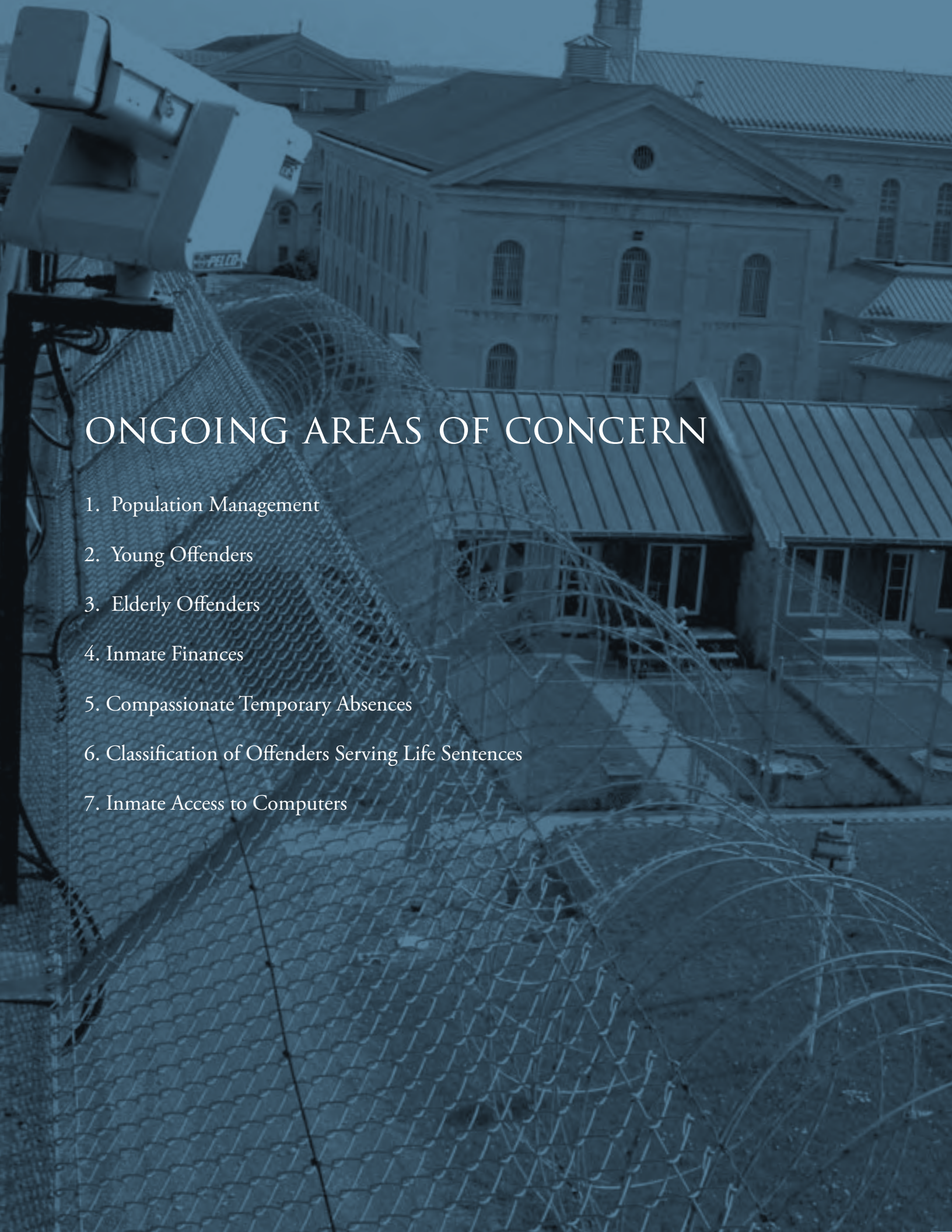

ONGOING AREAS OF CONCERN

1. Population Management
2. Young Offenders
3. Elderly Offenders
4. Inmate Finances
5. Compassionate Temporary Absences
6. Classification of Offenders Serving Life Sentences
7. Inmate Access to Computers

ONGOING AREAS OF CONCERN

POPULATION MANAGEMENT

After years of calls for fundamental reforms, the Correctional Service continues to place offenders in administrative segregation and other more restrictive environments as its main tool for resolving disputes and tensions in penitentiaries.

Madame Justice Arbour's 1996 report concluded that "the management of administrative segregation that I have observed is inconsistent with the Charter culture which permeates other branches of the administration of the criminal justice."

She went on to say: "I see no alternative to current overuse of prolonged segregation but to recommend that it be placed under the control and supervision of the courts. Failing a willingness to put segregation under judicial supervision, I would recommend that segregation decisions made at an institutional level be subject to confirmation within five days by an independent adjudicator."

Over the last 10 years, several other internal and external reports[8] have all observed similar fairness and non-compliance issues as those highlighted in the Arbour Report. They have made comparable recommendations calling for the independent adjudication of segregation cases. Yet, the Correctional Service has consistently rejected independent adjudication and continues to this day to argue that an enhanced internal segregation review process can achieve fairness and compliance with the rule of law.

On May 8, 2006, the Commissioner responded to my recommendation to introduce independent adjudication of administrative segregation decisions in last year's Annual Report. He informed me that at this time, instead of independent adjudication, the Correctional Service will introduce a number of new initiatives, including an internal audit, to strengthen compliance with policy and enhance fairness.

I welcome any initiative that will improve this situation, but I strongly believe that independent adjudication of segregation is necessary to ensure fair and unbiased hearings. It is also important in ensuring compliance with the Correctional Service's statutory framework, protection of prisoners' access to institutional programs and services during segregation, and the implementation of reintegration plans to ensure that the correctional authorities, in administering the sentence, use the least restrictive measures.

As the Correctional Service continues to attempt to improve its internal processes, the situation of segregated offenders continues to deteriorate. In the last three years, the number of voluntary segregated offenders who spent more than 90 days in segregation has tripled. Over the same period, the number of involuntary segregated offenders who spent more than 90 days in segregation has doubled.

As the Correctional Service continues to attempt to improve its internal processes, the situation of segregated offenders continues to deteriorate.

As I indicated in my last Annual Report, this Office has in recent years witnessed a "widening of the net" of restrictive forms of custody. The *Corrections and Conditional Release Act* refers to only two types of incarceration: the general inmate population and segregated inmates. The law precisely stipulates the rights and entitlements of each of those two populations, and describes rigorous procedural fairness for placements in administrative segregation. For example, this includes notices, reviews, hearings, regular visits by heads of institutions and health care.

Over the years, the Correctional Service has introduced a multitude of different offender sub-populations (e.g., transition units) that fall in-between those two legally defined populations. Many offenders now serve a significant part of their penitentiary sentence in these more restrictive units without benefiting from a pro-active reintegration strategy and formal regular reviews as legally afforded to offenders in administrative segregation.

In response to our recommendation last year on this matter, the Correctional Service committed to undertake a review to ensure that existing units are in compliance with law and policy. The results of that review, which was to be finalized by March 2006, are currently in draft form and have yet to be presented to the Correctional Service's senior management.

13. I recommend that in the coming year the Correctional Service:

- *proactively implement the least restrictive options and significantly reduce the overall number of placements in administrative segregation;*
- *significantly reduce the average length of stay in administrative segregation; and,*

· significantly reduce the time to effect intra- and inter-regional transfers.

14. I recommend that the Correctional Service immediately implement reasonable procedural safeguards for any offender confined in any situation that is not within the general inmate population, and ensure legal compliance with offenders' rights, entitlements and access to programs.

15. I recommend that the Minister play a leadership role by requesting that the House of Commons' Standing Committee on Public Safety and National Security examine the implementation of independent adjudication of administrative segregation decisions when it considers other amendments of the Corrections and Conditional Release Act.

YOUNGER OFFENDERS

This Office has often pointed out that the Correctional Service does not meet the special service and program needs of inmates aged 20 and younger. These younger offenders, numbering up to 400 at any given time, very often find themselves in disadvantaged situations – segregation, abuse by other inmates, limited access to and success in programming, gang affiliations, and delayed conditional release. Available data also indicate that Aboriginal offenders are significantly over-represented among younger offenders. For example, on May 9, 2006, there were 343 incarcerated offenders aged 20 and younger – 96 or 28 per cent of them were Aboriginal. The situation in the Prairies Region was most problematic as 58 per cent (72 out of 125) of offenders aged 20 and younger were Aboriginal.

Younger offenders…very often find themselves in disadvantaged situations – segregation, abuse by other inmates, limited access to and success in programming, gang affiliations, and delayed conditional release.

The Correctional Service does not provide special housing, programming or other services for younger offenders. While the Correctional Service's position is that programs available to all inmates can be adapted to meet the needs of younger offenders, the reality is that these young men and women continue to find themselves in the disadvantaged situations described above.

My recommendation this year focuses on outcomes, in the hope that the Correctional Service will make significant and quantifiable progress to improve the disadvantaged situation of younger offenders.

16. I recommend that within one year the Correctional Service:

· develop and implement new policies, programs and services specifically to meet the unique needs of offenders aged 20 and younger that will significantly reduce their time spent in maximum and medium-security institutions, and in administrative segregation; and,

· develop and implement programs and services designed to meet the unique needs of offenders aged 20 and younger that will significantly increase their timely and safe reintegration into the community.

ELDERLY OFFENDERS

Elderly offenders represent a large and growing special needs group within the federal inmate population. The Correctional Service completed a comprehensive internal review in 2000 which identified a wide range of areas that needed to be addressed so as to reasonably meet the needs of this population. At the time, the Correctional Service considered the situation such a priority that it established a new division with the specific mandate to address issues associated with accommodation, palliative care, reintegration options and program development.

In its March/April 2004 edition, the *Canadian Journal of Public Health* published "A Health Care Needs Assessment of Federal Inmates in Canada". It noted that there had been a 60 per cent increase in the number of inmates aged 50 and over with an 87 per cent increase in those aged 65 and over since 1993. The Report underlined the requirement for greater information on and specific attention to the health care needs of this growing segment of the inmate population.

Unfortunately, the challenging situation described in the internal Correctional Service's 2000 report and the 2004 report of the *Canadian Journal of Public Health* has not changed – in fact, it has further deteriorated as the number of elderly offenders continues to increase.

17. I recommend that Correctional Service respond to the special needs of elderly offenders and significantly improve key areas including accommodation, program development, palliative care, and reintegration options.

INMATE FINANCES

It has been close to 20 years since inmate allowances for work and program participation have been increased. This has drastically reduced their ability to purchase items inside institutions. We believe this has contributed to the violence that can accompany competition for increasingly scarce commodities in prison. 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. Low inmate allowances for work and program participation have adversely affected the amount of money that offenders can use to facilitate their integration into society during the initial phase of release.

The history of inmate pay provides a good indication of the inadequacy of today's inmate allowances for work and program participation. In 1981, the Cabinet Committee on Social Development approved a new inmate pay program. With the assistance of Statistics Canada, it calculated the rates of inmate pay, and the maximum pay rate was set at $7.55 per day. Today, the maximum inmate pay rate is $6.90 per day. In 1981, the Correctional Service created a "typical" inmate "canteen basket" to monitor the costs of the products that are mostly purchased by inmates. In 1981, the "canteen basket" cost $8.49. The same basket now costs $61.59 – or 725 per cent more than in 1981.

18. I recommend that the Correctional Service immediately increase inmate allowances for work and program participation. I further recommend that, from this time forward, inmate allowances be indexed to the rate of inflation.

COMPASSIONATE TEMPORARY ABSENCES

The *Corrections and Conditional Release Act* provides for escorted temporary absences for compassionate reasons to allow inmates to attend to "urgent matters affecting the members of their immediate family or other persons with whom the inmates have a close personal relationship." In most instances, inmates request compassionate temporary absences to visit a dying family member and/or attend a funeral.

In the last two years, this Office received a small number of complaints about the Correctional Service's denial of compassionate temporary absences. In these cases, this Office believes that the Correctional Service failed to apply its discretionary authority in accordance with its legal obligations.

In some cases, we disagreed with the Correctional Service's interpretation of "members of the inmate's immediate family or other persons with whom the inmate has a close personal relationship." Recent policy changes also require that the inmate now choose between either visiting a dying relative or close friend or attending their funeral. At a time of despair and sorrow, I believe that requiring a person to make this kind of choice lacks compassion, an essential element of the legal requirement.

Moreover, we are concerned that administrative delays in coordinating the logistics of compassionate temporary absences have prevented some offenders from attending funerals. In those situations, the Correctional Service has taken the position that, if a funeral is missed because of administrative delays, logistics or weather, inmates are no longer eligible under the policy because the matter is no longer "urgent." Furthermore, Aboriginal and women offenders are unduly affected by this position because they are more often incarcerated further from their home communities. Again, I consider that this position lacks the essential requirement of demonstrating compassion.

19. I recommend that the Correctional Service immediately:

- *amend its policy requiring that inmates choose between either visiting a dying member of their immediate family or other persons with whom inmates have a close personal relationship or attending their funeral; and,*
- *expedite the consideration of requests for compassionate temporary absences, and allow for a visit to the gravesite or with family members should circumstances make attendance at the funeral impossible.*

CLASSIFICATION OF OFFENDERS SERVING LIFE SENTENCES

On February 23, 2001, the Correctional Service issued *Policy Bulletin No. 107*. It 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. Since its introduction, I have considered this policy to be illegal and have recommended that it be rescinded immediately.

I have not been alone in my assessment. In its special 2003 report, the Canadian Human Rights Commission concluded that "adding a retributive element to the carrying out of the sentence is not rationally related to the legitimate purpose of assessing risk. It is in

fact contrary to the intent of both the *Corrections and Conditional Release Act* and the *Canadian Human Rights Act.*" The Commission recommended that the Correctional Service immediately revoke its two-year policy. Numerous other stakeholders, including the Canadian Association of Elizabeth Fry Societies, the St. Leonard's Society of Canada, the Canadian Bar Association, and the Church Council on Justice and Corrections have expressed similar concern about this policy.

In September 2005, the Correctional Service amended its two-year policy to allow wardens to exercise their discretion to override the rating produced by the Custody Rating Scale. This amendment to the policy has affected placement practices, but, in our opinion, this procedural change did not alter the legality of the policy.

20. I recommend that the Correctional Service immediately subject all federally-sentenced offenders to an individualized security classification process as required by law and regulations.

INMATE ACCESS TO COMPUTERS

In 2003, the Correctional Service decided to prohibit the further introduction of computers to individual cells, based upon its review of reports on a series of incidents involving misuse of in-cell computers. The Correctional Service then increased inmate access to a limited number of computers in designated common areas outside cells. This Office, inmates 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 such as litigation or recreation.

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 also continue to increase.

In October 2004, the Correctional Service established an advisory committee to examine how it could improve inmate access to computers. The committee has yet to complete its final report and to present its recommendations to the Correctional Service's Executive Committee.

21. I recommend that the Correctional Service:

- *establish a reasonable ratio of computers to inmates in designated areas outside cells available for inmate use; and,*
- *allow inmates to have computers for in-cell use.*

CONCLUSION

The Correctional Service has demonstrated progress in a limited number of areas since my last Annual Report. I would like to take this opportunity to highlight areas where our investigative staff have reported some improvements and achievements. These include:

- *the range of Aboriginal-specific programs continues to expand and new innovative programs have been established;*
- *the Correctional Service completed an employment needs survey for both incarcerated women and women on conditional release. It has also committed to develop an employment strategy for women offenders;*
- *more Aboriginal offenders are now accessing healing lodges;*
- *the Correctional Service approved a new governance structure for Health Services, which may help to ensure that health care funding is not diverted to address correctional funding pressures;*
- *the Women Offender Sector has initiated a bi-annual review of offender grievances to ensure that systemic areas of concern are identified and consistently addressed; and,*
- *although there are unreasonable delays in convening Correctional Service investigations into serious injury or death of inmates, the quality of the investigative reports once completed has shown significant improvement over the last reporting period.*

It is my sincere hope that the Correctional Service will significantly add to the above list of achievements in the coming year by fully addressing this year's recommendations. This year's report makes it very clear as to what the Correctional Service needs to do to improve its legal and policy compliance. We look forward to working collaboratively as the Correctional Service addresses the many issues listed in this year's report.

The coming year will be challenging as several factors may influence the ability of the Correctional Service to respond to its pressing issues. New criminal justice policy may be implemented with the net effect of increasing prison populations. From our experience and the available research, the Correctional Service will be unable to meet its legislative mandate if such an increase is not paired with significant investments in reintegration initiatives, programming and health care services.

Two additional broad policy issues are of concern to this Office: Canada's endorsement of the *Optional Protocol to the Convention against Torture* and the situation of national security detainees.

First, the protocol was adopted by the United Nations General Assembly in December 2002. Canada was a member of the group that drafted it and voted in favour of its adoption. The protocol establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment.

In my last Annual Report 2004-05, I encouraged the Canadian Government to yet again demonstrate its leadership by signing and ratifying this important human rights instrument. Moving quickly on signature and ratification would add to Canada's long historical tradition of promoting and defending human rights at home and abroad. It would also provide an opportunity to review the role and mandate of oversight agencies involved in the monitoring and inspections of "places of detention" and strengthen oversight mechanisms where required.

The second policy issue that concerns my Office is the situation of individuals detained pursuant to national security certificates. A national security certificate is a removal order issued by the Government of Canada against permanent residents and foreign nationals who are inadmissible to Canada on grounds of national security. A recent decision has been made by the federal government to transfer security certificate detainees held under the *Immigration and Refugee Protection Act* from Ontario facilities to a federal facility, pending their removal from Canada.

In Ontario facilities, the detainees could legally file complaints regarding conditions of confinement with the Office of the Ontario Ombudsman. That Office had the jurisdiction to investigate complaints filed by the detainees pursuant to the *Ontario Ombudsman Act*.

The Immigration Holding Centre has been built in Kingston within the perimeter fence of Millhaven Penitentiary. The Canadian Border Service Agency entered into a service contract with the Correctional Service to provide the Border Service Agency with the physical detention facility and with security staff. The Border Service Agency has a contract in place with the Red Cross to monitor the care and treatment of detainees in immigration holding centres, including the new Kingston holding centre. The Red Cross, a non-government organization, has no enabling legislation to carry out a role as an oversight agency.

The transfer of detainees from Ontario facilities to the Kingston holding centre means that the detainees will lose the benefit of a rigorous ombudsman's legislative framework to file complaints about their care and humane treatment while in custody. The Office of the Correctional Investigator is concerned that the detainees will no longer have the benefits and legal protections afforded by ombudsman legislation. Pursuant to the *Optional Protocol to the Convention against Torture*, a non-profit organization with no legislative framework, such as the Red Cross, is unlikely to meet the protocol's requirement for domestic oversight.

On a final note, I would like to report on my commitment in last year's Annual Report to enhance this Office's citizen engagement and information activities, and to comment on emerging areas of focus.

This past year my Office has been involved in a record number of outreach activities. We have formally consulted with a number of non-governmental organizations, mental health organizations and experts, community groups, and organizations representing Aboriginal People and visible minorities. I have also increased my involvement with the media and my participation in public events to enhance the understanding of my role and responsibilities as Canada's federal prison ombudsman. My staff and I have written many articles which have been reproduced in a variety of publications. These activities have resulted in increased opportunities for public recognition of the benefits of independent prison oversight.

As for next year's focus, I am increasingly concerned about the high number of deaths and self-inflicted injuries in custody over the last decade. My Office is especially concerned with the growing number of similar recommendations made year after year by the Correctional Service's national investigations, provincial coroners and medical examiners, and the ability of the Correctional Service to consistently implement these recommendations across the country. A timely and systematic follow-up on corrective actions is required to ensure that preventive measures are taken and result in a lower incidence of self-inflicted injuries and deaths. Over the course of the next year, my Office will conduct a comprehensive review of reports and recommendations dealing with deaths and major injuries in custody, particularly suicides, and self-inflicted injuries.

There is much to be done to make corrections in Canada more fair, humane and effective but we are building from a solid foundation.

This Annual Report is the result of a dialogue between my Office, the Correctional Service, offenders and other stakeholders. By its very nature, it is a critical assessment and highlights problems, not

successes. Readers are cautioned against concluding that corrections in Canada is a failed enterprise – it is not. There is much to be done to make corrections in Canada more fair, humane and effective but we are building from a solid foundation.

Many thanks to all those, particularly my staff, who have helped me meet my mandate over the last year.

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1. *Commission of Inquiry into Certain Events at the Prison for Women in Kingston (1996).*

2. "Over-classification" refers to housing offenders in institutions that are more secure than public safety warrants – for example, placing someone in a maximum-security prison when medium security would do.

3. For example, see: Working Group on Human Rights (chaired by Maxwell Yalden), 1997; House of Commons Standing Committee on Justice and Human Rights, 2000; Cross-gender Monitoring Project Report, 2000; Auditor General, 2003; Public Accounts Committee, 2003; and, Canadian Human Rights Commission, 2004.

4. "Deadtime" refers to a situation where offenders have little to do when they should be involved in programs or other activities.

5. Sections 81 and 84 of the *Corrections and Conditional Release Act* provide for the direct involvement of Aboriginal communities in supporting timely conditional release.

6. In 2003/04, approximately 19 per cent of adult custodial admissions (i.e., provincial jails and federal penitentiaries) in Canada were Aboriginal. The average count of persons in custody in Canada was 32,000. The population of Aboriginal adults in Canada according to the 2001 census was approximately 594,000. The population of non-Aboriginal adults in Canada according to the 2001 census was approximately 22,064,000. The overall adult incarceration rate in 2003/04 was 130 per 100,000 adults. The Aboriginal incarceration rate of 1,024 per 100,000 adults is only an estimate because admissions and counts are not directly comparable because characteristics of counts data are weighted toward those who are serving longer sentences. Nevertheless, at a very broad level, we know that the percentage of Aboriginal admissions is of the same general order of magnitude as the counts. Please note that for international comparisons, the incarceration rate generally includes young offenders and is therefore based on the total population. For example, Canada's incarceration is 108 (adult and youth) persons in custody per 100,000 general population (Corrections and Conditional Release Statistical Overview, 2005).

7. Sections 81 and 84 of the *Corrections and Conditional Release Act* provide for the direct involvement of Aboriginal communities in supporting timely conditional release.

8. These are the CSC Task Force on Administrative Segregation in 1997; the Working Group on Human Rights, chaired by Maxwell Yalden in 1997; the House of Commons Standing Committee on Justice and Human Rights in 2000; the Cross-Gender Monitoring Report in 2000; Justice Behind the Wall, by Michael Jackson in 2002; "The Litmus Test of Legitimacy: Independent Adjudication and Administrative Segregation", by Michael Jackson, *Canadian Journal of Criminology and Criminal Justice,* Vol. 48, Number 2, 2006, pp. 157-196; the Canadian Human Rights Commission in 2003; and, the Department of Public Safety and Emergency Preparedness Canada in 2004.