SPECIAL REPORT

Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

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Discipline

Ombudsman SASKATCHEWAN

Discipline

Introduction

To protect the safety of both inmates and staff in the province's correctional centres, the government has established rules of conduct in *The Correctional Services Administration, Discipline and Security Regulations.* These rules are supplemented by local rules established at each centre. The range of penalties for contravention of the rules is stated in the regulations, and the penalty chosen must be proportionate to the offence.

Inmates understand the need to establish order and are generally willing to abide by the rules. When inmates violate the rules and are punished, they are generally willing to accept the punishment if the process, verdict and sanction are fair and reasonable. Problems can arise when discipline is administered unfairly.

For a disciplinary decision to be fair it should, at a minimum, be authorized by the regulations and comply with the principles of natural justice. The importance of meeting this standard should not be underestimated. Inmates are entitled to appeal disciplinary decisions to the provincial court, and if the court concludes that the decision does not meet the above standard, it has the authority to overturn the decision.[1]

Madame Justice Arbour considered the equitable dispensation of justice within a prison to be essential to the integrity of the sentence imposed by the courts. She concluded that

> *"if illegalities, gross mismanagement or unfairness in the administration of a sentence renders the sentence harsher than that imposed by the court, a reduction of the period of imprisonment may be granted, such as to reflect the fact that the punishment administered was more punitive than the one intended."*[2]

The Disciplinary Process

In general, the disciplinary procedures in the province's four correctional centres are much the same. If an inmate violates a rule of conduct, staff members are to follow a policy of progressive discipline. More serious violations are referred to the centre's discipline panel, which is to consist of three correctional staff members, one who acts as the chairperson.

Discipline panel hearings are to be held within two days of the date of the offence. Inmates appearing before the panel have the right to be heard and present evidence, to have a lawyer there, to call witnesses and to question the charging officer.

If an inmate is found guilty, penalties can include one or more of the following: a reprimand, up to ten days cell confinement, loss of privileges for up to thirty days, and loss of up to 15 days remission.

Throughout the hearing, Panel members are to be guided in their decision-making by *The Correctional Services Administration, Discipline and Security Regulations* and the principles of administrative fairness. Inmates who do not believe the panel's decision is fair have the right to appeal the decision to the centre's director.

In the course of our review we discovered several issues that need to be addressed. We would like to note, however, that the good faith of the panel members is not in question.

[1] See for example: *Brian Morrison* v. *R.*, Provincial Court, Saskatoon, Oct. 12, 2000. (unreported).
[2] Louise Arbour, Commission of Inquiry into Certain Events at The Prison For Women in Kingston (Public Works and Government Services of Canada, 1996), 183, 225. In *McPherson* v. *R.* (NBQB S/M/207/95), the judge reduced the inmate's sentence by three months because his charter rights had been violated.

Procedural Issues

Inmate Access to the Act and Regulations

To ensure a fair hearing, it is essential that inmates understand the disciplinary process and are aware of their rights. One way to accomplish this is to provide inmates with ready access to *The Correctional Services Act and Regulations*, which explain disciplinary procedures and inmate rights.

Corrections has never disputed that inmates are entitled to the *Act* and *Regulations*, yet inmates often tell us that they are not given access to these documents, or that they are not readily available. Officials at each centre have assured us that requests for these documents will be granted. This may be an instance where practice and perception have yet to align.

RECOMMENDATION

+ Ensure that all inmates have ready access to *The Correctional Services Act* and *Regulations* and are aware of the procedure for obtaining it.

Informal Resolution

Discipline panels are established by statute to determine guilt when a violation of the rules is alleged. In Saskatchewan, discipline is a formal process in which there is no provision for reparation other than for property damage up to $200. Several jurisdictions, including Saskatchewan, believe that the objective of rehabilitation is better served if the inmate is given the opportunity to deal with the violation informally by accepting responsibility for the offence and responding appropriately.

In British Columbia and Manitoba, and in the federal correctional system, the expectation that offences will be dealt with informally whenever appropriate is included in the governing regulations:

> *Where an officer has reasonable and probable grounds to believe an inmate has committed or is committing a breach of the rules or regulations of the correctional centre, the officer shall, (a) where circumstances allow, stop the breach and explain to the inmate the nature of the breach; and (b) where the person aggrieved by the alleged breach consents, allow the inmate to correct the breach, where possible, and make amends to the person aggrieved.*[3]

Although Saskatchewan Corrections encourages informal resolution of offences, the matter is not addressed statutorily or in policy. The matter is, however, addressed in the Corrections Worker Training Program and in the induction training following a correction worker's placement. Nevertheless, to minimize differences between theory and practice it would be helpful to clarify Corrections' expectations in policy.

SUGGESTION

+ Clarify in policy the expectations for informal resolution of inmate discipline matters.

Staff Actions Must Comply with the Act and Regulations

Disciplinary decisions and actions must comply with the guidelines set out in *The Correctional Services Act* and the accompanying regulations.

Disciplinary offences are divided into Classes A, B, and C.

Class A offences are violations of the Criminal Code or offences for which an Act of Parliament or an Act of the Legislative Assembly prescribes a penalty.

Class B offences are defined in the regulations, and Class C offences, which are violations of institutional rules, are defined in local policy.

The regulations specify procedures for dealing with each type of offence and the penalties that can be imposed.

Class A offences are referred to the police, who decide whether formal charges are warranted.

[3] British Columbia, Correctional Centre Rules and Regulations, section 29; Manitoba, Correctional Services Regulations, section 8 (1); Canada, Corrections and Conditional Release Act, section 41.

Class B offences are addressed internally by the discipline panel, which is to ensure the following:

+ The charge must relate to one of the specific offences listed in section 10 of the regulations;
+ Procedures subsequent to the charge must comply with section 11 of the regulations; and
+ The sanction must be an authorized sanction under section 23 of the regulations.

Although the above criteria are generally met, we did discover a few problems. For example, the regulations only authorize the panel to suspend one sanction, loss of remission, yet it was not uncommon for other sanctions to be suspended as well. This was rectified when we brought it to Corrections' attention.

The panel at one centre was prohibiting inmates' access to their cells during working hours as a sanction. This would only be an authorized sanction if access to one's cell were construed as a privilege, which is questionable. Although there may be some merit to this practice, if Corrections wants to impose this as a sanction it would be better if section 23 of the regulations were amended to include it rather then relying on a questionable interpretation of the existing sanctions.

Class C charges and sanctions have generally been handled by unit staff members. The regulations, however, authorize only the director to impose sanctions for Class C offences. This is admittedly cumbersome, but the regulations are clear. If this is unworkable, they ought be amended. Not only were staff imposing sanctions for Class C charges, but they were also imposing at least one sanction that is not authorized—cell confinement.

RECOMMENDATION

+ Ensure that the imposition of sanctions is in accordance with the regulations.

Time to Prepare for the Discipline Panel

Section 13 of the *Regulations* states that "the panel shall hold a hearing within 48 hours of the occurrence of the alleged contravention, Saturdays, Sundays and holidays excluded." Section 17 authorizes the discipline panel to adjourn and lists three authorized reasons for adjournment, which include giving the inmate adequate time to prepare a defence.

This regulation means that an inmate will have a *maximum* of two weekdays, excluding holidays, to prepare for the hearing but could end up with fewer days depending on when the panel convenes. If the inmate has not had time to prepare, the Regulations authorize an adjournment.

However, as noted above, inmates do not always have ready access to the Regulations or may not consult them. Consequently, they may not know about this right.

The discipline charge report lists two allowable reasons for an adjournment, but inexplicably omits the time to prepare a defence as a reason.

Under these circumstances, it is likely that some inmates will conclude that adjournments to prepare a defence are not authorized and therefore will not request one. There is no way to estimate how many inmates this would affect.

RECOMMENDATIONS

+ Include "adjournments at the request of the inmate" in the list of permitted reasons for adjournments on the discipline charge report.
+ Ensure that discipline panels advise inmates that if they are not ready to proceed, they have the right to request an adjournment.

Inmate Participation in Discipline Process

It is important that justice must not only be done, but also be seen to be done. For this reason, a decision should not only be fair in itself, but be made through a fair and open process. The withholding of information, although sometimes unavoidable, inevitably breeds suspicion and distrust.

[4] SaskatchewanJustice, Corrections Division Policy, Security 0024.

Inmates are entitled to all of the information upon which the panel will be basing its decision, except where the disclosure of certain information would compromise the legitimate safety or security concerns of the institution. Divisional policy clearly states that the withholding of information should occur rarely and only when strictly necessary.

In all four centres, the proceedings of the discipline panel are tape recorded, with the exception of the panel's deliberations on guilt and sentencing. These are conducted by the panel without the inmate present and with the tape recorder turned off.

This practice was implemented in response to concerns that some inmates would become argumentative or abusive if they were present during the deliberations. Furthermore, staff members were not comfortable openly discussing guilt or severity of punishment in front of the inmate, as they felt their ongoing need for a working relationship with the accused would be compromised.

In most cases, deliberations on guilt and sentencing are best done without the inmate present. Nevertheless, inmates should be given an opportunity to make statements regarding their guilt and sentencing prior to these deliberations. This happens from time to time, but it is not a part of the formal procedure. Allowing inmates to make statements regarding guilt and sentencing may result in the discipline panel reaching a more informed decision, which in turn might be more palatable for the inmates.

Corrections' policy has recently been revised to require that the discipline panel record its discussions and reasons on the discipline charge report and provide a copy to the inmate.

This is important as these reasons, carefully and thoroughly stated, will inform the inmate of the panel's findings on credibility and the evidence and law relied on in reaching the decision. In short, they ensure the integrity of the process. Furthermore, the report of the panel's decision and reasons form the basis for the inmate's decision whether or not to appeal.

Despite this, the charge report allows only two lines for the recording of reasons. In some cases, this is all the inmate gets; in others, the chairperson will explain the reasons in detail on the tape.

An inmate is entitled to meaningful reasons. These should be provided in writing, and the report form should be revised to provide adequate space to accommodate this.

RECOMMENDATIONS

+ Encourage inmates to make representations regarding guilt and sentencing.
+ Document the reasons for the discipline panel's decision in detail, including in writing on the charge report, and provide a copy of this information to the inmate.

The Right to Counsel

Section 15(e) of the regulations entitles an inmate charged with a disciplinary offence "to retain counsel within a reasonable time and be represented by counsel at the hearing."

Corrections has interpreted this to mean representation by a lawyer only. This is a concern since it effectively prevents inmates from securing representation: the vast majority of inmates cannot afford to hire a lawyer, and representation at disciplinary hearings is not within the range of services available through Legal Aid.

The matters that are considered in disciplinary proceedings are not trivial, and the possible consequences involve a loss of liberty through the imposition of cell confinement or the loss of earned remission. While legal assistance is available through Legal Aid for matters where the accused faces a real likelihood of imprisonment, practical assistance is not available for those already imprisoned who face the possibility of serving their sentence under more restricted conditions or who might serve a longer portion of the sentence the court imposed.

Case law indicates that individuals involved in proceedings may be entitled to counsel depending on the nature of the decision, the severity of possible consequences, and his or her capacity to undertake and understand the proceedings.

This is not something that can be measured with precision, but it can certainly be argued that the nature of disciplinary proceedings, the potential consequence of lost liberty, and the lack of sophistication of many inmates would meet the legal test.

There is no question that a fair process affords people who may be adversely affected by a decision a reasonable opportunity to respond to the allegations against them. This clearly suggests that, when it is appropriate, affected individuals are entitled to competent representation.

Ideally, inmates would be provided with legal counsel free of charge. However, while one can advance an argument that inmates are entitled to this by right and in law, it is not legally clear that this is the case. We will leave that question to the courts, to be determined in an appropriate case.

It would seem that inmates facing discipline charges should be given an opportunity to be represented, either by counsel or by an agent, so that they have the best possible opportunity to consider and respond to allegations and to put their cases forward.

We are not convinced that Corrections' narrow interpretation of the word "counsel" is necessary. The word can also be defined more broadly to allow inmates an opportunity to consult with and be represented by an agent. An agent can be any person who they believe can competently counsel them with respect to the charge and their representation.

Various non-government agencies are capable and well positioned to provide such services. At a minimum, inmates ought to be able to secure the assistance of fellow inmates, who may be more knowledgeable and more articulate, to counsel them, help with preparations, and represent them at disciplinary proceedings.

There is some concern that if inmates were allowed to retain the services of people who are not lawyers as their counsel, this right would be abused by excessive requests for adjournments or by selecting agents who might tie up the disciplinary process.

While these may be legitimate concerns, they can be addressed. For example, the regulations for Manitoba state that an inmate may be represented by a person who "in the opinion of the chair of the discipline board is reasonably available and would not present a security concern." Similar regulations in Saskatchewan would alleviate many concerns and ensure a process that is both fair and practical.

The discipline charge report has a section that is to be checked off or initialled to indicate that the inmate has been advised of his or her right to be represented by a lawyer. As noted above, the regulations speak of "counsel" and the form should be corrected to reflect this.

We have also noted in the course of our observation of discipline panel hearings and our examination of discipline charge reports that the question is not always asked, and that the box is not always checked. One centre was using an older version of the form that does not even include the question.

RECOMMENDATIONS

+ Afford inmates appearing before discipline panels the opportunity to be represented by an agent, including an agent chosen from among other inmates.
+ Explore the willingness of appropriate non-government agencies to provide competent representation for inmates appearing before discipline panels.
+ Amend the regulations as necessary to ensure orderly and timely proceedings and to accommodate representation by an agent.

The Composition of the Discipline Panel and the Perception of Bias

A strong concern raised by inmates and agencies that work with inmates was the perception of bias in discipline panel decisions. Inmates feel that they are facing an institutional wall.

This perception is understandable when one considers the composition of the panel: usually a deputy director or assistant deputy director sits as the chair, accompanied by two other correctional centre staff members.

The regulations pertaining to discipline panels in Saskatchewan require the director in each centre to appoint three employees to sit as panel members. No more direction is given; consequently, the positions held by the members of the discipline panel vary from centre to centre.

Although none of the members of the panel will have had any involvement with the incident leading to the charge under consideration, they retain, especially in the eyes of inmates, an identity as correctional staff.

Inmates know that staff members and management have to work closely together, and believe that it would be difficult for a member of the panel to appear to accept the word of an inmate over the word of a co-worker. The unfortunate, although not surprising, conclusion of inmates is that panel members rarely challenge charges laid by fellow staff members to avoid difficulties with co-workers.

The perception of bias will persist as long as all of the panel members are also Corrections staff.

An obvious solution, which by all accounts is not popular with Corrections, is to create a discipline panel composed of an objective outside adjudicator or adjudicators. This would address the problem of bias, but Corrections is concerned that if the outside adjudicator did not have experience working in a correctional institution, he or she might have difficulty understanding institutional dynamics.

We are not convinced that this concern is justified. Indeed, it is often suggested that adjudicators should not have prior experience in the environment under review, to help ensure an objective process that is not influenced by preconceived notions or past incidents. Safety and security concerns will receive appropriate consideration when presented to the adjudicator as part of the hearing process.

If an outside discipline panel is not a viable option, there are less attractive but still effective alternatives. One option would be to include at least one outside person among the members of the panel and to give that person the authority to make the final decision in the event that the members cannot agree.

Another option, less attractive but still an improvement on the current situation would be to select at least some adjudicators from Corrections staff who do not work in any of the correctional centres. These adjudicators would not have daily contact with centre staff and would not, therefore, be thought to have the same degree of concern about staff acceptance of their decisions. This would reduce but not eliminate the perception of bias that haunts the current process.

Another concern regarding the makeup of the discipline panels is that in some centres, the designated staff members are delegating their responsibilities to other staff. The regulations do not permit this type of subdelegation; only the director has the authority to choose discipline panel members.

This is not a trivial issue. An improperly composed discipline panel has no legal jurisdiction to adjudicate charges. If the matter were to be appealed in a court, the panel's decision would be overturned, which would very likely mean that the charges against the inmate would have to be dismissed.

RECOMMENDATIONS

+ Restructure the membership of discipline panels so that they are entirely or at least partly composed of members who are not employees of Corrections, or at least not Correctional Centre staff members.
+ Ensure that subdelegation of discipline panel membership ceases.

The Decision-Making Authority of the Discipline Panel

Section 7 of the *Regulations* stipulates that the chief executive officer is to appoint three employees to the discipline panel. The regulations, however, do not specify how the three employees are to arrive at a decision. Can the chair overrule the other two members? Can the other two members overrule the chair?

At the men's centres in Regina, Saskatoon, and Prince Albert, the chair has the final say, although consensus is preferred. At Pine Grove, the preference is for consensus, but if there isn't one, the majority rules.

The regulations would appear to anticipate more than an observer's role for two of the three members of the panel. Therefore, in a situation where there is not agreement among members, one might expect that the panel would arrive at decisions through a majority vote. For this reason, the current practice in the men's centres is questionable.

RECOMMENDATION
+ Clarify the decision-making process to be followed by the discipline panel members in the regulations.

Training for Discipline Panel Members

The requirements for the completion of the Corrections Worker Program include studying the disciplinary process and the rights of inmates. This is covered again in the induction training received by all new employees. Staff members who are designated to sit on a discipline panel are therefore familiar with the applicable regulations and other relevant laws.

In recent years, Corrections provided all Deputy Directors and discipline panel chairs a training session to ensure their understanding of *The Correctional Services Act* and *Regulations* as well as procedures and protocols for conducting a discipline hearing. This is valuable training that should be offered on a regular basis.

One shortcoming in the training, however, is that it does not encompass in detail the competencies required of an adjudicator with the authority to impose sanctions that restrict individual liberties. An adjudicator with this authority should be knowledgeable about matters such as procedural requirements under the rule of law, formal decision-making, rational argument, the interpretation of evidence, credibility of witnesses, interrogation methods and inmate rights.

In 2000, the Executive Director of Corrections established a committee composed of all correctional centre Deputy Directors of Security and Operations. Among other things, this committee is currently working on a standardized training package for all Assistant Deputy Directors of Security and those who act in that capacity. A component of the training will be discipline panel procedures, protocols and relevant legislation. This committee may be well placed, therefore, to consider an expanded training program including the competencies referred to above.

Appropriate training and a reference manual that addresses some or all of the above-mentioned areas of expertise would not only benefit the panel members, but also encourage fairness in the disciplinary process.

RECOMMENDATION
+ Ensure that all panel members are appropriately trained and qualified to adjudicate matters involving loss of liberty

SUGGESTION
+ Consider creating a reference manual for discipline panel members.

Specific Charges and Clear Reports

When an inmate is charged with an offence, the charge must specifically refer to one of those listed in the regulations, and it must be the appropriate charge.

For example, when a urinalysis comes back positive, some centres charge the inmate with "being in a state of impairment," while others charge the inmate with "possession of contraband." Since a positive urinalysis is not evidence of "impairment" and does not necessarily involve the "possession of contraband," neither one is an appropriate charge.

Not only must the charge be correct, but the facts provided to the inmate, usually on the charge sheet, must include all of the relevant information, including who, what, when, where, why and how.

In the course of the review, we examined discipline charge reports from all four centres. Most of them were in order. Some, however, were poorly worded or too brief. It is essential that the

charge reports be thorough and clear. Where shortcomings in discipline charge reports are detected by the discipline panel, the charge is amended or dismissed.

The Director reviews all discipline charge reports after the panel's decision. He or she, too, will take appropriate action when flaws are detected and will counsel staff regarding proper charging and discipline procedures. Nevertheless, we have occasionally reviewed inappropriate and incomplete charge reports that resulted in convictions.

This is not simply a technical or procedural concern; there can be substantial consequences. Not only does the discipline panel have to rely on the information provided in the reports, but the inmate also has to be able to respond to the information. Incomplete or unclear information compromises both the ability of the panel to decide fairly and the inmate's right to know the case against him or her. Ultimately, an inmate may be wrongly convicted in fact or in law.

RECOMMENDATION

+ Ensure that discipline panel members are aware of their responsibility to verify that charges are specific and appropriate and that inmates are provided with full and clear information that identifies the specific incident and charge prior to the discipline panel hearing.

The Right to a Full and Fair Hearing

Section 14 of the regulations requires the discipline panel to "provide the inmate with a full and fair hearing" and to "conduct a thorough and objective inquiry into all matters relating to the alleged contravention."

A "full and fair" hearing and "thorough and objective" inquiry are essential to minimize the risk of convicting an innocent inmate. A wrongful conviction has the potential to severely compromise efforts to rehabilitate the accused inmate and will erode inmates' faith in the discipline system.

What is a "full and fair hearing"? What is a "thorough and objective" inquiry? The answer will depend on the case at hand. Many discipline charges are straightforward and require very little in the way of an inquiry. For example, if two staff members observe an inmate smoking and the cigarette butt is seized as evidence, little further inquiry will be necessary.

In other instances, guilt may not be so easy to determine. Evidence may be contradictory, and witnesses may be unreliable. In these cases, more investigating may be required, more witnesses may be called, or the panel may have to adjourn to collect more information.

Inmates at all four centres told us that they do not believe they receive a full and fair hearing or that there is a thorough and objective inquiry. One might argue that this should come as no surprise, as inmates are not likely to sing the praises of their accusers. Even so, the fact that inmates consistently complain about the integrity of the disciplinary system is a problem. This system cannot work properly if inmates do not have faith in its fairness.

Our own observations of discipline panel hearings revealed nothing substantially out of order, but our presence may have influenced the proceedings, and the sample was small. Even if all of the panel members conduct themselves in good faith (a reasonable assumption), the fact remains that inmates report little confidence in the system.

It may simply be the case that general inmate acceptance of disciplinary procedures will be extremely difficult to obtain. Nevertheless, it is a worthwhile objective. The provision of counsel or agents and an external presence on the panel, as described earlier, would secure at least some degree of acceptance and confidence.

RECOMMENDATIONS

+ Clarify in policy the expectations and standards for a full and fair hearing and thorough and objective inquiry.
+ Examine the current discipline panel procedures with the goal of increasing inmate confidence in the discipline process.

The Standard for Decision-Making

The standard for decision-making by discipline panels in Saskatchewan is not addressed in *The*

Correctional Services Act or in policy. The unofficial standard is a “balance of probabilities.” In the federal correctional system, the official standard is "beyond a reasonable doubt."[5] The standard should reflect the seriousness of the offence and the potential sanction.

Sanctions for more serious charges in Saskatchewan include cell confinement and loss of earned remission. Since both sanctions affect an inmate's charter right to liberty, the standard for the discipline panel should be high.

RECOMMENDATION
+ Adopt "beyond a reasonable doubt" in policy as the standard for discipline panel decisions.

Appeals

The Director's Response to Appeals

Section 26 of the regulations entitles an inmate found guilty of a disciplinary offence to appeal his or her conviction to the director of the correctional centre. Section 27 places responsibility for the appeal response on the director. The director is given no authority to delegate this responsibility, yet in one centre, the deputy director was routinely responding to appeals. Strictly speaking, none of these appeals were valid. When we drew this matter to the centre's attention, the practice was discontinued.

It would be acceptable for someone other than the director to investigate the appeal and report to the director, as long as that person has not been involved in any way in the offence or in the disciplinary hearing and as long as the Director personally reviewed that report and rendered his or her own decision.

Regardless of who conducts the investigation, it should include a review of all relevant documents and interviews with the inmate, staff and others who may have relevant information. The director is, however, required to be ultimately responsible for the appeal, and it is essential that he or she thoughtfully and thoroughly consider the results of the investigation and sign the appeal response.

Appeal Responses

In responding to an appeal of a discipline charge, it is necessary in the interests of fairness to provide full reasons for the decision.

If the appeal is denied, the inmate needs to know that the issues have been considered and that the reasons for the denial are sound. If the inmate's appeal is granted, the discipline panel needs to know the reasons for future reference.

For the most part, the appeal responses from the directors were acceptable. Some directors consistently responded with full reasons, but others were sometimes too brief.

It is important that full reasons are given to inmates and discipline panels not only in the interests of fairness, but also because of the principle that justice must not only be done but be seen to be done.

The timeliness of responses to appeals varied between centres. The regulations, section 27 (3)(a)(b), require a response within seven days of the receipt of the appeal, unless the inmate is confined as a result of the subject of the appeal, in which case a response is required in two days, excluding Saturday, Sunday, and holidays. If the director cannot meet the response time, he or she is to advise the inmate in writing of the reasons. At the present time, there are no consequences if the appeal is late.

Not responding to appeals within the statutory time limits is blatantly unfair. It not only diminishes the integrity of the disciplinary process, but also in many cases renders the appeal response irrelevant as the sanction has already been served by the time a response is received. One solution would be to suspend disciplinary sanctions that are under appeal. This would not only make for more meaningful appeals, it would encourage timely responses.

SUGGESTION
+ Consider suspending disciplinary sanctions that are under appeal.

[5] Correctional Service of Canada, Commissioner's Directive 580: Discipline of Inmates, section 39.

RECOMMENDATIONS
+ Emphasize the need for directors to provide inmates with full reasons for appeal decisions.
+ Take steps to ensure that appeal responses meet time requirements.

Sanctions

Voluntary Sanctions

One centre has formalized a procedure to provide inmates with the option of voluntarily accepting a sanction for a disciplinary offence rather than automatically proceeding to a hearing before the discipline panel.

Correctional Services Canada also uses voluntary sanctions as an alternative to formal discipline charges. For discipline issues that are straightforward, both staff and inmates benefit from a procedure that is simple and direct.

This practice appears to have merit, provided the voluntary sanction is not coerced. However, there is a hitch: inmates claim that it is always best to take the voluntary sanction, as there is little chance that the discipline panel will render a not-guilty verdict, and the panel's sanction will without doubt be harsher than the voluntary one. This problem could be addressed by making the voluntary sanction the same as that most likely to be imposed by a discipline panel.

To avoid the accusation that some innocent inmates are serving voluntary sanctions because they have no faith in the discipline panel or because they cannot be bothered with a process they consider unfair, one modification may be in order.

Presently, the inmate signs a form agreeing to the sanction. The way the form is worded, the inmate's signature is not an admission of guilt. It would be better if the form were reworded to include an admission of guilt.

RECOMMENDATION
+ Amend the voluntary sanction form presently in use to include an admission of guilt.

SUGGESTION
+ Promote the use of voluntary sanctions in all centres provided the sanctions are equivalent to what would most likely be received if a discipline panel imposed it.

Group Sanctions

The practice of imposing sanctions on an entire unit continues to be controversial. It is unfair to innocent inmates. Also, unless the director imposes the sanction, it is not authorized by the regulations.

At a meeting of directors in November 1999, in response to the Ombudsman's concerns about this practice, the directors agreed to stop imposing group sanctions, with the understanding that they could still be used if they were necessary for security purposes. An example of the latter is locking up an entire unit after receiving information that there was a weapon on that unit.

However, this agreement was either not properly understood or not interpreted consistently. Our office still receives and reviews complaints involving the imposition of what we conclude are group sanctions. In these cases, Corrections defines the action differently. The matter remains unresolved.

Group sanctions are an easy response to a unit problem when the identity of the inmates who are causing the problem is not clear. Peer pressure can be an effective control on behaviour. Even so, one might question the effect that this has on inmates who believe staff members are punishing them for the offences of others, or what the repercussions are for the inmate or inmates causing the problem. The need to enforce order does not justify punishing innocent inmates.

RECOMMENDATION
+ Cease imposing group sanctions.

Earned Remission

Under Saskatchewan's *Correctional Services Act*, section 30 (1), "Every inmate shall be credited with remission of the inmate's sentence as provided in *The Prisons and Reformatories Act* (Canada)."

The Prisons and Reformatories Act entitles inmates to earn a reduction of up to one third of their sentence provided they obey the rules and participate in programming designed to promote inmates' rehabilitation and reintegration.

The Regulations authorize discipline panels to cancel, or suspend the cancellation of, earned remission credits. The suspension means that if the inmate does not commit another similar offence during the suspension period, the earned remission is not cancelled, but if the inmate does commit a similar offence, it is.

This practice has been criticized in other jurisdictions. In Australia, Death in Custody Watch spokesman Kath Mallott questioned the wisdom of authorizing staff members who are not trained in the law to effectively increase the length of time an inmate serves.[6]

In Saskatchewan, the discipline panels in the four correctional centres impose loss of remission or suspend the loss of remission in a limited number of cases. The vast majority of inmates earn the maximum remission credits.

In fact, it could be argued that the idea that inmates "earn" remission credits is misleading. Programming for inmates is limited, as are work assignments. Consequently, remission is not so much something that inmates earn but rather something they can lose. This is especially relevant to the argument that a cancellation of remission is effectively an increase in the length of time that an inmate serves.

In the course of the review, several staff members expressed the view that the threat of loss of remission credits was an effective deterrent against violations of centre rules. The deterrent effect, however, is not something that has ever been measured.

Some inmates have expressed a preference for cell confinement over loss of remission, which lends support to this argument, but this is anecdotal evidence and therefore not very convincing. It may be that other sanctions are just as effective.

Although the cancellation of remission is allowed as a sanction in the Regulations, the standard necessary for a decision to deprive an inmate of his or her charter right to liberty (by increasing the amount of the sentence that is served) is arguably higher than can be met by discipline panel members without formal legal training. The potential for violation of Charter rights is a serious matter, and we believe that continued use of this sanction should be re-examined.

Another issue is the length of the suspension. Some centres place a time limit on the suspension, while others leave the suspension in place until the end of the inmate's sentence. The latter practice could result in inconsistencies in the treatment of inmates who commit the same offence and have the same indefinite suspension imposed: inmates who are serving different lengths of sentence would not be penalized with the same severity because the suspension would last for different lengths of time.

Since one of the primary objectives of the sanction is to promote well-disciplined behaviour, there may be some merit in limiting the time during which the suspension is in place. When determining the length of the suspension, there needs to be a balance between rewards that are too easy and rewards that are too difficult or too far away.

The federal system allows suspensions of up to 21 days for minor offences and 90 days for major offences.[7]

SUGGESTION

+ Set limits on the period of time remission can be suspended, taking into account average and maximum sentences for provincially sentenced inmates.

[6] Natalie O'Brien, "Justice of Jail Hearings Questioned" The Australian (December 1, 1999).

RECOMMENDATION

+ Discontinue the use of cancellation of earned remission as a sanction for disciplinary offences or ensure some or all of the members of the discipline panel who are not correctional centre employees have appropriate legal training.

Aboriginal Inmates

In recent years, the Canadian judicial system has taken steps to recognize the unique circumstances of aboriginal people and the need for alternative sentencing practices to address their special needs.

The correctional system in Saskatchewan has implemented programs to try to better meet the needs of aboriginal inmates. To date, however, this recognition is not reflected in the disciplinary process.

This is unfortunate because it is an integral part of Corrections' rehabilitative efforts. It may turn out that attempts to accommodate aboriginal inmates are being hindered by a disciplinary process that, on examination, proves to be ineffective or even counterproductive for aboriginal inmates.

RECOMMENDATION

+ Examine the disciplinary process and consult with aboriginal groups to determine if changes are necessary to meet the special needs of aboriginal inmates.

[7] *Corrections and Conditional Release Regulations*, section 41.

Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres
October 2002

Discipline

SPECIAL REPORT

RECOMMENDATIONS

+ Ensure that all inmates have ready access to *The Correctional Services Act* and Regulations and are aware of the procedure for obtaining it.
+ Ensure that the imposition of sanctions is in accordance with the regulations.
+ Include "adjournments at the request of the inmate" in the list of permitted reasons for adjournments on the discipline charge report.
+ Ensure that discipline panels advise inmates that if they are not ready to proceed, they have the right to request an adjournment.
+ Encourage inmates to make representations regarding guilt and sentencing.
+ Document the reasons for the discipline panel's decision in detail, including in writing on the charge report, and provide a copy of this information to the inmate.
+ Afford inmates appearing before discipline panels the opportunity to be represented by an agent, including an agent chosen from among other inmates .
+ Explore the willingness of appropriate non-government agencies to provide competent representation for inmates appearing before discipline panels.
+ Amend the regulations as necessary to ensure orderly and timely proceedings and to accommodate representation by an agent.
+ Restructure the membership of discipline panels so that they are entirely or at least partly composed of members who are not employees of Corrections, or at least not Correctional Centre staff members.
+ Ensure that subdelegation of discipline panel membership ceases.
+ Clarify the decision-making process to be followed by the discipline panel members in the regulations.
+ Ensure that all panel members are appropriately trained and qualified to adjudicate matters involving loss of liberty
+ Ensure that discipline panel members are aware of their responsibility to verify that charges are specific and appropriate and that inmates are provided with full and clear information that identifies the specific incident and charge prior to the discipline panel hearing.
+ Clarify in policy the expectations and standards for a full and fair hearing and thorough and objective inquiry.
+ Examine the current discipline panel procedures with the goal of increasing inmate confidence in the discipline process.
+ Adopt "beyond a reasonable doubt" in policy as the standard for discipline panel decisions.
+ Emphasize the need for directors to provide inmates with full reasons for appeal decisions.
+ Take steps to ensure that appeal responses meet time requirements.
+ Amend the voluntary sanction form presently in use to include an admission of guilt.
+ Cease imposing group sanctions.
+ Discontinue the use of cancellation of earned remission as a sanction for disciplinary offences unless some or all of the members of the panel who are not correctional centre employees have appropriate legal training.
+ Examine the disciplinary process and consult with aboriginal groups to determine if changes are necessary to meet the special needs of aboriginal inmates.

SUGGESTIONS

+ Promote the use of voluntary sanctions in all centres provided the sanctions are equivalent to what would most likely be received if a discipline panel imposed it.
+ Consider creating a reference manual for discipline panel members.
+ Clarify in policy the expectations for informal resolution of inmate discipline matters.
+ Consider suspending disciplinary sanctions that are under appeal.
+ Set limits on the period of time remission can be suspended, taking into account average and maximum sentences for provincially sentenced inmates.