

A large, light-colored teepee stands in the foreground, featuring a prominent black and white illustration of a turtle on its side. The teepee is set against a multi-story building with several windows, each fitted with metal bars. The scene is captured in a monochromatic blue-grey tone. The ground in front of the teepee is uneven and appears to be dirt or gravel. To the right of the teepee, a wooden structure, possibly a fire pit or a small enclosure, is visible. The overall atmosphere is somber and institutional.

## THE KEY ISSUES:

1. Health Services, Including Mental Health and Needle Exchange
2. Women Offenders
3. Aboriginal Offenders
4. Institutional Violence and Investigations of Inmate Injury
5. Inmate Grievances, Allegations of Harassment and Staff Misconduct
6. Case Preparation and Access to Programs

## KEY ISSUES

The following sections highlight key areas of offender complaints.

### HEALTH SERVICES, INCLUDING MENTAL HEALTH AND NEEDLE EXCHANGE

*By law the Correctional Service must provide essential health care services to every inmate in accordance with “professionally accepted standards.”*

#### (A) Professionally Accepted Standards

For years, health care issues have been a primary area of offender complaints to this Office and the Correctional Service’s grievance process. By law, the Correctional Service must provide essential health care services to every inmate in accordance with “professionally accepted standards.” The law makes no reference to other measurements, such as community or provincial standards.

To help ensure that this obligation was being met, the Correctional Service committed in 2001 to have all its health care units and regional mental health facilities accredited. Accreditation involves a detailed examination of an organization’s services and methods of operation.

The Correctional Service sought the assistance of the Canadian Council on Health Services Accreditation to examine and improve the quality of care and service it provides to inmates. The Council is an independent, internationally-recognized agency that has accredited over 1,500 individual or provincial sites, 11 national and three international organizations. According to the Council, accreditation is not a “pass or fail” process but rather one of continuous improvement and an objective measure of progress against a set of professional standards.

The Council has a two-phase accreditation process. The first phase involves self-assessment: the organization seeking accreditation measures its own compliance against the Council’s national standards. In the second phase, surveyors from outside the organization undertake the accreditation survey and use the same national standards to independently measure the organization through an on-site survey. The findings from the survey are summarized in a written report.

The Correctional Service completed the first phase of the Council process which is basically a pre-audit to maximize the chances of success in the second phase (accreditation). Twenty-nine of a total of 54 sites subsequently underwent the second accreditation phase.

*Failure to have health services accredited raises questions about the Correctional Service’s compliance with its legislative obligation to meet “professionally accepted standards.”*

For an organization that has provided health care services for more than 100 years, it was with great concern that I learned that 52 per cent of the sites (15) failed to be accredited, 38 per cent (11) were accredited with various conditions, and only 10 per cent (3) were fully accredited. Two key factors that prevented accreditation included the inadequacy of the existing clinical governance structure and the absence of continuing professional education and training for health care staff. Accreditation for the remaining sites has been put on hold.

In the absence of any other objective measurement, failure to have health services accredited raises questions about the Correctional Service’s compliance with its legislative obligation to meet “professionally accepted standards.”

If no significant progress is made in the coming year, I will explore recommendations that would assign the delivery of health care services to accredited publicly administered providers other than the Correctional Service.

*1. I recommend that the Correctional Service demonstrate compliance with its legal obligation to provide every inmate with essential health care according to professionally accepted standards, and that all institutional health care sites be accredited within one year.*

#### (B) Mental Health

For three years, my Office has focused on the inadequacy of mental health care services for offenders.

In my last Annual Report 2004-05, I highlighted the fact that the proportion of federal offenders with significant, identified mental health needs has more than doubled over the past decade. I also stated that mental health services offered by the Correctional Service to these offenders have not kept up with the dramatic increase in numbers of offenders with mental illnesses.

The level of mental health services available continues to be seriously deficient, and in my opinion, the Correctional Service is not fulfilling its legislative obligation to provide every inmate with essential mental health care and reasonable access to non-essential mental health care.

In July 2004, the Correctional Service approved a mental health strategy that promotes the adoption of a continuum of care from initial intake through the safe release of offenders into the community. Funds were obtained to strengthen the release end of the Correctional Service's mental health continuum.

This Office welcomed the news of new investments in community mental health by the Correctional Service in December 2005. Offenders with mental disorders, as a result, will be better served during their period of conditional release. However, no other investment has been made to consistently assess the offender population at intake and to ensure that their mental health needs are adequately addressed throughout their sentence.

Although mental health is now one of five priorities for the Correctional Service, there have been no significant changes at the institutional level over the past year. Offenders with mental illnesses continue to be segregated and punished for displaying symptoms of their illnesses and not treated adequately according to "professionally accepted standards." Over the last year, we have, in fact, witnessed the reduction in some mental health services that had previously existed – an example being the diminishing number of psychologists in the Ontario Region.

I recommended last year that immediate steps to sensitize and train all front-line staff to appropriately identify mental health behaviour and respond accordingly be undertaken, but such training has yet to be fully developed – let alone comprehensively delivered. This situation can only be described as critical.

*2. I recommend that the Correctional Service demonstrate compliance with its legal obligation to provide every inmate with essential mental health care and reasonable access to non-essential mental health care according to professionally accepted standards, and that all mental health care units and regional treatment centres be accredited within one year.*

*3. I again recommend that the Correctional Service take immediate steps to sensitize and train all front-line staff to appropriately identify disruptive mental health behaviour and respond accordingly.*

### (C) Needle Exchange

In 1994, the Expert Committee on Aids in Prison, established by the Correctional Service, reported on the increasing incidence of infectious diseases in federal penitentiaries. The committee found the causes of disease to include the use and sharing of contaminated drug paraphernalia. By 2004, most of the committee's recommendations for education, treatment and harm-reduction had been

implemented by the Correctional Service. The only outstanding recommendation relates to making clean needles available to inmates for exchange to prevent serious communicable diseases such as Hepatitis C and HIV spreading among the offender population and ultimately to society at large.

In a letter dated April 21, 2005, the former Minister of Public Safety and Emergency Preparedness indicated openness to exploring the viability of introducing a needle exchange program in Canadian penitentiaries. Around that time, the Correctional Service signed a memorandum of understanding with the Public Health Agency of Canada to receive scientific and technical advice concerning potential risks and benefits of prison needle exchange programs.

On March 30, 2006, Health Minister Tony Clement responded to my correspondence on this issue and said:

*"I am especially concerned with the safe needle exchange program and with public health issues for all persons in Canada, including those in correctional facilities. Given the high rates of infectious disease among federal inmates, most notably Hepatitis C and HIV, departmental officials will continue to work closely with the CSC."*

On May 10, 2006, the Standing Senate Committee on Social Affairs, Science and Technology, chaired by Senator Michael J. Kirby, tabled a report on mental health and addiction entitled *Out of the Shadows at Last*. Following a discussion on prison-based needle exchange, the report recommended "that the Correctional Service of Canada immediately implement expanded harm reduction measures in all federal correctional institutions."

*4. I recommend that the Correctional Service immediately implement a prison-based needle exchange to ensure that inmates and society at large are best protected from the spread of infectious diseases.*

### WOMEN OFFENDERS

In April 1994, women at the Prison for Women were strip-searched by an all-male Institutional Emergency Response Team. In February 1995, the Correctional Investigator delivered a special report to the Solicitor General detailing concerns with respect to the emergency response team's intervention at the Prison for Women and the conditions and duration of segregation. The government responded by establishing a Royal Commission of Inquiry, chaired by Madame Justice Louise Arbour, now United Nations High Commissioner of Human Rights. The report of the Commission of Inquiry into Certain Events at the Prison for Women was released March 31,

1996. The recommendations of the Commission were directed to the Solicitor General of Canada of the day, the Honourable Herb Gray.

In her report, Madame Justice Arbour stated: “My objective in bringing forward recommendations on various aspects of corrections that have been touched upon by this inquiry is to assist the correctional system in coming into the fold of two basic Canadian constitutional ideals...the protection of individual rights and the entitlement to equality.”

On June 4, 1996, the Solicitor General of Canada stated: “After reviewing the report, I accept what I see as its basic thrust, namely that there must be respect for the rule of law by the Correctional Service in the way it carries out its responsibilities.”

Although the Solicitor General undertook to respond to the recommendations of Madame Justice Arbour, to date only the Correctional Service has provided a response. Since the release of Madame Justice Arbour’s report, there have been several additional reviews on federal correctional services which for the most part have repeated many of Justice Arbour’s key 1996 recommendations.<sup>3</sup>

There have been some improvements in the situation for women offenders. The Prison for Women has been replaced by five new regional facilities and a healing lodge which accommodate women offenders in closer proximity to their community. The women’s maximum security units in male penitentiaries have been closed. A Deputy Commissioner for Women has now been in place for a decade, which has assisted in maintaining a focus on women’s correctional issues.

In April 2005, in response to repeated recommendations from my Office, the Minister of Public Safety and Emergency Preparedness requested that the Correctional Service publish the *Ten-Year Status Report on Women’s Correction 1996-2006*. This report, issued in April 2006, is the Service’s own assessment of its efforts.

Given these developments and the great interest by criminal justice stakeholders in these matters, I considered it important that the Minister of Public Safety receive independent advice with respect to the Correctional Service’s advances in human rights, fairness and equity issues since the Arbour Report of 1996. I therefore recommended in my last Annual Report 2004-05 that the Minister appoint an expert committee to review the Correctional Service’s *Ten-Year Status Report* and to consult with stakeholders, identify gaps between recommendations made and actions taken, formulate recommendations to address the gaps and report directly back to

the Minister. I also recommended that the report of the expert committee be made public.

The Minister partly accepted my recommendation and asked that the Correctional Service establish the expert committee, which would then report back to the Commissioner of Corrections – not the Minister as recommended. The Commissioner and the Minister have assured me that the review will nonetheless be made public. I look forward to the results of the committee’s review, and will therefore limit my recommendations this year to immediate operational concerns.

This Office has noted over the course of the past two years a significant increase in the number of women offenders returning to the community on statutory release rather than on day or full parole. We have also noticed a corresponding increase during this timeframe in the number of waivers and postponements of National Parole Board hearings by women offenders. Both of these trends are most evident among Aboriginal women. While there has been a slight increase in the number of women on work release programs, there has been a decline in the number participating in unescorted temporary absence programs. After a significant decline in 2004-05, the number of reportable use of force incidents at women’s facilities has measurably increased over the course of this reporting year.

*5. I recommend that, within one year, the Correctional Service:*

- significantly increase all women offenders’ access to meaningful employment and employability programming;*
- continue to significantly increase community accommodations and support services for women offenders in underserved areas;*
- review the daily operations and staffing of the women’s secure units with a view to eliminating “deadtime”<sup>4</sup> and to significantly increasing timely access to treatment, spiritual, academic and work programs;*
- significantly increase the number of women offenders appearing before the National Parole Board at their earliest eligibility dates;*
- build capacity for and increase use of section 84 and section 81 agreements with Aboriginal communities<sup>5</sup>;*
- significantly improve access to culturally sensitive programming and services for Aboriginal women who are currently imprisoned in the Atlantic, Quebec and Ontario regions;*

- review use of force incidents at women's facilities to ensure consistent compliance with policy;
- establish firm targets ensuring all front-line staff receive refresher training in women-centered approaches in accordance with the recommendation of the Canadian Human Rights Commission; and,
- provide women-centered training to all community parole officers working with women offenders.

## ABORIGINAL OFFENDERS

Over the past decade, our annual reports have made specific recommendations addressing the systemic and discriminatory barriers that prevent Aboriginal offenders from full benefit of their statutory and constitutional rights and that significantly limit their timely and safe reintegration into the community.

Despite some positive steps, the overall situation of Aboriginal offenders has not measurably improved in recent years. Aboriginals account for a disproportionate share of the prison population. They represent 18 per cent of the federal prison population although they account for just 3 per cent of the general Canadian population.

*The best estimate of the overall incarceration rate for Aboriginal People in Canada is 1,024 per 100,000 adults.*

To illustrate the magnitude of this overrepresentation, according to the most current Statistics Canada information, Canada has an overall incarceration rate of 130 per 100,000 adults. This rate includes adults incarcerated in both provincial and federal institutions. Using the same numbers from Statistics Canada, the best estimate of the overall incarceration rate for Aboriginal People in Canada is 1,024 per 100,000 adults.<sup>6</sup> Using the same methodology, the comparable incarceration rate for non-Aboriginal persons is 117 per 100,000 adults.

The Correctional Service does not control admissions to penitentiaries, but it does have a constitutional and statutory obligation to manage sentences in a culturally responsive and non-discriminatory manner. The areas of concern associated with Aboriginal Corrections go far beyond over-representation and require focusing on what happens to Aboriginal offenders while in the care and custody of the Correctional Service.

The Correctional Service has invested a great deal of effort and resources in addressing Aboriginal issues. Culturally sensitive programs have been established and Aboriginal issues have become a priority for the Correctional Service.

However, these efforts have not resulted in the kind of significant progress needed to improve the overall situation of Aboriginal offenders. The Correctional Service's own statistics confirm that correctional outcomes for Aboriginal offenders are not improving in many areas that the Correctional Service can positively influence. *The Final Report: Task Force on Aboriginal Peoples in Federal Corrections* in 1988 found that Aboriginal offenders were less likely to be granted temporary absences and parole, were granted parole later in their sentence, were more likely to have their parole suspended or revoked and were more likely to be classified at a higher security level. Unfortunately, this is as true today as it was nearly 20 years ago.

I stated in last year's Annual Report that after years of task force reports, internal reviews, national strategies, partnership agreements and action plans, the efforts and resources of the Correctional Service remained in large part unfocused and fragmented. I recommended again last year that the Correctional Service appoint a Deputy Commissioner specifically responsible for Aboriginal Corrections and the implementation of a comprehensive and effective strategic plan to address the many challenges. While the Correctional Service did institute a governance change, a Deputy Commissioner has not been appointed and the disadvantaged position of Aboriginal offenders remains.

I was advised in December 2004 that a "new Strategic Plan for Aboriginal Corrections" was under development and would be reviewed by the Correctional Service's senior Executive Committee (EXCOM) in February of 2005 and finalized by the end of April 2005. In December of 2005, the committee endorsed a "Strategic Plan for Aboriginal Corrections – Framework for EXCOM Discussion." A series of consultations, which included this Office, occurred during the period of January through April 2006 on the strategy. I was advised in April of 2006 that consultations on an "updated Strategic Plan for Aboriginal Corrections" was still on-going and that we would receive a copy of the strategy in the spring of 2006. Our Office received a document entitled *Strategic Plan for Aboriginal Corrections 2006/07 – 2010/11* on June 1, 2006. I understand that a further consultation process is currently under way to develop action plans to implement the strategy.

Given the continued absence of an approved action plan, my recommendation this year will focus on specific outcomes, in the hope that the Correctional Service will make significant and quantifiable progress in key areas related to closing the gap between Aboriginal and non-Aboriginal offenders in terms of timely conditional release.

*6. I recommend that in the next year the Correctional Service:*

- implement a security classification process that ends the over-classification of Aboriginal offenders;*
- increase timely access to programs and services that will significantly reduce time spent in medium and maximum security institutions;*
- significantly increase the number of Aboriginal offenders housed at minimum security institutions;*
- significantly increase the use of unescorted temporary absences and work releases;*
- significantly increase the number of Aboriginal offenders appearing before the National Parole Board at their earliest eligibility dates; and,*
- build capacity for and increase use of section 84 and section 81 agreements with Aboriginal communities<sup>7</sup>.*

*7. I recommend that the Correctional Service significantly improve (above the required employment equity level) the overall rate of its Aboriginal workforce at all levels in institutions where a majority of offenders are of Aboriginal ancestry.*

## **INSTITUTIONAL VIOLENCE AND INVESTIGATIONS OF INMATE INJURY**

One of the key legal responsibilities of the federal correctional system is to ensure that inmates serve their sentences in a safe and secure environment. For years, this Office has expressed concern regarding the extent to which the Correctional Service provides such an environment. The overall level of violence in penitentiaries remains unacceptably high. And the Correctional Service continues with alarming frequency to manage its penitentiaries with an over-reliance on use of force and segregation to resolve disputes and tensions. Experience demonstrates that other mechanisms such as positive, ongoing interactions with offenders and alternative dispute resolution can in many instances prevent institutional violence.

## *The overall level of violence in penitentiaries remains unacceptably high.*

Moreover, the lack of mental health services aggravates the situation. Too many vulnerable offenders suffering from mental illnesses are subject to abuse by predatory offenders while many more unnecessarily become the subject of use of force.

In the past year, the Correctional Service reported using force approximately a thousand times (967), a significant increase from the previous year (798). The ratios of use of force per inmate vary across the country, and are the lowest in the Ontario and the Prairies regions (one use of force to every 22.3 and 21.5 offenders, respectively). The highest ratios are found in the Maritimes, Quebec and the Pacific regions (one use of force to every 9.7, 11.6 and 11.9 offenders, respectively).

Most of the interventions using force are conducted at maximum-security institutions, but again striking differences in approach exist. For example, when considering use of force, Institutional Emergency Response Teams are used 56 per cent of the time in one maximum-security institution, whereas they are used only 13 per cent of the time in another maximum-security institution. Furthermore, use of force interventions rely on pepper spray (e.g., Oleoresin Capsicum) 66.5 per cent of the time in one maximum-security institution, but only 22 per cent of the time at another maximum-security institution.

Some penitentiaries clearly rely much more on use of force, whereas other penitentiaries appear to be managing offenders using less restrictive alternatives. These discrepancies need to be reviewed by the Correctional Service to ensure consistency and compliance with legal and policy requirements for use of force.

The thoroughness and timeliness of the investigative process into serious injury or death of offenders under section 19 of the *Corrections and Conditional Release Act* have been an issue for this Office for several years. Our most recent concerns have centred on the timely convening of investigations, on the timeliness of a meaningful analysis of completed investigation reports, and on approval by the Correctional Service's Executive Committee of recommendations and action plans developed in response to national investigative reports. As well, we note that, as of March 31, 2006, Correctional Service had not responded to 11 provincial coroners' reports on inmate suicides, some of which date back to 2001.

The number of injuries among inmates continues to be of grave concern. The Correctional Service continues to lack reliable and valid data on inmate injuries. For example, I have in past years received reports labelling suicides as minor injuries, and continue to receive quarterly reports on inmate injuries that cannot be reconciled with data from previous years or other sources. Moreover, limited analysis is conducted by the Correctional Service on the information provided to develop strategies to prevent future injuries and deaths.

Of further concern has been the ability of the Correctional Service to identify injuries that did not fit their definition of “serious bodily injury” and to demonstrate that these incidents were being appropriately reviewed. Where information is being gathered, a clear analysis of the causes of violence and injuries continues to be lacking. The report entitled *A Health Care Needs Assessment of Federal Inmates in Canada (April 2004)* noted that “injuries were common among inmates” and that a significant number of the injuries were “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 factors.”

*The number of injuries among inmates continues to be of grave concern. The Correctional Service continues to lack reliable and valid data on inmate injuries.*

In response to these concerns, the Correctional Service committed last year to “the development of a corporate strategy to assist in the production of quality analytical quarterly reports” on inmate injuries and institutional violence. Although institutional violence has been identified as a priority area by the Correctional Service, we have been presented with no evidence of either consistent, accurate information collection or analysis.

The absence of reliable information and delays in the investigative process hinder the Correctional Service’s ability to review and take appropriate decisions in limiting inmate injuries and institutional violence.

*8. I recommend that the Correctional Service establish a timely approval process by its Executive Committee for the development of action plans in response to investigative reports into incidents*

*of inmate deaths or major injuries. In no case should this process exceed six months from the date of the incident.*

*9. I recommend that the Correctional Service collect accurate information and conduct comprehensive analyses of all inmate injuries to significantly improve its ability to take appropriate action to limit inmate injuries and institutional violence and that this information be verified semi-annually as part of on-going internal audits.*

## **INMATE GRIEVANCES, ALLEGATIONS OF HARASSMENT AND STAFF MISCONDUCT**

*The Corrections and Conditional Release Act* requires the Correctional Service to establish “a procedure for fairly and expeditiously resolving offenders’ grievances.”

I concluded in last year’s Annual Report that the existing procedure was dysfunctional in terms of expeditiously resolving offender grievances, most notably at the national level. I presented two recommendations at the time:

*(a) I recommend that the Service take immediate steps to overhaul its operations and policies in the area of inmate grievances to ensure fair and expeditious resolution of offenders’ complaints and grievances.*

*The review should include a specific focus on addressing harassment and staff misconduct grievances.*

*(b) I recommend that an external consultant be retained to assist the Service’s review of its operations and policy to ensure fair and expeditious resolution of offenders’ complaints and grievances, and to improve its use of evidence-based strategies to ensure consistency in addressing areas of offender concern.*

While the Correctional Service initially “agreed” with these recommendations, the national review of the offender redress process was conducted internally. A final report on the review was produced in May 2006. The report acknowledges that the present operations “are not meeting statutory requirements,” but to date an action plan to reasonably address this matter has not been finalized.

In 1998, the Correctional Service extended the timeframes within the offender grievance process “to better reflect the time required to respond.” This Office raised concerns at the time indicating that such an extension was inconsistent with the Correctional Service’s commitment to “an effective, timely redress process for offenders.” During the fiscal year 2005-06, only 15 per cent of the grievances responded to at the Commissioner’s level were within these expanded timeframes.

The Correctional Service introduced a revised procedure three years ago in an attempt to reasonably address offender harassment complaints. This was seven years after Madame Justice Arbour recommended the “immediate” development and introduction of a responsive policy. The issues pertaining to harassment grievances have been repeatedly raised as a key priority in our annual reports and the most recent 2003 report from the Canadian Human Rights Commission. While the Correctional Service would appear to have finally developed a reasonable harassment policy, we are extremely concerned that so little progress has been made in ensuring operational compliance with the policy and legal provisions in such a key priority area.

*10. I recommend that the Correctional Service immediately comply with its legal obligations and establish “a procedure for fairly and expeditiously resolving all offenders’ grievances.”*

*11. I recommend that within one year the Correctional Service provide evidence that complaint and grievance statistics are being used to identify and address areas of systemic offender concerns.*

#### CASE PREPARATION AND ACCESS TO PROGRAMS

This Office initially raised the issue of delayed case preparation and access to programs in its Annual Report 1988-89. The focus at that time was on the increasing inability of the Correctional Service to prepare the cases of offenders in a thorough and timely fashion for conditional release consideration. It was evident from our review of the complaints received that a significant number of these delays were directly related to the Correctional Service being unable to provide the required assessments and treatment programming in advance of the offender’s scheduled parole hearing dates. Eighteen years later, these issues have yet to be adequately addressed.

In an attempt to address some of our recommendations, a joint working group involving the Correctional Service of Canada, the National Parole Board and the Office of the Correctional Investigator was established and in December 2004 issued a document entitled *Report on Factors Causing Delays in National Parole Board Reviews*. The report of this joint review provided concrete recommendations to facilitate timely reviews by the National Parole Board. It also recommended ensuring that offenders appearing before the Board receive the assistance and programs they need for their eventual safe community reintegration. I recommended in last year’s Annual report that the Correctional Service “immediately develop a responsive action plan to implement the recommendations

of the Joint Review Committee Report.” Although the Correctional Service “agreed” with the recommendation, no action plan has been approved.

My recommendation this year will therefore focus on outcomes, in the hope that the Correctional Service will make significant and quantifiable progress to improve timely case preparation and access to programs.

*12. I recommend that in the next year the Correctional Service:*

- significantly increase the number of offenders appearing before the National Parole Board at their earliest eligibility dates;*
- significantly reduce waiting lists for programs included in correctional plans to maximize safe and timely reintegration;*
- increase timely access to programs and services that will significantly reduce the time spent in medium and maximum security institutions; and,*
- significantly increase the number of unescorted temporary absences and work releases, which have drastically declined in recent years and yet have a very high success rate.*