such as use of force, searches, placements in segregation and transfers to higher security – can significantly impede and intrude upon

human rights. The Correctional Service has great authority over every single aspect of the lives of offenders. For this reason, the actions of the Correctional Service must comply with the rule of law and be consistent with human rights protections afforded by law. Through respecting the human rights of offenders, we as a society convey a strong message that everyone is to be treated with inherent respect and dignity regardless of his or her circumstance, race, social status, gender or religion.

Second, accountability is fundamental to our democratic system of government. Accountability and transparency in decision-making are central features of an effective correctional system. The Correctional Service must possess the means, strategies and methods for evaluating its performance, and be able to demonstrate to Parliament and Canadians the efficacy and fairness of its decisions. The corporate governance structure must be capable of preventing, detecting and rectifying violations of law and policy in a timely fashion. Accountability in corrections also means being responsive to the areas of concerns raised by offenders.

Finally, the Correctional Service's enabling statute, the *Corrections and Conditional Release Act*, builds upon the belief that successful rehabilitation and safe reintegration of offenders depend upon providing humane treatment and the least restrictive forms of custody and control, consistent with public safety. Successful, safe and timely reintegration is more likely to occur when rehabilitation programs, based on solid evidence, are provided early and through-

out the sentence. These programs might target mental health, anger management or substance abuse. Other programs, such as employment skills and education, must also be made available to offenders to better equip them for their eventual return to the community.

With the arrival this past year of a new Commissioner of Corrections, Correctional Service is going through a transition to new priorities to meet the demands of new leadership. Such a transition period provides a great opportunity for the Correctional Service to rejuvenate itself, and to look forward and seek new ways to achieve its goals and objectives.

However, looking to the future with optimism cannot be done without carefully reflecting upon the past history of the organization. For more than a decade, the Correctional Service has been the subject of many reviews and recommendations on how best to address chronic concerns. Looking forward should be done mindful of the past, as history in federal corrections is filled with repeated missed opportunities to address systemic issues.

The Correctional Service is a large, complex and decentralized organization. It operates within an environment which imposes competing demands and provides little tolerance for failure. Limited resources continue to be stretched ever more thinly and “doing more with less” has become the required standard operating procedure. This reality, no matter how challenging, does not excuse the Correctional Service for operating at odds with its legal and policy framework. If resources are the problem and operational demands make significant reallocation impossible, then new resources must be obtained. The focus must always be on doing what is right and respecting the three pillars described above.

By and large, despite considerable effort, there has not been adequate progress on the eight recommendations in last year’s Annual Report. Canadians should take notice as this lack of progress has clear repercussions on public safety. The Canadian public is not well served when the Correctional Service does not do what it is required to do to assist the rehabilitation of offenders.

This inadequate response often stems from structural problems which are resistant to change. Many of the issues the Correctional Service struggles with originate well outside of their institutions. Even so, while the Correctional Service is not responsible for the social conditions and policy decisions which shape its offender population, it is responsible for operating in compliance with the law.

Perhaps, to some degree, recommendations of the past have not focused sufficiently on outcomes, causing the Correctional Service to respond to those recommendations in a bureaucratic manner. I believe that too often the rationales for recommendations are lost in a sea of action plans, strategic plans, working groups and task forces. Over the years, too much effort has been invested in bureaucratic processes with little or no change in “outcomes.”

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As an ombudsman, it is my role to review offender complaints and comment on compliance and fairness issues – it is not my role to direct the Correctional Service on how to best manage itself. As an independent ombudsman office which has the benefit of looking objectively at problem areas, my recommendations directed to the Correctional Service should be designed to enhance accountability of Correctional Service managers and staff to ensure the safe, humane and lawfully administered custody and supervision of offenders.

Therefore, in this year’s Annual Report 2005-06, I will make recommendations which largely focus on improving “outcomes.” In this way, the rationales for my recommendations will not be lost. Hopefully the Correctional Service will respond by demonstrating its commitment to address systemic issues by improving performance on a set of key “outcomes” related to the specifics of the issues identified.

In November 2005, the Correctional Service announced its five new priorities: community transition; institutional safety and security; Aboriginal offenders; mental health; and, strengthening management practices. These priorities are of great interest to this Office, and we are pleased to see that the Correctional Service is in the process of prioritizing its many challenges and identifying measurable outcomes. We are hopeful that the focus will eventually achieve some concrete and significant results that will translate into effectively addressing these priority areas.

By the time this report is tabled before Parliament in the fall of 2006, I will have been Canada’s federal prison ombudsman for two and a half years – exactly halfway through my five-year term. This is, therefore, an opportune time for me to reflect on the effectiveness of my Office in fulfilling its mandate.

Since my appointment as Correctional Investigator, it has become abundantly clear that the key strength of this Office is its ability to address individual offender complaints at the institutional level. The dedication and professionalism of those involved in investigations and resolution of complaints are what makes this Office an important and effective organization. Our independence, paired with fair and professional investigative staff and managers, are key components of a productive ombudsman office. It is important to note that more often than not, Correctional Service staff and managers at the institutional level continue to be responsive to our representations and are, therefore, partners in our success.

Unfortunately, it has also become equally clear that the major weakness of this Office is its limited ability to cause the Correctional Service to reasonably address systemic issues and to ensure that its operations fully comply with its legislative and policy framework. This Office is, therefore, destined to deal with the same issues year after year, and has been unable to break this cycle and prevent complaints from emerging in the first place. Interestingly, the Correctional Service's internal grievance system is caught in the same unproductive cycle, responding to thousands of similar complaints and grievances year after year with limited ability to fix systemic issues that are the root causes of offender complaints.

The obvious concern with this pattern is the absence of sustained improvement. The list of unresolved issues that continue to plague the Correctional Service's compliance with its legal and policy framework includes:

- the Correctional Service has failed to demonstrate that it meets its statutory obligation to provide essential mental health care and reasonable access to non-essential mental health care in accordance to "professionally accepted standards." Over the last decade, the number of mentally ill offenders has more than doubled, yet the level of mental health services within its institutions has remained the same or diminished;
- the Correctional Service continues to provide physical health care services in facilities that have not been accredited and have not demonstrated compliance with "professionally accepted standards";
- despite the undeniable recognition of the benefits of harm reduction initiatives, a needle exchange program has yet to be introduced to curtail the spread of infectious diseases such as Hepatitis C and HIV within and outside the penitentiary walls;
- the Correctional Service has yet to establish a consistent "procedure for fairly and expeditiously resolving offenders'

grievances." This Office has raised the inadequacy of the Correctional Service's grievance system in every Annual Report since 1987. The net effect is that the current procedure remains non-compliant with legislative and policy requirements;

- the Correctional Service has failed to fully implement its harassment policy. In spite of the recommendation of Madame Justice Louise Arbour<sup>1</sup> a decade ago on the immediate necessity of implementing a harassment policy to protect offenders, the Correctional Service is still unable to comply with the provisions of its "new" harassment policy implemented almost three years ago;
- I have repeatedly recommended rescinding the policy which requires that federally sentenced 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. The policy, which is contrary to all other classification policy, has been in place since 2001, and hundreds of offenders have now been unjustifiably (and at great financial cost) over-classified<sup>2</sup> as a result;
- the Correctional Service continues to rely on risk assessment tools that have been repeatedly found to over-classify women and Aboriginal offenders. Since concerns expressed in 1996 by Madame Justice Arbour, numerous subsequent observers have determined that the tools used by the Correctional Service should not be used. Until such time as new tools are developed, Aboriginal and women offenders continue to be unjustifiably over-classified and hence discriminated against;
- many offenders, often mentally ill, increasingly serve a significant part of their penitentiary sentence in administrative segregation. Since the Arbour Report of 1996, several internal and external reports have advocated independent adjudication of administrative segregation decisions to achieve legal compliance. After 10 years of recommendations, the Correctional Service continues to argue, without supporting evidence, that an enhanced internal segregation review process can achieve fairness and compliance with the rule of law, and reduce the number of placements in segregation;
- the Correctional Service is increasingly relying upon restrictive units and the creation of correctional sub-populations outside of the legal framework of the *Corrections and Conditional Release Act* to manage offenders without the benefit of adequate procedural safeguards;

- the Correctional Service does not meet its statutory obligation to ensure the rights of Aboriginal offenders to effective assistance in reintegrating into the community. The Correctional Service's own statistics confirm that the situation of Aboriginal offenders is deteriorating in many areas that the Correctional Service could positively influence. That includes significant delays in timely and safe reintegration into the community; under-representation in minimum-security institutions and over-representation in maximum-security institutions and administrative segregation; limited use of legislative provisions designed to enhance Aboriginal reintegration; and a high ratio of detention referrals. The situation of Aboriginal women in terms of security classification and timely conditional release is even more problematic;
- despite past efforts, the Correctional Service has failed to implement a more humane and less restrictive alternative to long-term segregation of women. There also remain significant barriers to the timely and effective reintegration of women offenders, including access to programming, mental health services, institutional employment, and post release housing;
- there are unreasonable delays in convening Correctional Service investigations into serious injury or death of inmates. Once investigations are completed, there are additional unreasonable delays in obtaining the Commissioner's response to the recommendations of the investigation reports and the ensuing action plans; and,
- the Correctional Service has not adequately addressed the ongoing excessively high number of delays in presenting cases to the National Parole Board for consideration. Moreover, the number of offenders involved in work release and unescorted temporary absence programming continue to decline, even when the success rates of these forms of conditional release have historically been very high.

I recognize that in the past the Correctional Service has often not disagreed with the issues identified or necessarily opposed my recommendations. One key stumbling block to reasonably addressing these issues is the Correctional Service's challenge in effectively managing competing priorities with limited resources. With this in mind, I encourage those who hold the purse strings and who are ultimately responsible to Canadians for ensuring the Correctional Service operates in full compliance with its legal mandate to become familiar with my report.

The need for the Correctional Service to effect fundamental, lasting changes to address the above noted issues continues to rank as the overriding concern for this Office. The power of an ombudsman is limited to making recommendations. Without increased commitment on the part of the Correctional Service and Parliament to make significant progress to resolve these long standing issues, federal offenders will continue to live in an environment plagued with violence, conditions not conducive to positive change, inadequate mental and physical health care, and limitations in the services necessary to assist their reintegration into society as law abiding citizens. At the end of the day, these factors all impact negatively on public safety.

It is my sincere belief that, if implemented, my recommendations would assist the Correctional Service in meeting its mandate. A hallmark of a mature, confident organization is its ability to accept external criticism and oversight, and adjust its operations accordingly. I look forward to working with the Correctional Service to achieve and sustain meaningful improvements in the coming year.

**Howard Sapers**

Correctional Investigator of Canada