

# Let's Talk

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## HUMAN RIGHTS AND THE CORRECTIONAL SERVICE OF CANADA



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# RESPECT AND HUMAN RIGHTS

THIS ISSUE OF *Let's Talk* IS ABOUT HUMAN RIGHTS. I HOPE YOU WILL BE INSPIRED TO GET A GOOD DISCUSSION GOING ON HOW TO ENSURE THESE RIGHTS ARE RESPECTED.

Human rights are principles we should all strive to achieve. With human rights standards in place we are safer, more secure, we can be more trusting of others. The many hours of our lives that we spend at work will be positive hours. Promoting human rights at work means the obligation to abide by the law and the opportunity to enhance our quality of life.

The significance of applying the rule of law to our work has been pointed out to us time and again. We even added the words "...while respecting the rule of law" to our Mission Statement to remind ourselves of this profound, professional obligation.

I have pointed out in a previous column that following the law in all we do ought to be beyond question. We are here to help offenders become law-abiding citizens. We are role models for offenders.

More importantly, we need to actively work at eliminating any trace of inappropriate "codes" or conduct which might directly or indirectly

condone behaviour other than law-abiding behaviour.

An offender who engages in or condones illegal behaviour still needs more time before being ready for safe reintegration into society. An employee who engages in or condones illegal behaviour is not displaying professionalism or conducting his or herself in accordance with our core values.

Please spend a moment or two with your colleagues to talk about this and to do what we all know to be right. ■



Ole Ingstrup



Human rights are principles we should all strive to achieve.

# HUMAN RIGHTS AND CORRECTIONS



IN 1998, CANADA JOINS THE REST OF THE WORLD TO COMMEMORATE THE 50<sup>th</sup> ANNIVERSARY OF THE *Universal Declaration of Human Rights*. THE DECLARATION, WHICH OUTLINES THE INALIENABLE RIGHTS AND FUNDAMENTAL FREEDOMS OF ALL PEOPLE, IS WIDELY REGARDED AS ONE OF THE MOST IMPRESSIVE AND INFLUENTIAL DOCUMENTS OF OUR TIMES. A PRINCIPAL AUTHOR OF THE DECLARATION WAS A CANADIAN, JOHN PETERS HUMPHREY, WHO PLAYED A CENTRAL ROLE IN DRAFTING AND GUIDING THE FINAL TEXT THROUGH TO ITS ADOPTION BY THE UNITED NATIONS IN DECEMBER 1948. THE 50<sup>th</sup> ANNIVERSARY OF THE UNIVERSAL DECLARATION IS A FITTING OCCASION TO RENEW OUR COMMITMENT TO THE SPIRIT OF HUMPHREY'S WORDS WHICH DECLARES, IN THE FIRST OF ITS 30 ARTICLES, THAT "ALL HUMAN BEINGS ARE BORN FREE AND EQUAL IN DIGNITY AND RIGHTS."

As Article 6 of the Universal Declaration reminds us, all people, including those who are imprisoned, have the right to full and equal recognition and protection before the law. In other words, the exercise of what the Declaration refers to as "inalienable" and "fundamental" rights and freedoms, such as the right to life, liberty and security of the person, are subject only to those limitations which are determined by law. The Solicitor General's

own *Corrections and Conditional Release Act* invokes this internationally-recognized principle, affirming that offenders retain the rights and privileges of all members of society, except those that are necessarily removed as a consequence of incarceration.

Respect for human rights is the bedrock upon which all correctional interventions should be based. As the universal declaration makes clear, recognition of the inherent value and

## More than two-thirds of Canadians want their government to deal with the root causes of crime.

dignity of the person is the surest foundation upon which justice, peace and security can be achieved. Put simply, the essence of the human rights case for corrections is that rightful treatment of offenders instills a genuine and active respect for the rule of law, both inside and outside prison walls. Preserving and instilling respect for human rights inside prison is the best – perhaps the only way to help prepare a more law-abiding person. If we lead by the example we set – and I believe we do – there are rewards to society when we treat even the most hardened of criminals with fairness and respect. Humanizing the incarceration experience through a rights-oriented correctional model promotes responsible behaviour that favours the safe and timely reintegration of offenders back into society.

There is virtually no evidence to suggest that a harsher, more punitive correctional model is a better way of rehabilitating criminals, deterring crime or reducing re-offending rates. The U.S. has tried that approach, but it hasn't made that country a safer place to live. More than two-thirds of Canadians want their government to deal with the root causes of crime, as opposed to building more and more

prisons. Sensationally preying on the public's fear of violent crime may drive the political agenda of some, but it holds little prospect for renewing the public's confidence in our correctional system.

The top priority of the Canadian criminal justice system is public safety.



As Solicitor General, I have a mandate to ensure that Canadians feel safe in their communities, in their homes, in their schoolyards and on their streets. Ensuring public safety and making Canada's correctional system as effective as possible is in everyone's interest. However, it needs to be recognized that

incarceration alone does not necessarily lead to a safer, more humane or more satisfying notion of criminal justice. The best way of protecting Canadians is by helping to prepare offenders for their eventual release into the community, under closely monitored conditions. Canadians generally support the rehabilitative principle of corrections, which is to say the majority of the Canadian public supports the orderly, safe and timely re-entry of offenders back into society.

I wish to commend the initiative of all of those who were involved in putting together this special issue of *Let's Talk*. Commemorating the 50<sup>th</sup> anniversary of the Universal Declaration in both word and deed affords us an excellent opportunity to reflect upon the legacy of Canada's impressive achievements, and our remaining challenges in upholding evolving expressions of human rights standards and practices in the area of corrections. ■

A handwritten signature in black ink that reads "Andy Scott". The signature is written in a cursive, flowing style.

Andy Scott



# HUMAN RIGHTS

By Ivan Zinger, Human Rights Division, CSC

“WITHOUT DISSENTING VOTE WAS A GREAT ACHIEVEMENT – SOMETHING INDEED IN THE NATURE OF A MIRACLE. ONE WONDERS WHETHER IT COULD BE DONE NOW.”

[JOHN HUMPHREY, principal author of the “*Universal Declaration of Human Rights*”]

Fifty years ago, following the trauma and horrors of World War II, the nations of the world came together to declare a common set of principles and standards upon which lasting freedom, justice and peace in this

world could be achieved. The signing of the *Universal Declaration of Human Rights* in 1948 was a monumental achievement because, for the very first time in history, the international community assented that

crimes against humanity could not be ignored nor would they be tolerated. For the past half century, the “inalienable” rights and freedoms championed by the Universal Declaration – the right to free education;



# RIGHTS FOR ALL

the right to social security; the right to form and join trade unions; the right to equal pay for equal work; the right to life, liberty and security of the person; freedom of thought, conscience, assembly, and religion – have served as a kind of moral benchmark, a universal standard of achievement to which the world community is expected to adhere. Though still not fully realized anywhere in the world, the Universal

Declaration remains one of the most impressive and influential human rights statements of our times.

The recognition that all persons, regardless of their individual circumstance, “are born free and equal in dignity and rights” is perhaps no more applicable than in the world of corrections. Although half a century has passed since the adoption of the Universal Declaration,

it continues to be a compelling and relevant source for interpreting human rights rules in the correctional setting. Much of the spirit and letter of the Declaration is echoed in the principles and provisions upheld by our own *Canadian Charter of Rights and Freedoms*. Both domestic and international human rights instruments affirm that persons deprived of their liberty have a right to be treated in a fair,

forthright and decent manner and not be subjected to cruel, inhuman or degrading treatment or punishment.

When Canada originally signed the Universal Declaration, our prisoners were still subject to corporal punishment, the death penalty and bread and water diets. In 1948, it was widely assumed that prisoners forfeited all rights, freedoms and privileges enjoyed by a free person upon the commutation of their sentence. Over the past half century, Canada's criminal justice system has made significant progress in human-

... still not fully realized anywhere in the world, the Universal Declaration remains one of the most impressive and influential human rights statements of our times.

izing the incarceration experience. Today's legislators, correctional administrators and society at large accept that offender rehabilitation, including timely and safe reintegration of offenders back into the community, is dependent upon providing safe, humane and less restrictive forms of custody and control. The values that we collectively share as a society—respect for the rule of law, fair and equitable treatment of others, democratic governance, tolerance and acceptance of diversity—

are the same standards to which correctional authorities are now held accountable. We have indeed come a long way.

But we must not allow celebrating our progress and accomplishments in the human rights field to overshadow the important work and challenges that lie ahead. Our criminal justice system is far from perfect.

We have indeed come a long way.

Canada's incarceration rate continues to rank among the highest in the industrialized world. Many of our penitentiaries are full beyond capacity. The majority of our prison population is drawn from the ranks of the economically and socially disadvantaged; a disproportionate number of minorities, including Aboriginal persons, are locked up in our prisons. HIV infection rates and incidence of AIDS among Canadian offenders continues to far exceed prevalence rates in the general population. As for its employees, the Correctional Service of Canada still has a way to go in becoming a more inclusive and representative workplace free of practices that undermine a person's sense of dignity. Clearly, there is room for improvement.

The ideals and aspirations of human rights for all have been set. Commemorating the 50<sup>th</sup> anniversary of the *Universal Declaration of Human Rights* represents an important opportunity for us all to take action on human rights issues, ensuring that a promise made is a promise kept. ■

There are many significant and noteworthy developments in the history of federal corrections concerning both employees of the Correctional Service of Canada (CSC) and offenders. The Human Rights Division of CSC considers the following milestones to be some of the most notable achievements for celebrating the 50<sup>th</sup> anniversary of the *Universal Declaration of Human Rights*.

1959

*Parole Act* AND

NATIONAL PAROLE BOARD

The *Parole Act* came into force on February 15, 1959, allowing for the creation of the National Parole Board in the same year. For the first time in Canadian history, parole decisions were determined and administered by an independent and national body.

1960

*Canadian Bill of Rights*

The *Canadian Bill of Rights*, enacted by the Parliament of Canada on August 10<sup>th</sup>, 1960, affirms the dignity and worth of the person and recognizes and declares fundamental rights and freedoms. Although eclipsed by the *Canadian Charter of Rights and Freedoms*, 1982, the *Canadian Bill of Rights* continues to apply to acts of the federal government.

1972

ABORIGINAL ELDERS IN FEDERAL PENITENTIARIES

This year marks the first time an Aboriginal Elder entered a federal penitentiary to conduct a traditional ceremony. Just over 20 years later, two healing lodges for Aboriginal offenders were established with an emphasis on traditional Aboriginal spirituality and healing.

1972

ABOLITION OF CORPORAL PUNISHMENT

Corporal punishments such as whipping and strapping were available both as a sentence of the courts and as a penalty for institutional offences until 1972.



# CELEBRATING 50 YEARS OF HUMAN RIGHTS: MILESTONES IN FEDERAL CORRECTIONS

1973

## OFFICE OF THE CORRECTIONAL INVESTIGATOR

The Office of the Correctional Investigator was created in 1973. Its primary function is to investigate the problems of offenders and seek resolution. In 1992, the role of this prison ombudsman was formalized in the *Corrections and Conditional Release Act*.

1975

## STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (SMRs)

The SMRs are the most significant and comprehensive international instrument recognizing the rights of legally incarcerated persons. In subscribing to the SMRs in 1975, Canada committed itself to ensuring full compliance and domestic implementation.

1976

## ABOLITION OF THE DEATH PENALTY

On July 26, 1976, Canada passed a law abolishing the death penalty. The last execution in our history occurred in December 1962. All death sentences between these 14 years were commuted.

1977

## INDEPENDENT CHAIRPERSON FOR ADJUDICATING DISCIPLINARY MATTERS

The Independent Chairperson (ICP) system was instituted in federal correc-

tions in response to the MacGuigan Report, a Parliamentary inquiry into the Penitentiary Service of Canada. Prior to the introduction of the ICP system, all disciplinary decisions against offenders were made by wardens and Canadian Penitentiary Service employees. This new independent process helped ensure that disciplinary hearings and decisions were fair and equitable.

1978

## FEMALE CORRECTIONAL OFFICERS IN MALE INSTITUTIONS

Although women have always worked with female offenders at the Prison for Women, women first began working as correctional officers in federal institutions for male offenders in 1978. The first woman to hold the position of Warden in an all-male facility was appointed in 1980. As of August 1998, there were 13 women institutional heads in federal penitentiaries.

1980

## MARTINEAU AND THE DUTY TO ACT FAIRLY

Prior to the landmark case of *Martineau vs Matsqui Institution Disciplinary Board*, Canadian courts were reluctant to interfere with the decisions of correctional authorities. In its decision, the

Supreme Court of Canada reversed this “hands off” approach and for the first time in law articulated that correctional authorities have a duty to act fairly when making decisions concerning the rights of offenders.

1982

## *Canadian Charter of Rights and Freedoms*

Proclaimed into force on April 17, 1982, the *Canadian Charter of Rights and Freedoms* is one of the most significant developments in the protection of human rights and is recognized internationally as a model document. The Charter, being the “supreme law” of Canada, affirms rights and freedoms that are deemed essential to a free and democratic society.

1992

## *Corrections and Conditional Release Act*

The *Corrections and Conditional Release Act* (CCRA) was proclaimed into force on November 1, 1992, and replaced both the *Penitentiary Act* and the *Parole Act*. The CCRA is a progressive and comprehensive code reflecting years of human rights developments.

1995

## REGIONAL FACILITIES FOR WOMEN OFFENDERS

The establishment of four regional facilities and an Aboriginal healing lodge for federally sentenced women marks a significant change in philosophy for federal corrections in Canada. These new centres are designed to reflect and respond to the needs and realities of federally sentenced women based on the principles of empowerment, meaningful and responsible choices, respect and dignity, supportive environment and shared responsibility. The new facilities began opening in the fall of 1995. ■

# HUMAN RIGHTS, FAIRNESS AND THE CORRECTIONAL INVESTIGATOR

*By Ron Stewart, Correctional Investigator*

EACH OF OUR LEGAL TRADITIONS IN CANADA—THE CIVIL AND THE COMMON LAW—HAS, TO SOME EXTENT, DEFINED HUMAN RIGHTS. THESE, IN TURN, HAVE BEEN CLARIFIED BY OUR OWN FUNDAMENTAL STATUTES AND BY THE INTERNATIONAL AGREEMENTS TO WHICH WE HAVE ADHERED. BUT, IN THE END, SINCE HUMAN RIGHTS ARE GENERAL STATEMENTS OF ACQUIRED WISDOM, THEY ARE ILL-SUITED TO PRECISE INTERPRETATION OR APPLICATION TO CONCRETE CIRCUMSTANCES WITHOUT THE ASSISTANCE OF EITHER ADJUDICATION OR BLACK LETTER RULES.

This is particularly true when individual rights must be upheld in situations where they conflict with valid collective purposes.

## **INDIVIDUAL RIGHTS VERSUS**

### **COLLECTIVE RIGHTS: A DILEMMA**

Nowhere is the conflict between public and individual more stark than in the corrections field. There, safety and security, as well as effective offender reintegration, are central objectives of the Correctional Service of Canada (CSC), and their attainment may involve blatant intrusions on basic rights. It is no coincidence that prisons have been the focus of much of our human rights case law.

## **THE CCRA: A BEGINNING**

The Solicitor General's *Corrections and Conditional Release Act* (CCRA)

is but one legislative outcome. It applies a broad range of rules to the thousands of circumstances, major and minor, affecting the life and rights of the offender. The rules are geared to attain the stated purposes of security and reintegration while minimizing their effect on the offender's enjoyment of the rights of every citizen.

Correctional life is complex and fraught with potential dangers. There is a need for experienced staff who can exercise considerable discretion, and who are unencumbered by excessively prescriptive rules. The question becomes, how is their discretion to be guided so that it will not over-reach the boundaries of human rights?

Here, it has been recognized that regulation can never respond to all



situations. Instead, the courts have promoted the concept of fairness, which provides the offender with the maximum information and the ability to contest decisions (prospective or past) so that the decision will be rationally taken and so that improper decisions may be effectively remedied.

## **THE FAIRNESS PRINCIPLE**

We see the fairness principle throughout the CCRA, from formal "natural justice" as in the disciplinary hearing provisions, to basic "procedural fairness" as detailed in section 27. The



fairness principle operates, on the one hand, to recognize the urgency of maintaining security and the need to make frequent and efficient decisions and, on the other, requires timely and thorough consideration of the appropriateness of decisions: the more important the right involved, the more painstaking the solicitation and consideration of the offender's point of view.

A major outcome of the fairness process has been to assist, not just in applying human rights in concrete circumstances, but in more accurately *defining* them.

#### DEFINING HUMAN RIGHTS

Grievance decisions, disciplinary decisions, and major reviews of the administrative process – for example, the Solicitor General's Arbour Commission, CSC's Administrative Segregation Task Force, United Nations Committee Member Maxwell Yalden's Human Rights Review, and the CCRA Review – have all provided the basis for delineating and effectively implementing rights in a broad range of circumstances.

It is in this context that the human rights role of our office, I believe, becomes clear.

Mr. Yalden, Madame Justice Arbour and other commentators have emphasized the importance of a detached, independent oversight in circumstances where the Correctional Service of Canada may become too focused and bound by its internal concerns to respond effectively, in a timely fashion, to more global, less obvious and possibly unpopular imperatives such as human rights.

This reflects administrative law jurisprudence as it has evolved over the decades, and indeed, the development of the ombuds principle, which has paralleled this evolution.

#### THE CORRECTIONAL INVESTIGATOR

Our Office has the mandate of "observing the observance" of human rights from an independent, knowledgeable, experienced perspective and identifying ad hoc and systemic violations of human rights. These are communicated to CSC in a way in which, we hope, will effect early solution and clarify the need for policy change, often as a matter of fairness.

There has been, and there may continue to be, debate on how much authority this Office, or other oversight entities, should have in effecting their conclusions.

The essential point remains, however, that while the Correctional Investigator must continue to be sensitive to the institutional realities of corrections when advocating change, he has an obligation – which is set out in clear terms in Part III of the Act – to afford the Correctional Service of Canada the benefit of his viewpoint.

The Office's effectiveness will depend in large part on CSC's openness toward and in response to that viewpoint. The role of this Office, in conjunction with the Correctional Service of Canada, is to promote both the continued evolution of human rights standards and the protection of those rights within a correctional environment. ■



# CELEBRATING OUR PROGRESS, FACING OUR FUTURE

*By Michelle Falardeau-Ramsay, Chief Commissioner, Canadian Human Rights Commission*

THE *Universal Declaration of Human Rights*, ADOPTED ON DECEMBER 10, 1948, BY THE UNITED NATIONS GENERAL ASSEMBLY, SET OUT A WIDE RANGE OF RIGHTS TO WHICH ALL THE WORLD'S CITIZENS SHOULD BE ENTITLED. THIS STATEMENT, WHICH CELEBRATES ITS 50<sup>th</sup> ANNIVERSARY THIS YEAR, SET THE STAGE FOR THE EFFECTIVE IMPLEMENTATION OF HUMAN RIGHTS PRINCIPLES AROUND THE WORLD.

**IT WASN'T THAT LONG AGO**  
In Canada, the legacy of the Universal Declaration has been the development of human rights statutes at the federal and provincial levels and, in 1982, the *Canadian Charter of Rights and Freedoms*. Canada has come a long way

in ensuring respect for human rights since 1948. The Universal Declaration was adopted at a time when this country's record fell far short of the Declaration's vision: racism and anti-Semitism were very much a reality for religious and racial minorities;

people with disabilities had little, if any, access to jobs or services; Aboriginal people were ignored completely, when they were not shunted off to residential schools or forced to relocate their communities; and women had the right to vote, but little in the way



porations and agencies, as well as to businesses under federal jurisdiction such as banks, airlines and railways.

#### ROLES AND RESPONSIBILITIES

The most important role of the Commission is to investigate and try to resolve complaints of discrimination. Each year, the Commission deals with about 1,500 complaints. In 1997, disability remained the ground for discrimination most often cited, accounting

Canada has come a  
long way in  
ensuring respect for  
human rights  
since 1948.

of employment opportunities or legal equality. While Canadians may have been “free”, they were far from “equal”.

#### *Canadian Human Rights Act*

While all of Canada’s human rights problems have not yet been resolved, the existence of human rights laws and human rights commissions means that discrimination is no longer legally sanctioned or socially acceptable. The *Canadian Human Rights Act* came into force in 1977 and the Commission was established in the following year to administer the legislation. Today, the Act prohibits discrimination in employment and services on 11 different grounds including race, religion, age, sex and disability. Conviction for an offence for which a pardon has been granted is also a ground for discrimination, although the Commission has received very few complaints based on that ground. The Act applies to federal government departments, Crown cor-

porations and agencies, as well as to businesses under federal jurisdiction such as banks, airlines and railways. In 1997, the Canadian Human Rights Commission (CHRC) received a total of 15 complaints against the Correctional Service of Canada, nine from employees and six from inmates. Five complaints were based on sex, four on religion, two were based on disability, and one each based on colour, family status, national/ethnic origin, and race.

The CHRC is also responsible for ensuring that employers under its jurisdiction comply with the *Employment Equity Act*, which requires federally-regulated organizations and federal departments and agencies to provide employment opportunities for women, Aboriginal people, persons with disabilities and visible minorities.

The Commission’s third major function is to foster public understanding and support for human rights. Each year, the Commission distributes some 150,000 copies of different publi-

cations to members of the public, schools, and non-governmental organizations. The Commission also reaches the public through its Internet web site ([www.chrc.ca](http://www.chrc.ca)), and by dealing with the media. This year, the Commission has participated in many activities to commemorate the Universal Declaration’s 50<sup>th</sup> anniversary, which also coincides with the 20<sup>th</sup> anniversary of the Commission. In September and October, I travelled across the country to deliver public lectures on “Human Rights in the 21<sup>st</sup> Century” at seven universities. We are also co-sponsors of two major international conferences aimed at commemorating the anniversary year: one is scheduled for Edmonton in November and the other for Montreal in December.

Finally, the Commission plays an important role in monitoring the human rights situation in Canada and commenting on the federal government’s progress in achieving equality. The Commission is interested in two issues, which specifically involve the Correctional Service of Canada. First, the Commission is concerned by the situation of female offenders retained in institutions for men, particularly, Aboriginal women offenders who represent a high number of maximum security inmates. Second, the question of how prison authorities deal with the issue of HIV/AIDS is of particular interest to the CHRC because the rates of infection of inmates with HIV are more than 10 times as high as that of the general population.

#### KEEPING THE SPIRIT ALIVE

One of the Commission’s major challenges is to find new and creative ways to keep the spirit of human rights alive within organizations under our jurisdiction and among the Canadian public as a whole. We believe that all Canadians stand to gain from a society that respects people’s rights, regardless of their differences. And respect for diversity is, after all, one of the things that Canada is all about. ■



# CANADA, THE CSC A

*By Maxwell Yalden, United Nations Human Rights Commission*

CANADA'S RECORD IN HUMAN RIGHTS IS MORE THAN ENVIABLE WHEN COMPARED TO MOST OTHER NATIONS. HOWEVER, WE HAVE ALWAYS SET VERY HIGH STANDARDS FOR OURSELVES, AND IT IS BY THOSE STANDARDS, NOT BY OTHERS' PERFORMANCE, THAT WE MUST BE JUDGED AT THE END OF THE DAY.

Winston Churchill has been quoted as having observed many years ago that the "mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of civilization of any country". In this, as in many things, the old warrior had it just about right. That, at least, is my own conclusion after several years of service with the Canadian Human Rights Commission and, more recently, on the United Nations Human Rights Committee.

Wherever we look around the world, it is those who find themselves in the most difficult circumstances who are the test of our tolerance and compassion as democratic societies. Canada is no exception. In that context, those who are concerned with the

correctional system have very special responsibilities vis-à-vis the inmate population.

#### COMMON SENSE

Of course, I can readily anticipate the response: these are individuals who put themselves where they are through their own actions, and they must live with the consequences. That is plain common sense. But it is also common sense to recognize that many of them can be rehabilitated: the Correctional Service of Canada's (CSC) own statistics give ample evidence of that. And the question then becomes whether they are more likely to learn positive social skills in an environment which respects their rights, and provides a reasonable degree of fairness

and even compassion, to a degree consistent with their situation in a penal institution.

In this environment, full weight must also be given to the very special concerns of employees of the Correctional Service of Canada. For it is equally important to recognize the reciprocal and interlocking nature of the rights and duties of inmates and employees if a correctional system is to make a genuine contribution to the security and well-being of all Canadians.

#### ON THE INTERNATIONAL SCENE

Beyond these essentially practical considerations, Canada is bound by a series of international engagements – accepted by all the democracies with



# AND HUMAN RIGHTS

which we like to compare ourselves – that mandate fair and decent treatment of inmates, respectful of human dignity and aimed at eventual rehabilitation. One cannot emphasize too often that these are not pie-in-the-sky dreams. They are, in fact, the only realistic way to promote a sane society; and it is for that reason that they have been so widely accepted in international practice.

#### CANADIAN LAW

It is for the same reason that they are at the heart of Canadian law, prohibiting, as the Charter of Rights does, “cruel and unusual punishment”, and requiring, as does the *Corrections and Conditional Release Act*, “the least restrictive measures consistent with the protection of the public, staff members and offenders”. All of these measures are intended, in a word, to shorten the odds on successful rehabilitation and maintain a culture of respect for equity and human rights.

#### COMPARING CSC TO OTHERS

It was in this context that I was happy to accept, about a year ago, the Commissioner’s invitation to chair a working group<sup>1</sup> which was asked to examine CSC’s domestic and international obligations, to compare Canada’s experience with others’, to sketch out a model for evaluating compliance, and to evaluate CSC’s ability to respect human rights and its capacity to communicate its mandate. It has been a rewarding experience, and on the whole a very positive one. CSC has a complex and difficult balancing act in the area of human rights, and in the main it has acquitted itself with a high degree of professionalism.

#### NOBODY IS PERFECT

This obviously does not mean that it can escape criticism. There are inevitably many weaknesses, some perhaps endemic to the system, which are particularly difficult to overcome. On the employees’ side, for example, there are

problems with employment equity or troubling instances of harassment; in respect of inmates, the persistent problem of double-bunking or perceived weaknesses in the grievance procedure exist; these and other gaps in what will never be a perfect system require ongoing and vigilant attention at every level of the Service.

#### HUMANITY’S GOALS

And what better time for CSC to recommit itself to that task? The *Universal Declaration of Human Rights*, that fundamental statement of humanity’s goals and aspirations for a fairer and more humane future, is nowhere more applicable than in the world of corrections; no moment in history could be more appropriate than on the 50<sup>th</sup> anniversary of its proclamation, at the close of the 20<sup>th</sup> century. ■

<sup>1</sup> I want to thank my colleagues on the working group, Mr. Stuart Beaty and Mr. Ivan Zinger, as well as Ritu Banerjee and David Hooey, students who helped us with our research, for their valuable contribution to the study and to our report.

# HUMAN RIGHTS WITHIN CSC: ONE PRISONER'S PERSPECTIVE

*By Thomas Mann*

GLOBAL ECONOMY, GLOBAL MARKETS, GLOBAL COMMUNICATION; “GLOBAL” IS THE CATCH PHRASE OF THE 1990'S. THE WORLD IN 1998 MAY BE GLOBALLY INTIMATE IN MANY RESPECTS, BUT IT HAS NOT YET DEVELOPED A GLOBAL CONSCIENCE WHEN IT COMES TO HUMAN RIGHTS. CANADIANS EAGERLY CONDUCT TRADE WITH COUNTRIES WHO STILL HOUSE THEIR INCARCERATED, MANY POLITICAL PRISONERS, UNDER THE MOST HEINOUS OF CONDITIONS. OUR CULTURE AFFORDS SELECTIVE VALUES TO JUSTIFY BLINDNESS TO THE PLIGHT OF MANY PEOPLE, INCLUDING PRISONERS. VOICES ARE MUTED, COLLECTIVE VALUES IGNORED, AND ALL IS JUSTIFIED IN THE NAME OF COMMERCE.

**INCARCERATION RATE IN CANADA**  
Many would argue that the extremely high incarceration rate in Canada is built on this rather cold cultural and fiscal premise. At the core of Canadian justice and corrections is a disproportionate number of prisoners with histories of mental, physical, and sexual abuse, low self-esteem, drug and alcohol dependency. Many are from visible minority and/or economically impoverished groups. Canada's punitive, rather than socio-medical approach to the “War on Drugs” has significantly contributed to prison overcrowding. Legislative efforts and funding appear to be used to incarcerate and police the underprivileged, rather than addressing difficult societal issues.

**THERE WILL ALWAYS BE  
A NEED FOR PRISONS**  
Nevertheless, a majority of the public and politicians agree that there will always be a need for prisons. While

great strides have been made in recent times to overcome many of the inherent tensions and divisions between staff and prisoners, the gulag's “walls and fences” will always manifest some disparity. There are many documented instances, including the famous Stanford psychology experiments of the 1960s, which clearly demonstrate the potential for abuse of power and control in the correctional setting. Clearly, a complex, frustrating, and tenuous challenge faces staff striving to uphold CSC's Mission “to respect the dignity of individuals, the rights of all members of society, and the potential for human growth and development.”

**HEALTH AND SAFETY:  
FUNDAMENTAL RIGHTS**  
Uniting both the prisoner and prison official is the very contentious subject of health and safety. Regardless of one's livelihood, or a criminal sen-

tence of incarceration, access to professional health care, and a sense of confidence in one's environment, is a fundamental right, not a privilege. With the drastic rise of potentially fatal diseases such as HIV, tuberculosis and various strains of hepatitis in prisons, serious human rights concerns must be addressed. Ensuring public safety while striving to reduce recidivism rates is a difficult enough challenge in itself. But to do so in an environment where the fear of contracting a potentially fatal disease is always present increases tension in an already intense workplace.

**DEMOCRATIC REPRESENTATION**  
Key to the maintenance and promotion of human rights is effective democratic representation and a credible remedy when rights are alleged to have been violated. Prisoners are entitled to representation by an inmate committee. However, due to the





isolated and vulnerable circumstances that committee members operate under, many prisoners have profound misgivings about how effective inmate committees are in upholding rights. Conditions, privileges and programs vary considerably from one institution to another. Committees often expend considerable energy lobbying for rights that have long been recognized in other facilities of similar security levels. There is little cohesion and communication between committees. Unification of inmate committees on a regional or national level would address the problem of disparity of conditions and result in a more uniform exercise of rights and privileges.

Many prisoners are reluctant to get involved in prison politics for fear of jeopardizing their parole prospects or otherwise being reprimanded by the authorities. Many working on inmate committees do so with great conviction and personal sacrifice. In order for inmate committees to be effectual, democratic, and representative of legislative rights, guarantees must be afforded to protect them from potential persecution, or the fear of persecution.

#### **GRIEVANCE AND COMPLAINT PROCESS**

A closely associated and similar legislative right is the complex grievance and complaint process. Bureaucratically

noble in appearance, in practice the effectiveness, confidentiality and objectivity of the process are viewed with widespread cynicism by many prisoners. The Correctional Investigator is also viewed by many as a symbolic, bureaucratic placement, rather than a mechanism to protect and promote human rights. Many prisoners fear that simply lodging a complaint can be detrimental and that the only constructive way to achieve conflict resolution is by circumventing the complex grievance system and directly involving the Federal Court of Canada.

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Prisoners recant their freedom, but this is all. In all other respects, they are to be treated equally with all others in Canada. The protection and promotion of human rights must not just be bureaucratic window dressing. Legislation must work in practice, without negative ramifications. We must always strive for more effective, more humane, more pro-active and more personal prisons. Prisons must not just punish. Human rights in Canada must not be politically compromised. Votes cannot be sold at the expense of jailed, jailer or Canadians: period. ■

# CORRECTING CORRECTIONS FOR

By Kim Pate, Executive Director, Canadian Association of Elizabeth Fry Societies



GIVEN MY EXPRESS MANDATE TO WORK WITH AND ON BEHALF OF WOMEN AND GIRLS INVOLVED IN THE CRIMINAL JUSTICE SYSTEM AND GIVEN THAT THIS YEAR MARKS THE 50<sup>th</sup> ANNIVERSARY OF THE *Universal Declaration of Human Rights*, I DECIDED TO INVESTIGATE HOW MUCH WOMEN PRISONERS KNEW ABOUT THEIR HUMAN RIGHTS. THE RESULTS OF MY INVESTIGATION WERE DISMAL TO SAY THE LEAST. MOST WOMEN THOUGHT THAT HUMAN RIGHTS DID NOT APPLY TO THEM BECAUSE THEY WERE IN PRISON, AND ONE WOMAN WAS QUITE CERTAIN THAT PRISONERS COULD “WAIVE THEM”.

## KNOWING ONE'S RIGHTS

These less than encouraging results invite a series of questions. What does legal protection actually amount to when, 16 and 50 years after their respective inception, prisoners do not even know that they enjoy or can exercise rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Universal Declaration of Human Rights*? Since the Arbour Commission Report, chronicled extensive human rights abuses and other reprehensible transgressions of law and policy have again surfaced. Why have women prisoners been stripped, shackled and left chained naked to a metal bed frame, without a mattress, in segregation? Why have minimum security women been sent into the community in shackles on various forms of temporary absences? Why do we continue to use classification tools that disproportionately discriminate on the

basis of race, class, gender and sexual orientation? Why have perimeter and razor wire fences, additional alarms and total surveillance cameras been installed in the new regional facilities that were supposed to be modeled on international examples of women-centred minimum security facilities? Why are women with mental health problems and maximum security women imprisoned in all-male prisons? Why are so few federally sentenced Aboriginal women placed in the Okimaw Ohci Healing Lodge, a facility designed specifically for them? How can these situations persist in a country that is touted around the globe as having one of the most humane and progressive correctional systems in the world?

## DIFFERENCES STILL EXIST

These are but a few of the examples of Canada's most recent and less than

enviable human rights record vis-à-vis federally sentenced women in custody. When women get out of prison, they face additional problems, occasioned by the severe lack of community release options for women. Contrary to Canada's international obligations and agreements, as well as domestic law and correctional policy, many women are forced to go to halfway houses and other resources designed by and for men, while simultaneously trying to make ends meet, regain custody of their children and figure out ways to survive. Indeed, to date, there are no women-only day parole resources in the Prairie and Atlantic regions.

**CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES AT WORK**  
So, what is being done by groups and individuals, as well as the Correctional Service of Canada to remedy these situations? Basically, we at CAEFS

# FEDERALLY SENTENCED WOMEN



continue to rely upon existing international obligations, domestic law and correctional policies and procedures. In addition to the existing mechanisms, we strive to create new ones. We encourage women to grieve, refer matters to the Correctional Investigator and the Canadian Human Rights Commission, make Access to Information requests, quote the Standard Minimum Rules for the Treatment of Prisoners, the *Universal Declaration of Human Rights*, the *Corrections and Conditional Release Act* (CCRA) the Charter and the Commissioner's Directives. We work in coalition with women's and equality-seeking criminal justice advocates, academics, lawyers, and our membership, who use similar avenues of recourse at the national, regional and provincial levels. We also work to positively influence public attitudes, as well as bureaucratic action.

## CHANGES ARE VISIBLE

The Deputy Commissioner for Women and the wardens of the new regional prisons continue to work towards the successful implementation of carceral and community-based services for federally sentenced women. Efforts have also been renewed to

work constructively and cooperatively with federally sentenced women and their advocates. In addition, in her capacity as the Co-Chair of the CSC Policy Review Task Force, the Deputy Commissioner for Women was instrumental in ensuring that CSC cease the practice of imposing punitive sanctions on prisoners who self-injure. Women have historically spent long periods in isolation and faced all manners of institutional disciplinary action, including charges of damaging government "property" as a result of self-injurious behaviour, so this is a significant step forward.

## PROTECTING HUMAN RIGHTS

The challenge is to determine where we will go from here. CAEFS will continue to press for the human rights protections promised by Canada's adoption of the *Universal Declaration of Human Rights*, the Charter and the CCRA. We want to ensure that women are returned to the community in a manner that is safe and supportive for the women themselves, as well as the community as a whole. We are heartened by the Solicitor General's expressed intentions to increase the effectiveness of corrections in Canada.

Minister Scott has expressed a very real interest in seeing life breathed into Canada's domestic and international human rights obligations, including moving forward on implementing the recommendations of the Arbour Commission and the Task Force on Federally Sentenced Women. The Minister's outlook is already producing a trickle-down effect within the correctional context. Senior correctional officials are seeking to increase the effectiveness and accountability of the CSC. The Service established a Task Force on Segregation and convened a Working Group on Human Rights. Although some of the most crucial recommendations, such as the need for independent oversight of CSC's use of segregation have not been implemented, and women's issues have not been examined or addressed, there is now a Human Rights Division within the CSC.

We hold out great hope that the next 50 years will actually see many more demonstrable examples of the ability of women prisoners to enjoy and exercise the full protection of Canada's international and domestic commitments to protect their human rights. ■

ADDRESSING THE DISTINCTIVE NEEDS AND INTERESTS OF ABORIGINAL OFFENDERS HAS LONG BEEN OF VITAL IMPORTANCE FOR THE NATIONAL PAROLE BOARD. ABORIGINAL PEOPLE ARE WIDELY OVER-REPRESENTED IN FEDERAL CORRECTIONAL INSTITUTIONS. WHILE THEY MAKE UP ABOUT THREE PER CENT OF CANADA'S TOTAL POPULATION, THEY ACCOUNT FOR NEARLY 15 PER CENT OF THE INCARCERATED POPULATION. THAT PROPORTION IS EVEN HIGHER IN THE PRAIRIE PROVINCES, WHERE ABORIGINAL OFFENDERS REPRESENT ABOUT 40 PER CENT OF THE INMATE POPULATION.

**THE FACTS SPEAK FOR THEMSELVES**  
Evidence shows that Aboriginal offenders are more likely to serve their sentence within the institution than in the community. Although they are released on day parole at about the same rate as non-Aboriginal offenders, they are much less likely to be released on full parole, and more likely to be released on statutory release.

Even if granted full parole, it is usually later in their sentence and they are more likely to be re-incarcerated for a violation of supervision conditions. As well, Aboriginal offenders are twice as likely to be referred for detention, but once referred, however, they are detained at the same rate as non-Aboriginal offenders.

For many years, the disproportionate number of incarcerated Aboriginal offenders has presented significant correctional challenges, challenges which could only be met with greater cross-cultural awareness, sensitivity, creativity and innovation. In the past, national policies and programs designed to meet the needs of the non-Aboriginal prison population were largely unsuccessful with Aboriginal offenders as evidenced by their low rate of program participation.



## PUSHING THE ENVELOPE OF INNOVATION AND ABORIGINAL C

*By John Vandoremalen, National Parole Board*

### **ABORIGINAL ISSUES:**

#### **ADDRESSING SPECIAL NEEDS**

With the many diverse Aboriginal and Inuit cultures in Canada, it is important that efforts to address special needs in corrections and conditional release be geared to the cultures and traditions of specific regional Aboriginal or Inuit populations.

In recent years, the National Parole Board (NPB) has made efforts to sensitize Board members and staff by providing cross-cultural workshops and training on Aboriginal issues. As part of their training, Board members are encouraged to take a positive, non-confrontational approach in obtaining information when asking questions of Aboriginal

offenders. It is important for them to be aware of the cultural nuances of how Aboriginal offenders may respond to the questions posed to them during the course of a hearing.

### **ELDER-ASSISTED HEARINGS**

One of the most recent innovations introduced by the NPB has been the use of Native Elders to assist at Board hearings. The idea started in the Prairie region six years ago and in the Pacific region last year.

Elders play an important role during these hearings by ensuring that Board members understand and consider cultural perspectives of Aboriginal offenders and the role of Aboriginal programs, ceremonies and rituals. To



# HUMAN RIGHTS THROUGH AND CREATIVITY IN CORRECTIONS

help them achieve this understanding, Board members have participated in sacred ceremonies and teachings with Elders in some Aboriginal communities. The offender's participation in Aboriginal programming, as well as their participation in counselling with Elders, in ceremonies and rituals, and in traditional teachings, are all relevant factors in an Aboriginal offender's successful return to the community.

## RELEASING CIRCLES

Another innovation, which is still very much in the experimental stage, is the concept of "Releasing Circles" as an alternative or an adjunct to the more traditional Parole Board hearing. The "circle" has profound significance for

Aboriginal peoples from the Plains Cree bands in the Prairies. The circle's power is its spiritual essence. The concept is grounded in the view that the Creator is the supreme spiritual power, that everything has a spiritual essence and is connected to everything else. It is a reflection of the "circle of life" belief of species propagation in the plant and animal worlds, humans included. According to that belief, everything enters from the Spirit World, remains connected to it and eventually returns to the Spirit World. The circle, therefore, symbolizes balance, harmony and unity and is based on the concepts of inclusion, consultation and consensus.

The success of the circle is a function of the community's willingness

to collectively embrace a problem and share in the process of finding a solution. It is the community that is at the heart of this process and it must remain so in order to achieve the goal of the circle. The circle invites honesty and responsibility. People are required to face these; to make a commitment and accept accountability towards healing and reconciliation.

At the time of writing, four releasing circles have been conducted in the Prairie region. The people in the circle participate in the sharing of information that will lead to the Parole Board's decision about the timing and conditions of release of an offender as a law-abiding member into the community. The underlying principle is that by including all parties that have been affected by the offence, or are concerned with the offender's return to his or her community, the most effective and just decision will be made.

The traditional teachings of respect, honesty and caring characterize the circle setting. Finding a solution may take several rounds of the circle, possibly taking several hours, as cultures are different and people are equally different, thereby making every circle different.

Through the openness and honesty of the circle, there is a shared goal of healing and strengthening and of reducing the risk of re-offending. Therefore, the circle is an opportunity for the justice system, the community and the offender to be responsible and accountable for the successful reintegration of an offender into the community. It is a way for the community to welcome the offender in its midst. Perhaps, the greatest feature of a releasing circle is that it provides all participants, including the victims, a forum for finding solutions, which are suggested by and agreed to by all.

Though still in the experimental stages, valuable lessons have been learned from the participants and the Aboriginal communities that have been involved in releasing circles, indicating that the concept holds promise for future endeavours. ■



*The Universal Declaration of Human Rights:*

# THE FIRST FIFTY YEARS A GOLDEN OCCASION

*By Vanessa Brochet, Legal Services, CSC*

ON THE OCCASION OF THE 50<sup>th</sup> ANNIVERSARY OF THE *Universal Declaration of Human Rights*, WE ARE REMINDED OF THE IMPORTANCE OF RESPECT FOR HUMAN RIGHTS IN THE HISTORY OF OUR CORRECTIONAL SYSTEM.

While the late 70's and early 80's were a crucial period for jurisprudence, human rights in the institutional environment continued to progress with the *Canadian Charter of Rights and Freedoms*, the adoption of a mission statement by the Correctional Service of Canada, and the enactment of the *Corrections and Conditional Release*

*Act* (CCRA). Numerous changes to Canada's legal framework arising from the Charter and from the CCRA, match provisions in the Universal Declaration and in other international instruments that have been endorsed by Canada. In the following paragraphs, we look at the main advances arising from legislation and court deci-

sions concerning the protection and promotion of human rights in the correctional environment.

## **PRINCIPLES OF FUNDAMENTAL JUSTICE**

In the 1980 Solosky case, the Supreme Court of Canada affirmed, for the first time, that imprisoned persons retain all

their civil rights other than those which they have been expressly or implicitly deprived of by law. This decision was handed down just days after the famous decision in *Martineau vs Matsqui Institution Disciplinary Board*, where the Court found that if a penitentiary's internal procedures or decision-making processes are incompatible with the duty to act fairly, those procedures and processes are subject to judicial review.

Failure to comply with the rules of fundamental or natural justice, such as the principles of procedural fairness, became one of the most often invoked grounds leading to judicial review. On several occasions, the Supreme Court and other Canadian courts recognized that inmates have certain rights and recourses, such as the right to be informed of the reasons for a decision, the right to be told of the evidence against them, the right to make representations, the right to a hearing, the right to be present at the hearing, the right to counsel, and the right to a non-arbitrary decision based on the evidence submitted at the hearing. These principles were repeated again and again by the courts in cases related to disciplinary hearings, transfers, urinalysis, double bunking and other matters. Since that time, the Charter has raised some of these rights to the status of constitutional guarantees. In addition, numerous procedural guarantees have been incorporated into the CCRA and Regulations.

**LIVING CONDITIONS OF INMATES**  
Article 5 of the *Universal Declaration of Human Rights* provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This principle is now entrenched in the Charter and is clearly stated in the CCRA. However, it has not always been respected, as evidenced by numerous investigations into the living conditions of penitentiary inmates. The Act now provides that inmates placed in segregation retain the same rights,

privileges and conditions of detention as other inmates, except for those which can only be enjoyed in association with other inmates and which cannot reasonably be granted in view of security requirements and the restrictions inherent in an administrative segregation area. Thus, inmates in segregation have the right to essential health care, respect for their religion and culture, suitable rehabilitation programs and so on. In short, the right to humane treatment. Despite legislative changes in this regard, the 1996 Arbour Report, arising from the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, revealed that there are still certain shortcomings regarding respect for and protection of the human rights of inmates under such circumstances as administrative segregation and searches.

**THE RIGHT TO PROTECTION AGAINST UNREASONABLE SEARCHES**  
Section 8 of the Charter protects people against unreasonable search or seizure, and Article 12 of the Universal Declaration seeks to protect people from arbitrary interference with their privacy. The effect of these guarantees, in the correctional context, has been to restrict the power to search inmates and their cells, to look for drugs and to conduct urinalysis testing. Guidelines have been introduced in this regard, and enabling powers have been spelled out in the legislation. The courts continue to tell us, as they did in the *Weatherall* case, that "such searches must be conducted in good faith and that their purpose must not be to intimidate, humiliate or harass inmates, or to inflict punishment." While the expectation of privacy is greatly reduced in a prison environment, the courts have limited the power of prison authorities to monitor inmates' communications, to record their conversations and to film them.

**THE RIGHT TO VOTE**  
Several courts have found that depriving inmates of the right to vote is a

violation of section 3 of the Charter but is justified by section 1. However, recently, the courts have rejected these justifications and overturned provisions making inmates ineligible to vote.

**THE RIGHT TO EQUALITY**  
Inmates may belong to disadvantaged groups that are protected by Section 15 of the Charter. Indeed, the decision in the *Véysey* case gave the protection of Section 15 to same-sex partners who are victims of discrimination in a prison. Furthermore, in the *Daniels* case, the court recognized a protection to women and Aboriginal persons who, it was argued, do not enjoy conditions of incarceration equivalent to those enjoyed by men and whites.

Adoption of the CCRA was probably the turning point regarding protection of inmates' rights. However, while the Act certainly marked progress, such rules of law are only useful in a context where the primacy of law is accepted, and where respect for the letter and the spirit of the law are fundamental values.

This overview has focused on the role of court decisions, changes in the law, and the advent of the Charter in the realm of inmates' rights and the legal framework governing incarceration. Historically speaking, the *Universal Declaration of Human Rights* represents a common ideal for all nations and peoples of the world. It sets out eternal, universal values. In Canada, it has been a source of inspiration for legislative provisions regarding human rights.

In the Correctional Service of Canada, the universal values and common ideals toward which we are striving are set out in the Mission Statement and in the principles of section 4 of the CCRA, which must guide the Service in carrying out its mandate. It is vital that compliance with these principles and values, and with the primacy of law, become a focal point of our activities. ■

# OFFENDER AFFAIRS

By Brian Mainwaring, Offender Affairs, CSC



YOU NEED SOMEONE WHO CAN SAY: “COMMISSIONER, YOU’RE WRONG. I’M CHANGING YOUR DECISION!” THIS WAS THE PARTING ADVICE FROM JOE PRICE TO COMMISSIONER OLE INGSTRUP ON FINDING A NEW DIRECTOR GENERAL, OFFENDER PROGRAMS. IT SUMS UP ONE OF THE EXPECTATIONS OF THE POSITION THAT REVIEWS ALL THIRD-LEVEL GRIEVANCES FROM FEDERAL OFFENDERS AND FORWARDS THEM TO THE ASSISTANT COMMISSIONER, CORPORATE DEVELOPMENT FOR SIGNATURE.

It also underlines a determination to resolve issues impartially, in line with the principles of fairness, and in accordance with the Mission, legislation and policies governing the Service. Mr. Price did not hesitate to say, “You’re wrong” when necessary. Over 100 third-level grievances were upheld during his tenure as acting Assistant Commissioner, Corporate Development, an average of 20 per cent.

**IMPROVING THE GRIEVANCE SYSTEM** Federal offenders under the jurisdiction of the Correctional Service of Canada have had access to a formal grievance procedure since 1973. At that time, a consultant’s report recommended implementation of a four-level system, primarily as a means of ensuring that letters to Ministers and government officials were answered promptly and consistently. Both the

Prairie and Quebec regions developed grievance systems and ran pilot projects. The warden represented the final level of decision-making in the Quebec model, while the Prairie model opted for four levels.

It was not until after the Parliamentary Inquiry into the Penitentiary Service of Canada (MacGuigan Report, 1976) that the system, as we know it, was implemented. The





Inquiry was critical of the long delays in responding to offenders' issues. The Service responded with a detailed Commissioner's Directive based on the Prairie model. Most of the features of that model, including access to an Inmate Grievance Committee, Outside Review Board, and options for informal resolution at the lowest levels were later included in the Regulations pertaining to the *Corrections and Conditional Release Act*. The Act grants offenders the legal right to a complaint and grievance system.

**PEOPLE INVOLVED IN THE PROCESS**  
Each major institution has a grievance coordinator who manages the institu-

tional grievance process. Since more than 80 per cent of all offender issues are resolved at the complaint or the first level (warden's authority) of the process, this position can have a significant impact on operations. Some wardens have chosen to have the grievance coordinator investigate issues directly while, in other institutions, complaints and grievances are referred to the manager in charge of the area, or the individual that is being grieved. At regional and national headquarters there are teams of analysts who investigate grievances and prepare responses for the Deputy Commissioner's signature in the region, and for the signature of the Assistant Commissioner, Corporate Development, at the third and final level. Approximately 80 person-years are devoted exclusively to the grievance process, while most operational managers are exposed to some extent.

The current Director, Inmate Affairs, Mike Johnston, has the mandate to implement the recommendations of the Commission of Inquiry into Certain Events at the Prison for Women, conducted by Madame Justice Louise Arbour. M<sup>me</sup> Arbour was harshly critical of the grievance system because of the unreasonably long response times, the remoteness of the decision-making and the incomplete investigation that was conducted into the women's grievances.

#### **MEASURABLE IMPROVEMENTS NOTED**

Mr. Johnston's first target was the backlog. It was reduced within three months from over 300 outstanding responses to 80. In consultation with staff and offenders across the country, Mr. Johnston then drafted revisions to the policy, introduced prioritization of grievances, more realistic timeframes, a mechanism to handle "multiple grievors", updated the grievance codes and produced a revised manual. The Division also produces a

quarterly bulletin, providing an account of some of the more complex issues that have been raised through the grievance process, and a semi-annual data report that identifies trends, potential problem areas and best practices. These improvements did not go unnoticed. The Correctional Investigator, in his last two annual reports, has noted measurable improvements in the quality and timeliness of responses.

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The Inmate Affairs Division has a mandate to investigate third-level grievances. The direct result is the assurance of fair redress for offenders. Indirectly, grievance responses illustrate to staff and offenders alike the standards by which operational issues will be judged. Finally, the grievance process offers a fertile training ground at all levels for future managers to learn the principles of fair decision-making. ■



# ACHIEVEMENTS AND CHALLENGES - WORKING ON DISABILITY ISSUES IN CSC

*By Helen Friel, Offender Reintegration Branch, CSC, and Member, NACPD*

THE ACHIEVEMENT OF A WORKFORCE REPRESENTATIVE OF THE CANADIAN POPULATION AND THE MEETING OF ITS OBLIGATIONS UNDER THE *Employment Equity Act* AND THE *Canadian Human Rights Act* ARE AMONG CSC'S OBJECTIVES. THESE ACTS, AND CSC'S OWN MISSION STATEMENT AND VALUES CONTAIN SEVERAL PRINCIPLES THAT ARE PARTICULARLY RELEVANT TO THE EMPLOYMENT OF PERSONS WITH DISABILITIES.

These principles are first, that the law is the authority governing CSC's activities and, second, that the Service respects "the need for employment equity achieved through a staff complement that represents a cross-section

of Canadian society."<sup>1</sup> A third principle is the need to foster and maintain, at all levels of the organization, a collective will to develop and instil attitudes and behaviour that respect and value differences.

#### **CSC'S WORKFORCE**

However, reflecting a situation that is government-wide, CSC does not currently employ a representative workforce. While the Service has achieved significant progress in the

representation of the four designated employment equity groups over the years, it is in the area of representation of persons with disabilities that the Service has achieved fewer gains.

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#### PERSONS WITH DISABILITIES: A CHALLENGE

There are a number of reasons for this, one reason being that persons with disabilities are reluctant to self-identify. The Service has implemented a number of initiatives to address this and other encumbrances to achieving better representation of persons with disabilities in CSC's workforce.

#### NATIONAL ADVISORY COMMITTEE ESTABLISHED

These initiatives include the promotion of self-identification campaigns and the establishment, by Commissioner Ingstrup in 1990, of a National Advisory Committee for Persons with Disabilities (NACPD). The mandate

of the NACPD is to provide advice and consultation on employment equity, diversity management practices, workplace accommodation and accessibility issues and to help the Service to identify and investigate areas of concern to persons with disabilities. Membership of the NACPD is made up of employees (one or two from each region) who demonstrate an interest in issues related to disabilities. In addition, there is one member who is selected from an external organization representative of persons with disabilities. Each year, committee members meet at a National Conference that is attended by senior staff members and subject area experts.

The National Conference provides an opportunity for the members of the NACPD to review the past year's progress, raise and address issues of concern, and to exchange information with departmental or external experts on disability, employment equity or other human resource issues.

#### COMMITTEE PROMOTES AWARENESS

An NACPD Newsletter is produced three times a year and distributed to staff electronically. In 1995, the NACPD produced a document entitled "A Closer Look" which reviewed departmental policies, practices, directives and government legislation, and examined career development and disability awareness within the Service. Last year, the NACPD produced an *Access Planning Guide* that has been distributed widely, to increase awareness of those involved in the planning of conferences about individuals with unique needs.

This year, the NACPD is proposing the development of a video, which could be used to increase awareness of persons with disabilities and which focuses on the measures taken to accommodate persons with disabilities in the workplace.

This video is seen as a key method of educating and informing manage-

ment and staff, and addressing other significant issues that should be considered if CSC is to meet its organizational employment equity objectives, which are clearly linked to CSC's corporate values and goals.

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#### COMMITMENT AND LEADERSHIP OF CSC

By funding and supporting the NACPD, CSC is showing its leadership and commitment to the goals of employment equity in general, and to the needs of employees with disabilities in particular.

This message of leadership and commitment will effect cultural change and contribute to an organization where persons with disabilities are valued, and barriers, be they attitudinal, behavioural, procedural or physical, are removed. ■



# WOMEN'S RIGHTS ARE HUMAN

*By Judith Sammon, Women's Advisory Committee, CSC*

In November 1991, a first-ever National Conference for Women in CSC entitled *Towards Equal Partnership* was held at Mont Ste. Marie in Quebec. The conference provided a forum for women to share ideas, knowledge and experiences relating to women's issues in the correctional workplace. Twenty-six specific recommendations emerged from the conference's proceedings. The recommendations covered a range of topics including: mentoring and coach-

ing; career planning and counselling; anti-harassment; selection boards and competitions; training and development; policy and communication.

#### **WOMEN'S COMMITTEE ESTABLISHED AT NHQ**

As a result of the 1991 conference, the Service has increasingly recognized the need to respect the fact that women within the Correctional Service of Canada (CSC) do have different issues

and concerns than their male counterparts. In his opening comments marking International Women's Day in 1997, Commissioner Ingstrup challenged participants to get involved in addressing issues affecting women at CSC's National Headquarters. A group of women responded to the Commissioner's challenge, culminating in a mandate and a list of objectives for the establishment of a Women's Committee at NHQ.



# AN RIGHTS

**ENHANCING THE QUALITY OF LIFE**  
Under the guidance of the Senior Deputy commissioner, the committee was established in 1997. It is open to all employees regardless of gender and is dedicated to addressing work-related concerns, as well as issues related to health, home and family. The objective of the group is to enhance the quality of work life of women in all sectors of the Service by supporting women's personal and professional

growth through development and learning opportunities and other initiatives and issues affecting women.

## **EVENTS ORGANIZED TO RESPOND TO PEOPLE'S CONCERNS**

The NHQ Women's Committee has been very busy in its inaugural year. Above and beyond their regular work commitments, the committee has hosted a number of special events and conferences. In February 1998, Bill Isaacs, Institutional Preventive Security Officer, Kingston Penitentiary, addressed workplace safety and awareness issues and, in March 1998, renowned psychologist Dr. Marna Zinatelli led a discussion on building innovative solutions to workplace problems. In addition to

involvement in activities marking International Women's Day, the Committee is an active member of the planning committee for the National Conference for Women.

In the near future, the Committee is planning to organize events around the following themes: aging parents; project management; day care options; financial planning and mentoring. As indicated by the topics, these areas of interest and concern are no longer just "women's issues." Men are increasingly faced with issues that have traditionally been responsibilities perceived to be inherent to women. The Committee encourages involvement from all staff at NHQ – so get involved. ■



# TURNING BACK THE HANDS OF TIME: INVESTIGATIONS INTO ALLEGED ABUSES PREDATE THE UNIVERSAL DECLARATION<sup>1</sup>

*By Robert Dandurand, Performance Assurance Sector, CSC*

On June 1, 1835, the Provincial Penitentiary of Portsmouth, eventually known as Kingston Penitentiary, admitted its first six inmates after a near state of rebellion within local jails forced its construction. Its first Warden, Henry Smith, pursued with unrelenting zeal the objective of inmate reform through a tight regime of control with hard labour. He was severely criticized by a public inquiry and was fired, despite Member of the Legislative

Assembly MLA John A. Macdonald's defence.

**CORPORAL PUNISHMENT THE ANSWER**  
From the start, Warden Smith set about imposing a severe regime designed to reform convicts through reflection, hard labour and the fear of punishment. No sound of any kind was to be made by a convict except in the most exceptional of circumstances. Anything that might disturb the

silence and harmony of the institution was forbidden under pain of severe corporal punishment. Records show that the warden sentenced inmates to six lashes of the cat-of-nine-tails for laughing.

**INVESTIGATION REVEALS THE TRUTH**  
In 1847, a commission, that was later known as the Brown Commission of 1849, (in recognition of its militant secretary George Brown rather than



its Chair the Honourable Adam Ferguson), was appointed to investigate the conduct, discipline and management at the provincial penitentiary. The report “painted a picture of a harsh, brutal, dehumanizing regime in which corporal punishment was meted out fiercely, repeatedly and indiscriminately, usually at the order of Warden Smith.”<sup>2</sup> Once tabled, the report brought about the warden’s immediate dismissal as well as the dismissal of a number of prison officers.

Notwithstanding this, corporal punishment was not formally abolished in Canadian penitentiaries until 1972.

#### **RESPECTING THE RULE OF LAW**

Nearly 150 years after the Brown Report, the Honourable Louise Arbour<sup>3</sup>, reminded the Correctional Service of Canada (CSC) that, in the imposition of punishment, all authority must come from the law. CSC’s Mission document was amended to reflect this. Practical measures were taken to support such values as honesty, respect for the physical safety of others, respect for privacy and for human dignity, that were already in the document.

Today, Board of Investigation members are required to analyze and report on any areas where the

Service or any of its members were not in compliance with the law, policy and procedures.

#### **AUDITING FOR HUMAN RIGHTS VIOLATIONS**

The Audit Unit of the Performance Assurance Sector has not conducted an internal audit specifically targeted at the subject of human rights. However, many of the audits that have been completed over the past several years contain audit objectives which assess the extent to which CSC meets its obligations with respect to human rights legislation.

For instance, audits of Segregation, Inmate Discipline and Use of Force all contained objectives related to ensuring that offender rights were respected. Among the rights examined were: the right to access legal counsel; the right of recourse; the right with respect to official language preference; and the right to fair and dignified treatment. In many cases, direct input from offender representatives was obtained. This latter step provides a degree of assurance that offenders have a measure of input into the audit process.

#### **KEEPING TRACK OF HUMAN RIGHTS PERFORMANCE INDICATORS**

The presentation of Performance Indicators to the Executive Committee

(EXCOM) allows senior managers to examine operations from a number of perspectives, including those relating to the rights of offenders. Some examples of these operations are:

- Administrative segregation: CSC policy requires consideration of all other options in order to avoid lengthy periods in segregation; to examine whether the reasons for segregation are in accordance with the law; and if the required reviews are carried out in the timeframes required by law.
- Offender classification and inmate placement: to ensure that the least restrictive option is adhered to.
- Past parole eligibility dates: to examine whether individuals are being prepared for the earliest possible safe release.
- Grievance process: to ensure that the complaint and grievance transactions are being completed within the required timeframes. ■

<sup>1</sup> Source: *Kingston Penitentiary: the First Hundred and Fifty Years: 1835-1985*

<sup>2</sup> *Idem*, p.42

<sup>3</sup> Commissioner and author of the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, 1996.

# STRICT GUIDELINES FOR RESEARCH IN THE CORRECTIONAL SETTING

By Louisa Coates, Communications Sector, CSC

The Correctional Service of Canada (CSC) adheres to the principles of human rights and fairness for all offenders under its care.

The Mission outlines the core values of the Correctional Service of Canada, which are to protect society and assist offenders to become law-abiding citizens. The Mission strongly supports the principles of human rights and fairness. CSC's Research Branch was established to carry out the Mission's values by creating new and relevant offender programs and by strengthening correctional knowledge.

"The establishment of a Research Branch at CSC marked the beginning of a new era for corrections research in the Department of the Solicitor General," said Director General of Research, Dr. Larry Motiuk. "Research issues could be addressed directly and tied to the development of organizational goals and policies. The Branch enabled the development of the kind of institutional and community-based offender programs that managers saw were needed."

The Correctional Service of Canada has strict guidelines for research in the correctional setting, as stipulated in the Commissioner's Directive on Research. The Directive establishes parameters for operational, medical and behavioural research, research which can provide valuable

information to correctional managers, help improve the health of offenders and help staff better understand, manage and treat inmates.

The Directive says that research proposals must undergo rigorous

"The establishment of a Research Branch at CSC marked the beginning of a new era for corrections research in the Department of the Solicitor General".

scrutiny before they are approved. Proposals are to be reviewed by either a national or regional research committee for their quality, ethics and their benefit to offenders and the

Correctional Service. The Directive states that researchers can only gain access to offender files if prior authorization, consistent with the *Privacy Act*, has been obtained. Finally, inmates participating in research cannot benefit from any kind of privileges.

Medical research requires the review and permission of prison, regional and national staff before it is allowed to proceed. Inmates can volunteer for medical research only if they have been diagnosed as having a medical condition addressed by the study, clearly understand the objective of the study, accept the methods used and have signed a consent form describing the study's objectives.

The *Corrections and Conditional Release Act* (CCRA) is the legislative foundation of federal corrections and conditional release. It states that the role of the federal correctional system is to carry out sentences through the safe and humane custody and supervision of offenders. It clearly states that no treatment can be given to an inmate unless he or she voluntarily consents to it, and that an inmate has the right to withdraw from treatment at any time.

Finally, research projects must also comply with the *Privacy Act* and respect both the confidentiality of information and the privacy of offenders. ■