Human Rights and Corrections: A Strategic Model

Report of the Working Group on Human Rights

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EXECUTIVE SUMMARY

Established by the Commissioner in May, 1997, the Working Group on Human Rights was asked to review CSC systems for ensuring compliance with the rule of law in human rights matters; to provide a general strategic model for evaluating compliance within any correctional context; and to present recommendations concerning the Service's own ability to comply and to effectively communicate such compliance.

Based on a thorough review of all international, constitutional and domestic instruments that have relevance to the human rights of inmates and employees, the Working Group concluded (1) that the essential rights of prisoners are adequately reflected in the *Corrections and Conditional Release Act* and *Regulations*; and (2) that the human rights of CSC employees are similarly protected in law by virtue of the *Canadian Charter* and the various statutes that deal directly or indirectly with the rights of federal employees. (Chapter Two and Annexes C, D and E). An examination of the legal and operational framework in nine other correctional systems that are broadly comparable to Canada's found that, differences of detail aside, certain features that are essential to providing fair and humane corrections were common to all of them, e.g. internal monitoring that includes an effective grievance redress mechanism and external monitoring that provides for independent review or decision-making where more critical rights issues are involved. (Chapter Three and Annex F).

Drawing both on the Canadian framework and on its counterparts in Europe, Australia and the U.S.A., the Working Group developed a strategic model for achieving and evaluating compliance with lawful human rights rules that should help any correctional authority articulate and organize a complete, effective and publicly accountable system. (Chapter Four and Annex G).

CSC's ability to meet its human rights obligations was then reviewed on the basis of internal and external analyses and a number of interviews and visits. (Annexes B and I). The Working Group considered three main areas for compliance: (1) with employees' rights; (2) with the rights of inmates and (3) with rights-related needs that are more specific to aboriginal and women offenders. It was apparent that there was some scope for improvement in all three areas, as well as with respect to the overall systems of policy formulation and transmission, and the various internal and external monitoring and evaluation mechanisms. Corresponding recommendations are proposed throughout Chapter 5 and are summarized in Annex H.

Finally, the Group was asked to review and comment upon CSC's ability to communicate its human rights mandate to the general public and the international community. Given the extremely broad range of public views concerning both the rationale and the efficacy of the Service's mandate in this matter, there is a manifest need for a more comprehensive and more refined communications strategy that (1) encompasses both internal and external dimensions of the task; (2) provides a thorough analysis of the often divergent communications needs; (3) develops specific messages and arguments, tailored to those needs, that are factually based, up-front and convincing; and (4) takes more initiative in presenting substantive correctional achievements. (Chapter 6 and Annex H).

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Chapter 1: Introduction

The Working Group on Human Rights was established by the Commissioner in May 1997 in order to:

- examine CSC's international and domestic obligations and review its current practices in the area of human rights;
- compare the Canadian approach with that of other countries;
- develop a strategic model or framework which would enhance any correctional authority's ability to evaluate compliance with its human rights obligations;
- make recommendations for improving CSC's ability to respect human rights; and
- make recommendations to improve the Service's ability to communicate its mandate to the public and the international community.

The complete text of the Working Group's Terms of Reference may be found at Annex A. There are, in addition, a few preliminary observations that may help readers understand how those tasks were approached.

First, it must be said that CSC operates within a particularly complex environment, in which public expectations and a conscientious respect for Canada's human rights obligations are not necessarily congruent. Its mandate can be an ungrateful one: damned if it does and damned if it doesn't. With that in mind, it is important to put on record that, from our observation, the Service approaches a difficult task with a high degree of professionalism and concern for the public good. This, of course, does not make it immune to criticism; readers are, however, asked to keep in mind throughout the following chapters that CSC and its staff are plainly committed to finding the best ways to carry out their public duty.

The purpose of the Working Group was essentially to look at legal texts, structures, systems and mechanisms that would promote a correctional "culture respectful of human rights" and permit management to monitor progress in that direction. The review has therefore concentrated on evidence and analysis from three main sources:

- documents ranging from international covenants, legal texts, articles and external reports to internal CSC strategy papers, reviews, policies, research findings, training modules, statistical analyses, etc. (see Annexes C, D & E);

- interviews with managers and employees, union officials, inmates, community representatives and the Correctional Investigator's Office (see Annex B) about the adequacy of the Service's structures, systems and practices; and

- on-site visits to institutions in Ontario and Quebec, to exchange views on compliance issues, assess the accessibility of the relevant policies to staff and inmates, and to observe staff training.

Although every attempt was made to examine the above issues in a comprehensive fashion, our immediate goal was to provide succinct and timely analysis and advice. It was therefore not appropriate to undertake an exhaustive analysis of *all* Canadian statutes that might affect the rights of offenders or employees, or to provide specific guidance on the implications of rights-related statutes like the Official Languages or Access to Information and Privacy Acts which are monitored by other agencies.

For reasons of clarity, it was also decided that obligations and mechanisms that relate primarily to employee rights would best be dealt with separately from the provisions of the *Corrections and Conditional Release Act (CCRA)*, which deals mainly with offenders' rights. It should be clear, however, that the two are connected and, indeed, that inmates' rights must constantly be viewed in relation to the rights of staff, victims and Canadians generally.

We also wish to acknowledge at the outset the cordial cooperation which was encountered throughout this review, and the many helpful contributions we received in our efforts to identify weaknesses and suggest improvements. A culture that is truly respectful of human rights can only be brought about by individuals who understand what is at stake and how their particular role helps make such a culture possible. The Correctional Service of Canada has no lack of such people. We hope that the observations and suggestions that follow will be taken as they are intended: a sympathetic hand in the difficult work of developing a safe, humane and socially constructive correctional system.

Special thanks must also go to Ritu Banerjee and David Hooey, two students who assisted the Working Group, for the painstaking research they have undertaken into the overall legal framework and the voluminous materials received from other countries, as well as the many other documents they have consulted on our behalf.

Chapter 2: The Human Rights Legislative Framework

"The Working Group will review Canada's domestic and international legal obligations with regard to inmates' and employees' human rights."

With the assistance of CSC's Human Rights Unit and the Departments of Justice and Foreign Affairs and International Trade, two reference guides have been compiled outlining international and domestic human rights provisions that are relevant to federal corrections. This process has made it clear that Canada's human rights obligations are broadly distributed over many international instruments and domestic legislative and constitutional texts. Together they form the human rights foundation on which CSC's work is based.

The first compilation is entitled *Canada's International Human Rights Obligations with Respect to Prisoners and CSC Employees*. Annex C identifies those obligations which are most applicable to the Service's daily operations, following the traditional two-part division of international law between binding international commitments (ratified treaties, conventions and covenants) and other international instruments. It is our view that any correctional authority should adhere to both binding and other international human rights instruments that have been approved by the state concerned before the international community. CSC should therefore consider itself bound by all such instruments that have been endorsed by the Government of Canada.

The *Universal Declaration of Human Rights* was adopted by the United Nations General Assembly on December 10, 1948. Although it does not have the status of a binding international covenant, it is widely regarded as determining conventional international law and as the primary instrument for protecting the "inalienable," "inherent" and "fundamental" dignity of the human person. It underlies the many subsequent UN covenants and conventions that have shaped international human rights law, to which Canada is a party, in particular the *International Covenant on Civil and Political Rights* and the *Convention Against Torture*. These, among other things, provide that:

> "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (art. 10, *International Covenant on Civil and Political Rights* [*ICCPR*]);
>
> "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (art. 7, *ICCPR*);
>
> "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation" (art. 10(3), *ICCPR*); and
>
> "Each State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" (art. 2(1), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*).

There is no binding international treaty that deals exclusively with the treatment of prisoners and the conditions of incarceration. The most significant and widely respected instrument dealing with such rights is the *Standard Minimum Rules for the Treatment of Prisoners (SMRs)*. In subscribing to the SMRs in 1975, Canada committed itself to ensuring full compliance and domestic implementation. In particular, the Canadian Delegation announced that, "in approving the instructions for the Canadian Delegation to this Congress, the Cabinet agreed that the Delegation should indicate to the Congress that Canada has adopted the *Rules* and will refer these for implementation to the Committee of Federal/Provincial Ministers and Deputy Ministers of Corrections."

The *SMRs* consist of a body of principles and rules of general application which are considered "absolute" and "fundamental" and to be implemented everywhere and at all times. They proceed from basic declarations of intent and purpose to deal in a practical way with prison conditions and the humane treatment of prisoners. The text seeks to describe "the essential elements of the most adequate systems of today, [and] to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions." The *SMRs* enumerate only those basic minimum requirements which should apply to all prisoners upon entering a correctional system; they in no way restrict an authority's powers to go beyond those norms.

Two additional international instruments which Canada has endorsed and which reinforce the protection of the human rights of prisoners are the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (December, 1988) and the *Basic Principles for the Treatment of Prisoners* (December, 1990). Both outline provisions that are crucial to maintaining prisoners' inherent dignity as human beings, and to ensuring that they retain all rights and freedoms except those that are necessarily restricted by incarceration.

The Working Group believes that it is important for both employees and inmates to have ready access to Canada's international commitments in this area. It is therefore recommended that a copy of the *International Reference Guide* be provided to all CSC institutions.

A second compilation entitled *Canada's Domestic Human Rights Obligations with Respect to Prisoners and CSC Employees* (Annex D) identifies constitutional and statutory texts that are particularly relevant to Canada's human rights obligations in the area of federal corrections. The Working Group recommends that a copy of the *Domestic Reference Guide* also be provided to all CSC institutions.

In our opinion, the essential rights of prisoners are adequately reflected in those sections of the *Corrections and Conditional Release Act (CCRA)* that describe the purpose and principles of the federal correctional system. The key principles of safe and humane custody, retained or residual rights, least restrictive measures, forthright and fair decision-making, access to an effective grievance procedure, respect for sex, ethnic, cultural and linguistic based differences, and the right to participate actively in rehabilitative programs, are all set out in the law. It is also clear that the human rights of CSC employees are protected in law both by the *Canadian Charter of Rights and Freedoms,* by general human rights legislation and by the various statues that deal specifically with federal employees. As a result, Canada

is generally compliant with all the relevant international and domestic human rights norms, as are most other advanced democracies in terms of their legal and policy frameworks. The major requirements of the *CCRA*, as they relate to Canada's international undertakings, are set out in Annex E.

It is particularly important to recognize the fundamental nature of Canada's commitments in light of the fact that some members of Canadian society, including some CSC employees, do not necessarily share the values underlying the Service's human rights framework. In that context, it is essential to make it clear that the principles and provisions incorporated in the *CCRA* derive from universal human rights standards supported by all the advanced democracies with which Canada compares itself, that the Service holds itself accountable to those standards, and that it is actively committed to making them work in federal correctional institutions.

Chapter 3: Comparative Country Analysis

"The Working Group will compare CSC's current human rights legislative and policy framework with those of other countries which have demonstrated a strong commitment to human rights."

It was clear to us that other jurisdictions are confronting similar issues to those now facing CSC, and that their means of dealing with these matters might offer instructive suggestions for enhancing the Service's compliance-monitoring mechanisms. Information on the correctional framework and on prisoners' access to internal and external oversight mechanisms was therefore sought and received from nine countries: France, Germany, the United Kingdom, the Netherlands, Denmark, Norway, Sweden, Australia, and the United States. Supplementary reference materials compiled by the Human Rights Unit were used to complement official sources. On this basis, individual tables profiling each correctional authority have been prepared and may be found at Annex F. (The information from Germany and Norway was not sufficient to warrant this kind of presentation.)

Nearly all the jurisdictions surveyed endorse in primary legislation the principle that imprisonment should only be used as a punishment of last resort. Our review also indicates, however, that correctional authorities are under increasing legislative and societal pressure to introduce more austere ("no frills") prison regimes, impose new restrictions on prisoners, and tighten security requirements. Even such traditionally liberal and open European regimes as those of Sweden, the Netherlands, Norway and Denmark have taken measures in recent years to introduce a more spartan and, in some instances, more punitive prison regime in response to the prevailing law-and-order philosophy. If there are lessons to be learned, they are simply that, within a social context common to many jurisdictions, those responsible for administering prisons are faced with an ever more difficult task in ensuring legal standards of humane detention while simultaneously maintaining staff rights and the security of society at large.

As might be expected, correctional jurisdictions differ in the level, scope and complexity of their internal rights-monitoring practices. However, all those reviewed provide for an inmate grievance system with corresponding levels of administrative review, reporting, monitoring and appeal built into the redress process. Typically, complaint procedures also secure prisoners' due process rights such as the right to be heard, the right to be given written reasons, and the right to appeal to a central authority.

The correctional authorities surveyed have all established additional safeguards in those decision-making processes which are likely to involve significant losses of inmates' rights. In many instances, they also practice some kind of grievance prioritization whereby sensitive issues are brought immediately to the attention of the institutional head; less serious matters are generally to be resolved informally. More important decisions, such as those relating to disciplinary segregation, involuntary transfer or parole, are usually reviewed by central authorities rather than decided locally.

All the authorities surveyed would undoubtedly accept the merits of Lord Justice Woolf's dictum that a prison system without an independent, external review element is not a system that accords with proper standards of justice and accountability. Whatever the external monitoring mechanisms in place, prisoners and the public expect the correctional authority to reach decisions in a fair, forthright, impartial and unprejudiced manner. Its ability to do so must therefore meet certain standards of independent scrutiny. This involves a series of questions: how and by whom are the public watchdogs appointed; to what authorities do they report; to what extent are prison premises and documentation made accessible; and what powers do external oversight bodies have to ensure compliance with their decisions and recommendations?

Our analysis suggests that most of the countries reviewed have external oversight mechanisms that provide some answer to those questions. While a prisons ombudsman might seem to be the most obvious oversight mechanism, dedicated agencies of this sort are still relatively rare and may even be considered superfluous in countries with a tradition of general legislative ombudsmen. Indeed, in only two cases -- Canada's Correctional Investigator and England's Prison Ombudsman - have such specialized external monitoring mechanisms been established. (It must, of course, be noted that Canada does not have a general parliamentary ombudsman.) However, the Danish, Dutch and Swedish parliamentary ombudsmen also have responsibilities for carrying out inspections of custodial facilities, investigating prisoners' complaints and scrutinizing decisions of the correctional authority which are broadly analogous to those of their English and Canadian counterparts. Despite minor differences, it does seem to be generally agreed that an ombudsman-like function provides a more efficacious point of appeal for inmates to resolve their problems with the correctional authority than the court system would be able to offer.

As regards judicial oversight, most courts have historically been reluctant to challenge the authority of prison administrators. More recently, however, and especially in jurisdictions which lack credible external oversight mechanisms, judicial review has assumed a more prominent role in providing public accountability for what goes on behind prison walls. Arguably, many useful changes in prison conditions over the past three decades have stemmed from court challenges pursued by inmates. Disciplinary adjudication, sentence calculation, involuntary transfers, and security classification are all prison matters that have increasingly been subjected to the scrutiny of the courts in the UK, the USA and Canada.

Several jurisdictions have also made use of citizen involvement to mediate between prisoners and institutional heads (e.g., Boards of Visitors in England, Supervisory Boards and Appeals Committees in the Netherlands, Official Visitors in Australia, and Citizens Advisory Committees in Canada). However, prisoners may not always have great confidence in the ability of such groups to provide autonomous and effective redress. Our review indicates that these ostensibly independent bodies invariably report to, and are appointed, trained and monitored by, the correctional authority itself. This is not to say that the involvement of citizens in the correctional process does not provide some public assurance that prisons are managed in a humane manner; however, it appears to be accepted that such involvement complements rather than replaces a more independent and authoritative external oversight.

The jurisdictions surveyed also vary in the extent to which their legal and policy frameworks take account of international human rights norms and standards of custodial treatment such as those promulgated in the United Nations *SMRs* and the *European Prison Rules*. The value of such instruments with respect to monitoring a state's obligations lies in the fact that, at least in those states which have accepted the *Optional Protocol* to the *International Covenant on Civil and Political Rights,* they provide a means of final redress when domestic remedies have been exhausted. Several jurisdictions have directly incorporated international conventions and principles into domestic law, which obliges them to take those standards into account when formulating policy or taking decisions likely to affect prisoners' rights. And in the case of most European States, which are members of the Council of Europe, the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* provides an additional monitoring facility to promote acceptable prison standards.

In dealing with external oversight mechanisms, one should not overlook those non-governmental watchdog and research organizations that specialize in raising the profile of prisoners' rights. The more prominent of these groups (e.g., Amnesty International, Prison Watch International, Penal Reform International, the Howard League for Penal Reform) have a reputation for delivering hard-hitting criticisms and have been instrumental in leading prison reform campaigns around the world.

What emerges from this review of other correctional systems is that virtually all make use of parallel mechanisms for the protection of inmates' rights. Some of those safeguards are more extensive or specific than others, but the essential common elements are found practically everywhere: an internal monitoring mechanism that includes a grievance redress system, and an external monitoring mechanism that either makes or reviews any decision that seriously impinges on prisoners' rights to fair and humane treatment. In other words, what is particularly significant is that, beyond differences of detail, all correctional systems that aspire to be open, transparent and publicly accountable have developed similar systems for monitoring and protecting prisoners' rights.

Chapter 4: A Strategic Model for Assessing Compliance with Human Rights Obligations in a Correctional Context

"The Working Group will develop a strategic model which will enhance the ability of CSC and other correctional systems to assess the degree to which they meet their human rights obligations."

While the following model clearly owes much to our analysis of Canadian correctional practice, its aim is to set out those features that are fundamental to any credible framework for assessing human rights compliance in a correctional setting.

The first component of such a framework must obviously be a clear and succinct statement of objectives: (1) to permit the correctional body to demonstrate to society that it is cognizant of and in compliance with the rule of law as it pertains to human rights; and (2) to ensure that its systems for achieving and evaluating compliance are complete, efficient, and compatible with other systems of legal accountability.

Such a framework should thus provide the correctional authority with a way to conceptualize and organize monitoring mechanisms that is specific to the relevant obligations and norms and a basis for identifying and correcting deficiencies in existing systems. It should also provide the groundwork for explaining to employees, inmates, the legislature and society at large why and how it seeks to comply with international and domestic human rights obligations.

Within this framework, meaningful evaluation of compliance with human rights standards entails three main premises:

- ☑ that there be the clearest possible common understanding of what the lawful rules and regulations require;
- ☑ that those rules be firmly and unambiguously grounded in terms of their international, constitutional or legislative authority; and
- ☑ that mechanisms designed to achieve and evaluate human rights compliance be as transparent and open to public scrutiny as possible.

THE RULE OF LAW

Correctional systems are by their nature heavily dependent on rules, not just for the fair and humane treatment of offenders, but for the orderly conduct of a difficult social relationship. The strategic task is to integrate human rights considerations within that rule-bound environment in such a way that their rationale can be readily understood and their requirements intelligently met. This means that the first step towards ensuring the rule of law in human rights matters must be an explicit recognition that the correctional authority holds

itself bound by international, constitutional and statutory obligations that have been accepted by the state.

A second step in establishing clear, commonly accepted rules requires that the correctional authority not only acknowledge its lawful obligations but also use the most direct and appropriate means to ensure that the relevant rules are effectively embodied and communicated as an integral part of its operational practices.

In short, the purpose of human rights rules must be manifest and unambiguous, and their operational implications must be clearly linked to the law and clearly explained. Only then can the various persons involved be held responsible and accountable for their part in respecting those rules. There also cannot be successful compliance measurement unless those directly concerned understand and internalize the rules and have clear guidance on how to apply them in practical terms.

It follows that, to make human rights rules effective in the operations of any correctional system, two requirements must be met: first, there must be a clear and consistent policy framework; and, second, procedures for putting those policies into effect must be transmitted to staff and inmates in ways that make them as easy to understand and apply as possible.

POLICY FRAMEWORK

Once the relevant laws and regulations are in place and it is clear how they relate to legal obligations, the policy framework serves to contextualize them and make them specific to the work of a particular correctional system; in other words, the fundamental requirements of humanity and fairness need to be made workable on a daily basis. To meet that goal, the formulation of policy must meet certain standards:

- ☑ policy should be issued only to the extent that a practical interpretation of the legal or regulatory rule is indispensable (need);
- ☑ policy should be explicitly linked to its legal and regulatory basis (authority);
- ☑ policy should identify as specifically as possible the rights at issue (specificity);
- ☑ policy should be uniform and consistent for all correctional situations within the system (consistency);
- ☑ as far as possible, policy should not be diluted or confused by locally adopted rules but should issue from a single authoritative source (single-source); and
- ☑ policy should be expressed in the most straightforward and practical language possible (clarity).

RULE TRANSMISSION

Even when the correctional system has met all of the above policy formulation standards (need, authority, specificity, consistency, single-sourcing and clarity), the quest for compliance has only begun. Operational rules still have to be firmly implanted in the minds and in the behaviour of all concerned. This process of rule-transmission and internalization is an ongoing one and should comprise the following elements:

- ☑ basic training for all staff that thoroughly explains the legal basis and operational implications of human rights rules, makes the fullest possible use of situational training and job-experienced personnel, and leaves trainees with readily understandable support material that they can turn to for practical guidance on the job;

- ☑ regular access to refresher training for all personnel, particularly front-line staff;

- ☑ key rights-related rules that are embodied in a convenient and readable handbook that staff can be expected to refer to on a regular basis; and,

- ☑ an equivalent guide for inmates which is accessible to all and backed up with orientation sessions at the institutional level for those who have limited or no reading skills.

MONITORING COMPLIANCE WITH INMATES' RIGHTS

There is more to achieving accountability than simply measuring the extent to which a particular correctional system possesses and follows procedural safeguards. Important though these are, they cannot in and of themselves either guarantee full human rights compliance or satisfy the need for public scrutiny. The correctional authority needs not only to evaluate its own compliance but also to demonstrate compliance to the legislature and to society.

Internal Systems

Assuming that the relevant obligations have been clearly translated into policy and procedures and that the rules have been thoroughly communicated, a satisfactory internal compliance model requires the following features:

- ☑ regular procedural checks against those rules, as a routine aspect of all reporting and supervision requirements;

- ☑ grievance and complaint systems that are demonstrably accessible, timely and effective in providing redress or response;

- ☑ inspections, audits and evaluations that regularly and comprehensively review compliance with human rights obligations; and

- ☑ full and timely incident-specific investigations into situations where human rights safeguards appear to have broken down.

While the above systems have obvious structural and resource implications that will find different responses in different states, as a general rule there is a need for a clearly designated entity within the correctional authority with lead responsibility for guiding and monitoring compliance with human rights rules. This also implies a management plan that gives prominence to human rights compliance and ensures timely and systematic follow-up when particular compliance problems are identified. In this context, an Inspectorate General or office of equivalent status deserves consideration. While there may be few aspects of any correctional system that do not impinge on the human rights of offenders, employees or other parties, such concerns can get lost among other organizational priorities.

Correctional philosophy may be admirable and procedures technically complete, but something more is necessary to ensure a sustained and well-informed management focus on human rights compliance. A credible internal model requires that the tasks of developing suitable performance indicators and putting together a thorough program of evaluation be conducted in close conjunction with the related responsibilities of grievance/complaint handling, incident investigation, and tracking rights-related court proceedings. The more the various processes involved in internal monitoring can be organizationally concentrated, the greater the likelihood that such a system will stand up to scrutiny and satisfy the requirements of public accountability.

External Monitoring

Many modern correctional systems recognize and reflect a duty to be both "forthright and fair". Such considerations are obviously of paramount importance when it comes to safeguarding human rights, not least because corrections are conducted in the name of the larger society. To meet that standard of accountability, it is not sufficient that the system have appropriate internal monitoring mechanisms; it must also be able to satisfy the public authorities that its performance is at all times fully consistent with the rule of law.

That is why many monitoring arrangements call for an official public watchdog or, in some cases, continuing judicial oversight to provide an independent external evaluation of a correctional authority's compliance with its lawful obligations in carrying out sentences. The following principles apply:

- ☑ independent oversight provides an unbiased reading on the extent of a system's compliance with its lawful obligations; it is not intended to provide an additional level of operational management;

- ☑ to meet the test of independence in a credible way, an external body must be able to submit its findings to the legislature as directly as possible, without interference or the appearance of interference from within the system;

- ☑ in the event of serious incompatibility between the monitoring agency and the correctional authority's judgment about compliance with human rights obligations, provisions should exist whereby the matter can be submitted to adjudication;

- ☑ an external monitoring body must have sufficient resources, not only to respond to allegations of non-compliance, but also to initiate and conduct its own investigations.

To ensure the fullest possible respect for inmates' rights, a complete compliance-monitoring model will therefore provide for an external monitor, whether it be part of the judiciary or a prisons ombudsman.[1] Such a monitor must be recognized in law, and the person appointed should be removable only for cause, preferably only by the legislature. The office should have the following powers or duties:

- ☑ to ensure that its services are well known and readily accessible to the inmate population;

- ☑ to have the fullest possible access to all relevant documentation, as well as the authority to interview parties as and when required;

- ☑ to receive, investigate and, whenever possible, informally resolve complaints or grievances from inmates who believe that lawful rules regarding prison conditions or correctional procedures have been breached;

- ☑ in cases where, following investigation, a complaint or grievance is judged to have merit, to promptly to inform the parties of that finding and make such recommendations to the correctional authority as are considered necessary to remedy the situation; and

- ☑ to report to the legislature on a regular basis, highlighting significant findings and recommendations, and in particular drawing attention to any unresolved disputes with the correctional authority that may require further action or adjudication.

[1] The Canadian "Correctional Investigator" already possesses many of the attributes of a prisons ombudsman, but the latter title, which is in use in England, better describes the function in question.

In instances where significant loss of prisoners' rights is at stake, the simple monitoring of a correctional authority's decisions by an external entity may not be sufficient to ensure compliance; it is arguable that the decision itself should be made by some external entity. Currently, most jurisdictions we have reviewed recognize that serious disciplinary matters and parole decisions should at least involve some authority independent of the correctional service. We believe this requirement should be a component of any effective correctional model.

Aboriginal Offenders

Although this general model applies to all prisoners and employees, it does not specifically deal with the rights of aboriginal peoples in the various countries where they are present. It is therefore suggested that there be additional monitoring requirements in those cases, to ensure that those human rights issues that are more specific to aboriginal offenders will be appropriately dealt with.

As part of the criminal justice system, a correctional authority must ensure that direct or indirect discrimination against aboriginal peoples is not condoned or exacerbated by its own policies and practices. Measures for taking account of such needs should include:

- ☑ the creation of institutions and/or programs that reflect aboriginal approaches to justice and rehabilitation;
- ☑ involvement of elders and native liaison workers in penitentiaries;
- ☑ recruitment and promotion of aboriginal staff;
- ☑ establishment of aboriginal advisory committees;
- ☑ adoption of policies which encourage recognition of, and respect for aboriginal cultures; and
- ☑ appropriate staff education.

To comply fully with the rule of law, a correctional authority must also monitor its compliance with any legal requirements that pertain specifically to aboriginal people, or any decisions which may exacerbate discrimination against them. Any internal audit that looks into operational decisions affecting prisoners' rights should therefore include specific measures to assess their impact on aboriginal offenders' rights.

Other factors that may require specific monitoring include:

- ☑ taking account of the fact that general grievance mechanisms may not suit aboriginal offenders, who may require different ways to bring legitimate human rights concerns to official attention; and

- ☑ the impact of apparently neutral requirements (e.g. in risk-assessment or parole-decision situations) may be markedly different for aboriginal offenders in that historical disadvantages may prevent them from meeting certain educational or other standards.

Women Offenders

It has often been observed that "women's rights are human rights." This is true in the correctional context as it is elsewhere. It is also true, however, that women offenders have particular rights and needs which are recognized internationally, and which present correctional authorities with special problems. Among the more specific international obligations the following should be noted:

- ☑ "Men and women shall so far as possible be detained in separate institutions: in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate" (s. 8(a), *SMRs*);

- ☑ "No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer" (s. 53(2), *SMRs*);

- ☑ "Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women" (s. 53(3), *SMRs*); and,

- ☑ "Measures applied under the law and designated solely to protect the rights and special status of women, especially pregnant women and nursing mothers ... shall not be deemed to be discriminatory. The need for, and the applications of, such measures shall always be subject to review by a judicial or other authority" (Principle 5 (2), *Body of Principles*).

While it is not possible to envisage a sub-model of human rights safeguards that is specific to all women offenders, it is possible to enumerate certain institutional features that one would wish to find in any correctional system. These would, for instance, include:

- ☑ a proportion of women employees throughout the system that is sufficient to meet the standards of humane treatment outlined in the articles cited above; and

- ☑ where possible, both internal and external entities with particular responsibility for monitoring the treatment and concerns of women offenders.

Since correctional systems also tend to be designed to deal with a carceral population that is predominantly male, it is not uncommon to find that female facilities are at best rough adaptations from a male institutional model. This not only creates an environment that may be indifferent to such biological differences as those referred to in the *SMRs,* it often fails to take account of the different social or educational needs of women. In order to minimize the effects of such male correctional models, the following features also deserve attention:

- ☑ where women offenders are controlled by male employees, means must be put in place to prevent and correct all forms of sex-related discrimination and harassment;

- ☑ particular arrangements must be made to facilitate the reporting and remedying of complaints by female offenders; and

- ☑ the human rights and well-being of women inmates must be a regular focus for internal evaluation and public scrutiny.

EMPLOYEES' RIGHTS

Internal systems for monitoring respect of the human rights of correctional employees will have the same essential components as those for verifying compliance with inmates' rights: routine reporting and supervision; timely grievance and dispute resolution mechanisms; regular audits and evaluations; and special investigations when required.

They will also have access, as do all public sector employees, to various agencies which have been established wholly or in part to deal with rights-related problems. It is important to recognize, however, that the professional duties of correctional personnel may have more specific human rights implications. Thus, in so far as their working conditions involve particular risks to their personal dignity, health and security, a rights-monitoring model should:

- ☑ incorporate personnel policies and evaluation mechanisms that focus on such matters as their exposure to violence, disease, stress, harassment or legal liability; and

- ☑ provide employees with appropriate internal means for raising and remedying such concerns with correctional management.

PROCESS CONCERNS

Given even the fullest conceivable array of human rights rules and compliance-monitoring mechanisms, there remains a risk that the quest for fair and humane treatment may bog down in layer upon layer of claims and counter-claims, decisions and reviews, all likely to involve significant delays in bringing the matter to a clear conclusion. For a compliance model to be effective and credible, it therefore needs to preempt such over-judicialization to

the extent that is humanly possible; otherwise, the rights that are at issue may be demeaned by an excess of process.

With that in mind, the following guidelines should help streamline the administration of interrelated rights-compliance systems in a correctional context:

- ☑ everything possible should be done by the correctional authority to resolve alleged human rights violations promptly, informally and at the lowest possible hierarchical level;

- ☑ the progress of non-trivial complaints through the internal review/redress system should be expeditious, consistent and made up of the fewest possible steps;

- ☑ complainants should be encouraged but not obliged to exhaust internal remedies before invoking the most appropriate external oversight body;

- ☑ internal and external compliance-monitoring systems should collaborate actively to minimize overlapping investigations or reviews; and

- ☑ any substantive difference of opinion between agencies about what a human rights rule permits or requires should be brought before an appropriate quasi-judicial or judicial body without delay.

CHAPTER 5: CSC PRACTICES AND MONITORING MECHANISMS

"The Working Group will review CSC's existing human rights procedures and practices, and communications strategies and mechanisms (i.e. training and education of staff and managers, employment equity, etc.) to encourage and maintain a culture respectful of human rights."

PART I: EMPLOYEES' RIGHTS

LEGAL AND POLICY FRAMEWORK

In the post-Charter Canada in which CSC operates, it is hardly surprising that more judicial and public attention has been given to groups whose rights had not figured prominently in the past. There can also be little doubt that many Canadians perceive human rights as being more the preserve of special interest groups than of mainstream citizens. In the present instance, this gives rise to a belief that the *CCRA* stress on inmates' rights comes at the expense of the no less valid interests of correctional staff and the larger community. With this in mind, it is important to point out that the strength of human rights protection is that it extends to *all* individuals and groups, and that denying the fundamental dignity of any person, no matter what his or her status in society, diminishes all members of that society. It must also be recognized, however, that no right is absolute, and thus that the rights of inmates to fair and humane treatment are contingent on their own readiness to comply with the rules that society has seen fit to impose in federal correctional institutions.

The rights of CSC employees are the rights of all Canadians. More specifically, they are the rights of those Canadians who have been designated to carry out a lawful correctional regime. As such, they deserve a high degree of public consideration and respect, together with a corresponding degree of support from the organization for which they work.

As noted above, employees of the Correctional Service are covered by various international and domestic human rights laws which Canada has endorsed. Furthermore, they can avail themselves of all the safeguards provided by the *Public Service Employment Act* and the *Public Service Staff Relations Act,* the Equal Wages and other anti-discrimination provisions of the *Canadian Human Rights Act*, the *Employment Equity Act,* and the Peace Officer liability protection set out in the *Criminal Code*.

On the policy front, the rights of CSC employees are not only addressed by all personnel, human resources and staff relations policies that are promulgated by the central agencies, they are also the express subject of internal policies such as Commissioner's Directive 255 (*Harassment and Other Forms of Discrimination in the Workplace*) or Commissioner's Directive 251 (*Employment Equity*). However, the mere existence of relevant law and policy in itself guarantees nothing. The legal and policy *framework* that purports to safeguard the human rights of CSC employees is, with some exceptions noted below, both comprehensive and specific, but the question remains to what extent the Service follows through in practice.

Given the human rights concerns that CSC employees have expressed, either directly to the Working Group or by way of staff surveys, research and other internal feedback, it appears that there are several rights issues that require more specific attention.

First, the legal and policy framework is incomplete or inadequate in certain respects. Other than principle 4(j) of the *CCRA*, there is almost nothing *in the Act* to affirm that the human rights of employees need to be diligently protected in the correctional environment. Such lacunae should be remedied in any revision to the Act, to make it clear that employees' rights are as much a priority as those of inmates.

Second, there are serious employment equity issues, most notably in the representation of aboriginal peoples and visible minorities in relation to the offender population. The representation and distribution of employees who belong to one or more of the groups designated in the *Employment Equity Act* have long been identified as a problem for CSC. The Correctional Law Review, for instance, spoke of the need for "increased efforts at affirmative action", the need to "deliver" correctional programs through "native staff", as well as suitable improvements to the legislation and greater awareness training for non-aboriginal employees.

Federal employment equity legislation has now been in effect for over a decade, and CSC continues to undertake initiatives of various kinds, both to enhance the overall representation of the designated groups in relation to their availability in the labour force and to bring about a more appropriate presence and distribution of women, aboriginal peoples, visible minorities and persons with disabilities throughout the organization. While more recent recruitment and promotion strategies have undoubtedly produced some gains, particularly for women, the Service recognizes that the current employment equity situation is less than satisfactory.

The latest CSC *Status Report on Employment Equity Activities* outlines more than 60 activities and 20 related initiatives for 1997-1998, but it is not clear that any is specifically targeted on chronic problems such as the disproportion between aboriginal offenders and aboriginal employees, particularly in the Prairie Region, hierarchical imbalances in the distribution of women, or the difficulties associated with recruiting or retaining members of visible minorities or people with disabilities. CSC is about to be audited by the Canadian Human Rights Commission with respect to its employment equity performance, which should help the Service analyze these difficulties more closely and develop a more specific action plan.

It should also be noted that, although the legal ruling which differentiates between what is permissible in the way of female staffing in male institutions and the appropriate use of male employees in female institutions dates from 1993, there continues to be some resistance to the operational implications of that ruling among male Correctional Officers, and a correspondingly difficult work environment for many female CXs.

Third, the effectiveness of anti-harassment policies and of the corresponding prevention and redress provisions is questionable. There is also no CSC policy that relates to the possible harassment of CSC employees by inmates. The concern here appears to be less for verbal

abuse than for sexual harassment which, in addition to being unwelcome, may have security implications.

According to the latest available data, workplace harassment of all kinds remains a significant feature of the CSC environment, one that is of course not consistent with the Service's legal obligations in this matter or with a culture respectful of human rights. The existence of the Commissioner's Directive on harassment referred to above and an Anti-harassment Program testifies to the seriousness with which CSC views this issue. Nevertheless, it appears that the policy position of "zero tolerance" towards harassment and more particularly sexual harassment is still far from being realized. Quite apart from the high incidence of sexual harassment indicated by both female and male employees in relatively recent surveys conducted in the Ontario region, there is a striking level of belief that complaints of harassment will be less than productive. Although at latest report the number of harassment complaints has increased, perhaps reflecting growing confidence in the redress system, it is obviously desirable that the Service give further attention, not only to clarifying policy and staff awareness training, but also to more sustained monitoring of this phenomenon and to bolstering the credibility of its harassment complaint investigation and redress systems.

Finally, there are long-standing and unresolved pay equity claims. This issue was consistently raised with the Working Group by CSC union representatives at various levels. In pointing out to them that it is not a matter that CSC can deal with on its own authority, we of course indicated that this in no way diminishes the claims of female employees to receive equal pay for work of equal value. Failure to meet that standard remains an area in which the Government of Canada and the Federal Public Service generally are not in compliance with either their international or domestic obligations.

MONITORING MECHANISMS

In general terms, the mechanisms whereby the human rights of CSC employees are monitored parallel those that apply to inmates' rights: supervision; complaints and grievance procedures; audits and reviews; special investigations, and access to external remedies as required. There is therefore, in principle, no lack of means whereby CSC employees can bring either broad or specific human rights issues to the attention of someone with the power to deal with them.

Which is not to say that they are effectively dealt with in practice. From the viewpoint of CSC's ability to evaluate its overall compliance with the Service's human rights obligations to employees, it is suggested that the following measures would be helpful:

- ☑ develop a simple accounting of the key human rights concerns of CSC employees;

- ☑ develop appropriate performance measures and ensure that they figure regularly as part of the overall evaluation strategy;

- ☑ assign to a particular responsibility centre the task of tracking, analyzing and reporting to senior management on any action taken to enhance compliance with the relevant norms; and

- ☑ develop a comprehensive action plan for correcting persistent rights-related problems of concern to CSC staff.

PART II: INMATES' RIGHTS

There can be no doubt that the Correctional Service of Canada is cognizant of its international and domestic obligations with respect to the human rights of inmates. Furthermore, all the indications are that it fully intends to give practical recognition to those commitments that are explicit or implicit in the *Corrections and Conditional Release Act*.

It is therefore reasonable to suppose that any shortcomings that have come to light since the present *Act* came into force are attributable to one or more of the following: weaknesses in the legislative design of the *Act* or in the way it handles rights-related issues; problems in communicating the operational implications of the rules or standards contained in the *Act* so that both employees and inmates can clearly understand their respective responsibilities and entitlements; and breakdowns in internal or external compliance-monitoring and remedial mechanisms that are required by law and policy and intended to ensure public accountability.

All three factors appear to have contributed to the difficulties CSC has experienced in recent years. However well the legislative drafters and CSC managers may have understood the underlying obligations and the rule of law in human rights matters, they have been less successful in putting that understanding in a form that can be readily implemented and evaluated. To understand why that is so, each factor will be considered in turn.

(1) THE LEGISLATIVE DESIGN

First, one must acknowledge what the *CCRA does* do to lay out a correctional regime that will be respectful of Canada's obligations in human rights matters. As noted earlier, over and above the general right to safe and humane custody, sections 3 and 4 of the *Act* specifically identify: the right to be dealt with in the least restrictive way; the residual rights which are those of any member of society, except those necessarily restricted or removed by virtue of incarceration; the right to forthright and fair decision-making, and to an effective grievance procedure; the right to have sexual, cultural, linguistic and other differences and needs respected; and the right to participate in programs designed to promote rehabilitation and reintegration. These broad principles can be readily traced back to their international and constitutional roots. They encompass the fundamental obligation to balance the safety of the public and employees with the least restrictive treatment of inmates and the duty to help them towards a better life when full liberty is restored.

The Act goes on to enumerate more specific rights-related rules and standards which range from a definition of lawful custody, or the criteria for placement and transfer, to living conditions, special programs and health care norms. In short, the *CCRA*, in one way or

another, covers virtually every factor that might affect the proper treatment of federal offenders, and is at least as complete and thorough as the corresponding legislation of any country we have reviewed.

On the other hand, a closer examination of the *CCRA* from the standpoint of how well it presents the total panoply of human rights as recognized by Canada and the CSC, or how well it serves as a practical basis for achieving and evaluating compliance with those rights, reveals that:

- the *Act* does not, even in a preambular fashion, directly invoke or allude to international obligations and norms;

- although section 70 of the *Act* uses human rights language to refer to the need to make "the living and working conditions of inmates and the working conditions of staff members . . . safe, healthful and free of practices that undermine a person's sense of personal dignity", no guidance is provided on how the rights of employees to a safe working environment are to be reconciled with the rights of sometimes difficult or dangerous inmates[2]; and,

- inclusion in the *Act* of many technical safeguards of procedural fairness that were previously matters of common law or policy has not only led to additional bureaucratic elaboration but, in doing so, may have detracted from the key objective of enabling CSC employees to exercise an *informed* balancing of their custodial duties with the rights of inmates.

Accordingly, in light of the *CCRA* Review now in progress, it might make the Act more amenable to the purpose of protecting the human rights of inmates and employees:

☑ if it made it as explicit as possible that its principles and provisions aim to meet Canada's international commitments;

☑ it also acknowledged more clearly the need to balance public safety, custodial control and the rights of employees with the rights of inmates and the goal of promoting their successful reintegration;

☑ the rights of inmates to fair and humane treatment and to personal dignity were more directly invoked with reference to those control functions, such as discipline, that further abridge or intrude upon those rights; and

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[2] Other than section 70, only Principle 4(j) makes reference to matters related to employees' rights: selection and training; career development opportunities; working conditions; an environment "free of practices that undermine a person's sense of personal dignity"; and participation in policy and program development. To meet the often expressed concern that a proper emphasis on safeguarding inmates' rights may appear to devalue employees' rights, particularly in respect of safe working conditions, even a short statement to the effect that nothing in the Act that aims to protect the rights of offenders shall detract in any way from either the protection of the public or the human rights of correctional staff might be worth including.

☑ the level of procedural detail[3] were reduced, with a view to enhancing the fundamental *principles* of fairness (adequate reasons for decisions, proper notice of hearings, and so on) while placing regulatory detail in Regulations.

If the best foundation for compliance with the rule of law is a straightforward and authoritative statement of the applicable rule, one must doubt whether the work of the CSC at present has that kind of foundation. Not only does the Act itself treat inmate and employee rights with various degrees of particularity[4], it is supplemented by a wide-ranging Mission Document containing almost three dozen "guiding principles" and more than fifty "strategic objectives". The latter are undoubtedly a useful statement of corporate goals, but they cannot help but leave correctional officers in some confusion as to where they stand vis-à-vis the requirements of the law, especially when the Mission must be read in conjunction with Commissioner's Directives and regional and institutional rules.

(2) PROVIDING DIRECTION

The mandate of the Working Group calls for a review of CSC's "communication strategies and mechanisms...to encourage and maintain a culture respectful of human rights." This recognizes an important and necessary connection between the ways in which rights rules are transmitted and how one determines whether those messages have been received and properly acted upon. Indeed, it is impossible to review CSC's present monitoring arrangements without first asking what steps have been taken to convey the relevant rules to both employees and inmates.

The Policy Review Task Force of 1996 identified a range of "deeply ingrained" problems in "putting in place the management controls necessary to monitor our performance", not the least being the multiplicity of policy documents at various organizational levels. The sheer volume of policy documentation is such that the likelihood of its providing staff with practical guidance on how to comply with human rights rules remains extremely questionable.

The Task Force also noted that "Policy by itself will not change the behaviour of individuals or the organization". Its proposals for improving current mechanisms for providing direction to staff suggested immediate steps to eliminate existing inconsistencies and redundancies, as well as mechanisms to ensure that policy statements are promulgated only when strictly necessary and are centrally controlled and consistent across the Service. Also proposed were ongoing mandatory reviews and clear lines of responsibility for centrally approved policies, together with consolidation of "how to" procedural guidance in "Standard Operating Practices" or similar workplace reference tools.

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[3] The arguments *for* the present level most often advanced are that it leaves no loopholes for interpretation, provides specific step-by-step direction to staff and thus provides them with assurance that they are following the rule of law. The arguments *against* this approach are that it encumbers the Act with inappropriate language, which in turn leads to defensive paper compliance and less attention to either the underlying principles or the development of an informed and responsible workforce, and last but not least, that it has not been effective.

[4] For instance, the extent of a segregated inmate's "rights" are expressly stipulated in s. 37, but the only "right" that is named as such in the 8 pages of the Act that are devoted to Search and Seizure is the "right to make representations before submitting a urine sample".

The overlapping and inconsistencies revealed by the Task Force might be partly attributed to a piecemeal and decentralized process of policy development, but they also suggest an over-dependence on procedural fine-print to make the correctional culture respectful of human rights. In the circumstances, it comes as no surprise that CSC's internal monitoring mechanisms have not always proved up to the task of ensuring that the rule of law prevails where human rights are concerned. There is thus a pressing need for coordinated policy "editing", using that term in the widest sense: the Standard Operating Procedures on Policy Development themselves reflect a continuing assumption that an intricate, time-consuming approach to policy will provide the straightforward and consistent guidance that is now largely missing; in fact, a more radical and plain-language approach to rule-making is imperative.

The related problem of training also deserves priority attention, as the knowledge and understanding of what may lawfully be done when dealing with inmates remains far from satisfactory. Until quite recently, training materials tended to take a lecture-like form, with relatively few situational, case-study or workshop elements and little use of staff with institutional experience. And perhaps worse, beyond a brief period of initial training that presents the law and the rationale for dealing with inmates according to the rule of law, there has been little if any ongoing practical education in these matters, making front-line employees heavily dependent on the "oral tradition" as to "the way things are really done".

Many front-line employees still consider themselves unclear as to what precisely is required of them and reluctant to act on the basis of their own understanding and initiative, for fear they will not be following the rules. Moreover, some of the paper burden involved in completing forms to document their compliance with written rules is perceived as detrimental to getting on with their job and doing the right thing.

CSC's Corporate Objectives for 1997-98 give prominence to "assisting staff to carry out their duties through ongoing communications, training and development." Without underestimating the need for more efficient policy development, much more organizational emphasis needs to be placed on appropriate staff development. This might entail several things, among them bolstering the overall training budget, increasing the proportion of core training devoted to compliance with the rule of law, mandatory refresher training every few years on the job, and use of mobile training units with relevant "know-how" skills.

(3) MONITORING MECHANISMS

Reporting and Supervision

In light of the profusion of textual guidelines that still prevails throughout CSC, it is to be expected that routine supervisory checks will lean heavily on paperwork. To some extent, the many forms currently in use provide procedural checklists designed to show that all the prescribed steps have been followed. It is less clear, however, that CSC has adopted a more comprehensive plan whereby staff members and managers can be held accountable for complying with the human rights rules that are at stake. Important as it may be to develop an adequate paper trail, a culture of compliance presupposes that employees at every level will be held personally responsible for the application of human rights principles;

this in turn entails making such compliance a normal component of the performance appraisal process.

Grievances and Complaints Systems

Where inmates' rights are concerned, the *CCRA* requires complete and unprejudiced access to a fair and expeditious grievance resolution process. Sections 74 through 81 of the Regulations then lay out the steps and procedures to be followed to meet those requirements. The latest Commissioner's Directive (081) on the subject also reinforces "the duty to act fairly", the need to give priority to complaints that "significantly impact on offenders' rights and freedoms" and the protection of confidentiality. At this writing, the Standard Operating Procedures on the grievance process are still in draft form. When last seen, they were somewhat closer to becoming a manual for easy reference in the workplace but could still benefit, in our view, from being more obviously linked to the Act and the Regulations. Given its nature and purpose, a grievance procedure that even *appears* over-involved imposes unnecessary burdens on both inmates and employees and raises the chances that it will be less expeditious and effective than it is supposed to be.

Comments made to the Working Group by inmates on the effectiveness of the grievance process ranged from non-committal to dismissive. When every allowance is made for the inmate perspective and a corresponding distrust of the correctional system, there is no doubt scope for further improvement. The prioritization of grievances has already been noted and CSC's efforts in that direction deserve encouragement. The Service has also responded positively to comments to the effect that more should be done to use information derived from the grievance process to evaluate the consistent application of policy. To these and other improvements already under way one could add:

- ☑ that CSC should examine the possible benefits (e.g. in timeliness and consistency) of removing the regional level of review;[5]

- ☑ that more systematic use should be made of "inmate grievance committees" (*CCRR* 77(1)) to encourage early and constructive resolution of complaints;

- ☑ that the opportunity for inmates to request that an institutional head's decision be referred to "an outside review board" (*CCRR* 79(1)) be more actively explored;

- ☑ that more effective ways be developed to encourage aboriginal offenders to bring human rights compliance problems to official attention; and

- ☑ that when corrective action is required to remedy a grievance it be delivered promptly and openly, to reinforce the value of the process.

[5] "Collapsing of levels" was among the measures proposed following an internal review of the process in 1994. While this proposal was not adopted for reasons related to decentralization, both the need for administrative simplification and the human rights requirement of fair and consistent treatment argue strongly in favour of revisiting this recommendation.

Although more is now being done by CSC management to collate the data and track trends in grievance statistics, it can hardly be said to be analyzing the various types and sources of grievances in such a way as to pinpoint and correct systemic human rights problems. To know whether the procedure is actually providing inmates with satisfactory redress for legitimate complaints one would want to have information of a more qualitative kind that is not at present developed by either CSC or the Correctional Investigator.

A similar process could usefully be undertaken with respect to the hundreds of rights-related issues and court cases in which Legal Services are involved: copious statistical information is maintained, but there is no evidence of sustained management analysis as regards its significance for CSC's overall compliance with international and domestic human rights obligations.

Audits and Reviews

The issue is not whether CSC possesses audit and review mechanisms, but whether it uses them in such a way as to satisfy itself and others that it is in compliance with its human rights obligations. CSC is developing an overall performance measurement scheme that, among other things, seeks to improve its ability "to comply with law and policy, by developing a clear policy framework and assisting staff to carry out their duties through ongoing communications, training, and development." Included in the "key activities" that the Corporate Objectives document specifies in this regard are a "system to monitor, measure and audit on a consistent national basis" and a "program of compliance audits".

From the standpoint of enhancing respect for the human rights of inmates or employees, it must be noted that, although the Corporate Objectives document refers to "Respect for the rule of law" and to certain basic principles from the CCRA , neither the Act nor the Regulations are ever mentioned, any more than the word 'rights'; and that no strategic framework for evaluating CSC's compliance with its human rights obligations is discernible in this document. It may be that an eventual "approved audit plan" and the "review and evaluation schedule" will reflect such a strategy, but those that we have seen do not.[6] This leads one to suspect that CSC has difficulty translating human rights obligations into practical objectives that are at once meaningful and measurable. The "key results/commitments", to use the language of the corporate plan, are all clearly set out in the *CCRA/CCRR*. It would, therefore, greatly reinforce CSC's ability to respect the rule of law if its strategic evaluation framework and program were *built around the Act*.

If one analyzes the *CCRA/CCRR* to see what aspects of legal compliance are most critical to practical respect for the human rights of inmates[7], one arrives at something along the following lines:

1. Material, physical and psychological conditions must meet approved standards.

[6] The latest Annual Schedule of Reviews (30.10.94) is little more than a 6-point list and, apart from "Official Languages" and "Employment Equity", contains nothing that could be called rights compliance-specific.

[7] A similar analytic process can be followed for purposes of defining an evaluative framework for employees' rights.

2. Those aspects of lawful custody and control that necessarily impinge on the rights of inmates (placement and transfer, discipline, search and seizure, etc.) must be managed in accordance with certain fundamental principles:

   - the least restrictive/intrusive procedures, practices and results;
   - systematic respect for those procedural safeguards that arise from the duty to act fairly; and
   - timely and effective access to internal and external review/redress mechanisms.

3. The availability and quality of provisions to promote successful rehabilitation and reintegration, e.g., programs, correspondence and visits, work releases and other temporary or conditional absences, must be assured.

Starting from such *legally enshrined fundamentals*, CSC could devise, first, an audit/review framework that ensured that compliance with each essential human rights factor was formally evaluated at least once within, say, a 5-year cycle, and, second, performance indicators that looked beyond technical compliance with procedural rules. For instance, one needs to know to what extent rehabilitative provisions have measurable effects, not only on the rates of recidivism or escape, but on inmates' own sense of preparedness for social reintegration.

Based on observation and comments from those most directly involved, the existing audit and evaluation program lacks a sense of compliance priorities, as well as being ad hoc and incident-driven in operation. There is also a widespread consensus that, even when internal or external reviews and audits have pointed directly and convincingly at compliance problems - and their sources - the level of organizational attention given to introducing appropriate systemic remedies fluctuates greatly.

In short, an examination of CSC's current audit and review processes as they relate to improving compliance with human rights law reveals several deficiencies:

- they leave an impression of bypassing the CCRA/CCRR, which, while obviously not intended, tends to undermine the authority of the Act;
- there is no strategic breakdown of rights-related issues and hence no clear evaluation framework;
- it does not appear that those rights issues that are currently slated for evaluation are part of a sustained program that implies both regularity and follow-through; and
- results measurement relies almost exclusively on a limited selection of quantitative data.

Internal Investigations

By their nature, internal CSC investigations are, as a general rule, *ex post facto* inquiries into alleged breakdowns in the safe and humane custody requirements of the law. Essentially, their focus is to discover what might or ought to have been done to prevent such a breakdown, to determine responsibilities and to promote action to prevent recurrences. From the standpoint of ensuring compliance with human rights requirements, any internal monitoring mechanism is likely to be weakened by the suspicion of pro-institutional bias. The current regime aims to ward off that suspicion by requiring at least one qualified outside member on any investigation board. Doubters point out that outside members are disproportionately drawn from lists of people with a previous professional association that may predispose them to the institutional view.

What else might be done to ensure that investigations carried out by or through CSC are as thorough, impartial and credible as one could wish them to be? Among measures which suggest themselves are that the candidate pool of qualified outside members be prepared jointly by CSC and respected NGOs such as the John Howard and Elizabeth Fry societies. Investigation reports might also be required, in the interests of accountability, to specifically locate all responsibilities for particular breakdowns. And CSC could be required to explain immediately any serious differences between the findings of an internal investigation and those provided by an external body such as the Correctional Investigator.

Internal vs. External Mechanisms

A constant of compliance evaluation is the need to find a sound working balance between CSC's interest in assuring effective management of its operations and the interest of Parliament and the Canadian public in obtaining an independent reading of that process. In that regard, Canadian law has established several agencies with independent oversight powers that are relevant to the human rights of inmates and employees. Among them are the Correctional Investigator, the Canadian Human Rights Commission, and others which have been enumerated above.

It is not possible here to examine all of these agencies and their functions in the correctional and human rights context. However, it is obviously necessary to consider the role of the Correctional Investigator, who is specifically charged in the *CCRA* with conducting investigations into decisions, acts or omissions of CSC "that affect offenders either individually or as a group." The office of the CI has been established in law to monitor such problems as may arise between offenders and CSC employees, and it is fair to say that the vast majority of those problems bear some relation to the international and domestic human rights obligations that Canada and CSC have assumed.

The powers and duties of the Correctional Investigator are detailed at length in the *CCRA* and are essentially those of a prisons ombudsman: to respond to and seek to resolve complaints from federal inmates; to initiate such investigations as seem necessary to evaluate the extent of CSC's overall compliance with its law and policy; and to report findings to Parliament and the public, along with recommendations for appropriate remedial action. The CI's role and responsibilities very clearly impact upon those of CSC and, as a result, are

bound over time to involve some friction between the two organizations, however much management on both sides may strive to avoid it. In this context, there are at least two aspects of the relationship between the external watchdog and the internal monitoring systems of the Correctional Service that may be open to improvement:

- first, although the two organizations try to avoid duplicative reviews of the same allegations, the law requires that inmates have untrammeled access to both systems, which leads at times to conflicting versions of events or conflicting conclusions about the merits of the case; and

- second, recommendations of the Correctional Investigator not only have no compelling force, they are reported to Parliament through the Solicitor General, who is also the minister responsible for the Correctional Service, an arrangement which is bound to raise questions about the overall credibility and effectiveness of the independent oversight mechanism.

Although the most recent Annual Report of the Correctional Investigator (1996-97) points to some improvements in the working relationship between the CI and the CSC, the overall history of that relationship has been less than satisfactory for either party. This raises the critical question to what extent respect for the human rights of inmates or employees may have suffered as a result.

Among the various bones of contention between the CI and the CSC over the years are several that have immediate and obvious implications for both the substantive and procedural rights of federal offenders, including the increasing prevalence of "double-bunking" in both general and segregated inmate populations[8]; inmate pay, Special Handling Units, and other aspects of custody involving placement, segregation and transfer, use of force, the effectiveness of the internal grievance procedure, and access to programming to prepare inmates for reintegration. It is not our role to discuss the merits of the differing perspectives of the two agencies in these and other matters. However, the paramount principle of respecting inmates' rights suggests at the very least that the CI and the CSC have a common interest in pursuing improved coordination. This might involve:

- ☑ establishing joint working criteria and guidelines for prioritizing complaints and minimizing investigative overlaps or duplication;

- ☑ regular and thorough review of systemic issues, with a view to *jointly* proposing actions to resolve these matters; and

[8] Although the UN Standard Minimum Regulations are not completely clear in this matter, their basic intent appears to be that correctional authorities not sleep more than one offender in a cell unit or conditions designed for only one. CSC's present position, as set out in CD 550, "Inmate Accommodation" 1995, is basically that no cell space of less than 5 square meters – or without either direct or indirect light – may be used to accommodate more than one inmate. CSC accepts that it fails to meet this standard at the rate of 18% nationally and in some cases close to 40 – 50% in particular institutions.

- ☑ as noted above, in those rare cases where a line of effective resolution compatible with CSC's human rights obligations cannot be arrived at, devising an agreed procedure whereby the matter could be submitted to adjudication through a tribunal or court process.

Elements of these proposals for improved coordination are already under discussion between the two organizations. Nevertheless, on the basis of our interviews and visits, we have to conclude that present steps to improve the relationship - and, in particular, to resolve several major outstanding substantive differences – have not been as productive as one would wish.

On the basis of all these considerations, we also recommend that:

- ☑ the *effectiveness* of the working relationship between the CI and CSC, in terms of its ability to deliver prompt and credible remedies for legitimate inmate grievances, be the focus of a separate and specific review;

- ☑ the Correctional Investigator be authorized to report directly to Parliament; and

- ☑ the Office of the Correctional Investigator be granted the resources necessary (a) to carry important cases/issues to adjudication, and (b) to play a more active public role in communicating the social rationale for respecting inmates' rights.

External Oversight for Administrative Segregation

There continues to be a debate on whether decisions to place or maintain inmates in administrative segregation should involve independent adjudicators. The Task Force on Administrative Segregation did not recommend immediate implementation of such a model, but it did propose that CSC evaluate its potential benefits by way of a limited experiment. Since, in Canada, administrative segregation may affect inmates' liberties even more than disciplinary segregation, which has an upper limit of 30 days, and given the fact that institutional authorities may have a vested interest in the outcome of their decisions, we believe the latter recommendation should be pursued.

PART III: SPECIAL NEEDS

While the human rights provisions of the *CCRA* clearly apply to all offenders, the Act also singles out the needs of aboriginal peoples and women for special attention. There is no need to elaborate here on why this is so, or why these two groups occupy such a prominent place among CSC's compliance problems. What does call for some comment is the extent to which the Service has been able to adapt its general systems to these particular human rights requirements.

ABORIGINAL OFFENDERS

Several areas of CSC operations that affect the rights of aboriginal peoples continue to be problematic, among them: access to spiritual and cultural support (particularly in segregation) and to ceremonies and ceremonial objects; the ways in which risk assessment, security classification and placement are carried out; and recommendations to the National Parole Board concerning denial of parole and detention until warrant expiry. Some of the procedural safeguards outlined in the *CCRA* may inadvertently hinder CSC's ability to take into account the distinctive situation of aboriginal offenders. When, for example, the Service makes risk assessment, security classification or parole decisions based on the presence or absence of factors such as employment, education or family and community support - all areas where aboriginal offenders are often disadvantaged - discriminatory results can follow from ostensibly neutral processes.

The *CCRA* also contains specific provisions for dealing with aboriginal needs and fostering their eventual reintegration. Section 81 allows the Solicitor General to enter into bilateral agreements with aboriginal communities for the care and custody of aboriginal offenders. There have, however, been very few concrete results in this area, and the Service needs to explore more actively the opportunities presented by that provision. More attention could also be given to raising employees' awareness of aboriginal rights and needs, to the recruitment, training, and promotion of aboriginal staff, and to ensuring more appropriate aboriginal representation at all levels of the Service. In particular, we would recommend that CSC develop a specific component of its employment equity action plan that directly addresses anomalies in the distribution of aboriginal offenders vis-à-vis aboriginal employees.

When it comes to existing monitoring mechanisms, aboriginal offenders are known to make little use of either internal or external grievance and complaint systems. Not only are such systems educationally or culturally alien to them, they appear to hold little promise of redress for the kinds of problem that most affect aboriginal offenders. That being so, CSC should actively try out alternative ways of tapping into, documenting – and correcting – the numerous aboriginal rights concerns that undoubtedly exist. This might, for instance, entail developing a small, continuing inspection team devoted specifically to identifying and remedying aboriginal rights-related problems

WOMEN OFFENDERS

Section 77 of the *CCRA* stipulates that the Service must provide programs tailored to the needs of women offenders. To that end, CSC is required to consult regularly with women's advisory groups and other individuals and agencies with appropriate experience in working with women. In recent years, the Service has implemented numerous changes to ensure that it remains responsive to the needs of women offenders. Two issues nevertheless present a particular challenge to CSC. The first concerns the over-representation of aboriginal women in federal correctional institutions: overall, the women offender population is small, but over 18 per cent of female inmates are aboriginal. Moreover, two of every five aboriginal women offenders have a maximum security classification and therefore are not eligible for residence in one of the regional centres for women. Establishment of those

centres has thus not resolved all the security problems involved in managing a small number of high-risk offenders or the very particular needs of these aboriginal women. Furthermore, separate maximum security units for women have been set up in male institutions (so-called "co-located units") in all CSC regions, and the conditions of confinement and procedural safeguards applicable to these groups raise particular concerns. Both the high concentration of aboriginal offenders with limited access to appropriate programs and services and the relatively isolated and abnormal conditions of their confinement cannot but have detrimental effects on the women concerned. Alternative accommodation for this small sub-population of offenders should be a priority for the Service in terms of meeting its human rights obligations.

CHAPTER 6: COMMUNICATING CSC'S MANDATE

"The Working Group will make recommendations with respect to improving CSC's ability to communicate its mandate and knowledge to the general public and the international community regarding human rights issues."

There are several reasons why the Correctional Service of Canada needs to communicate its human rights mandate to the general public and the international community with clarity and conviction:

Canada wishes to be seen internationally as an active defender of human rights;

as an organizational component of Canada's justice system, CSC is a key manifestation of the rule of law in Canadian society;

the mandate that the Service has been given by Parliament is inherently complex and potentially confusing for many Canadians; and

CSC is caught in a cross-fire between those who perceive the correctional system as soft on criminals and those who worry that incarceration further degrades them, or fails to assist them in becoming more positive members of society.

SETTING OBJECTIVES

The preceding chapters have stressed the importance of the most straightforward and authoritative statement of the Service's legal mandate. In our view, the central objective of CSC's communications program should be to enable the Canadian public to understand three fundamental points: the nature of the ground rules under which the Service operates; the fact that those rules stem from and are consistent with Canada's international and domestic legal obligations; and that the Canadian correctional system actually provides the benefits that it is intended to provide. To the extent that the Service is able to meet that overall objective, it should also be well-placed to communicate to the international community that the federal correctional system in Canada is not only a sound operational reflection of the rule of law but also contributes to the public well-being, both nationally and internationally.

There can be little doubt that more needs to be done to present such information to all relevant publics in ways that are accessible and persuasive. Among the more obvious steps in that direction, we recommend:

☑ stripping the Service's mandate statement to its essentials (i.e. to provide safe and humane custody of offenders in a fair, forthright and publicly accountable way);

- ☑ building a communications program around those central goals, and making clear how the operational ground rules contribute to their effectiveness; and

- ☑ directly and specifically addressing the more difficult and contentious public issues.

CSC uses a variety of documents and devices to tell Parliament and the public about its mandate, organization and activities. One such document, entitled *An Overview of Canada's Federal Correctional Services*, gives some idea of how it currently seeks to present itself. Two things are striking about this presentation:

- it is heavy on correctional history and the background of the *CCRA* (22 pages), as well as on the framework, mechanisms and programs that are supposed to deliver "good corrections" (44 pages), but "overall success rates" occupy only four pages; and

- although the ultimate goal is stated as "contributing to the protection of society", measures of success are confined to the rate of escapes, successful completion of temporary absences, minimizing incidents in the community, and reducing the incidence of recidivism; while these measures are concrete enough, one must ask whether they are sufficient to provide convincing evidence that CSC is fulfilling its mandate.

THE CURRENT COMMUNICATIONS FRAMEWORK

CSC is in the process of reviewing its structures and resources in the area of communications. The most recent communications framework speaks of a "wish to see better results in this area". The accompanying strategy focuses heavily on negative perceptions of CSC's impact on public safety and on the more active involvement of managers and employees in countering such perceptions. Useful as these may be as general directions, they are not a sufficient basis for a communications strategy that is more comprehensive, more specific and, above all, more convincing.

The Internal Dimension

A recent newspaper article dealing with the results of a 1996 staff survey[9] suggests a communications problem that goes beyond public perceptions of prison conditions. An impression is left that a substantial proportion of CSC staff either do not accept the rationale for their professional conduct or question its effectiveness in meeting public concerns. In that light, a sound communications framework for the Service must obviously encompass the internal as well as the external dimension. If staff are to see themselves as part of a lawful and socially constructive enterprise, they not only need a firm grasp of clear and practical professional guidelines, they must also have some personal understanding of why such rules are lawful and the social purpose that they serve.

[9] "Prisons too cushy, staff tells pollsters", Ottawa Citizen, November 6, 1997.

Over and above concerns that staff may share with the wider public, there are more specific internal problems that deserve inclusion in a comprehensive communications strategy. The most frequently voiced is the belief that inmates' rights are given precedence over employees' rights (c.f. the public's concern that victims' rights take second place to the early reintegration of offenders)[10]. Whatever the merits of these preoccupations, they should undoubtedly be one focus of CSC's communication activities. Failure to address staff-related communications problems can only compound the difficulty of "rebuilding public confidence . . . in the Service's ability to deal with offenders and to ensure the protection of the community."

The External Dimension

One would expect a complete communications strategy to be based on a detailed analysis of the various difficult issues to be dealt with. The current framework document touches on a variety of judicial, media and public preoccupations but does not discuss their interrelations or how CSC might respond to each in ways that are at once specific and mutually consistent. Thus, although the framework does not say so, it implicitly recognizes that public criticisms of CSC's mandate or performance are not all of one piece. The Service is as likely to be taken to task for carrying out its mandate as it is for abusing the rule of law. This calls for a communications strategy that is capable of dealing with both poles of public concern while still basing itself on the same basic information and argument. Not an easy objective to meet.

Furthermore, as presently formulated, the communications framework focuses more on "mechanisms to realize CSC's communications objectives" or on "managing the communications function" than on specifying those objectives, coming up with messages to meet various internal and external needs, and outlining an orderly communications program that reflects corporate priorities. In short, one is left with an impression that the plan represents a combination of process concerns and a reaction to public and internal hot spots, rather than a strategy designed to get CSC messages across.

NEEDS ANALYSIS

To devise a more purposeful strategy, a closer analysis of the relevant needs is required. Among other things, this entails looking into the reasons why the Service's communication efforts to date have been less than successful. Why, for instance, are so many staff still unsure of their operational ground and skeptical about the underlying correctional philosophy, and what does this tell one about current communications shortcomings? How indeed is a continuing attachment to detailed procedural rules supposed to be reconciled with the Mission's emphasis on "initiative, self-direction and acceptance of personal responsibility" within a framework of values and principles?

Similar observations apply with respect to CSC's communications management of the public environment. Given its mandate, it seems more than likely that the Service will always

[10] Similar doubts are expressed about the "impartiality" of the Correctional Investigator's office, which is sometimes viewed as a prisoner's advocate rather than an unbiased mediator.

require a well-prepared fire-fighting capability to respond to internal and external crises. What is less clear is whether it also has a well-thought out program of fire prevention and control. There are, as the present strategy recognizes, a wide range of public concerns to be taken into account. It is precisely because these concerns are both various and diffuse that CSC must answer two different questions: first, what kinds of information could be most useful in addressing each particular concern; and second, what kinds of communication activity, in each case, stand the best chance of making a positive impact on public awareness. It may well be, as the Angus Reid Group indicated in 1996, that "the public is not well informed on the structure and operations of Canada's correctional system", but there are also several ways in which the Service might respond to that lack. The purpose of a strategy should be to help CSC select those that are most promising.

Assuming the Service acknowledges that neither staff nor public is satisfactorily educated as to its purposes and programs, the first step towards improvement is the same in both cases: clear and convincing messages. The fundamental CSC message is well expressed in both the Act and the Mission: both international and domestic law require that the Service carry out court-imposed sentences through "safe and humane custody and supervision of offenders", and that it help prepare those offenders for reintegration "through the provision of programs in penitentiaries and in the community."

What is problematic is how best to maintain what the Mission describes as "the dynamic nature of the relationship between assistance and control." A simple assertion that "safe reintegration is the best protection, as almost all offenders will eventually be released" does not suffice by itself. It is a sure bet that the vast majority of Canadians have little if any clear idea of what CSC does to make sure that reintegration is indeed safe. If public attention understandably zeroes in on instances where reintegration appears to have been premature, even if these are rare occurrences statistically speaking, how well is CSC equipped to demonstrate that reintegration generally works well? As indicated above, the Service generates all kinds of data, but they are not always relevant from a public evaluation standpoint, or analyzed and presented in the most persuasive manner.

Another popular misconception is that federal correctional institutions are little better than country clubs for the socially delinquent. Insofar as beliefs of that nature owe something to legitimate concerns to ensure fair and humane treatment, there is clearly a need to develop convincing information that will also show, not only that actual prison conditions are in fact a good deal less than easy, but that they help serve socially important objectives by humanizing incarceration and fostering the kinds of responsible behavior that favour eventual safe reintegration.

In spite of legal and corporate commitments to openness, integrity and accountability, CSC has, rightly or wrongly, acquired a public reputation for denial and defensiveness. In order to earn a genuine reputation for openness, integrity and accountability, we recommend that the Service:

- ☑ develop a number of specific and factually supported corporate messages/positions[11] that it feels confident it can actively promote as counterweights to negative publicity;

- ☑ make the most of its considerable strengths by developing the kinds of factsheet that will bear them out; and

- ☑ give proof of its integrity and accountability by publicizing the results of its own internal reviews and research in straightforward language, along with specific indications of what is being done as a result.

Rights-Related Strategies

Among the most difficult aspects of promoting a culture respectful of human rights in a correctional context is the conflict between widespread public perceptions about prisons and prisoners and the underlying premise, accepted by all correctional authorities, that offenders have both the right to be fairly and decently treated and the right to be helped towards a better life.[12] This dilemma is further sharpened by the seeming contradiction between the need to apply measures that diminish personal rights while nevertheless insisting that such acts of intrusion or privation be carried out with proper respect for the very same rights.

Clearly, the best argument for observing human rights rules is not merely that they are required by international convention or domestic law, or even that they are intrinsically more civilizing, but that they actually work better than any known alternatives - for inmates, for staff and for society at large. By preserving such fundamental social rules within the institutional setting, so the argument goes, one improves the odds of eventually releasing a more responsible person. The question then becomes how to convey what some may consider questionable doctrine - and statistical probabilities - to an apathetic or skeptical public. If the essence of the human rights case is that rightful treatment is more likely to breed respect for the law and public welfare than the reverse, then such messages need to be substantiated. For instance, it needs to be shown that:

- inmates with a history of antisocial or irresponsible behaviour can on the whole learn positive social skills, even if some failures are inevitable;

- the availability and effectiveness of systems for resolving reasonable complaints actually do provide a positive social feedback to both inmates and employees, even if they also provide scope for barrack room lawyers to ply their trade; and

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[11] It is our observation that, when all the facts are taken into account, CSC performs its difficult task with a high degree of professionalism and concern for the good of offenders, staff and society at large. It certainly seems possible that more could be done to convey this fundamentally positive evaluation to the public without being either self-serving or smug. One possible starting point for developing such messages would be to list *CSC's objective achievements*: nothing too anecdotal, nothing that cannot be substantiated, nothing that is not directly connected with the requirements of the law, and nothing that is not clearly relevant to the kinds of public concerns that are expressed.

[12] It is not unusual to hear the argument, even from CSC staff, that many inmates are assured of better conditions and services *inside* prison than those assured to more deserving citizens outside.

- the rewards, to society *and* the individual, of treating even hardened offenders with a modicum of fairness and compassion are real, even if they are not guaranteed.

In summary, it is recommended that CSC's communication strategy try to get beyond demonstrating that appropriate systems are in place, that the rate of compliance with law and policy is statistically satisfactory, or even that an increasing proportion of employees claim to support the underlying philosophy. In order to be both credible and accountable to the Canadian public and the international community in human rights terms, CSC also needs to:

☑ develop performance data that bear not simply on, for instance, recidivism rates but also on more *qualitative* outcomes of programming and other socially useful aspects of corrections as a whole;

☑ seek a better balance of good news and bad news in presenting its own record, and be more up front about the limitations of institutional programming as a means of achieving safe reintegration;

☑ reinforce the message that managing offenders with greatly varying levels of social risk is a communal responsibility, not one confined to the correctional authority;

☑ in that context, promote a better public understanding of how to achieve the best possible mix of control and assistance, or of institutional and community corrections, and what represents the best value for money given the overriding goal of public safety; and

☑ use a greater variety of means to carry its messages to concerned publics actively and directly, e.g. by creating its own media opportunities, making more of both individual and statistical successes, and promptly countering adverse press with well-argued and factually convincing responses.

In conclusion, we would reiterate that for CSC to present itself internationally as having in place a correctional system that is both lawful and socially purposeful, it must first reinforce its capacity to withstand critical scrutiny by Parliament and the Canadian public. The message to the international correctional community, which already has considerable respect for the Canadian model, should then follow without difficulty.

ANNEX A: TERMS OF REFERENCE WORKING GROUP ON HUMAN RIGHTS

Background

The Correctional Service of Canada (CSC) functions within a domestic and international legal and policy framework which fully endorses the protection of human rights. However, full compliance with this framework has remained a challenge.

The findings of the *Commission of Inquiry into Certain Events at the Prison for Women* (Arbour Report, 1996) and recent CSC reports by the Task Force on Policy Review, the Reintegration Task Force, and the Task Force Reviewing Administrative Segregation have all commented on CSC's casual attitude toward the law and policy and have made recommendations to enhance CSC's ability to cultivate and maintain a culture respectful of human rights. Most of their recommendations are aimed at ensuring that CSC upholds the rule of law and only restricts inmates' rights and privileges when authorized by law and in accordance with fair decision-making practices.

Most of the recommendations of the Arbour Report have already been implemented or are currently being addressed. For example, a Deputy Commissioner for Women's Corrections has been appointed and new search and crisis intervention practices have been implemented. The Inmate Grievance process has been strengthened to ensure expeditious resolution of inmates' complaints and grievances. The Task Force on Policy Review has made recommendations to simplify CSC's policy framework and to communicate policy effectively to staff members and managers. All policies which were found to be inconsistent with the *Corrections and Conditional Release Act* (*CCRA*) have been or are currently being redrafted. The Reintegration Task Force has recommended several changes to ensure that CSC effectively carries out its mandate to safely reintegrate inmates in the community. The Task Force Reviewing Administrative Segregation also recommended the adoption of an enhanced process that was designed to limit the use of and stay in administrative segregation.

Although over the years efforts have been made to encourage and maintain a culture respectful of human rights, the adequacy of the current human rights legislative and policy framework must be reevaluated. This is especially important because of the window of opportunity provided by the upcoming *CCRA* review. In the event that the current legislative framework requires strengthening with respect to providing appropriate protections of human rights, recommendations by this Working Group should be considered at that time. In addition, a comprehensive strategic model of how best to evaluate ourselves must be developed to ensure full endorsement and compliance with the human rights legislative and policy framework. This model will be of assistance to numerous foreign agencies which come to CSC for advice, and thus will contribute to Canada's foreign relations.

A review of the legislative and policy framework which protects the human rights of CSC's employees must also be conducted to ensure that CSC complies with legislative and policy

provisions which promote and ensure a healthy and productive working environment respectful of their human rights.

Mandate

The Working Group will:

1. review Canada's current domestic and international legal obligations with regard to inmates' and employees' human rights;

2. in that light, review CSC's existing human rights monitoring procedures and practices, and communication strategies and mechanisms (i.e. training and education of staff and managers, employment equity, etc.) to encourage and maintain a culture respectful of human rights;

3. compare CSC's current human rights legislative and policy framework with other countries which have demonstrated a strong commitment to human rights;

4. make recommendations for enhancing CSC's ability to comply with and promote the protection of human rights;

5. develop a strategic model which will enhance the ability of CSC and other correctional systems to assess the degree to which they meet their human rights obligations; and

6. make recommendations with respect to improving CSC's ability to communicate its mandate and knowledge to the general public and the international community regarding human rights issues.

Approach

In carrying out its mandate, the Working Group will accomplish the following:

- review of Canada's domestic and international human rights obligations;
- review CSC's existing human rights monitoring procedures and practices;
- conduct a comparative analysis of CSC's legislative and policy human rights framework with other countries which have demonstrated leadership in the protection of human rights;
- develop of a strategic model of human rights;
- analyze operational, strategic and resource issues raised by the review; and
- issue a report to be presented at EXCOM.

Working Group Members

The Working Group members will be:

- Maxwell Yalden, Chair
- Stuart Beaty
- Ivan Zinger, CSC

Two law students will be hired on a casual basis to provide research support to the Working Group.

The Working Group will consult with CSC's staff and managers, external organizations which are stakeholders in the Correctional System, and domestic and international human rights organizations as required.

The final report will be issued by December 31, 1997.

ANNEX B: LIST OF CONTRIBUTORS

Correctional Service of Canada

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Other

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Gibbs, Willie – Chairperson, National Parole Board
McIssac, Edward – Executive Director, Correctional Investigator's Office
Ray, Lynn – President, USGE & Staff
Siberryn, Jim – Executive Director, National Parole Board
Stuart, Ron – Correctional Investigator
Tait, John – former Commissioner, CSC; former Deputy Solicitor General

ANNEX C: CANADA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS WITH RESPECT TO PRISONERS AND CSC EMPLOYEES

The complete texts and citations of the following internal instruments can be found in Canada's *International Human Rights Obligations with Respect to Prisoners and CSC Employees.*

I. Canada's International Treaty Obligations

A. International Bill of Human Rights

- *International Covenant on Economic, Social and Cultural Rights*
- *International Covenant on Civil and Political Rights*
- *Optional Protocol to the International Covenant on Civil and Political Rights*

B. Specific Human Rights Instruments

- *International Convention on the Elimination of All Forms of Racial Discrimination*
- *Convention on the Elimination of All Forms of Discrimination against Women*

C. Human Rights of Prisoners

- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

D. Human Rights Relating to Staff

- *Convention Concerning Discrimination in Respect of Employment and Occupation*
- *Convention Concerning Employment Policy*
- *Convention Concerning Equal Remuneration for Men and Women for Work of Equal Value*
- *Convention Concerning the Abolition of Forced Labour*

II. Other International Instruments

A. General Human Rights

- *Universal Declaration of Human Rights*
- *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*

B. Human Rights of Prisoners

- *Standard Minimum Rules for the Treatment of Prisoners*
- *Basic Principles for the Treatment of Prisoners*
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*
- *Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physical, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
- *United Nations Standard Minimum Rules for Non-custodial Measures*

C. Human Rights Relating to Prison and Law Enforcement Staff

- *Code of Conduct for Law Enforcement Officials*
- *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

III. Regional Organizations and Instruments

A. Organization of American States

- *Charter of the Organization of American States*
- *American Declaration of the Rights and Duties of Man*

B. The Council of Europe

- *European Prison Rules*
- *European Convention for the Protection of Human Rights and Fundamental Freedoms*
- *European Social Charter*
- *European Convention for the Prevention of Treatment or Torture and Inhuman or Degrading Treatment or Punishment*
- *Convention on the Transfer of Sentenced Persons*
- *The Framework Convention for the Protection of National Minorities*

IV. International Organizations

A. UN Congress on Crime Prevention and Criminal Justice

- *Standard Minimum Rules for the Treatment of Prisoners*
- *Basic Principles for the Treatment of Prisoners*
- *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

B. Conference on Security and Co-operation in Europe

- *Final Act, Helsinki Declaration*
- *CSCE Helsinki Document 1992*

ANNEX D: CANADA'S DOMESTIC HUMAN RIGHTS OBLIGATIONS WITH RESPECT TO PRISONERS AND CSC EMPLOYEES

The completed texts and citations of the following statutes and constitutional documents can be found in *Canada's Domestic Human Rights Obligations with Respect to Prisoners and CSC Employees.*

A. Constitutional Documents

- *Canadian Charter of Rights and Freedoms*
- Part II of the *Constitution Act, 1982*

B. Domestic Statutes Affecting Human Rights

- *Canadian Bill of Rights*
- *Canadian Human Rights Act*
- *Privacy Act*
- *Access to Information Act*
- *Official Languages Act*

C. Domestic Laws Affecting Prisoners

- *Corrections and Conditional Release Act*
- *Corrections and Conditional Release Regulations*
- *Canadian Criminal Code*

D. Domestic Laws Affecting Staff

- *Employment Equity Act*
- *Canada Labour Code*
- *Public Service Staff Relations Act*
- *Public Service Employment Act*

ANNEX E: CANADA'S OBLIGATIONS AND THE CCRA

CCRA	INTERNATIONAL DOCUMENTS						
	Binding Instruments		Other Instruments				
	ICCPR	Conv. Against Torture	Universal Declaration	SMRs	Basic	Body	European Prison Rules
Corrections							
Purpose							
3(a): safe & humane treatment & supervision of offenders			1	57 & 60(1)	1	1	1, 3, 65(a) & (b)
3(b): their rehabilitation and reintegration	10(3)			60(2), 61 & 65	5, 10, & 66		3, 10, 65(d), & 70
Principles							
4(a): protection of society				58	4		
4(b): carrying out sentence with all relevant info							7 & 8
4(c): effectiveness and openness of Service							53
4(d): use of least restrictive measures				57	5		67(3)
4(e): offenders retain all rights except those removed as a consequence of the sentence	10			57	5		64
4(f): to facilitate public involvement in Service operations							53 & 70
4(g): fair and forthright decision-making; offender's access to grievance system		12 & 13		36		7 & 33	41-42
4(h): respect for diversity and the special needs of women and aboriginal peoples	27			53		5(2)	
4(I): offenders expected to obey rules							
4(j): proper training and selection of staff		10		46 & 47			52, 54, 55, 63
10: peace officer status				54			63
17: escorted temporary absences				44			49, 87-89
18: work releases				73(2)			87-89
22: compensation for death and disability		14					49
23(2): inmate access to information				35			
24: accuracy of information given							
25: info given to police and parole boards							
26: disclosure of info. to victims							
27(1): right to full answer & defense	14(3)(a) & (b)			30(2)			36(3)
27(2): written reasons for decisions							
27(3): exceptions for disclosure of info.							

CCRA	INTERNATIONAL DOCUMENTS						
	Binding Instruments		Other Instruments				
	ICCPR	Conv. Against Torture	Universal Declaration	SMRs	Basic	Body	European Prison Rules
27(4): right to an interpreter	14(3)(f)			51(2) & 30(3)		14	36(4), 41, & 60
28 & 30: placement or classification in least restrictive environment.				8, 61-69, & 63			11-13
29: transfer of inmates				45			50(1)
Segregation 31(2): return to general population at earliest time					7		
31 (3): grounds for administrative segregation			9		7	36(2)	
Segregation -Review Process 33(1): case of involuntary segregation must be reviewed							
33(2): presence of inmate at hearing							
36: visit by health care professional every day				32(3)			38
37: subject to necessary limits, inmate in admin. Segregation has the same rights as general population							64
Discipline 38: purpose				27			33-34
40(a)-(s): list of offences				29		30	35
41: informal resolution							
42: written notice of charge of offence				29			36
43(1): hearing required to deal with a charge							36
43(2): presence of inmate required							
44: disciplinary sanctions				31-32, 70			
Searches of inmates 47(1) routine non-intrusive frisk searches							
48: strip search by staff of same sex							
49-50: frisk & strip search based on reasonable grounds							
51-57: dry-cell, body cavity searches, & urinalysis							
58: searches of cells							
Visitors 59-60: searches of visitors				37			
Searches of Staff 63-64: searches of staff members							
Power to Seize 65-66: power to seize contraband							

CCRA	INTERNATIONAL DOCUMENTS						
	Binding Instruments		Other Instruments				
	ICCPR	Conv. Against Torture	Universal Declaration	SMRs	Basic	Body	European Prison Rules
Living Conditions 68: no use of instruments of restraint as punishment	7			33-34			39
69: cruel, inhumane or degrading treatment or punishment of offender	7 & 10(1)	16 & 2	5	31		6	37
70: healthful and safe living & working conditions of staff and inmates	10(1)		25	10 – 26	9		14-23 & 83-88
71-72: visitation and correspondence			12-16(3)	37-38, 61, & 79-80		19	43(1) & 65(c)
73: assembly and association	21		20				
74: inmate input in decision-making							
75: religion	18		18	6(2), 41, 42, & 66(1)	3		46, 47, & 66(a)
76: provision of programs for all offenders			26	59, 66(1), 68-69, & 71-77	5	28	10, 65(d), 66, 68, 69, 70 & 77
77: provision of programs for female offenders						5	11 & 28
78: payment to offenders				76, 89	8		76
Aboriginal Offenders 80: provision of programs for aboriginal peoples	27			66(1)			
81: aboriginal justice and agreements with Minister							
82: establish national aboriginal advisory committee							
83-84: access to and provision of aboriginal spiritual leader	18 & 27		18	41, 42, & 66(1)			47
Health Care 86: provision of essential health care				22, 62, & 82-83		24	26 – 32, & 100
87: service to consider health factors				22, 66(2), & 82-83			10, & 26-32
88: voluntary and informed consent to treatment	7					24	27
Grievance Procedure 90-91: provision and access to a fair and expeditious grievance procedure		13 & 12		36		33(1) & 7	41-42
Conditional Release *Principles* 100: purpose to facilitate rehabilitation and reintegration	10(3)			60(2), 61, 65, 66, & 79 - 81	5 & 10		3, 10 65(d),& 87-89
101(a): protection of society				58	4		

CCRA	INTERNATIONAL DOCUMENTS						
	Binding Instruments		Other Instruments				
	ICCPR	Conv. Against Torture	Universal Declaration	SMRs	Basic	Body	European Prison Rules
101(b): consider all information to make decision							
101(c): timely exchange of info							
101(d): least restrictive determination				57	5		67(3), & 87-89
101(e): proper training of staff		10		46-47			52, & 54-55
101(f): offenders have access to relevant information				35			
102: criteria for granting parole							
103: establishment of a national parole system							87-89
104- 108: composition and jurisdiction of national parole board							
119-121: eligibility for parole							
122-126: parole review process							
133-135: conditions of release				60(2)			
Review hearings 140(1): mandatory hearings							
140(4): attendance of observers							
140(6): access to information				35			
140(7): assistance to offender							
140(9): right to an interpreter	14(3)(f)			51(2) & 30(3)		14	36(4)
141: disclosure of information to offender							
142: disclosure of information to victims							
147: right of appeal to appeal division							
Correctional Investigator 158-167: appointment and powers of the C.I. and Office		12 & 13				29 & 33	4-5
182-184: confidentiality to protect the offender							

Legend:

Corrections and Conditional Release Act, S.C. 1992, c.20. [CCRA]
International Covenant on Civil and Political Rights, 16 December 1966, 1976 Can. T.S. No. 47 [ICCPR].
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Can. T.S. 1987 No. 36 [Conv. Against Torture].
Universal Declaration of Human Rights, 10 December 1948, UNGA Res. 217(III), UN GAOR, 3rd Sess., Supp. No. 13 at 71 [Universal Declaration].
Standard Minimum Rules for the Treatment of Prisoners, ECOSOC Res. 663 (XXIV) of 31 July, 1957 and 2076 (LXII) of 13 May 1977 [SMRs].
Basic Principles for the Treatment of Prisoners, 14 December 1990, UN GA Res. 45/111 [Basic].
Body of Principles for the Protection for All Persons under Any Form of Detention or Imprisonment, 9 December 1988, UN GA Res. 43/173 [Body].
European Prison Rules, (1987) Council of Europe: Strasbourg, 1987 [European Prison Rules].

ANNEX F: COUNTRY PROFILES

AUSTRALIA (Queensland Corrective Services Commission)

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
Prison population per 100000 adults 124 17,500 total prisoners 3800 prisoners (Qld.) 5.3% female 50% of female inmates are aboriginal aboriginal men comprise 20% of national prison population	• Section 120 of the Australian Constitution provides that each State has jurisdiction over prisons and correctional matters; Commonwealth prisoners are thus subject to the provisions of the State in which they are imprisoned • The *Corrective Services Act* (1988) and accompanying *Regulations* (1989) define the powers and duties of the Queensland Corrective Services Commission (QCSC), established in December 1988 • The *Act* and *Regulations* are supplemented by several procedural texts: the Queensland Corrective Services Commission Rules, the General-Managers' Rules and the Corrective Centre's Policies and Procedures	Official Visitors (OVs) Disciplinary Segregation	• OVs were introduced in 1989 following the recommendations of the *Kennedy Report* (1988) which reviewed the status of the Queensland correctional system • OVs officially replace the visiting magistrates system of resolving prisoner grievances at the institutional level • Each correctional facility must have a minimum of two OVs; one member must be a community representative and the other experienced in law • OVs are appointed by the correctional authority, required to visit the prison at least twice a month, have access to all Commission files and documents, and can interview any staff member or correspond with prisoners in confidence • OVs cannot overrule any order, instruction or decision of any officer or employee of the QCSC • The Commission appoints OVs of aboriginal heritage, as required • Prisoners may also write, in confidence, to any member of management or to executive board members of the Commission's central office • The General Manager of a prison may order the separate confinement of a prisoner for up to seven days for a "major" breach of prison discipline; there is no express limit on the length of any additional segregation periods, but segregation orders extending beyond the initial seven days must be approved by the QCSC	Ombudsman Judicial Review Non-Judicial Controls	• The office of the Parliamentary Commissioner for Administrative Investigations (Ombudsman) scrutinizes the entire range of government activity in Queensland • The Ombudsman can receive complaints from prisoners directly and investigate them, provided that inmates first try to resolve problems using internal processes • The Ombudsman has powers to recommend, not overturn previous decisions of the Commission • In Australia, there is no correctional statute or regulation that states or implies that prisoners possess any residual freedoms whilst they are held in custody • The *Judicial Review Act* (1991) allows prisoners to challenge regulatory and administrative decisions of the government through the courts system • Under the *Act*, prisoners have the right to ask the responsible government agency for a "Statement of Reasons" outlining how a decision was reached and on what facts it relied • The Criminal Justice Commission and the Human Rights and Equal Opportunities Commission may also address prisoner complaints • The Australian Human Rights Commission has a limited role in investigating prisoner complaints since the Commission, a federally regulated body, does not come under the jurisdiction of the states who control corrections • The *Freedom of Information Act* (1992) gives prisoners a legally enforceable right to be given access to documents held by state government departments and agencies; in

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
Aboriginals Are 19X more likely to be imprisoned than non-Indigenous persons 12 State prisons 2040 employees 15% of custodial workers are women 4.1% of QCSC staff is Aboriginal $205 million (Aus.) budget	• All decisions, from remission of sentence (parole), security classification, review of segregation orders to transfer, rest with the Commission; the Minister of Justice may overturn a Commission's ruling • The QCSC mission is to "administer a system of corrections which securely and humanely contains or supervises offenders" • Legislation allowing private sector management of prisons was introduced in 1990; two of Queensland's 12 prisons are currently managed by contract, but owned by government		• An Official Visitor must also review any period of segregation that extends beyond one month • The OV may recommend that a segregation order be confirmed, varied or set aside; however, the OV's recommendation has no binding force and is forwarded to the Commission for review • Prisoners are not permitted legal representation in reviewing major breaches of prison rules; reviews are conducted by the prison manager		1996, the QCSC received 456 access requests for documents held by the correctional authority
		Standards	• There are no enforceable national minimum standards regulating prison conditions in Australia • The conference of Correctional Administrators (1994) has produced an *Australian Guidelines* document derived largely from international texts		
		Inspector	• Division 4 of the *Corrective Services Act* provides for the appointment of inspectors whose statutory powers give them unrestricted access to all parts of prisons and all prisoners; the Inspector has no powers to determine the conditions under which prisoners are kept		
		Remission of sentence (Parole)	• Queensland prisoners must earn remission of sentence; it does not accrue as a right • The decision to grant remission to prisoners based on "generally good conduct and industry" is at the discretion of the Commission; remission criteria include the following areas: breaches of prison discipline; behaviour; efforts at and participation in rehabilitation; and community supervision needs • Prisoners may earn "over task" marks for extra, above average or exacting prison work		

CANADA (Federal Corrections)

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
Prison population per 100000 Adults 151 14,500 federal inmates; 33,800 total 2.1% female inmates; 5 Regional Women's Centres increase in federal prison population (1987-97) 38% prisoners per 100 places 109	•The *Corrections and Conditional Release Act* (*CCRA*, 1992) is the primary statute defining the duties, powers, purpose, principles and functions of federal corrections • The *CCRA* states that the purpose of Canadian corrections is "to contribute to the maintenance of a just, peaceful and safe society" • The Correctional Service of Canada (CSC) is the government agency responsible for the administration, supervision and management of federal prisons and offenders sentenced to two years or more • The Commissioner of Corrections, appointed by Governor in Council, is delegated powers by the *CCRA* to make prison regulations establishing procedures and correctional policy for the management of the Service	Inmate Complaint and Grievance System (C&G) Inmate Grievance Committee (ICG) Discipline and Sanctions	• The *CCRA* provides for a grievance resolution procedure that is "fair and expeditious"; offenders may avail themselves of the procedure "without negative consequences" • At the complaint stage (first level), inmates and staff are encouraged to resolve problems in an informal manner while sensitive or urgent matters are brought immediately to the attention of the warden • The formal grievance system allows for review and redress by progressively senior CSC respondents at three levels in the organizational hierarchy: institutional, regional and national • Grievances are designated as "high" or "routine" priority by correctional authorities at each level • High priority grievances include, but are not limited to, involuntary transfers, placement in segregation, denial of visits, use of force and strip searches • 23,382 grievances were registered in 1996; approximately 75% were resolved at the lowest level (the complaint stage) • Inmates may request a review of a response prepared at the complaint stage by a committee consisting of equal numbers of staff and inmate representatives • Recommendations of the committee are non-binding on the correctional authority; however, wardens must document reasons why they disagree with an IGC's recommendations • This facility is not consistently used • The *CCRA* enumerates 21 disciplinary offences • Disciplinary sanctions can consist of a warning or reprimand, loss of privileges, fine, extra duties and disciplinary segregation (up to 30 days)	Office of Correctional Investigator (OCI) Judicial Review	• The authority of the OCI lies in its ability to independently investigate and bring to resolution inmate complaints related to decisions, recommendations, acts or omissions taken by CSC authorities, including complaint and grievance responses • The OCI may determine whether such actions were: i) contrary to law or policy; ii) unreasonable, unjust, oppressive or improperly discriminatory; iii) based wholly or partly on a mistake of law or fact; or iv) exercised for an improper purpose, on irrelevant grounds or without reasons having been given • The OCI may commence an investigation on the basis of a confidential prisoner complaint, at the request of the Minister, or on its own initiative • The OCI has full discretion as to how an investigation is to be carried out, including the right to hold hearings, to request disclosure of CSC documents and inspect facilities • The CI issues recommendations to the Commissioner and the Minister; however, these are not binding on CSC • The OCI handled 6300 complaints in 1996-97 • The CI prepares and issues an annual report to the Minister which is laid before Parliament • Prior to the 1982 enactment of the *Charter of Rights and Freedoms*, the courts were reluctant to interfere with decisions of prison administrators • By 1985, the Supreme Court of Canada had affirmed, in a series of *Charter* challenges, that federal inmates may apply for judicial review of any decision which affects "rights, privileges and interests" (*Cardinal v. Dir. of Kent Institution*) • Section 7 provisions of the *Charter* require that any deprivation of the "right to life, liberty and security of the person must be in accordance with principles of fundamental justice"; Section 24 gives courts the power to grant remedies for violations of constitutional rights by governments and their agents • The courts have repeatedly interpreted Section 7 "fundamental justice" principles to include an inmate's right to counsel in certain

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
42 federal prisons 14.5% Aboriginal Offenders; 3.5% in Canadian society 2600 prisoners serving life sentences average offender age 35 cost per prisoner per day $137 $1.1 billion budget 12000 employees 37% female 3.2% Aboriginal	• Correctional policy is guided by CSC's Mission Statement: to exercise safe, secure and humane care and custody of offenders, assisting in their rehabilitation and eventual reintegration into the community as law-abiding citizens • The *CCRA* provides that CSC must use the "least restrictive measures consistent with the protection of the public, staff and offenders" • The National Parole Board (NPB) has exclusive jurisdiction to grant, deny, terminate or revoke parole	Administrative, Disciplinary and Involuntary Segregation Prisoners' Rights	•Wardens may confine inmates to administrative segregation on grounds that their continued presence in the general population would jeopardize: i) the security of the institution or; ii) of any person, including that of the inmate or; iii) interfere with an internal investigation • The Segregation Review Board and the regional correctional authority review placement decisions at prescribed intervals and make recommendations to the warden to either extend or terminate segregation • The legal authority for limiting rights and freedoms in the carceral context is outlined in the *CCRA;* it prescribes that "offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence" • Inmates have a right to privileged communication with certain individuals including Members of Parliament, the Solicitor General, the Governor General, federal judges and magistrates, legal counsel, the Correctional Investigator, provincial ombudsman and the Chairperson of the National Parole Board	Independent Chairperson (ICP) Citizens Advisory Committee (CAC) Outside Review Board (ORB) Non-Judicial Controls	administrative hearings in which the nature of the case is sufficiently grave and complex, and where the outcome may lead to notable losses of liberty (*Howard v. Stony Mountain Inst.*, 1984; *Vandenameele v. Stony Mountain Inst.*, 1995 and; *Tremblay v. Laval Inst.*, 1987) • ICPs are appointed by the Minister (often on the basis of a recommendation from regional correctional authorities) to conduct disciplinary hearings into charges of "serious" offences punishable by up to 30 days in disciplinary segregation • Wardens may establish a lay observer body charged with monitoring, evaluating and advising on correctional matters • Members are volunteers drawn from the community in which the prison is located; regional authorities approve the appointment of any CAC member • Specific functions of the CAC include: prison visits; attending parole, grievance and disciplinary proceedings; meeting with CSC managers, staff and offenders, and acting as independent observers during prison disturbances • There are over 50 active CAC chapters today • Inmates may request a review of a warden's grievance response by an ORB, composed of "neutral" members • In practice, this mechanism is seldom, if ever, used • Inmates may file complaints or requests to other federal agencies such as the Canadian Human Rights Commission, the Official Languages Commissioner, and the Information and Privacy Commissioners

DENMARK

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
prison population per 100000 66 3600 prisoners (1995) 3.8% female 18 state prisons (5 closed, 13 open) increase in prison population (1987--95) 7% prisoners per 100 places 98	• The *Danish Criminal Code* (1967) empowers the Minister of Justice and the Department of Prisons and Probation to make detailed regulations governing all aspects of prison life; prison regulations are guided by the *Danish Public Administration Act* (1987) • Prison regulations are issued as "circular orders" by the Minister of Justice; in practice, these are almost always devised by the Department of Prisons and Probation • Danish corrections are premised on the principle of "normalization," i.e., life inside prison should approach, as far as possible, the conditions of life on the outside • Terms of imprisonment are normally served in an "open" custodial facility, close to the prisoner's	Staff Committee	• Decisions regarding essential aspects of the prison regime -- i.e. furlough, employment, transfer, release and parole -- are taken by a Staff Committee at the prison level • A typical Staff Committee consists of a medical officer, psychologist, caseworker, chaplain, correctional officer, as well as other personnel "particularly familiar with the inmate whose case is to be discussed" • The Director of the institution determines who shall sit as permanent Committee members • The Committee makes recommendations to the Director and is required to report, in detail, any dissenting opinion(s) • On the basis of the Staff Committee's recommendation, the Director comes to a decision or passes his/her recommendation on to the Department of Prisons and Probation • Prisoners are entitled to state their views whenever a Staff Committee reviews their case • Ministry of Justice officials are responsible for certain decisions (i.e. parole, transfer, security classification) affecting prisoners serving sentences of eight years or more • Prisoners are "entitled to exercise their civil rights as far as it is not precluded by their being detained in custody" (*Order on Custodial Treatment*, 1973) • Prison regulations secure inmates a number of procedural rights: the right to access prison files; the right to be heard and to make a statement	Ombudsman Judicial Review	• The *Ombudsman Act* (1954) prescribes that "any person deprived of liberty shall be entitled to address written communications to the Ombudsman in sealed envelopes" • The Ombudsman is appointed by the Danish Parliament and provides significant scrutiny over the Department of Prisons and Probation • The Ombudsman's remit in prison matters includes: carrying out inspections of prison conditions; investigating particular cases brought to his/her attention; paying visits to custodial facilities; and scrutinizing Ministerial and Departmental decisions affecting prisoners • During custodial inspections, the Ombudsman is entitled to interview both prisoners and staff; full inspection reports are submitted to the Department of Prisons and Probation and are also filed with the institution • The Ombudsman presents his findings in annual reports tabled in Parliament • Pursuant to a recommendation by the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (*CPT*), the *Ombudsman Act* was amended in January 1997 to include a provision which formalizes the Ombudsman's capacity to perform systematic inspections of prisons • This recommendation was issued following the *CPT's* inspection of some Danish prisons in 1990 • Judicial review is not a normal avenue of redress for Danish prisoners who fail to resolve their grievances with prison authorities; only a few prisoners have actually pursued cases against the Department of Prisons in the courts • The Ombudsman seems to provide a more efficacious,

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	Description	EXTERNAL MONITORING Mechanism	Description
	home community and in association with others • Approximately 25% of the average sentenced prison population is placed in a closed regime; the same rules apply in both closed and open facilities, though freedom is more restricted in the former • Factors influencing the type of regime in which prisoners are confined include: sentence length; "dangerousness;" seriousness of offence; escape risk; and how the offender is likely to adapt to the prison regime • The *Danish Penal Code* specifies that conditional release (parole) may be granted when two-thirds, but not less than two months of the prison term has been served, unless such an early release is deemed "inadvisable"	Prison Discipline	before a decision is made; the right to be given reasons when a decision is communicated; and the right to receive guidance of appeal • The prison rules specify only two types of disciplinary sanction: either a fine or confinement in a "special cell" • Decisions to award a sanction rest with the Director and are made in the inmate's presence • Confinement in a special cell for "serious breaches" of discipline may not exceed four weeks; extensions may only be granted by Department of Prisons and Probation officials • A full report of each infraction of prison regulations resulting in a disciplinary sanction is entered into a "special register" and sent to central administration every three months		less rigid and potentially quicker avenue of redress than the courts • Recommendations of the Danish Permanent Committee of Penal Law Reform propose that "certain decisions" taken by the Department of Prisons (i.e.: denial and/or revocation of statutory parole; transfers; denial of visits; refusal to deliver letters; disciplinary cell placement for more than seven days) should be given "special access" to judicial review; the Committee's recommendations are currently being considered by Parliament
		Complaints and Appeal	• From the viewpoint of the inmate, the complaints and appeal procedure is largely self-contained • Complaints are mostly referred to the Director • Prisoners may appeal disciplinary and/or staff committee decisions taken against them to the Department of Prisons, and ultimately to the Minister of Justice		
		Prison Inspection	• An Internal Inspection Unit was established in 1995 • Its purpose is to ensure compliance with legislation and regulations and to counsel and encourage dialogue between the Department and the prisons it administers		

FRANCE

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
Total prison population: 58 616 ('96) Prison pop/ 100 000: 95 4% female inmates (1995) 31% non-nationals inmates (1993) prisoner to staff ratio: 100:33 ('89-'92) 12 850 new places	• *Administration Pénitentiaire*, a branch of the Ministry of Justice, is responsible for the prison service • *Penal Code of 1994* has replaced the Napoleonic code of 1810; the new code does not stipulate a maximum or minimum sentence requirement for offences • There are 3 types of prison institutions: the *maisons centrales,* which hold prisoners sentenced to more than 1 yr.; the *maisons d'ârret et de correction,* which hold both remand prisoners and prisoners sentenced up to 1 yr.; and the *centres pour rélégués,* which observe the conduct of prisoners with a view to early release • There are 3 categories of criminal offences:	*Chef de l'établissement pénitentiare* *Inspection générale* (Inspectorate for the Prison Services) *Directeur régional des services pénitentiare compétent* or *the garde des Sceaux*	• Inmates can request an audience with the Warden • This inspection facility is part of the central bureaucracy; it investigates major disturbances or escapes, conducts routine inspections, reviews the security plans of facilities, examines system-wide correctional functions, and oversees probationers • There are 2 main types of inspection: *missions de contrôle générale,* which review of prison operations; and *missions d'enquête,* which conduct inspections after important incidents • Disciplinary decisions must be appealed before applying for recourse before an administrative tribunal • The *Directeur régional* maintains a comprehensive list of infractions and disciplinary sanctions	*juge de l'application des peines* (JAP) *Commission de l'application des peines* *Préfets*	• The JAPs authority is derived from the *Code of Criminal Procedure* • JAPs are responsible for supervising sentences • JAPs are regular members of the magistracy who adjudicate cases in courts and are selected for a 3 year term by the '*Tribunal de Grande Instance*' • The right to interfere in the detention regime is limited to those powers necessary to oversee the sentence • The JAPs must meet with inmates once a month and may also meet with individual inmates on request • JAPs have the authority to alter an inmate's sentence and to influence the individual's program, which is a central part of the rehabilitation process for inmates • In the early 1980s, the role of the JAPs was modified by increasing their discretion in determining a sentence; the most fundamental change was the introduction of a *commission de l'application des peines* with which the JAPs must consult in making decisions • The judge can advise on the transfer of inmates, 'house rules', segregation, disciplinary hearings and as well as other aspects of incarceration • Inmates can lodge grievances about their treatment • The commission is chaired by a JAP • Each institution has its own commission, which annually reviews each inmates' case • It consists of the Warden, a prosecutor, the Personnel Director, a prison educator, a prison psychiatrist, a social worker and a doctor. Others can be appointed at the JAP's discretion • Préfets are direct representatives of the state; they chair

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
were added in 25 new prisons prisoner pop. under 21yrs: 10.2% avg. time spent 7.6 months occupancy rate 111.8%	serious offences punishable by life (max); *delits*, less serious, ranging from 6m to 10yrs, with the purpose of educating the inmate; and petty offences which carry fines or non-custodial sentences aimed at deterrence • The philosophy behind the French correctional system ranges from prevention to security • "Programme 13000", launched in1986, was an initiative to create new cells to cope with the problem of overcrowding and to privatize new prisons			*Inspection générale des affaires sociales (IGAS)* *Autorités administratives indépendantes* *Autorités administratives et judiciaires*	the *commission de surveillance* (control board) • Inmates can request an audience with the control board, which consists of judges, lawyers, and community representatives • The IGAs issues reports on the state of the prison medical services to the Ministry of Health, receives individual complaints from inmates, and makes inquiries into suspicious deaths • Inmates can request the *médiateur de la République*, once all other methods have been exhausted; the médiateur, or ombudsman, can directly criticize "bad laws" • Inmates can apply to the *Commission d'accès aux documents administratifs,* which has 2 months to respond • Decisions can be appealed to the JAP • Inmates can make written submissions to certain administrative and judicial bodies • Inmates can correspond confidentially with regional health inspectors & *Départements des Affaires sanitaires et sociales*

THE NETHERLANDS

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
prison population per 100000 67 10,300 prisoners (1995) increase in prison population (1987-95) 106% 75 prisons prisoners per 100 places 103 4.6% female inmates 50% of inmates are of non-Dutch origin	• *Principles of Prison Administration Act* (1953) establishes resocialization as the purpose of Dutch corrections; custodial sentences are served in "association" (i.e. work, leisure and exercise takes place in company of fellow inmates) • *Prison Rules* and *Prison Regulations* elaborate statutory provisions contained in *Prison Act* • In January 1995, the Dutch National Agency for Correctional Institutions (DJI) was incorporated as an agency of the Ministry of Justice • The DJI's task is to ensure the "safe, efficient and humane" enforcement of custodial punishment • Directorate of Prison Services is answerable	Supervisory Board	• Members of the Supervisory Board are independent citizens (i.e. not in the employ of the DJI), drawn from the community in which the prison is located • The Board oversees the "treatment of prisoners ... and the observation of the regulations laid down concerning them" • Prisoners may approach any member of the Board to air grievances or complaints	"Minimal Restrictions"	• The Dutch Constitution (1983) prescribes that the basic rights of prisoners can only be limited to the extent that assertion of constitutional rights is incompatible with the loss of liberty • Theoretically, the "minimal restrictions" doctrine means that Dutch prisoners retain the right to vote, to marry and to privacy, as well as freedom of expression, assembly and association, and religion • All 'rights' may be temporarily suspended (except for the primary right of complaint) by the Governor if s/he feels security or order in the prison is jeopardized
		Appeals Committee (AC)	• Established in 1977, the AC consists of at least three members who are either recruited from or recommended by the Supervisory Board; appointments to the AC are made by the Justice Minister • AC is charged with hearing prisoners' complaints and mediating between prisoners and the Governor • It has powers to change, supplement or completely revise the Governor's decisions provided these are found to be in conflict with prison rules or fail to satisfy "reasonable and fair" tests	National Ombudsman (NO)	• Established in 1982, the NO's role in the prison setting is limited since: i) s/he may not review general government policy or matters where statutory remedies are available; ii) only a few prisoners' cases each year are actually investigated by the NO and; iii) the second chamber of Parliament has a "commission for requests" which may also hear prisoner complaints
		Central Advisory Council (CAC)	• Decisions taken by the AC can be appealed by either inmate or the Governor at the CAC level located in The Hague • CAC is delegated responsibility for placement, transfer, segregation, participation in prison program, and prison leave decisions. CAC also advises the Ministry of Justice on prison policy development • While not a 'court' in the formal sense, CAC	Prisoners' Protected Correspondence	• Correspondence between prisoners and the Queen, Parliament or Parliamentary Committees, National Ombudsman, Minister of Justice, judicial authorities, Central Advisory Council, Supervisory Board and Appeal Committee is not subject to any inspection
				European Convention on Human Rights	• The *European Convention* is incorporated into Dutch domestic law; therefore legislators and prison authorities must take into account its application when formulating policy or taking decisions likely to affect prisoners' human rights • The Appeals Committee, civil courts, Advisory Council and National Ombudsman may all base their rulings on

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
14000 employees 6200 prison officers 17% staff is female prisons account for 25% of Ministry of Justice budget one cell per prisoner policy abolished July 1994	to the Chief Executive Officer of the DJI • The transformation to agency status limits the influence of the Ministry of Justice in The Hague to general administrative and performance criteria • Under agency rules, Governors sign a "contract" with Ministry officials; Governors are expected to obtain commercial contracts with local businesses, using prison labor to offset costs • Dutch prisons are classified according to: degree of security afforded (i.e. closed, open, semi-open, day detention centers); age and sex of prisoner and length of sentence • It is part of the regime in open prisons for inmates to spend their weekends at home		decisions are final and judicial in the sense that they establish claims in terms of prisoners' rights • CAC must be advised when: new members are appointed to Supervisory Boards; a facility changes its function; or a new establishment is planned		obligations derived from international human rights law • As a result of domestic incorporation of international treaties, Dutch prisoners have rarely taken their complaints to the European Commission; from 1987 to 1992 only one Dutch inmate had lodged a complaint in the Strasbourg-based court of human rights
		• Prisoners' Right of Complaint	• Since 1976, the *Principles of Prison Act* contains a formal statutory provision protecting a prisoner's right to complain • Under its provisions, a prisoner may complain about almost any action "which abrogates the rights he derives from the regulations applicable in the prison" • Specific guaranteed grounds of complaint include: i) disciplinary measures taken by the Governor; ii) refusal to send letters; iii) refusal to allow visits by certain persons • The Dutch orientation to prisoners' rights is that rights can be established and protected through the "primary" and "absolute" right of complaint	• *European Prison Rules* (1987)	• Although the *European Prison Rules* are not formally binding on member states of the Council of Europe, the Netherlands views the *Rules* as an "actual code" for the humane treatment of prisoners • The Netherlands was the first country to support establishment of a European inspectorate as a means of demonstrating, enforcing and strengthening domestic compliance with the *Prison Rules*
		• Inspector	• A small, in-house operation, the Inspector reports to the Director of the Prison Service • The Inspector advises on staffing, new plant planning, escapes, complaints and conducts investigations of staff malpractice • Reports are not published		

SWEDEN

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
prison population per 100000 65 5800 prisoners (1995) increase in prison population (1987-95) 34% prisoners per 100 places 92 68 prisons 5% female average cost per prisoner per day $250 8000 staff 52% basic grade	• The *Prison Treatment Act* (1974) requires that "correctional treatment shall be so devised to promote the adjustment of the inmate in society and to counteract the detrimental effects of deprivation of liberty" • The *Swedish Penal Code* (1964) was amended in 1989 to include the concept of "penal value," linking choice of sanction to seriousness of the offence, motive and intent of the accused • Statutory provisions are supplemented by regulations drafted by the Ministry of Justice and rules made by the Prison Administration (SPPA) • Swedish corrections is premised on the principles of "normality" (i.e. life inside prison should reflect, as far as	Review and Appeal	• A prisoner may appeal a Governor's decision by writing to central administration headquarters • All disciplinary measures resulting in "lost time" are subject to review of, and possible quashing by, SPPA's legal division • Decisions affecting security classification, transfer and institutional placement are taken at the regional or headquarters level; these decisions must be reviewed six months from the date of last assessment	Judicial Review	• The decisions of the SPPA concerning prisoners can be -- and often are -- appealed to the local administrative court; the court is obliged to review every case brought before it • Prisoners do not have an unconditional right to an oral hearing before court authorities, and they must seek permission of the SPPA to attend court proceedings • The merits of a prisoner's appeal are decided by documentary evidence only • The court can confirm, alter, or quash a decision taken by the SPPA, but it cannot award liability damages • Cases of compelling legal interest in which there is evidence of legal error or neglect are pursued at the Administrative High Court level
		Prisoners' Rights	• The *Freedom of the Press Act* (1949) provides that a prisoner may inspect his/her prison file • Prisoners' letters of complaint addressed to public authorities, administrative bodies, international organizations, Parliament or legal counsel are not subject to inspection • Letters and packets received by prisoners in closed regimes are subject to random scrutiny; scrutiny of telephone conversations may only occur with informed consent • Since 1991, all prisoners have been required to provide a specimen of blood, urine or breath, whenever requested	Justice Ombudsman (JO)	• Swedish prisoners have an absolute right of complaint to the JO • The functions of the JO are carried out by four ombudsman who are appointed by and answer to Parliament • The JO may receive prisoners' complaints and initiate or undertake inquiries into the administration of prisons • The JO has no power to order a change in a decision, but can criticize, make recommendations and occasionally take disciplinary or legal action against prison officials whose conduct is found "incompatible" with Swedish justice • Prisoners appear to have faith in the JO's independence; the JO is well-known to prisoners, its investigations are widely reported and often critical of the SPPA
		Prison Discipline	• A prisoner may be punished for indiscipline if s/he "violates standing orders or fails to follow any instructions given to him or her" • Escapes, attempted escapes, furlough abuse, alcohol and drug-related infractions are the most common punishable offences • Prisoners may be issued a warning or awarded "lost time" for an infraction against prison rules		

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
prison officers, 20% of whom are female majority of prison sentences range from 14 days to 2 months 10% of population sentenced for drug related offences half of inmate population abuse drugs 15000 persons per year serve prison time	possible, life on the outside) and "proximity" (i.e. prisoners should be placed in facilities close to their home community) • Seven regional offices answer to the central administration of the SPPA; direct political accountability for the prison estate rests with the Ministry of Justice • The SPPA is headed by a Director General (who is also chair of the Management Board); members of the Board are appointed by the government and include representatives from Parliament, prisons and probation, trade unions and independent laypersons • Distinctions between "community" and "national" prisons were abolished in 1996, but "open" and "closed" prison regimes were retained	Segregation Prison Inspection	• In cases where "lost time" is awarded, the Governor must send a full account of the proceedings along to headquarters • Infractions against prison discipline often result in transfer to a "closed" prison regime • Solitary confinement was abolished in 1976 • Under Section 20 of *The Prison Treatment Act*, a prisoner may be segregated for the following reasons: on grounds of national security; if the prisoner presents a clear danger to life or health of self or others; is under the influence of an intoxicant; is thought to be planning or assists another prisoner in an escape attempt; engages in coercive sex; to prevent serious damage to prison property and to maintain good order of the institution • Decisions to segregate prisoners must be reviewed at least once each tenth day of segregation; decisions to place a prisoner in a special maximum security unit must be reviewed at least once a month • The head of each of Sweden's administrative regions conducts periodic investigations of facilities; various other government bodies are charged with ensuring that the physical and material conditions -- i.e. food, hygiene, sanitation, health, safety -- are satisfactory • Prisoners can complain to the responsible government authority	*European Convention on Human Rights*	• The *European Convention* constitutes an important organ of control on the prison system, even if Swedish prisoners have rarely used its provisions to vent a grievance

UNITED KINGDOM

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
prison population per 100000 116 60000 inmates 3.8% females 83% Caucasian formal capacity 102% 131 prisons estimated cost of detainment per prisoner per year $50, 000	• *Prison Act* (1952) gives Home Secretary powers to make rules for the management of prisons • *Criminal Justice Act* (1991) provides authority for contracting out of prisons to the private sector • *Prison Rules* (1964) set out general regulatory powers and administrative duties for treatment of prisoners •HM Prison Service supervises custodial detention in England and Wales •The goal of the Prison Service is to provide "humane detention" and to help prisoners lead "law-abiding and useful lives in custody and after release" • Advice and instructions to Governors issued on an ad hoc basis by Prison	Requests & Complaints Board of Visitors (BoV)	• Multi-tiered system first introduced in 1990 encourages inmates to resolve grievances informally and/or exhaust internal mechanisms before seeking redress outside of the prison system • Internal prison decisions can be appealed to the Board of Visitors or Area Manager and finally to the Prisons Ombudsman • Area Managers deal directly with certain "reserved subjects" (i.e. parole, early release, adjudications) • BoV performs a lay "watchdog" role • BoV Members are volunteers serving three year terms; members are selected by and answer to the Home Secretary • A BoV has unrestricted access to every part of the facility and may interview prisoners out of sight and hearing of prison authorities when requested • Boards normally only become involved in prisoner grievances once all other internal mechanisms have been exhausted • The BoV has no executing powers; it cannot "order" a Governor to change his/her decision but can refer prisoners' complaints or make recommendations to the Area Manager or the Home Secretary • The BoV's role in adjudicating prison disciplinary hearings was removed in April 1992 following Lord Justice *Woolf's* (1991) recommendations	Prisons Ombudsman (PO) Judicial Review	• Established November 1994, the PO is appointed by and reports directly to the Home Secretary on a non-statutory basis • The PO provides an independent, confidential point of appeal for prisoners failing to satisfactorily resolve their grievances with the Prison Service • The PO has access to all Prison Service documentation not likely to prejudice security • The PO has no power to consider complaints filed against external bodies (i.e. police, Parole and Immigration Boards, Ministerial decisions or advice, cases currently before the courts) or actions outside the responsibility of the Prison Service (i.e. conviction and sentencing) • Recommendations are made either to the Director General or to the Home Secretary; both officials have a chance to review the PO's report in draft form in order to screen for factual accuracy, disclosure of sensitive material and respond to criticisms • The PO issues an annual report to the Home Secretary which is presented before Parliament • There is no Bill of Rights or written Constitution in the UK, therefore, inmate rights have usually been deduced from common law principles, as well as the legal obligations placed on the Home Secretary • Since the late 1970s, the courts have extended jurisdiction into all aspects of prison life reflecting the path-breaking *St. Germain* [1979] decision that "the rights of a citizen, however circumscribed by a penal sentence, must always be of concern to the Courts" • Disciplinary adjudications, sentence calculation, prison transfers and security classification are now increasingly

Profile	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
	Service Headquarters interpret scope of discretionary powers of *Prison Rules* • The Prison Service has been incorporated as an executive agency of the Home Secretary since 1993 • Home Secretary (HS) is accountable to Parliament for the Prison Service; she/he receives reports directly from the Director General on serious matters • The Secretary of State (or Prisons Minister) answers to the Home Secretary and is responsible for the majority of policies implemented in prisons • Under agency rules, the Director General (DG) is Chief Executive of Prison Service, the DG is appointed by the Home Secretary, with approval of the Prime Minister.	Inspectorate of Prisons (HMIP)	• Chief and Deputy Chief (normally seconded from senior posts in the Prison Service) and three inspection teams are funded by/answer to Home Secretary • The Inspectorate conducts a "rolling program" of inspections (each establishment is visited at least once every 5 years), reporting on quality of prison regime, conditions, staff/inmate morale, and treatment of prisoners in approximately 40 prisons per year • Key factors addressed include humane treatment, prison conditions and value for money • Reports issued by the HMIP incorporate Home Secretary's response since that office has primary political responsibility for implementing recommendations • Annual report outlining principal findings is laid before Parliament	European Court of Human Rights *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*	subjected to court review • Judicial review has helped to ensure that: i) the prison rules are more widely accessible to prisoners and more carefully followed; ii) written reasons for segregation are provided; iii) disciplinary offences are more precisely defined; iv) prisoner's communication with a lawyer are protected • The *European Convention on Human Rights* is binding on the UK, although it is not yet incorporated in domestic law by way of statute; the right to petition the Court has been recognized since 1965 • Significant decisions of the Court defining the rights of prisoners in the UK include: the right to marry; disciplinary procedures; prisoners' access to the courts and respect for prisoners' privileged correspondence • The *European Convention* establishes a Committee for the Prevention of Torture whose objective is to promote standards of humanity and dignity in the custodial arrangements of Council of Europe members • Reports of the Committee are kept confidential until or unless the state gives permission to publish its findings • The Committee has visited the UK three times (1990, '93 and '94); reports have commented on the crowded conditions and the lack of integral sanitation found in some facilities • The UK agreed to publication of each of the Committee's reports

UNITED STATES (Federal Bureau of Prisons)

Profile*[13]	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
prison population per 100000 420 1.2 million prisoners prison population has tripled in last 15 years; annual growth rate 8.7% 1500 prisons 65,000 female inmates inmates held in maximum security 115,700 blacks are 7.5X more likely than whites to	• The 10th amendment of the U.S. Constitution reserves powers for each state to establish, finance and administer its own criminal justice systems, including powers to define, prosecute and punish criminal activity • The US government has its own police agencies (the FBI) and prison administration (Federal Bureau of Prisons, or BOP) which manage offenders convicted of violating Federal laws • The jurisdiction of Federal laws extends to drug-related offences, arson, larceny, organized and white collar crime, robbery, extortion, immigration and state security • The legal authority of the BOP derives from its congressional mandate, establishing it as an agency of the US Government; Congress appropriates funds for the BOP to operate, including staffing and building	Administrative Remedy Program (ARP) Inmate Discipline	• ARP is a process whereby federal inmates may seek review by high-level Bureau officials of any issue related to their incarceration first provided that "good faith" informal procedures have been tried • Wardens are responsible for the implementation and operation of ARP remedies, establishing procedures for receiving, recording, reviewing, investigating, and responding to prisoner requests or appeals • "Sensitive issues" (where an inmate's safety or well-being might be jeopardized if an ARP request became known) may be submitted directly to the Regional Director; allegations of physical abuse by staff are referred directly to the National Office of Internal Affairs • Inmates who are not satisfied with an ARP response may appeal to the Regional Director, then to Central Office; responses from each level may be released to the general public under the *Freedom of Information* and *Privacy Acts* • The BOP operates a proportional discipline and sanction system: prohibited offences are arranged on a sliding severity/punishment; sanctions are intended to reflect the seriousness of the offence • Acts of "greatest" severity (e.g. assault, arson, escape, rioting, narcotics possession) can result in recession or retardation of recommended parole date, forfeiture of earned statutory "good time" credits (up to 100%), disciplinary transfer and/or segregation (up to 60 days), monetary restitution, and/or loss of privileges • Disciplinary matters are usually presided over by the Warden, a hearing officer or disciplinary committee; the same presiding authority awards sanctions • In disciplinary cases, inmates must be extended "Due	"Hands-Off" Doctrine US Supreme Court Rulings "Liberty Interests" "Cruel and Unusual Punishment" (Prison Crowding)	• Before the early 1960s, the prevailing attitude of both American society and, to a lesser degree, the courts was that prisoners lost virtually all rights upon confinement • This view was entrenched in the "hands-off" doctrine which implied that the Federal courts had no constitutional power to supervise or interfere with the application of prison rules • As the final arbiter and interpreter of constitutional rights, the U.S. Supreme Court is the most important definer of prisoners' rights, setting national standards for penal custody • The highest court is generally guided by recognition that a custodial sentence imposes "reasonable" limitations on the "free" exercise of constitutionally guaranteed rights • The Court has held that an inmates' expectations of privacy, freedom of speech, association and religion must yield to the "paramount interest" of security • The denial of visits from a particular person, granting of parole, commutation of a life sentence, transfer to a prison with less favourable or more restrictive conditions, and placement in disciplinary segregation are not justiciable "liberty interests" • The Supreme Court has twice ruled that prison crowding is not "cruel and unusual punishment" since the Constitution does not mandate "comfortable" prisons (*Bell v. Wolfish*, 1979; *Rhodes v. Chapman*, 1981) • In prison conditions cases, the Court is guided by the difficult "state of mind" standard: inmates must prove that prison administrators acted with deliberate intent to deprive them of a basic human need such as food, warmth, or exercise (*Wilson v. Seiter*, 1991)

* Profile data represent composite Federal and state statistics as extracted from the 1997 Directory of the American Correctional Association and The Corrections Yearbook (New York: Criminal Justice Institute) 1996.

Profile[13]	Legislative Authority and Accountability	INTERNAL MONITORING Mechanism	INTERNAL MONITORING Description	EXTERNAL MONITORING Mechanism	EXTERNAL MONITORING Description
serve a prison sentence inmates aged 55-75 155,000 3100 prisoners held on death row; 42 prisoners executed in 1996 3.2% of inmates tested HIV positive in 1995 average daily cost per prisoner $54 61% of federal inmates are serving drug-related sentences	• The "Duties of the Bureau of Prisons" (18 U.S.C. 4042) outlines its mission to provide "safe, humane, and appropriately secure" custody; it is the primary federal statute guiding BOP operations • BOP core regulations and policies are collected and published as federal rules (Title 28) in the *Federal Register* • Beyond these "core" statutes, BOP Headquarters issues implementing instructions called "Program Statements" • The BOP manages 91 adult correctional facilities, ranging from minimum to maximum security, administers a budget of $2.75 billion, employs 29,200 persons (12,000 correctional officers) and houses 111,000 inmates • 11,000 federal inmates are placed in private contract facilities • 27% of BOP staff is female	Prisoners' Rights (Access to Courts, Inmate Mail and Visits) Standards and Accreditation	Process" rights, including: the right to receive advance written notice of the charge(s); the right to an impartial hearing; the right to prepare for the hearing; the right to call witnesses and present documentary evidence and; the right to a written statement of the findings, evidence relied on and sanction to be imposed • The correctional authority has no obligation to provide for an appeal process or to provide legal counsel in disciplinary hearings (*Wolff v. McDonnel*, 1974) • Prisoners' rights are principally those guaranteed under the U.S. Constitution • Wardens must provide an inmate law library, and ensure "reasonable" inmate access to the courts • Inmate correspondence, including legal counsel, is subject to monitoring, reading and inspection, consistent with "legitimate government interests" • There is no legal entitlement to contact visits; conjugal visits are allowed in only a few states • The American Correctional Association and the Commission on Accreditation for Corrections have promulgated national standards and a voluntary system of accreditation for correctional agencies • The accreditation system provides a self-evaluation mechanism designed to stimulate improvement in correctional management, accountability, performance, programs and facilities	Death Penalty "Section 1983" Legislation *Prison Litigation Reform Act* (1996)	• The Supreme Court has ruled that the death penalty is "an extreme sanction, suitable to the most extreme of crimes" (*Gregg v. Georgia*, 1976); at last report, 37 states and the Federal government had statutes authorizing the death penalty • The most popular way to pursue prisoners' rights in the courts is through a Federal statute contained in the Civil Rights Act (1871), codified as Title 42, Section 1983 • Until 1971, federal inmates could not access Section 1983 provisions because its scope covered only state officials; however, in the case of *Bivens* (1971), the US Supreme Court ruled that this restriction was unfair to federal inmates • Federal inmates thus pursue "Bivens" cases in the courts • The *Prison Litigation Reform Act* was signed into law by President Clinton in April 1996; the main intent of the *Act* is to reduce "frivolous and ill-founded" Section 1983 prisoner suits • In 1995, 42,000 prisoner civil rights petitions were filed in court • The *Act* places several new restrictions on prisoners' access to Section 1983 remedies, including: reduced time limits on court orders providing relief from poor prison conditions; termination of some already existing consent decrees to improve conditions; monetary restrictions on plaintiff's attorney's fees and costs; restrictions on emergency injunctive relief orders and; the exhaustion of all available administrative remedies before a prisoner can file a motion in federal court • It is quite likely that the *Act* will be challenged since, as of January 1996, 437 institutions in 36 separate jurisdictions were under court orders or consent decrees to limit prison populations and/or improve living conditions in at least one major facility

ANNEX G: OUTLINE OF A STRATEGIC MODEL FOR MONITORING HUMAN RIGHTS COMPLIANCE IN A CORRECTIONAL SETTING

I. OBJECTIVES

A. GENERAL

- ☑ satisfactory and demonstrable compliance with lawful human rights obligations; and
- ☑ complete, efficient and compatible systems for achieving and evaluating compliance with human rights rules.

B. PARTICULAR

- ☑ a means of conceptualizing and organizing specific human rights monitoring mechanisms;
- ☑ a basis for identifying and correcting systemic human rights problems; and
- ☑ groundwork for a complete and appropriately tailored communications program.

II. PREMISES FOR EFFECTIVE MONITORING

- ☑ clear, common understanding of the human rights rules;
- ☑ unambiguous legal authority for those rules; and
- ☑ compliance mechanisms that are both transparent in themselves and open to public scrutiny.

III. POLICY FRAMEWORK

- ☑ policy interpretation strictly according to practical need;
- ☑ explicit links to legal and regulatory authority;
- ☑ policy that is specific to particular human rights;
- ☑ consistency across the correctional system;

☑ policy issued from a single central source; and

☑ the most straightforward and practical language possible.

IV. RULE TRANSMISSION

A. TRAINING

☑ basic training that provides full situational treatment of all operational implications of human rights rules; and

☑ regular access to appropriate refresher training, particularly for front-line staff.

B. SUPPORT MECHANISMS

☑ convenient and readable reference material for staff; and

☑ corresponding material for inmates, supplemented by thorough orientation sessions on entering an institution.

V. MONITORING

A. INTERNAL

☑ regular procedural checks as part of reporting and supervision;

☑ demonstrably accessible, timely and effective grievance and complaint processes;

☑ regular and comprehensive audits, evaluations and inspections of human rights norms;

☑ full, timely and impartial investigation of incidents involving alleged human rights violations;

☑ a dedicated human-rights-compliance tracking capacity; and

☑ specific provisions and, if necessary, monitoring mechanisms for verifying respect for groups such as women or aboriginal peoples which have special needs.

B. EXTERNAL

☑ a legally recognized independent monitoring body with powers to:

- make it services known and accessible;
- access all relevant premises and documents, and interview all parties;
- resolve complaints and recommend systemic remedies to the correctional authority;
- report as directly as possible to the legislature; and
- seek timely adjudication of disputed findings.

V. MONITORING EMPLOYEE RIGHTS

☑ clear and complete policy formulation and transmission re all employee rights; and

☑ an equivalent array of internal and external monitoring and redress mechanisms (e.g. grievance process, regular audits, and ready access to impartial agencies or adjudication outside the organizational hierarchy).

ANNEX H: SUMMARY OF RECOMMENDATIONS

General

1. It is recommended that copies of both the *International Reference Guide* and the *Domestic Reference Guide* on CSC's human rights obligations be provided to all institutions.

The Corrections and Conditional Release Act

2. The *CCRA* could be reinforced in various ways; we recommend in particular:

   I. that a clear reference to Canada's international obligations to respect the human rights of inmates and employees be incorporated in the law;

   II. that there be more explicit recognition of the need to balance public safety, custodial control and the rights of employees with the rights of inmates, including the right to be prepared for eventual reintegration;

   III. that the rights of inmates be more specifically invoked within the body of the Act, along with the overriding principle that the more any control mechanism abridges or intrudes upon those rights, the greater is the duty to respect appropriate standards of humanity and fairness; and

   IV. that the powers and duties of the Correctional Investigator be clarified so as to reinforce the need for prompt and effective resolution of rights-related problems and complaints; promote optimal coordination between the activities of the CSC and the CI; make the independence of the CI more apparent by authorizing him to report directly to Parliament; and provide for prompt adjudication of disputed cases.

CSC Policy

3. We recommend that:

   I. all policy and procedural guidelines clearly refer to the legal or regulatory authority on which they are based;

   II. any strategic framework or operational mechanism for evaluating CSC's compliance with human rights rules be based directly on the CCRA/CCRR or, in the case of employee rights, on the relevant federal statute;

   III. CSC develop and promulgate specific policy on the harassment of employees by inmates; and

IV. The Service develop specific components of its employment equity action plan that directly address particular long-standing problems in achieving a more appropriate balance between the representation and distribution of employees vis-à-vis offenders.

Policy Formulation

4. We further recommend that CSC more actively and comprehensively pursue the directions indicated by its Policy Review Task Force:

I. to greatly reduce the Service's dependence on multi-layered written directives to implant sound rights-related rules;

II. to speed up and streamline the policy development process to ensure that policy is not promulgated except when strictly required; that it is centrally controlled and consistent across the Service; and that its language meets the highest standards of clarity and directness; and

III. to apply the same basic criteria to the development of manuals or other reference material such as Standard Operating Procedures: no unnecessary repetition of law, regulation or policy; a more centralized responsibility for Service-wide consistency; and a specific quality-control mechanism to ensure plain language and practical utility.

Training

5. It is recommended that CSC take action to improve the quantity, quality and accessibility of rights-related training, particularly for front-line staff:

I. by increasing the amount of core training time devoted to the principles and the operational implications of respecting the rule of law;

II. by making refresher or updating training in these matters mandatory for all employees, and CXs in particular; and

III. by ensuring that training stresses the practical judgements and decisions that each officer must be able to make through the use of situational and case-study training methods, as well as through staff with demonstrated and appropriate institutional experience.

Monitoring Mechanisms

Internal Monitoring

6. In principle, CSC monitoring mechanisms are sufficient and we see no need to add to them. However, their effectiveness in checking compliance with human rights rules could be improved if they were treated more as a strategic whole, rather than relatively independent facets of an overall performance evaluation system. We therefore recommend that:

   I. CSC use the principles and component elements of the CCRA as the basis for a strategically complete and better coordinated audit and evaluation program;

   II. compliance-related information from all sources be analyzed thematically to provide a comprehensive picture of CSC's overall performance in this matter; and

   III. the task of building up such an overall picture be assigned to a designated Human Rights Unit , headed by an individual with appropriate seniority, and having the necessary resources to carry out its mandate and report its findings directly to senior management.

7. With regard to improvements to the component mechanisms as such, we propose the following:

   I. that steps be taken to hold individual staff members professionally responsible for applying the rule of law in human rights matters, and that this be reflected in performance appraisal criteria;

   II. that various measures now under way to make the grievance procedure for inmates more expeditious, as well as a better overall human rights evaluation tool, be vigorously pursued;

   III. that further consideration be given to eliminating the regional level of grievance review and making more active use of both Inmate Grievance Committees and Outside Review Boards;

   IV. that the effectiveness of the grievance procedure as a means of providing prompt and appropriate remedies to legitimate inmate complaints be given a high priority for inclusion in a compliance evaluation program;

   V. that the candidate pool for outside members of investigation teams be prepared jointly with appropriate NGO's;

   VI. that, in the interests of accountability, investigation reports be required to specifically locate all responsibilities for particular breakdowns;

VII. that the Service carry out more sustained monitoring of work place harassment of all kinds and take steps to bolster the credibility of its harassment complaint process; and

VIII. that CSC be required to explain any serious differences between the findings of an internal investigation and those of an external body such as the Correctional Investigator.

8. With respect to addressing the needs of aboriginal offenders, we recommend:

I. that CSC further improve employee awareness about aboriginal needs and rights;

II. the development of a specific component of its employment equity action plan which directly addresses anomalies in the distribution of aboriginal offenders vis-à-vis aboriginal employees; and

III. the development of an inspection team devoted to identifying and remedying aboriginal rights-related problems to remedy the insufficient utilization of the grievance system by aboriginal inmates.

9. With respect to women offenders, we recommend:

I. alternative accommodation for women offenders who are classified as maximum security remain a priority for CSC; and

II. that the gross overrepresentation of aboriginal women in maximum security institutions be the focus of a separate and specific review.

External Monitoring

10. With regard to the role of the Correctional Investigator, it is recommended that:

I. he be authorized to report directly to Parliament;

II. the Office of the Correctional Investigator be given the resources necessary to carry important cases/issues to adjudication, and to play a more active public role in communicating the social rationale for respecting inmates' rights; and

External and Internal Monitoring

11. With regard to the relationship between internal and external monitoring functions, it is recommended that:

I. CSC and the CI jointly establish working criteria and guidelines for prioritizing and filtering complaints and for minimizing investigative or other overlaps;

II. the two agencies collaborate on regular reviews of systemic issues for the purpose of determining what action is required to resolve them;

III. in those exceptional cases where a resolution compatible with CSC's human rights obligations cannot be agreed, steps be taken to submit the matter to adjudication without delay; and

IV. the *effectiveness* of the working relationship between the CI and CSC, in terms of its ability to deliver prompt and credible remedies for legitimate inmate grievances, be the focus of a separate and specific review.

External Oversight for Administrative Segregation

12. It is recommended that CSC evaluate the potential benefits of independent adjudication as recommended by the Task Force Reviewing Administrative Segregation.

Communications

13. In order to enhance CSC's ability to communicate its mandate to the public and the international community, we recommend that the Service:

I. build a communications program around the central goals of "safe and humane custody of offenders in a fair, forthright and publicly accountable way"; and

II. directly and specifically address the more difficult and contentious public issues.

14. It is further recommended that CSC enhance its reputation for openness, integrity and accountability by:

I. developing a number of specific and factually supported messages;

II. making the most of its strengths by developing fact sheets to bear them out; and

III. publicizing the results of its own reviews and research in straightforward language.

15. In order to be both credible and accountable to the Canadian public and the international community, the Service should also:

I. develop performance data that bear on *qualitative* aspects of programming and other useful aspects of corrections;

II. seek a better balance of good and bad news in presenting its record, and be more up front about the limitations of institutional programming;

III. reinforce the message that managing offenders is a communal responsibility;

IV. promote a better understanding of how to achieve the best mix of control and assistance, or of institutional and community corrections; and

V. use a greater variety of means to project its messages.

ANNEX I: SELECTED REFERENCES

Note: The domestic and international instruments consulted are listed in Annexes C and D. Full texts and citations can be found in the two reference guides compiled by the Working Group.

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