A WORK IN PROGRESS:

The *Corrections and Conditional Release Act*

Sub-committee on Corrections and
Conditional Release Act
of the
Standing Committee on
Justice and Human Rights

Paul DeVillers, M.P.
Chair

May 2000

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The Standing Committee on Justice and Human Rights

has the honour to present its

THIRD REPORT

Pursuant to its Order of Reference dated December 2, 1999 and the provisions contained in article 233 of the *Corrections and Conditional Release Act* a sub-committee of the Standing Committee on Justice and Human Rights was established to conduct a comprehensive review of the provisions and operations of the *Corrections and Conditional Release Act*.

In accordance with its mandate the Sub-committee held public hearings in Ottawa and in many other parts of the country. As well, the Sub-committee visited correctional facilities of all levels of security across Canada and attended parole hearings. While visiting correctional facilities, the Sub-committee held *in camera* meetings with management teams, correctional officers, parole officers, program staff, Parole Board members, inmates, citizen advisory committee members, and others.

The Sub-committee agreed to present the following report to the Committee, entitled: A Work in Progress: the *Corrections and Conditional Release Act.*

Your Committee has adopted this report which reads as follows:

TABLE OF CONTENTS

CHAPTER 1:

INTRODUCTION

1.1 The criminal justice system, with all its complexity and contradictions, is seen by many as the primary means of assuring Canadians have a comfortable level of security in their homes, places of business and workplaces, and on the streets. Public safety concerns are met, in part, through the incarceration, rehabilitation and effective reintegration of offenders into the community as law-abiding citizens. This can only occur within the criminal justice system once there has been a finding of criminal responsibility, and a sentence has been imposed by the court.

1.2 This report deals with issues arising from the application of legislation put in place by Parliament to address the administration of sentences of imprisonment in excess of two years in length. It is an appropriate time for the Sub-committee on Corrections and Conditional Release Act to be reporting the results of its findings, since many elements of the corrections and conditional release system are in transition. Many of the Sub-committee's findings and recommendations reflect this reality encountered by it throughout its study.

RECENT HISTORY

1.3 In 1992, Parliament adopted the *Corrections and Conditional Release Act*[1] (the Act) to replace the now-repealed *Penitentiary Act* and *Parole Act*. This Act has been amended several times since then. It emerged from and was based upon the mid-1980s work of the Department of the Solicitor General's Correctional Law Review; the 1987 report of the Canadian Sentencing Commission; a 1988 report by a predecessor to the standing committee; a 1990 government green paper; and a 1991 report by a predecessor to the standing committee.

1.4 There have been many events and developments since the Act came into effect. Perhaps the most important of these, with far-reaching consequences, came about as a result of a series of events in April 1994 at the Kingston Prison for Women. This led to the appointment of a commission of inquiry, led by Madam Justice Louise Arbour, which reported its findings in April 1996. Her report has had a major impact on the Correctional Service.

1.5 The *Corrections and Conditional Release Act* provides the legislative foundation for and sets out the responsibilities of the Correctional Service of Canada (Correctional Service) in Part I, the National Parole Board (Parole Board) in Part II, and the Correctional Investigator in

Part III.

1.6 Parts I and II of the Act also set out definitions of, and eligibility for, different types of conditional release of offenders into the community, and designate the releasing authority - either the Correctional Service or the Parole Board - responsible for making decisions on their appropriateness and availability. The different forms of conditional release are work release, temporary absences, day parole, full parole, and presumptive statutory release.

1.7 In March 1998, the Solicitor General released a consultation paper entitled *Towards a Just, Peaceful and Safe Society: the Corrections and Conditional Release Act Five Years Later*. This paper and a series of technical studies were given wide distribution and made available on the Internet as part of the Department's consultative process. Following the release of these documents, the former Solicitor General appeared before the standing committee in May 1998. A summary of the responses to the consultation paper was released in October 1998 by the Minister's department.

1.8 The Act contains a review clause requiring a parliamentary review of the provisions and operation of the Act. The Standing Committee on Justice and Human Rights established this Sub-committee on November 3,1998 and gave it the mandate to conduct the review. It officially began the review in February 1999. This report is the product of that process.

REVIEW PROCESS

1.9 The Sub-committee began its work by developing and releasing terms of reference in December 1998. They were meant as a point of departure, to focus on broad issues of concern to the Sub-committee. They were given wide circulation to those it was hoped would make submissions, as an important part of this parliamentary review. Using the Department of the Solicitor General's consultation and technical papers as source material, the Sub-committee made it clear in its terms of reference that those making submissions to it were not limited in the issues they were invited to address in their submissions. (The Sub-committee's terms of reference can be found at Appendix A.) In response to its terms of reference and solicitation of submissions, the Sub-committee received briefs and other documents from a number of groups, agencies, and individuals. (A list of these submissions can be found at Appendix C.) The Sub-committee held public hearings in Ottawa and other parts of Canada, where it heard directly the concerns of groups, agencies and individuals. (A list of these public hearings can be found at Appendix B.)

1.10 The Sub-committee decided at the outset of its process that its review would not be an academic or theoretical exercise. To that end, the Sub-committee toured as many correctional institutions as possible during the time available to it. Correctional institutions, both old and of more recent vintage, of all security levels, in all regions of the country were visited. The Sub-committee toured all parts of these institutions. While there, it met with management teams

and citizen advisory committees. It also held *in camera* meetings with parole officers, correctional officers, front-line staff, program staff, health care workers, union representatives, staff from the Correctional Investigator's Office and inmate representatives.

1.11 While visiting correctional facilities, the Sub-committee was also able to attend several Parole Board hearings and, in an *in camera* setting, hear the concerns of Board members.

1.12 The *in camera* process was followed so that those most affected by the provisions and the day-to-day operation of the Act could speak frankly and in confidence to the Sub-committee. To ensure this, the Sub-committee did not record and transcribe these meetings. Contemporaneous notes were relied on to ensure that what was said became part of this process. In referring in this report to what it learned during these visits, the Sub-committee has not identified individuals, correctional institutions or regions of the country. (A list of the correctional institutions visited in the five regions of Canada can be found at Appendix D.)

1.13 At the end of this process, the Solicitor General of Canada, the Deputy Solicitor General, the Commissioner of Corrections, the Chair of the National Parole Board, and the Correctional Investigator appeared before the Sub-committee in public hearings. Members were able to draw upon the submissions they had received and their institutional visits, to pose questions and seek clarification on a number of issues.

FUNCTIONS PERFORMED BY AGENCIES UNDER THE ACT

1.14 The functions performed by each of the agencies established under the Act are only briefly set out here. More detailed functional descriptions will be provided throughout the report as the Sub-committee makes its findings and recommendations.

1.15 The Correctional Service is responsible for receiving and assessing offenders serving terms of imprisonment in excess of two years, and managing their sentences. It operates maximum-, medium-, and minimum-security penitentiaries for men and women; community correctional centres where offenders on some form of supervised conditional release in the community reside; and community parole offices that supervise offenders conditionally released into the community. The Correctional Service also contracts with many private-sector agencies for the provision of halfway houses and community supervision of conditionally released offenders. It not only manages the sentences of offenders, but also prepares them for gradual release and releases them back into the community. The Correctional Service provides the Parole Board with information about offenders, upon which its conditional release decisions can be based. It also plays a key role in identifying which offenders the Parole Board should consider ordering detained in custody beyond their otherwise presumptive statutory release dates, potentially until the end of their sentences. Finally, the Correctional Service supervises offenders conditionally released into the community.

1.16 The Parole Board is an independent administrative tribunal that has exclusive legal authority to grant, deny, terminate or revoke the conditional release, on day parole or full parole, of federally sentenced offenders from federal institutions and provincial or territorial inmates from provincial or territorial institutions, where there are no parole boards. British Columbia, Ontario, and Quebec have provincial parole boards. The Parole Board, in addition to its releasing functions, also has authority to order inmates, who may, before the end of their sentences, commit serious harm or serious drug offences, detained in custody until the end of their sentences. It also, upon application, grants pardons and makes recommendations on the exercise of the Royal Prerogative of Mercy. A review of this function does not form part of the Sub-committee's mandate, since it is not dealt with in the *Corrections and Conditional Release Act*.

1.17 The Correctional Investigator acts as an ombudsman for federally sentenced offenders, independently of the Correctional Service. Investigations can be undertaken at the Correctional Investigator's own initiative, at the request of the Solicitor General, or upon receipt of a complaint by or on behalf of an inmate or offender. The Correctional Investigator may review Correctional Service investigative reports concerning events where an inmate has died or suffered serious bodily injury. The annual report provided to the Solicitor General by the Correctional Investigator is tabled in Parliament.

GENERAL THEMES

1.18 As can be seen from what has been set out so far, and as will become even more obvious in the rest of this report, the legislation, institutions and policies put in place by Parliament are complex and, at times, confusing. The Sub-committee has prepared this report of its findings and recommendations in such a way that the complexity will become less daunting to those seeking an understanding of the corrections and conditional release system now in place.

1.19 Despite the complexity of the issues being considered in this report, the Sub-committee has been able to discern a number of underlying themes emerging from this review. They will inspire and provide the underpinning for much of what is said in it. At this point in the report, these underlying themes will be set out in the following general, sketchy terms, to be more fully developed at appropriate places in the Sub-committee's findings and recommendations:

- Public protection or community safety is the paramount consideration in all decisions made at all stages of the corrections and conditional release system.
- To achieve this paramount consideration, the corrections and conditional release system has, and should have, as a primary goal the safe rehabilitation and reintegration of offenders as productive, law-abiding members of the community.
- The corrections and conditional release system should encourage offenders to actively participate in this process, and corrections and conditional release authorities to see that

the process is effectively carried out.

- Decisions should be fairly and equitably made by corrections and conditional release authorities. Sentence management takes place in the context of the rule of law and the duty to act fairly, where offenders' entitlements and rights are constrained, but not nullified, by the correctional environment.
- The corrections and conditional release system must reach out to involve Canadians.
- The corrections and conditional release system put into place by Parliament in 1992 is still in transition. This is most apparent in the physical contrast between older correctional institutions and those constructed more recently. This transitional phase is also obvious in the recruitment and training of, and demands placed upon, those employed to deal with offenders; emerging new ways of working with a difficult clientele; and the makeup of the offender population and the challenges they pose to those managing their sentences.

1# R.S.C., c. C-44.6 (S.C. 1992, c. 20), as amended.

CHAPTER 2:

PUBLIC PROTECTION AS THE PARAMOUNT CONSIDERATION

2.1 The main function of the corrections and conditional release system is to administer sentences of incarceration handed down by criminal courts. This is to be done in such a way as to assure that the offender is eventually reintegrated into the community as a law-abiding citizen, who doesn't reoffend or victimize others.

2.2 This chapter deals with public protection, which is the paramount consideration set out by Parliament as its most important legislative policy guidance to those applying and interpreting the Act on a daily basis. The John Howard Society of Canada emphasized this by saying in its brief that corrections and conditional release system personnel must govern their day-to-day activities with the statement of legislative purpose in mind.[2] The Ministry of the Attorney General of Ontario Office for Victims of Crime, in its brief, urged the Sub-committee to keep the paramount consideration of public protection as the basic purpose of the corrections and conditional release system at the forefront of its deliberations.[3] The Sub-committee has accepted and applied this advice in the findings and recommendations contained in this report.

PURPOSE

2.3 The Act contains two purpose provisions. Section 3 is addressed to the federal correctional system, while section 100 performs the same function for conditional release, in which both the Correctional Service and the Parole Board play roles. Section 3 of the Act reads as follows:

> The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by
>
> (*a*) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
>
> (*b*) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

2.4 As can be seen, the purpose of the correctional system is clearly protection of the public through management of sentences via offender custody and supervision, and rehabilitation and community reintegration. It is also clear, however, that there is a hierarchy of values within this provision of the Act. Custody, supervision, rehabilitation, and reintegration are identified as the means to assure public protection. Section 100 of the Act reads as follows:

The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.

2.5 The purpose of the conditional release system is clearly protection of the public through the timing and conditions of release decisions facilitating offender rehabilitation and reintegration as law-abiding members of the community. It is also clear here that there is a hierarchy of values within this provision of the Act. The timing and conditions of release for rehabilitation and reintegration are set out as the means to assure public protection.

2.6 It is not uncommon for Parliament to enact statements of purpose and principle to indicate the goals it seeks to achieve, to those who have to apply and administer legislation. The present sentencing provisions of the *Criminal Code* contain such a statement of legislative policy intent.

2.7 The Sub-committee believes that both the correctional system and conditional release legislative purposes, as it understands them, are not in need of change. However, both the Correctional Service and the Parole Board must ensure that these purpose clauses provide the basic criteria against which policies and decisions are to be measured.

PRINCIPLES

2.8 There are two provisions in the Act setting out principles intended as guidance for achieving the purposes discussed in the immediately preceding part of this chapter of the report. Section 4 applies to the Correctional Service and section 101 applies to the Parole Board. Section 4 of the Act reads as follows:

> The principles that shall guide the Service in achieving the purpose referred to in section 3 are
>
> (*a*) that the protection of society be the paramount consideration in the corrections process;
>
> (*b*) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the

sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders;

(*c*) that the Service enhance its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programs to offenders, victims and the public;

(*d*) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;

(*e*) 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;

(*f*) that the Service facilitate the involvement of members of the public in matters relating to the operations of the Service;

(g) that correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(*h*) that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements;

(*i*) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programs designed to promote their rehabilitation and reintegration; and

(*j*) that staff members be properly selected and trained, and be given

(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

Section 101 of the Act reads as follows:

> The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are
>
> (*a*) that the protection of society be the paramount consideration in the determination of any case;
>
> (*b*) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;
>
> (*c*) that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programs to offenders, victims and the general public;
>
> (*d*) that parole boards make the least restrictive determination consistent with the protection of society;
>
> (*e*) that parole boards adopt and be guided by appropriate policies and that their members be provided with the training necessary to implement those policies; and
>
> (*f*) that offenders be provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

2.9 Both of these provisions provide clear direction to the Correctional Service and the Parole Board as to how Parliament intended the legislative purposes to be implemented by both agencies in their day-to-day operations. The sentencing provisions of the *Criminal Code* use a similar legislative policy technique, there referred to as a fundamental principle and `other' principles of sentencing.

2.10 Section 4 and section 101 of the Act are consistent with section 3 and section 100, in that they contain, in identical terms, the designation of protection of society as the paramount consideration in the corrections process or the determination of any case. Unfortunately, these provisions, at paragraph 4(*a*) and paragraph 101(*a*) respectively, in their present legislative form, are enunciated in the same manner and seem to have the same weight and status as the

following paragraphs. The following paragraphs are clearly intended to be the means by which the paramount guiding principle is to be implemented.

2.11 This manner of drafting undervalues the importance of the paramount principle in the corrections and conditional release system. The Sub-committee believes this should be addressed by recasting section 4 and section 101 to amend the Act, so that paragraph 4(*a*) and paragraph 101(*a*), dealing with protection of society as the paramount consideration, are reformulated as stand-alone basic principles. The remainder of the sections would be retained as separate provisions setting out guiding principles for the attainment of the legislative purposes and basic principles.

2.12 Paragraph 4(*a*) could become a new section 4, and the rest of section 4 could become a new section 5, to deal with the Correctional Service. The new section 4 could be drafted in the following terms, based on the present paragraph 4(*a*):

Basic principle: The protection of society is the paramount consideration in the corrections process.

2.13 A similar amendment could be made to section 101 of the Act to set out the basic principle and guiding principles applicable to the Parole Board.

RECOMMENDATION 1

The Sub-committee recommends that section 4 and section 101 of the *Corrections and Conditional Release Act* be amended so that the paramountcy of the protection of society is established as the (stand-alone) basic principle applicable to the Correctional Service of Canada and the National Parole Board. What remains of section 4 and section 101 is to be retained, as amended, as guiding principles.

2.14 There are many ways to ensure that this basic principle is implemented on a day-to-day basis. The rest of this chapter deals with some of these ways and suggests required changes, to ensure that protection of the community is effectively provided for in specific circumstances.

ADDING TO THE SCHEDULES

2.15 Schedule I and Schedule II of the Act perform an important function in providing a degree of public protection. Schedule I sets out a number of offences, prosecuted by indictment, involving the possible or actual infliction of serious harm on victims, while Schedule II sets out a number of serious drug offences prosecuted by indictment.

2.16 These schedules come into play at several different points in the administration of a

sentence. When a scheduled offender applies for an unescorted temporary absence, section 107 of the Act provides that the National Parole Board, rather than the Correctional Service, has jurisdiction to grant it. Under section 125 of the Act, an offender who has committed a scheduled offence is not eligible for the accelerated parole review process, and is thus not releasable on day parole at the one-sixth point in the sentence. Finally, an offender who has committed a scheduled offence is potentially subject to the post-statutory release detention provisions found at section 129 to section 132 of the Act.

2.17 These schedule-related measures have a direct impact on public protection. They provide the basis for delaying the release into the community of offenders posing an unacceptable risk of reoffending. In doing so, they ensure that those committing serious offences and at risk of recidivating serve a longer, denunciatory portion of their sentences in a carceral setting, where they will not be threats to the community.

2.18 For the schedules to be effective and have the impact here ascribed to them, it is important that policy-makers keep them under continuous review and add new offences to them, as these offences are adopted by Parliament in response to public concerns and expectations. The enactment of these new offences, and their inclusion in one or the other of the schedules, will express Parliament's intent to denounce such criminal conduct.

2.19 As an example of this, Parliament has recently amended the *Competition Act*[4] to make deceptive telemarketing either a summary conviction offence, punishable by a fine of up to $200,000 and/or imprisonment for up to one year, or an indictable offence, subject to a fine at the court's discretion, and/or imprisonment for up to five years.

2.20 To express the seriousness with which it views this offence, Parliament took the unusual step of setting out a number of offence-specific aggravating factors to be taken into account by the courts in imposing appropriate sentences. Among these factors are the deliberate targeting of persons vulnerable to abusive tactics; the targeting of previous victims; the amount of the realized proceeds; and the deliberate manner in which abusive tactics are used.

2.21 To demonstrate further the seriousness with which it views deceptive telemarketing, Parliament subsequently added it to the enterprise crime provisions of the *Criminal Code*,[5] but did not add this offence to the schedules. Consequently, those prosecuted by indictment, convicted of deceptive telemarketing, and sentenced to terms in excess of two years are eligible for the accelerated parole review process and possibly for day parole after six months, or at the one-sixth point in their sentence, whichever comes later. The National Parole Board does not deal with their requests for unescorted temporary absences. They are not necessarily subject to the post-statutory release detention provisions of the Act, based on their offences or convictions.

2.22 This demonstrates the importance of Parliament consciously considering whether it wants

to further denounce criminal activity beyond merely enacting a new offence with the consequential sanction. The failure to add an offence to the schedules has an impact on the legislated tools available to the corrections and conditional release authorities administering a sentence of imprisonment.

2.23 Deceptive telemarketing is not the only criminal offence not in the schedules that has recently attracted public attention. The child pornography offences, contained in section 163.1 of the *Criminal Code*, are hybrid offences that, if proceeded with by indictment, can attract a sentence in excess of two years, but are not included in Schedule I of the Act.

2.24 In contrast, Parliament amended[6] paragraph 125(1)(*a*) of the *Corrections and Conditional Release Act* to ensure that those convicted of criminal organization offences are not eligible for the accelerated parole review process. This was done in response to a public outcry when several offenders, who received lengthy sentences for serious drug offences, were not only eligible for the accelerated parole review process, but were also released on day parole at the one-sixth point in their sentences instead of six months before their parole eligibility dates. This amendment, however, did not add criminal organization offences, as defined in section 2 of the *Criminal Code*, to the schedules.

2.25 The Sub-committee believes that the schedules to the Act play an important role in setting out Parliament's view as to which criminal offences are serious enough to be designated as deserving special denunciation, resulting in greater portions of sentences being served in a prison. Although the Sub-committee comes to conclusions and makes recommendations elsewhere in this report that have an impact on the use to which the schedules are put, it believes they should be maintained, expanded by adding offences, and reviewed on a continuing basis, to determine if any further additions are required.

RECOMMENDATION 2

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended by adding child pornography offences and criminal organization offences (as defined in section 2 of the *Criminal Code*) to the schedules. As it further amends criminal legislation, Parliament should consider adding other offences such as deceptive telemarketing to the schedules as a means of denouncing criminal conduct.

APPREHENSION IN CASES OF BREACH OF CONDITIONAL RELEASE

2.26 The effectiveness of successful reintegration into the community is dependent on the setting of appropriate release conditions to be respected by the offender, and close supervision to ensure this happens. The burden is on the offender to live in the community according to these conditions, and on the release supervisor to see that they are respected.

Public protection is best assured when offenders and their release supervisors live up to the duties and responsibilities imposed on them.

2.27 The reality is, however, that offenders do not always respect the conditions under which they are released back into the community. These situations are dealt with by section 135 of the *Corrections and Conditional Release Act*. Where an offender breaches a condition of parole - which means both day parole and full parole - or statutory release, a member of the Parole Board, or a person designated by name or title by the Chairperson of the Parole Board or the Commissioner of Corrections, may suspend the release and authorize the apprehension and recommitment to custody of the offender.

2.28 Similar provisions exist with respect to work release and unescorted temporary absences. Subsection 18(6) of the Act allows the warden of a penitentiary, who suspends or cancels a work release, to issue a warrant of apprehension and recommitment to custody. The authority approving an unescorted temporary absence, who suspends or cancels it, may issue a warrant of apprehension and recommitment to custody under section 118 of the Act.

2.29 The Canadian Police Information Center (CPIC), a national police database available to virtually all police forces, contains information about parolees released from institutions, on parole and statutory release. Through an interface with the Correctional Service, CPIC users can determine whether a subject is a federal penitentiary inmate.

2.30 Subsection 18(6), section 118, and section 135 of the Act, and the ready access of information about conditionally released offenders, provide a good basis for the apprehension and reincarceration of released offenders in breach of their release conditions. Conditions can be breached by the commission of a new offence or the failure to abide by the release conditions themselves. If a conditionally released offender has committed a new offence, he can be arrested and charged by law enforcement authorities in the same way as any other suspected person.

2.31 The difficulty lies with a conditionally released offender who has breached a condition of release, but has not committed a criminal offence. The Ministry of the Attorney General of Ontario Office for Victims of Crime describes the situation faced by police officers as follows:

> Officers are... required to attempt to access a 24/7 CSC service and gain their decision to revoke the conditional release and issue a warrant. Not only is this an unnecessarily cumbersome, lengthy and more costly process but, given the internal CSC decision to not return offenders in violation of their conditional release, potentially counterproductive to the safety supposedly achieved through the imposition of conditions.[7]

2.32 Based on this argument, the Ministry of the Attorney General of Ontario Office for Victims

of Crime proposed that section 145 of the *Criminal Code*, which establishes the offence of being at large without lawful excuse before the end of a term of incarceration, be amended to make it an offence to be in breach of a condition of conditional release.

2.33 The Canadian Police Association takes a similar position on this issue. They describe the situation of the police officer faced with such circumstances in the following terms:

> Police officers are also unable to arrest and charge an offender who has breached a condition of his parole. Police are merely able to notify the parole officer, who makes the determination on whether or not to revoke or reoffend. Police should have the ability to arrest and charge offenders who have breached their parole conditions.[8]

2.34 Based on this argument, the Canadian Police Association recommended that the *Criminal Code* be amended to create the indictable offence of breaching a condition of conditional release.[9]

2.35 The Sub-committee agrees with the submissions it has received on this issue. Subsection 18(6), section 118 and section 135 of the *Corrections and Conditional Release Act* are not adequate in themselves to effectively cover all the circumstances confronting law enforcement officials, where a conditionally released offender is in breach of a condition not amounting to a new criminal offence. Provision must be made to allow a police officer faced with such a situation to detain and arrest the offender without delay.

2.36 The Sub-committee is not convinced, however, that it is necessary to create a new *Criminal Code* offence to deal with the types of situations discussed in this part of the chapter. Instead, the Act itself should be amended to allow a police officer to arrest without warrant an offender observed to be in breach of a condition of any of the forms of conditional release. This would allow a police officer to arrest without warrant an offender observed to be in breach of a release condition in circumstances where it is not feasible to detain the offender until a warrant is obtained under subsection 18(6), section 118 or section 135 of the *Corrections and Conditional Release Act*. This amendment would provide police, corrections, and conditional release authorities with another means for dealing in a timely way with conditional release breakdowns.

RECOMMENDATION 3

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to allow a police officer observing an offender to be in breach of a condition of any form of conditional release to arrest that offender without warrant.

INVESTIGATIONS

2.37 Periodically, incidents occur in correctional facilities resulting in death or serious bodily injury. Both inmates and staff members have been the victims of these occurrences. Although after-the-fact investigations of such events can do little to affect them, they can be used to identify and address causes, policy gaps and weaknesses in day-to-day practices. Such investigations identify corrective steps to be taken to reduce the possibility of a reoccurrence of similar events, with at times tragic consequences. The implementation of recommendations arising out of such investigations contributes to the protection of those found in correctional facilities, inmates, staff and others.

2.38 Section 19 to section 21 of the Act deal with Correctional Service investigations. Section 19 requires the Correctional Service to conduct an investigation and report to the Commissioner of Corrections, whether or not there is an investigation under section 20, when an inmate dies or suffers serious bodily injury. The report resulting from such an investigation is to be provided to the Correctional Investigator. Section 20 of the Act allows the Commissioner to appoint persons to investigate and report on any matter relating to the operation of the Correctional Service. Finally, subsection 116(1) of the *Corrections and Conditional Release Regulations* requires the warden of a penitentiary to, among other things, report the death of an inmate to the coroner or medical examiner having jurisdiction.

2.39 The Union of Solicitor General Employees recommended to the Sub-committee that section 19 of the Act be amended to require an investigation when a staff member dies or suffers serious bodily injury.[10] It set out its rationale in the following terms:

> The Service is also responsible for the safety and health of its employees and therefore should conduct an investigation (neutral and impartial) when a staff member dies or is injured.[11]

2.40 The Sub-committee agrees with this recommendation and its underlying rationale. As indicated at the outset of this part of the chapter, properly constituted and thorough investigations will result in effective corrective actions being taken where needed. The consequence will be a safer work environment for correctional staff and a safer living environment for inmates.

2.41 Although it agrees with this recommendation in principle, the Sub-committee offers the following comments to clarify its finding. Any amendment to section 19 of the Act must only apply to death or serious bodily injury suffered by correctional staff while on the job. The subsection 19 (2) requirement to provide the report of such an investigation to the Correctional Investigator should not be applicable where death or serious bodily injury of correctional staff is involved, as that office investigates offender complaints. If section 19 of the Act is amended as

proposed, there will have to be a consequential amendment to subsection 116(1) of the Regulations to require notification by the warden of a correctional institution to the local coroner or medical examiner.

RECOMMENDATION 4

The Sub-committee recommends that section 19 of the *Corrections and Conditional Release Act* be amended to require the Correctional Service to investigate and report to the Commissioner of Corrections on the job-related death of, or serious bodily injury to, correctional staff.

TEMPORARY ABSENCES - CITIZEN ESCORTS

2.42 As indicated elsewhere in this report, temporary absences are provided for by the Act in two forms - escorted and unescorted. These elements of the conditional release system are essential to the planned and gradual reintegration of offenders into the community as law-abiding citizens. This means of encouraging the maintenance of family and community ties by offenders is an important element in efforts to protect society, and results in a reduction in the rate of reoffending. The Sub-committee sets out its findings and recommendations on temporary absences and work releases elsewhere in this report. This part of the chapter deals only with the issue of those who may act as escorts in escorted temporary absences.

2.43 Correctional Service staff may act as escorts in both security and non-security contexts. Citizen escorts may only participate in such low-security contexts as Alcoholics Anonymous meetings, Narcotics Anonymous meetings, chaplaincy programs and community service projects, to meet individual offender needs identified in the correctional plan. Citizen escorts are drawn from individual volunteers, faith-based groups, non-governmental organizations, citizen advisory committees, and Aboriginal communities.

2.44 Citizen escorts are selected by the warden of a penitentiary, depending on offender needs. Prior to being selected, they are screened and given an enhanced reliability and criminal records check. They are provided with orientation and training on the correctional system and policies and their escort responsibilities. From time to time, ex-offenders are accepted as volunteer citizen escorts after a rigorous review of their own rehabilitation.

2.45 The issue of citizen escorts was brought to the Sub-committee's attention by the Union of Solicitor General Employees.[12] They recommended that section 17 of the Act be amended to require that only Correctional Service staff be permitted to act as escorts in relation to escorted temporary absences. The rationale for this proposal is as follows:

> This duty and responsibility should be solely that of a staff member who has peace officer status and has received appropriate training to ensure the safe and

humane custody and supervision of offenders.[13]

2.46 The Sub-committee shares this concern for the safe and secure escorting of offenders temporarily present in the community during relatively short periods of time and for specific purposes. The requirement that all escort duties be performed by Correctional Service staff, however, goes too far. If a staff person has to go along on every escorted temporary absence, it will take them away from their regular duties in correctional facilities, and because of the limited number of staff available, it will make escorts more difficult to obtain, resulting in the decreased use of a largely successful program.

2.47 The Sub-committee believes, however, there is merit to the concern underlying the recommendation made by the Union of Solicitor General Employees. Protection of the public is best secured by an effective escorted temporary absence program, and by competent, well-trained and briefed escorts. These escorts can be either Correctional Service staff or civilian volunteers. Because there have been escort failures in the past, the Correctional Service has the important responsibility of ensuring that escorts are properly screened, selected, trained and briefed.

2.48 At the present time, subsection 115(3) of the Act provides that unescorted temporary absences are not available to inmates classified as maximum security. This provision recognizes the reality that these inmates represent a high probability of escape, a high risk to public safety if they do escape, and require a high degree of supervision and control in the penitentiary.[14] The Sub-committee believes that this reality of maximum-security inmates has to be recognized in the selection of those to be assigned as escorts for escorted temporary absences. Although it is unlikely maximum-security inmates will be accompanied by citizen escorts, this should be made clear in the legislation. Therefore, the Act should be amended to require that only Correctional Service staff, having received appropriate training, are to act as escorts of maximum-security inmates on escorted temporary absences. The effect should be fewer escort breakdowns and the successful completion of escorted temporary absences.

RECOMMENDATION 5

The Sub-committee recommends that section 17 of the *Corrections and Conditional Release Act* be amended to require that only Correctional Service staff be authorized to act as escorts in the escorted temporary absences accorded to maximum-security inmates.

2.49 Although public protection is the paramount consideration to govern the exercise of responsibility by corrections and conditional release authorities, many other factors must also come into play. Corrections and conditional release authorities are to not only carry out the court-imposed sentence of imprisonment by providing safe and humane custody and supervision of offenders, but assist those in their charge to be safely rehabilitated and

reintegrated into the community as law-abiding citizens. These goals are always subject to the requirement that they be carried out in such a way as to promote public safety.

2.50 The rest of this report has been developed within this context. Effective programs, within both the penitentiary and the community, and a conditional release and supervision system that works provide the step-by-step gradual process by which offenders successfully make their way back into the community. These are the goals of the Sub-committee's findings and recommendations.

2# Brief, p. 2.

3# Brief, p. 3-4.

4# R.S.C., c. C-34, as amended, section 52.1.

5# R.S.C., c. C-46, as amended, section 462.3*b*(1).

6# S.C. 1999, c. 5, section 50.

7# Brief, p. 11.

8# Brief, p. 10.

9# Brief, recommendation 14, p. 12.

10# Brief, p. 3.

11# Ibid.

12# Brief, p. 3.

13# Ibid.

14# Section 18 of the Regulations.

CHAPTER 3:

PUBLIC PROTECTION AND OFFENDER REHABILITATION

3.1 For some observers, inmate rehabilitation programs are nothing more than a form of indulgence toward those who have broken the law. Research has shown, however, that programs aimed at solving the problems preventing offenders from functioning successfully in the community can effectively reduce recidivism, and are thus essential to the correctional system's main objective of maintaining a just, peaceful and safe society.

3.2 Since most inmates are eventually released into the community, it must be recognized that incarceration is only a temporary means of ensuring public safety; only sustainable change in offender behaviour can ensure the long-term protection of the community. A number of studies on incarceration - contrary to the positive results of studies on the effectiveness of rehabilitation programs adapted to offenders' needs - have shown that incarceration in itself does not ensure sustainable change in offender behaviour.

3.3 The John Howard Society of Canada brief made this point very well. It emphasized that rehabilitation programs are fundamental to successful reintegration into the community by stating:

> It is also important to differentiate activities which supervise and control from programs and services which develop changes in the person. The first set of activities imposes external controls while the latter encourage internal controls. Both have a valid role and often are concurrent and complementary. If we are not vigilant to the differences, however, the external control methods will overwhelm attempts to develop internal controls. For instance, imprisonment (external control) will stop a person from consuming alcohol but unless the person can deal with his addiction (internal control) the risk of failure after release from prison will remain high. We must recognize that by the time the warrant expires and external controls are no longer available, we must depend entirely on the internal controls that the individual has developed to ensure our continued safety. It makes sense, therefore, to give strong support for appropriate and effective programs and services.[15]

3.4 Like the John Howard Society of Canada, the Sub-committee recognizes the importance of

distinguishing between activities that aim to control offender behaviour and programs and services that aim to change it in a long-lasting way. It therefore unconditionally supports the purpose of the correctional system as set out in section 3 of the *Corrections and Conditional Release Act*, which recognizes that an approach balanced between assistance to and control of offenders is essential in ensuring community protection. Although, the Sub-committee realizes that these two objectives can be hard to reconcile for corrections workers, who must both supervise and assist, and administrators, for whom day-to-day penitentiary management necessarily involves a number of controlling factors, it considers that the Correctional Service must do all it can to achieve this balance.

3.5 The Sub-committee is firmly convinced that the best way to protect the public is to prepare offenders for their reintegration into the community. In the Sub-committee's opinion, the Act rightly recognizes that all interventions within the correctional system must be designed and implemented bearing in mind this eventual reintegration of the offender.

3.6 Federally sentenced offenders often suffer from social inadequacies, such as insufficient education, lack of occupational skills, drug abuse, and mental health problems, which inhibit them from leading productive lives in society; addressing these inadequacies effectively reduces recidivism. The Sub-committee is therefore convinced that it is entirely logical to encourage and help inmates to become law-abiding citizens.

3.7 Although the Sub-committee's consideration of the Act did not allow it to consider the Correctional Service rehabilitation programs in depth, it will make general recommendations on the rehabilitation of offenders and their safe reintegration into the community. These recommendations for effective correctional plans to reduce recidivism are based on testimony heard by the Sub-committee during its consideration of the Act, including *in camera* meetings with offenders and persons working as employees and volunteers within the federal correctional system.

3.8 This chapter deals with the following issues:

- access to reliable and timely information on offenders;
- adaptation of rehabilitation programs to the specific needs of offenders;
- community rehabilitation programs; and
- the need for rehabilitation programs and services taking into account the needs of offenders who are women, Aboriginal, young, elderly, or dealing with serious health problems.

A CLEAR MANDATE FOR THE CORRECTIONAL SERVICE

3.9 As part of its mandate, the Correctional Service is responsible for assisting and encouraging offenders to return to the community as law-abiding citizens, by providing them

with rehabilitation programs and services likely to foster their successful reintegration into the community. Thus, in addition to supervising offenders and meeting their basic needs for food, clothing, shelter and health services, the Correctional Service must provide offenders with programs and services likely to help them change their behaviour. The following sections of the Act set out this responsibility imposed on the Correctional Service.

> **Section 3.** The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by
>
> > (*b*) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.
>
> **Section 5.** There shall continue to be the Correctional Service of Canada, which shall be responsible for
>
> > (*b*) the provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community.
>
> **Section 76.** The Service shall provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community.

INFORMATION ON OFFENDERS

3.10 Since a thorough understanding of the problems faced by offenders is essential to managing risk in institutions and in the community, and for implementing effective programs that can reduce recidivism, the Correctional Service must have timely access to reliable information on offenders.

3.11 In carrying out its mandate, the Correctional Service conducts intake assessments of all offenders, on their admission to federal correctional institutions, in order to identify their needs for supervision and rehabilitation programs. Present Correctional Service policy allows no more than 56 days to complete the intake assessment,[16] which is used to determine the institution in which the offender will serve the sentence[17] and to develop a suitable correctional plan for the offender.

3.12 The purpose of correctional plans is to help offenders change their behaviour and ultimately to become law-abiding citizens. These detailed individual plans, based on intake and subsequent assessments, include all the treatments and programs offenders are to follow during their sentences, and the associated objectives they are to achieve.

3.13 If correctional plans are to reduce recidivism effectively, that is, if the treatment and programs are to address directly the factors underlying the criminal behaviour of individual offenders, the Correctional Service must have reliable information on those factors.[18]

3.14 Both the Barreau du Québec and psychologist Dr. Marnie Rice, Director of Research at the maximum security Oak Ridge Division of the Penetanguishene Mental Health Centre, believe that high quality information at this stage of the process is essential to ensure community protection since it allows for appropriate offender classification (in institutions adapted to individual offenders' security classifications and needs for rehabilitation programs) and is an important component in the offender's file in case of future decisions on conditional release.

3.15 In her brief to the Sub-committee, Dr. Rice emphasized the importance of obtaining complete, reliable information on offenders, saying:

> Obtaining the right kind of comprehensive information about offenders is absolutely critical for accurate risk assessment. The most accurate instruments for the prediction of future violence among offender populations depends critically upon having accurate information from several sources, a fact that was recognized in the development of the CCRA.[19]

3.16 According to the Barreau du Québec, it is also important that this information be forwarded as soon as possible to the Correctional Service, so that it can classify offenders programs that meet their needs. A number of witnesses told the Sub-committee that delays in receiving access to information can seriously jeopardize offender rehabilitation. In its brief to the Sub-committee, the Barreau du Québec noted:

> [An] inmate should be classified as quickly as possible so that he or she can have access to rehabilitation programs that are suited to his or her situation, and that will enable the inmate to be reintegrated into society while not presenting a greater risk to the community.[20]

3.17 During its review of the Act, the Sub-committee was told that the Correctional Service had difficulty in obtaining in a timely manner all the information it needed to conduct effective intake assessments of the offenders entrusted to it. As has been pointed out, this situation may well lead to inaccurate assessment of the risks offenders represent and their specific needs for programs, as well as inappropriate decisions regarding conditional release. After reading the most recent *Report by the Auditor General of Canada* on the process of offender reintegration,[21] and the testimony of a number of witnesses on the shortcomings with respect to offender information,[22] the Sub-committee was convinced that problems with information

sharing among the various parts of the criminal justice system can hamper the process of offenders' reintegration into society; and timely, complete, high-quality information on offenders is essential for developing effective correctional plans. Nevertheless, the Sub-committee considers that the problems noted by these witnesses stem not from the Act itself, which recognizes the importance of information sharing,[23] but from its application. The Sub-committee therefore encourages the Correctional Service to continue its efforts to improve information sharing among the various component parts of the criminal justice system as the best way of overcoming the current problems in this regard. We note that the Correctional Service has signed official information-sharing agreements with the National Parole Board and with nine provinces.

3.18 In light of the preceding considerations and the fact that much remains to be done to improve information sharing among the various component parts of the criminal justice system, the Sub-committee makes the following recommendation:

> **RECOMMENDATION 6**
>
> **The Sub-committee recommends that the Correctional Service of Canada increase its efforts and allocate additional resources (1) to obtain more quickly the information considered necessary to conduct offender intake assessments that are effective for offenders' safe reintegration into the community; and (2) to ensure that the information it receives is accurate and complete.**

PROGRAMS ADAPTED TO OFFENDERS' NEEDS

3.19 During its review of the Act, the Sub-committee also learned about the characteristics of effective correctional and community programs that foster offender rehabilitation and their reintegration into the community.[24] On this point, witnesses told the Sub-committee that the rehabilitation programs that best protect the public from recidivism are the ones that target offenders' criminogenic needs and adapt the level of intervention to the level of individual offenders' risk of reoffending.

3.20 A number of witnesses, including the John Howard Society of Canada and the John Howard Society of Newfoundland, emphasized that programs must address the factors underlying offenders' criminal behaviour, stating:

> [Programming] must target criminogenic needs, those dynamic risk factors that when changed are associated with changes in criminal conduct such as anti-social attitudes and feelings, pro-criminal peer associations, substance abuse and problem-solving skills. Programs which target these dynamic factors have been

shown to have the most promise in reducing recidivism.[25]

The likelihood of gradual release being successful can be enhanced through the presence of good prison programs that address those factors that relate to offending behavior.[26]

3.21 In giving testimony before the Sub-committee in Halifax, Terry Carlson of the John Howard Society of Newfoundland emphasized the importance of adapting the level of intervention to individual offenders' risk of recidivism. He argued that, if offender programs are to be effective in reducing recidivism, they must be oriented and organized according to the risk individual offenders present to the community. Carlson also argued that, the higher an individual offender's risk of recidivism, the more intense should be the level of intervention and that, in accordance with the goal of effective reduction of recidivism, the Correctional Service must focus on programs for offenders with medium or high risks of recidivism.

3.22 The Sub-committee believes the community is better protected if Correctional Service rehabilitation programs are effective and relevant, and thus considers it essential that the Correctional Service work to ensure that the range and availability of offender programs correspond to offenders' criminogenic needs and the risks of recidivism they present to the community.

3.23 Having learned during its visits to the penitentiaries about the principle of differentiation, or orienting and organizing interventions with offenders in accordance with individual offenders' risk of recidivism, the Sub-committee wants to encourage the Correctional Service to continue its efforts to tailor its interventions to the risks individual offenders present to the community.

3.24 In the Sub-committee's opinion, the principle of differentiation recognizes the importance of reintegrating offenders into the community while at the same time reducing the risk of jeopardizing public safety. This principle, as defined in the Correctional Service's case management manual, is applied as follows:

Offenders with high reintegration potential: In such cases, intervention oriented towards release should be pursued. Low-intensity should be planned in institutions (where necessary); if there is a need for core intervention (living skills, substance abuse, sex offender treatment, family violence or literacy), these should be addressed in the community.

Offenders with medium reintegration potential: In such cases, institutional intervention must be combined with intervention in the community; the core programs that are intended strictly to make the risk acceptable to public safety must be implemented in the institution, followed in the community by other core programs or by lower-intensity programs (relapse prevention, maintenance).

> Offenders with low reintegration potential: High-intensity intervention. Core interventions (living skills, substance abuse, sex offender treatment, family violence or literacy) must be applied in institutions prior to release and must continue in the community. [27]

3.25 The Sub-committee also considers it important that the Correctional Service encourage offenders in federal institutions to work toward gradual "cascading" from higher-security to lower-security institutions before being granted conditional release into the community. In the Sub-committee's opinion, cascading recognizes the importance of reintegrating offenders into the community while reducing the risk of jeopardizing public safety. The Sub-committee therefore encourages the Correctional Service to inform offenders of the advantages of being cascaded to lower security institutions in improving both their reintegration into the community and their chances of obtaining conditional release.

COMMUNITY REHABILITATION PROGRAMS

3.26 Some witnesses before the Sub-committee considered community rehabilitation programs more effective in many cases than institutional programs in reducing recidivism. In its brief to the Sub-committee, the John Howard Society of Newfoundland stated, "While quality prison programming is important, the research has demonstrated that community-based programs can be even more effective."[28] Emphasizing in its brief that the problems offenders face are often social, the Quebec Association of Social Rehabilitation Agencies argued that a correctional institution is often not the best place to solve these problems.[29]

3.27 As has been pointed out, the Sub-committee considers that an approach aimed at reducing recidivism involves providing both community rehabilitation programs and appropriate supervision. It therefore paid special attention to the inadequacy, noted by a number of witnesses, of community programs and resources for supporting offenders.

3.28 Thomas Hoban, president of the Miramichi Community Corrections Council Inc. in New Brunswick, had this to say to the Sub-committee about the lack of community programs:

> There is a gross imbalance between Institutional Programming and Community. There is ample or considerable programming within the Institutions, however, NONE within the community. Some programming can be found in the urban areas, however there are none to be found in the rural areas of this country. Persons receiving programming in the institutions are being released daily into communities wherein there is no continuance of the programs available.[30]

3.29 The Sub-committee also learned about the shortcomings in community programs recently

noted by the Auditor General of Canada in the report tabled in Parliament in April 1999:

> While the Service has developed a continuum of rehabilitation programs from the institution to the community, its ability to deliver these programs to offenders in the community falls short of current needs. Research indicates that many intervention programs that deal with offenders' criminogenic needs are more effective when delivered in the community.[31]

3.30 The Sub-committee believes that offender rehabilitation in the community would be greatly facilitated if the institutional programs in which offenders participated were also provided in the community, and that this ongoing programming is essential since, if there are no community programs that continue the work done in the correctional institutions, the chances of offenders' falling back into criminal habits remain high. The importance of continuing programming has long been recognized; one reason justifying the transfer in the 1970s of responsibility for supervising offenders on conditional release from the National Parole Board to the Correctional Service of Canada was a desire to provide ongoing programming in the community.

RECOMMENDATION 7

The Sub-committee recommends that the Correctional Service of Canada increase its efforts in community programs and allocate more resources to them, in order to ensure that offenders on conditional release receive the support considered necessary for their successful reintegration into the community.

3.31 Given the importance of community rehabilitation programs, the Sub-committee was pleased by the Solicitor General's announcement of additional resources to be allocated to programs next year. While testifying before the Sub-committee in Ottawa on May 31, 1999, the Solicitor General stated: "In the coming year, the ministry plans to expand the community-based programs that provide treatment, training and supervision for offenders on conditional release."[32]

SPECIAL GROUPS WITH SPECIAL NEEDS

3.32 The Act gives the Correctional Service and the National Parole Board "legislative and operational flexibility to ensure that programs, treatment and decision-making address the diverse needs and circumstances of the offender population and groups within the offender population."[33]

3.33 Although the Sub-committee understands why the Act specifically recognizes the

problems faced by women and Aboriginal offenders, for example, through specific criteria ensuring that policies and practices meet these two groups' special needs, it also wants the special needs of offenders who are young,[34] who are elderly, or who have serious health problems to be recognized explicitly in the Act. The Sub-committee is aware that the practices of the National Parole Board and the Correctional Service already take these groups' special needs into account, it believes these offender groups must be explicitly referred to in the Act: the Sub-committee feels that legislative amendments in this regard would provide visibility for their special needs.

3.34 The Sub-committee therefore considers it important to amend the statement of principles guiding the Correctional Service of Canada and one of the general provisions governing the National Parole Board, so the Act explicitly recognizes the special problems and needs of these offender groups.

RECOMMENDATION 8

The Sub-committee recommends that paragraph 4(*h*) and subsection 151(3) of the *Corrections and Conditional Release Act* be amended by adding offenders who are young, elderly, or have serious health problems to the list of offender groups considered to have special needs.

3.35 There have been a number of studies on the difficulties faced by the Correctional Service and the National Parole Board in managing the sentences of women and Aboriginal offenders. These studies have often helped improve our knowledge of the special needs of these groups and the correctional services available to them.

3.36 Despite progress made in the past few years and although paragraph 4(*h*), sections 77, 80 through 85, and subsection 151(3) of the Act already recognize the importance of providing programs and services adapted to the special needs of women and Aboriginal offenders, the Sub-committee considers that much remains to be done in order to improve the situation of these two offender groups in our penitentiaries. The following section of this chapter therefore deals with women and Aboriginal offenders and the Sub-committee's recommendations for appropriate programs and services for them.

3.37 Because women account for between 2% and 3% only of all federally sentenced offenders, it is difficult to provide programs and services that pave the way for their reintegration into the community. Furthermore, a number of studies have shown that women offenders do not have access to programs or services that are comparable to those available to male offenders.

3.38 It is not surprising, therefore, that the Sub-committee repeatedly heard during its hearings that programs and services for women offenders were still inadequate, in spite of an overall

improvement in the situation of women offenders since the regional correctional institutions for them had been opened.

3.39 As well, having noted during its visits to penitentiaries in all parts of Canada that programs for women offenders are inadequate, the Sub-committee paid special attention to testimony from certain witnesses, including Lisa Addario of the National Associations Active in Criminal Justice, Marie-Andrée Bertrand of the École de criminologie at Université de Montréal, and Kim Pate of the Canadian Association of Elizabeth Fry Societies. These witnesses stated that the obvious lack of adequate programs and services for women offenders constitutes prejudice against this offender group.

3.40 The Sub-committee recognizes that the small number of women in the offender population makes it difficult for the Correctional Service to provide diversified programs for women offenders. For example, on the subject of women inmates in maximum-security institutions, the report of the CCRA Working Group stated:

> Programming is often impeded by the small numbers, which also mitigate against effective programming. Small numbers mean most women receive individualized assistance (e.g. school) and one-to-one counselling which is not ultimately desirable, nor in many instances, effective in helping to reduce risk.[35]

3.41 The St. Leonard's Society of Canada warned the Sub-committee against an analysis based solely on the cost-effectiveness of programs for women offenders:

> There really is no simple cost effective response to corrections for women. The numbers do not allow for economies of scale. However, by using best practices in women's programs, we will lead the way to improvements in corrections for men and we will see the successful integration of women to their communities - measures which benefit us all.[36]

3.42 The Sub-committee does not consider the small number of women offenders a valid reason for failing to work to ensure that women offenders obtain services that will facilitate their reintegration into the community as law-abiding citizens. Recognition of the Correctional Service's difficulties cannot justify abandoning the ongoing search for solutions.

3.43 The Sub-committee recognizes that the Correctional Service has made a number of efforts to solve this problem since the 1990 report by the Task Force on Federally Sentenced Women entitled *Creating Choices*, and the creation of the position of Deputy Commissioner for Women, following a recommendation by Madam Justice Louise Arbour in her 1996 report. In spite of all this, it believes the Correctional Service must continue its efforts to ensure that federally sentenced women offenders have access to rehabilitative programs and services.

3.44 In this regard, the Sub-committee considers it particularly urgent that the Deputy Commissioner for Women, with the Correctional Service, develop and implement modern work and training programs both in the correctional institutions for women and in the community. As is required in paragraph 4(*h*) and section 77 of the Act, these programs will have to be adapted to the specific needs of women offenders, and foster their reintegration into the community.

3.45 Insofar as Aboriginal offenders are concerned, the figures published in the Solicitor General's report are alarming. Aboriginal persons account for some 3% of the Canadian population overall, but 12% of federally sentenced offenders. Compared with non-Aboriginal inmates they usually serve longer portions of their sentences in institutions rather than in the community, and they are more often referred for detention hearings.

3.46 Studies have repeatedly shown that existing Correctional Service programs and management practices did not always meet the specific needs of Aboriginal offenders. The Correctional Service must therefore recognize these offenders' special needs and ensure that Aboriginal offenders benefit from correctional services and programs that foster their reintegration into the community as law-abiding citizens.

3.47 The Act now recognizes that the overall Correctional Service approach, rehabilitation programs, and reintegration into the community must be sensitive to Aboriginal culture. A number of witnesses considered this recognition alone to be a significant improvement to the correctional system. Even so, the Sub-committee heard from witnesses who criticized the lack of programs adapted to Aboriginal offenders' special needs, and emphasized the specific problems of federally sentenced Aboriginal offenders.

3.48 Since the Sub-committee believes that programs and services must meet the special needs of Aboriginal offenders and have as their goal effective correctional planning to reduce recidivism, it recommends that, in order to improve correctional services for Aboriginal offenders, a position of deputy commissioner for Aboriginal offenders be created within the Correctional Service that is similar to the existing deputy commissioner for women position. The deputy commissioner for Aboriginal offenders would be responsible for studying, analyzing and endeavouring to solve problems relating particularly to Aboriginal offenders in the correctional system. In the opinion of the Sub-committee, the deputy commissioner would be responsible for planning and developing policies and programs, monitoring and reviewing Correctional Service operations, and supervising studies on issues affecting Aboriginal offenders. As a member of the Correctional Service executive committee, the deputy commissioner for Aboriginal offenders, like the deputy commissioner for women, would also take part in all decisions that directly or indirectly affect Aboriginal offenders in the correctional system.

RECOMMENDATION 9

The Sub-committee recommends that the Correctional Service of Canada create a deputy commissioner for Aboriginal offenders position, with powers and responsibilities similar to those of the existing deputy commissioner for women position.

3.49 As mentioned in the introduction to this chapter, the Sub-committee was unable to consider Correctional Service rehabilitation programs in depth. Having noted during its review that the November 1996 and April 1999 *Reports by the Auditor General of Canada* on offender reintegration did not evaluate the process of reintegration into the community as it applied specifically to women and Aboriginal offenders, the Sub-committee believes that an in-depth evaluation of the programs and services provided for these offender groups would be very helpful to the Correctional Service, these offender groups, and the population as a whole.

3.50 The Sub-committee therefore considers it essential that the Auditor General of Canada carry out an evaluation identifying the strengths and weaknesses of the present process of reintegration into the community that is available to these two offender groups.

RECOMMENDATION 10

Since previous Auditor General of Canada audits of the process of reintegration into the community have not addressed issues specific to women or Aboriginal offenders, the Sub-committee recommends that the Auditor General carry out an evaluation of the process of reintegration into the community available to women, as well as an evaluation of the process available to Aboriginal offenders in the federal correctional system.

15# Brief, p. 9.

16# Auditor General of Canada, "Chapter 1. Correctional Service Canada - Reintegration of Offenders," *Report of the Auditor General of Canada to the House of Commons*, April 1999.

17# The institution selected must match the offender's security level and provide the support and programs the offender needs.

18# This point is explored in greater depth in the next section of this chapter.

19# Brief, p. 4.

20# Brief, p. 7.

21# In this report, the Auditor General analyzes shortcomings with respect to information on offenders. Auditor General of Canada, "Chapter 1. Correctional Service Canada - Reintegration of Offenders," *Report of the Auditor General of Canada to the House of Commons*, April 1999.

22# Individual and organizational witnesses noting shortcomings concerning information on offenders included the Canadian Criminal Justice Association, the Barreau du Québec, the Ontario Parole Board, the Criminal Lawyers Association, Charlene Mandell, and Dr. Marnie Rice.

23# Subsection 23(1) of the Act.

24# For more information on the characteristics of effective treatment programs, see D. Andrews, J. Bonta et R. D. Hoge, "Classification for Effective Rehabilitation : Rediscovering Psychology," *Criminal Justice and Behavior*, 1990, vol. 17, p. 19-52.

25# Brief, John Howard Society of Newfoundland, p. 4-5.

26# Brief, John Howard Society of Canada, p. 9.

27# The principle of differentiation is defined in: Correctional Service of Canada, *Case Management Manual: Standard Operating Practices*, February 1999 Edition, "700-00 Introduction - Reintegration Process", p. 7.

28# Brief, p. 4.

29# Brief, p. 2.

30# Brief, p. 1.

31# Auditor General of Canada, "Chapter 1. Correctional Service Canada - Reintegration of Offenders," *Report of the Auditor General of Canada to the House of Commons,* April 1999.

32# *Evidence*, May 31,1999, 15:40.

33# Solicitor General of Canada, *Towards a Just, Peaceful and Safe Society* - Consolidated Report - *The Corrections and Conditional Release Act* Five Years Later - Report of the CCRA Working Group, 1998, p. 142.

34# While testifying before the Sub-committee, Susan Reid-MacNevin, Professor and Director of the Criminology and Criminal Justice Department at St. Thomas University in Fredericton, emphasized the importance of considering young offenders to be a population with special needs.

35# Solicitor General of Canada, *Towards a Just, Peaceful and Safe Society* - Consolidated Report - *The Corrections and*

Conditional Release Act Five Years Later - Report of the CCRA Working Group, 1998, p. 161.

36# Brief, p. 8.

CHAPTER 4:

PUBLIC PROTECTION AND GRADUAL OFFENDER REINTEGRATION INTO THE COMMUNITY

4.1 Gradual conditional release of offenders into the community is an essential tool available to the Correctional Service and the National Parole Board for protecting the Canadian public. Since it helps offenders make the transition from correctional institutions to the community, while providing them with supervision and assistance likely to foster their reintegration into the community as law-abiding citizens, gradual conditional release is considered the best way of reducing recidivism. As Terry Carlson of the John Howard Society of Newfoundland noted in his testimony before the Sub-committee, gradual conditional release is therefore the most effective tool for reintegrating offenders into the community while at the same time reducing the risk of jeopardizing public safety.

4.2 The Sub-committee believes gradual conditional release of offenders into the community is also the logical extension of the offender rehabilitation and reintegration process that begins inside correctional institutions. As the John Howard Society of Canada emphasized, it must be recognized that although sentences served in institutions are an opportunity for offenders to learn, only gradual conditional release makes it possible to test what they have learned since being incarcerated, while reducing the likelihood of recidivism. The John Howard Society of Canada told the Sub-committee:

> Prison programs teach the theory while gradual reintegration provides the opportunity to apply the theories under supervision in the community. Prison rehabilitation programs are like teaching tennis in a submarine. You can teach the rules and the theory, but there is no opportunity to practice.[37]

4.3 Because gradual reintegration of offenders into the community seeks to protect the public just as much as rehabilitation programs do, it is not surprising that most testimony and briefs presented to the Sub-committee supported the use of conditional release. Here are some examples:

> If well managed, programs of gradual release are the best method known to reduce recidivism. Failure to involve people in these programs places the community at greater risk and in so doing contravenes the purpose of the Act. It

should be expected, therefore, that all offenders, on leaving prison, would be in an appropriate program of gradual release.[38]

The literature is clear that offenders who are part of a gradual release planning process are much more successful in their transition to the community and ultimately law-abiding behaviour than those offenders who have not had the benefit of such transitional entry points.[39]

We believe that appropriate follow-up in the community through sound programs of gradual release is essential for the long-term protection of society, particularly if the rehabilitation of high-risk offenders is to be achieved.[40]

By detaining the person to warrant expiry we give up the effective tool of gradual release with supervision, controls and expectations of treatment...[41]

4.4 In this chapter, therefore, the Sub-committee does not challenge the importance of conditional release within the federal correctional system. Rather, on the basis of the evidence it heard during its review of the Act, it makes recommendations:

- to strengthen the discretionary nature of conditional release;
- to clarify the decision-making powers of the Correctional Service and the National Parole Board concerning conditional release; and
- to broaden the scope of certain conditional release programs.

4.5 Generally speaking, in the Sub-committee's opinion, the federal correctional system in its present form is based on a series of excessively complex rules. The provisions governing statutory release currently make it possible to release inmates into the community in a manner that is too automatic. From this starting point, the Sub-committee proposes changes to the present conditional release programs in the federal correctional system.

AN IMPORTANT DISTINCTION BETWEEN STATUTORY RELEASE AND OTHER TYPES OF CONDITIONAL RELEASE

4.6 As stated in the introduction to this report, offenders sentenced to a federal prison term are currently offered five different conditional release programs: temporary absence, work release, day parole, full parole, and statutory release. While these programs have the common objective of ensuring the safe reintegration of offenders into the community, statutory release is the only type of conditional release presumed to be automatic under the Act. Subsection 127 (1) states that most inmates are entitled to be released after serving two thirds of their sentence and to remain at large until the expiration of the sentence according to law. It provides as follows:

> Subject to any provision of this Act, an offender sentenced, committed or transferred to penitentiary is entitled to be released on the date determined in accordance with this section and to remain at large until the expiration of the sentence according to law.

4.7 That being said, there are provisions in the Act that currently make it possible for the Correctional Service and the National Parole Board to control the statutory release of dangerous offenders. The Act states that inmates serving a life sentence or an indeterminate sentence are not eligible for statutory release. Moreover, the Correctional Service can, prior to the inmate's statutory release date, refer the case to the Board for a detention review if it believes that the inmate is likely, before the expiration of the sentence according to law, to commit:

- an offence causing the death of or serious harm to another person;
- a sexual offence against a child; or
- a serious drug offence.

4.8 Under the current legislation, the National Parole Board may, at a hearing, authorize the statutory release of an inmate, make the statutory release subject to appropriate conditions, or opt to keep the inmate in prison until the end of the sentence.[42]

4.9 Given the provisions in the Act, the problem with statutory release is not therefore that it lacks mechanisms for controlling the automatic release of offenders who might commit serious offences listed in the schedules to the Act, but that the Correctional Service and the Parole Board are unable to select inmates as rigorously as they can when analyzing cases for all other forms of conditional release.

4.10 It is important to acknowledge that, in spite of these legal provisions, many offenders are currently entitled to serve a third of their sentence in the community, under supervision and subject to specific conditions, without being required to show that they deserve to be released, as is the case for all other types of conditional release. Statutory release is different from other types of conditional release in that the presumption favours release rather than detention.

4.11 Thus, inmates who have refused to participate in rehabilitation programs and have not followed the rules of the institution, yet who are not at risk of committing an offence causing the death of or serious harm to another person, a sexual offence against a child or a serious drug offence before the expiration of their sentence, are released after serving two thirds of their sentence without their case necessarily having undergone a comprehensive review by the Correctional Service and the National Parole Board. Indeed, at present, offenders granted statutory release who have refused to participate in the social reintegration process may have fewer conditions attached to their release than do some offenders granted parole.

4.12 The Canadian Police Association illustrated this situation by stating: "Despite an offender's blatant refusal to participate in rehabilitation programs and repeated aggressive conduct within the institution, the offender is eligible for automatic release, in the form of Statutory Release, at the two-thirds point in their sentence. The National Parole Board can only consider detention if recommended by CSC."[43]

4.13 In light of the above, it is not surprising to find that many front-line staff who work with federal inmates on a daily basis have expressed a great deal of frustration with this type of conditional release. In their view, no inmate should be automatically granted statutory release, especially since the presumption that it will be granted allows some inmates to adopt an uncooperative attitude toward the process of social reintegration. It is claimed that some inmates, knowing that they will eventually be granted statutory release regardless of what they do, prefer to serve more of their sentence in an institution without feeling obligated to participate in programs or to cooperate with the corrections staff.[44]

4.14 The Sub-committee shares the front-line staff's concerns: it believes that no inmate should be released automatically from prison and that the rules currently governing statutory release serve to undermine the importance of inmates' conduct in prison.

4.15 Various witnesses, including the Correctional Service, attribute this significant difference between statutory release and other types of conditional release to the fact that statutory release is a last resort aimed primarily at protecting society. The reasoning behind that position is that statutory release makes it possible to prevent inmates from being released without any supervision at the end of their sentence. It must be remembered that most inmates sentenced to prison will one day end up back in society and that when their sentence expires, the state no longer has the authority to supervise and monitor them.

4.16 While critical of the rules governing statutory release, the Sub-committee believes that this type of release is far better for public safety than releasing inmates without any supervision at the end of their sentence. It considers that statutory release, because it affords a supervised transition between prison and the community, is essential to the safe reintegration of offenders into our communities. It should be remembered that when an offender is conditionally released, the risk of a repeat offence continues to be monitored by a parole officer, who may suspend the release at any time if a new offence is committed or if any of the conditions of release is breached.

4.17 That being said, the Sub-committee believes that statutory release, as provided for in the current legislation, allows inmates to be released too automatically into the community. It therefore proposes below legislative amendments aimed at strengthening the discretionary nature of the conditional release system and making the Board and the Correctional Service more accountable for the release of inmates after they have served two thirds of their

sentence. The Sub-committee would like to emphasize its belief that it is essential for the Correctional Service and the National Parole Board to exercise some discretion in granting statutory release to all federal inmates.

4.18 The Sub-committee believes it is vital that the cases of all offenders be reviewed to determine whether any should be referred to the Board for detention review. This would make clear to the general public and to inmates that all decisions relating to conditional release are based on professional risk evaluation.

4.19 At present, before granting an inmate statutory release, the Correctional Service is required to review the case only if the inmate has committed a violent offence listed in Schedule I of the Act or a serious drug offence listed in Schedule II. At present, the Correctional Service policy states that all offenders undergo a comprehensive risk assessment before being granted statutory release. The Sub-committee believes, however, that incorporating that policy into the Act would make it clear that statutory release is not automatic. It might also encourage inmates imprisoned for an offence not listed in the schedules to the Act to participate in rehabilitation programs.

4.20 In the same vein, the Sub-committee feels it is important to review all offenders' files in order to identify cases that warrant special release conditions (such as observing a curfew, abstaining from alcohol or drugs, undergoing treatment, refraining from being in contact with certain individuals, complying with a residency requirement, or being in more frequent contact with the parole officer). The Correctional Service currently refers to the Board only those cases that in its view warrant the imposition of special conditions. This practice therefore means that the two organizations responsible for conditional release of federal offenders have to be involved in statutory release for offenders deemed to be at risk of reoffending. The Sub-committee also feels that if inmates realize that they may have to comply with special conditions further limiting their freedom, they are more likely to become involved in the process of social reintegration. This would consequently improve their chances of having the privilege of serving a portion or the remainder of their sentence in the community before having served two thirds of their sentence.

4.21 As a result of these proposals, no inmates would be granted statutory release before their case had undergone a comprehensive review by the Correctional Service and the Parole Board. Moreover, by allowing the Correctional Service and the Board to take offenders' conduct into account in considering statutory release, the Sub-committee feels that it will be possible to further encourage offenders to participate in the process of social reintegration and, therefore, reduce the risk of reoffending.

4.22 In light of the foregoing, and given that the primary issue is to ensure public safety and security above all else, the Sub-committee makes the following recommendations:

RECOMMENDATION 11

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to require Correctional Service Canada to review all cases eligible for statutory release in order to determine whether they should be referred to the National Parole Board for a detention review.

RECOMMENDATION 12

The Sub-committee recommends also that the *Corrections and Conditional Release Act* be amended to require the National Parole Board to review all cases eligible for statutory release in order to determine whether special conditions need to be attached to the inmate's release and, if so, to identify these conditions.

4.23 The Sub-committee believes that as a result of these amendments, society will be better protected and inmates' attitude toward the process of social reintegration will be improved. Nevertheless, it also feels that the statutory release provisions must be reviewed in depth during the next review of the *Corrections and Conditional Release Act*. This issue will be addressed in the last chapter of this report.

ACCELERATED PAROLE REVIEW PROCEDURE

4.24 The Sub-committee repeatedly heard at its hearings that the conditional release programs most successful in reducing recidivism were those that relied on discretionary decisions by either the Correctional Service or the National Parole Board. In its brief, the Canadian Resource Centre for Victims of Crime stated:

> It is interesting to note that the conditional releases with the highest success rates are those that rely on the judgments of professionals and are based on proper risk assessments that focus on public safety, where the lowest success rates are for those releases by law, including statutory release and accelerated parole review.[45]

4.25 While the Sub-committee notes the lower success rate among offenders released under accelerated parole review for day and full parole, it does not believe that accelerated parole review should be eliminated. In fact, it believes that two amendments should suffice to make accelerated parole review correspond to the Sub-committee's position on conditional release: tightening the eligibility criteria; and changing the risk of recidivism criterion to be taken into account by the National Parole Board in reviewing cases.

4.26 The Sub-committee considers it crucial to recognize a significant difference between the

accelerated parole review procedure and statutory release. Unlike statutory release as it currently stands, accelerated parole review ensures that all eligible offenders' cases are carefully reviewed by the Correctional Service of Canada and the National Parole Board. Moreover, under the Act, if after reviewing a case the Board has reason to believe that the offender will commit a violent offence listed in Schedule I of the Act before the expiry of the warrant of committal, the Board is required to deny release under the accelerated parole review procedure.

4.27 Unlike the current conditions governing statutory release, accelerated parole review is not a right, but is a simplified case review procedure reserved for offenders considered non-violent who are serving a first federal term of incarceration.

4.28 Under section 125 of the Act, an offender eligible for accelerated parole review is:

- sentenced to a federal penitentiary for the first time;
- not serving a sentence for murder or aiding and abetting murder;
- not serving a life sentence;
- not convicted of an offence listed in Schedule I of the Act;
- not convicted of a criminal organization offence; and
- not subject to a court order making them ineligible for parole before serving at least half of their sentence (this condition includes offences listed in Schedule II of the Act).

4.29 Unlike other offenders, those who meet all these conditions are automatically streamed into a simplified review procedure for possible day or full parole, with no requirement for a hearing before the National Parole Board. They may also benefit from day parole, not six months before their full parole eligibility dates as is the case for offenders ineligible for accelerated parole review, but after serving six months or one-sixth of their sentences, whichever is longer. In reviewing these cases, the Board must also use the criterion of violent recidivism, not general recidivism, as is the case for offenders ineligible for accelerated parole review.

4.30 Although the Sub-committee considers it important to retain accelerated parole review, so first time federal offenders considered non-violent need not be subjected to the negative influence of some repeat offenders, it also considers two amendments to the accelerated parole review procedure essential. The Sub-committee believes offenders incarcerated for Schedule I or Schedule II offences should not be eligible. As well, the recidivism criterion taken into account by the National Parole Board in reviewing these cases should specify general recidivism, not violent recidivism. It is the Sub-committee's view that the Parole Board should grant parole only if it is convinced there are no reasonable grounds to believe that any offence will be committed before the expiry of the warrant of committal.

RECOMMENDATION 13

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to ensure that the accelerated parole review procedure is not available to offenders incarcerated for offences listed in Schedule II to the Act, regardless of whether there has been a judicial determination of parole eligibility.

RECOMMENDATION 14

The Sub-committee also recommends that the *Corrections and Conditional Release Act* be amended to ensure that the National Parole Board, in reviewing the cases of offenders eligible for accelerated parole review and determining whether they should be released on day parole or full parole, takes into account the general recidivism criterion.

CLEARER DEMARCATION OF DECISION-MAKING AUTHORITY ON GRADUAL CONDITIONAL RELEASE

4.31 Under the Act, the purpose of conditional release is to contribute to the maintenance of a safe society by means of the rehabilitation of offenders and their appropriate reintegration into the community, including the imposition of appropriate conditions of supervision. This purpose affects the respective decision-making functions of both the Correctional Service and the National Parole Board concerning the gradual conditional release of offenders into the community.

4.32 Under the Act, offenders presently have available five different forms of conditional release, each designed to achieve specific objectives of reintegration into the community. These include temporary absence, work release, day parole, full parole, and statutory release. Of these forms of conditional release, only parole - including day parole and full parole - relies solely on decisions by the National Parole Board. The others - except for statutory release - rely on discretionary decisions by the Correctional Service or the National Parole Board.

4.33 As part of their duties, institutional heads may also release, for specified periods, inmates they consider at low risk of recidivism, on specific conditions and only if they believe this release will foster offender reintegration into the community. Institutional heads usually grant two types of conditional releases: work releases; and escorted or unescorted temporary absences.[46]

4.34 Work releases allow offenders considered at low risk of recidivism to work or perform community service for a period not exceeding 60 days. The Quebec Association of Social Rehabilitation Agencies emphasized one benefit of this form of conditional release when it stated:

> One major benefit of work releases is that they enable offenders to take advantage of training or work that they might not necessarily have access to in prison. In addition, since they are in the community, their learning or working conditions are much less artificial than in an institution.[47]

4.35 Temporary absences allow institutional heads to reintegrate offenders into the community temporarily for specific purposes. Escorted and unescorted temporary absences can be granted on medical, administrative or compassionate grounds, to perform community service, facilitate offenders' contacts with their families, or allow them to participate in personal development programs.[48] In its brief, the Quebec Association of Social Rehabilitation Agencies emphasized the importance of this form of conditional release:

> [F]or offenders, temporary absences represent an opportunity to begin their community reintegration in a serious manner. This is an essential program that most offenders should be granted before being released on day parole or going on a work release.[49]

4.36 Under the Act, although institutional heads have full responsibility for granting work releases and escorted temporary absences, the National Parole Board usually has full authority and discretion to grant unescorted temporary absences to offenders serving life sentences imposed as minimum sentences or commuted from death sentences, indeterminate sentences, or sentences for offences listed in Schedule I or Schedule II to the Act.[50] Subsection 117(1) of the Act, quoted below, nevertheless allows the National Parole Board to delegate these powers to the Commissioner or institutional heads.

> The Board may confer on the Commissioner or the institutional head, for such period and subject to such conditions as it specifies, any of its powers under section 116 in respect of any class of offenders or class of absences.

4.37 Given the complexity of the Act, it is not surprising that a number of those with whom the Sub-committee met in correctional institutions argued that these overlapping responsibilities of the Correctional Service and the National Parole Board cloud the decision-making processes concerning conditional release. The Sub-committee shares this opinion and believes that the responsibilities of the Correctional Service and the National Parole Board concerning conditional release should be more clearly defined.

4.38 In order to more clearly define the decision-making powers of the Correctional Service and the National Parole Board, the Sub-committee, like a number of individuals who testified before it *in camera*, believes it would be preferable to combine temporary forms of conditional release (temporary absences and work releases) into a single structure that would be the

responsibility of the Correctional Service.

4.39 In the Sub-committee's opinion, there is no need for a separate section of the Act governing work releases, since the sections governing temporary absences already confer the necessary powers to allow offenders to be released to participate in structured work and community service programs.

4.40 In light of the preceding observations and the fact that the recommended amendments would simplify the wording of the Act and likely help the public better understand the conditional release system, the Sub-committee makes the following recommendation.

RECOMMENDATION 15

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended in order to combine work releases and escorted and unescorted temporary absences into a single structure and to make the Correctional Service responsible for granting, renewing and extending these forms of conditional release at its discretion.

4.41 Given the importance of temporary absences to offenders' gradual conditional release into the community, the Sub-committee considers it necessary to provide offenders with the possibility of appealing Correctional Service decisions in this regard. It therefore proposes that institutional heads be authorized to grant all escorted and unescorted temporary absences, including work releases, which would become a type of temporary absence, and that offenders be entitled to request National Parole Board reviews of these decisions, if the applications are denied.

RECOMMENDATION 16

The Sub-committee recommends that a provision be added to the *Corrections and Conditional Release Act* providing offenders with the possibility of requesting National Parole Board reviews of Correctional Service decisions concerning escorted and unescorted temporary absences.

NEED TO EXTEND SCOPE OF SOME FORMS OF CONDITIONAL RELEASE

4.42 During its hearings, the Sub-committee repeatedly heard that some forms of conditional release were too restrictive and did not effectively support the objective of offender reintegration into the community. In light of evidence from Correctional Service staff and offenders, the Sub-committee considers it appropriate to extend the scope of all forms of conditional release granted for determinate periods, and parole in specific cases. The following

section of this chapter presents these amendments.

Temporary Absence

4.43 The Sub-committee considers it essential to provide offenders with the possibility of obtaining temporary absences in the community, not only to acquire work experience but also, and just as importantly, to participate in educational, occupational and life-skills training programs.

4.44 Given the importance of providing the possibility of temporary absences to offenders who successfully demonstrate that this type of conditional release would benefit them, the Sub-committee considers it essential to expand the definition of personal development programs - now one ground for granting escorted and unescorted temporary absences - to include acquiring work experience and participating in educational, occupational, and life-skills training programs. This amendment to the Act would have the benefit of extending the scope of this form of conditional release, the purpose of which is to facilitate offender reintegration into the community.

> **RECOMMENDATION 17**
>
> **The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to include, in the list of grounds for granting escorted and unescorted temporary absence release, participation in educational, occupational, and life-skills training programs.**

4.45 In response to requests by Correctional Service staff, the Sub-committee also considers it important that the Correctional Service be able to release offenders into the community for periods exceeding 60 days, when such periods are considered likely to foster offender reintegration into the community.

4.46 Given the Sub-committee's recommendations to expand the definition of personal development programs and combine work releases and temporary absences into a single structure, the Sub-committee is confident that the Correctional Service will find in subsection 116(6) of the Act, quoted below, the flexibility it needs to set up structured work, community service, and educational, occupational, and life-skills training programs for periods exceeding 60 days.

> An unescorted temporary absence for purposes of a specific personal development program may be authorized for a maximum of sixty days and may be renewed, for periods of up to sixty days each, for the purposes of the program.

4.47 Some of those the Sub-committee met during its visits to correctional institutions also

noted that, since the Act has been in force, escorted temporary absences may no longer be granted for group activities for socialization purposes. However, Correctional Service staff consider these activities positive incentives in managing inmates' behaviour and encouraging them to keep in touch with the community.[51]

4.48 In her brief, Charlene C. Mandell emphasized to the Sub-committee:

> I would submit that T[emporary] A[bsences] for socialization purposes should not have been eliminated. They provided a means for offenders to become re-acquainted with the community and to acquire useful life skills ... I submit that TAs for socialization purposes can form an important part of an offender's correctional plan, especially for long-term offenders and lifers. Therefore, I recommend that section 17 and section 116 of the CCRA be amended to include socialization as a reason for TAs.[52]

4.49 While the Sub-committee does not agree with Charlene Mandell that socialization should be a ground for granting unescorted temporary absences, it does believe, as do a number of those who work closely with inmates, that institutional heads should be able to grant escorted temporary absences for group activities considered likely to foster offenders' socialization.

> **RECOMMENDATION 18**
>
> **The Sub-committee recommends that section 116 of the *Corrections and Conditional Release Act* be amended to allow institutional heads to grant escorted temporary absences for group activities considered likely to foster offenders' socialization.**

Parole on Compassionate Grounds

4.50 During the Sub-committee's visits to correctional institutions, witnesses pointed out that it was impossible for offenders serving life or indeterminate sentences to obtain full parole on compassionate grounds. In particular, Sébastien Brousseau of the Office des droits des détenus stated that there was no reason offenders serving life or indeterminate sentences should not be able to obtain parole on compassionate grounds.

> In our view, that provision is yet another aberration; an inmate who is suffering from a terminal disease and who is about to die, who does not represent a risk to society, would not be able to get parole. These exceptions should simply be done away with, because under such circumstances parole is being granted for humanitarian reasons, and because the National Parole Board can study the case and decide whether or not the person represents a risk. If he does not represent a

> risk, we believe that he should be able to take advantage of this section just like any other inmate.[53]

4.51 In the Sub-committee's opinion, offenders serving life sentences or indeterminate sentences who are terminally ill and who present, in the opinion of the National Parole Board, no undue risk to the community should be able to be granted parole.

4.52 The Sub-committee recognizes the significance of this decision, however, and believes that National Parole Board decisions in this regard should be subject to approval by the Chair of the Board.

> **RECOMMENDATION 19**
>
> **The Sub-committee recommends that section 121 of the *Corrections and Conditional Release Act* be amended to make offenders serving life sentences or indeterminate sentences who are terminally ill eligible for parole on compassionate grounds. In these cases, the Act must provide that National Parole Board decisions are subject to approval by the Chair of the Board.**

Parole for Purposes of Deportation Under the Immigration Act

4.53 Although at one time the National Parole Board was authorized to consider the cases of offenders subject to deportation orders under the *Immigration Act* and to make decisions on their release, since 1992 all offenders subject to deportation orders must serve one third of their sentences before becoming eligible for full parole.

4.54 Stephen Fineberg of the Association des avocats et avocates en droit carcéral du Québec expressed to the Sub-committee his position on deportation orders as follows:

> I think the board should be authorized again, as it was before 1992, to make distinctions between people. There are many cases of people from outside the country who have problems with the language, have no relatives in North America, receive no visits and follow no programs because they cannot. If they could follow programs what would be the point, since they're not going to be released into Canada anyway? They can't prepare themselves for a gradual reintegration into Canadian society because they're not going to be here. So there are people who spend long years here doing nothing. Some of those cases would command your sympathy, and others would not for a moment.
>
> All we are proposing is that the parole board again be equipped to make distinctions, and where people deserve an opportunity, they receive the

> opportunity . . . . We think it's in everyone's interest that Canadian taxpayers not pay when people are detained for years at a time in a country where ultimately they won't be released, when they're far from every kind of support Canadian prisoners have.[54]

4.55 The Sub-committee agrees with Stephen Fineberg and believes that the National Parole Board should be authorized to consider the cases of offenders subject to deportation orders under the *Immigration Act*, so that they may obtain parole for the purposes of deportation at any time during their sentences. The Sub-committee believes offenders subject to deportation orders should be eligible for conditional release as soon as possible.

RECOMMENDATION 20

The Sub-committee recommends that section 121(1)(*d*) of the *Corrections and Conditional Release Act* be amended so that offenders subject to deportation orders under the *Immigration Act* are considered exceptional cases and may thus be granted parole solely for the purposes of deportation at any time during their sentences.

37# Brief, p. 3.

38# Brief by the John Howard Society of Canada, p. 11.

39# Brief by Susan Reid-MacNevin, Director, Department of Criminology and Criminal Justice, St. Thomas University, Fredericton, p. 2.

40# *Evidence*, Terry Carlson, John Howard Society of Newfoundland, March 18, 1999, 12:05.

41# Brief, John Howard Society of Newfoundland, p. 6.

42# The National Parole Board annually reviews the files of all inmates in detention and according to that review, may confirm or cancel the detention order. If the order is cancelled, the inmate can be granted statutory release; his release may be subject to a condition that the inmate live in a community institution.

43# Brief, page 10.

44# Regarding other forms of conditional release, it is important to recognize, as Louis Théorêt of the Ontario Parole Board stated in his testimony, that inmates who refuse to participate in rehabilitation programs are less likely to be granted any other form of conditional release than statutory release.

45# Brief, p. 5.

46# Offenders incarcerated in maximum-security institutions are not eligible for unescorted temporary absences or work releases. Instead, in order to control the risk these offenders present to society, the Correctional Service uses escorted temporary absences: temporary releases under intensive supervision.

47# Brief, p. 7.

48# Although inmates may obtain escorted temporary absences at any time during their sentences, eligibility criteria for unescorted temporary absences vary with sentence type and duration.

49# Brief, p. 6.

50# Paragraph 107(1)(*e*) of the Act.

51# Before the Act came into force, temporary absences for socialization purposes accounted for 35% of escorted temporary absences and 25% of unescorted temporary absences. According to the Solicitor General of Canada, *Towards a Just, Peaceful and Safe Society* - Consolidated Report - *The Corrections and Conditional Release Act* Five Years Later - Report of the CCRA Working Group, 1998, page 26, eliminating temporary absences for socialization purposes is also one of the main causes of the lower number of temporary absences being granted.

52# Brief, p. 10.

53# *Evidence*, February 9, 1999, 16:10.

54# *Evidence*, March 22, 1999, 18:00.

CHAPTER 5:

FAIR AND EQUITABLE DECISION MAKING

5.1 As indicated in the introduction to this report, one of the general themes to emerge from the submissions received by the Sub-committee, from its travels, and its own deliberations is that decisions should be made fairly and equitably by corrections and conditional release authorities. Parliament has established the parameters within which sentences of imprisonment are to be administered, based on the rule of law, the duty to act fairly, and constitutionally entrenched charter rights.

5.2 Section 4 of the *Corrections and Conditional Release Act* sets out the legislative principles upon which sentences are to be managed. Paragraph 4(*d*) of the Act requires the Correctional Service to use the least restrictive measures consistent with the protection of the public, staff and offenders (least restrictive alternative). Paragraph 4(*e*) affirms that offenders retain rights and privileges available to all community members, except for those necessarily removed or restricted consequential to a sentence of imprisonment (residual rights). Finally, paragraph 4 (*g*) requires that correctional decisions be made in a fair and forthright manner, allowing for access to an effective grievance resolution process.

5.3 Section 101 of the Act sets out the legislative principles that are to guide the Parole Board in achieving the purposes of conditional release. Paragraph 101(*b*) requires the Parole Board to take into account all available relevant information, in making conditional release decisions. Under paragraph 101(*f*), offenders are to be provided with relevant information, reasons for decisions, and access to the review of decisions, so as to ensure a fair conditional release process.

5.4 Over the years, the courts have imposed a duty to act fairly on corrections and conditional release authorities. The components of this duty include:

- the provision of notice and information to offenders;
- the right of offenders to present evidence and make representations to the decision-maker; and
- the provision to offenders of a fair and unbiased decision-making process.

5.5 The legislative principles, read together with the duty to act fairly, provide the backdrop to

the issues dealt with in this chapter. It addresses the manner in which a sentence of imprisonment is to be managed and conditional release and other decisions are to be made. More particularly, this chapter discusses various decisions made by corrections and conditional release authorities and their impact on offenders. It takes into account the residual rights of offenders, the least restrictive alternative, and fair decision-making obligations placed upon the Correctional Service and the Parole Board.

5.6 The John Howard Society of Canada describes the importance of fair and equitable decision-making processes in the following terms:

> Fair and respectful treatment is a requirement of the Act because they are integral and necessary to achieving the purpose of public protection through successful reintegration.[55]

ADMINISTRATIVE SEGREGATION

5.7 Administrative segregation is provided for at sections 31 to 37 of the Act. This type of removal of inmates from contact with other inmates can be either voluntary (requested by the inmate) or involuntary. It is different from segregation imposed as punishment in the inmate disciplinary process for a serious offence (see paragraph 44(1)(*f*) of the Act).

5.8 Subsection 31(3) of the Act sets out the grounds for administrative segregation in the following terms:

> The institutional head may order that an inmate be confined in administrative segregation if the institutional head believes on reasonable grounds
>
> (*a*) that
>
> (i) the inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person, and
>
> (ii) the continued presence of the inmate in the general inmate population would jeopardize the security of the penitentiary or the safety of any person,
>
> (*b*) that the continued presence of the inmate in the general inmate population would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence, or

> (*c*) that the continued presence of the inmate in the general inmate population would jeopardize the inmate's own safety,
>
> and the institutional head is satisfied that there is no reasonable alternative to administrative segregation.

5.9 The purpose of administrative segregation is to prevent the inmate from associating with the general prison population. The Act does not establish a maximum length of time for the duration of administrative segregation. Subsection 31(2) requires the Correctional Service to return the inmate to the general inmate population of the present or another penitentiary at the earliest appropriate time.

5.10 Section 33 of the Act deals with the initial and later regular reviews of administrative segregation cases. It does this in general terms and leaves the details of such reviews to section 19 to section 23 of the *Corrections and Conditional Release Regulations*.[56] Under these provisions of the Regulations, the warden of a penitentiary is to review, within one working day, the case of an inmate involuntarily administratively segregated by a staff member acting under delegated authority. Within five working days a segregation review board, made up of Correctional Service personnel, is to review the case of an administratively segregated inmate. As well, it is to review such a case every 30 days for as long as the inmate is administratively segregated. There is also provision in the Regulations for the review of administrative segregation cases every 60 days by a Correctional Service employee designated by the appropriate regional deputy commissioner.[57]

5.11 Administrative segregation was one of many issues addressed by the coroner's jury hearing evidence about the events surrounding the October 1993 death of Robert Gentles, which occurred while Correctional Service personnel were forcibly removing him from his Kingston Penitentiary cell. The jury, which heard many months of testimony about Mr. Gentles' death, reported its findings and 74 recommendations on June 24, 1999. Among the issues addressed were cell extractions, the use of chemical agents and inflammatory sprays, institutional lockdowns, correctional staff training, correctional officer stress, management accountability, citizen advisory committees, and increased independent civilian oversight of the Correctional Service.

5.12 The jury dealt with administrative segregation at recommendation 19 by saying:

> It is recommended that when administrative segregation is used, it is administered in compliance with institutional procedures and the law and appropriately monitored by senior management.

5.13 This recommendation did no more than urge that there be adherence to legislative,

regulatory and policy guidance already in place for resorting to administrative segregation. The fact that the coroner's jury felt the need to make this recommendation demonstrates the importance they attached to this issue. The Correctional Service responded officially in January 2000 to this recommendation by describing in general terms what it has done since 1997 to improve the administrative segregation process. Some of this information can be found elsewhere in this part of the chapter.

5.14 During its travels, the Sub-committee took a particular interest in administrative segregation and toured the segregation units in each of the penitentiaries it visited. The administrative segregation review process itself and long-term administrative segregation were of special concern. Consequently, the Sub- committee submitted a number of written questions on the operation of administrative segregation to the Correctional Service.

5.15 It received a reply to its questions in July 1999, which contained current data and other forms of information. The Correctional Service provided the Sub-committee with what is set out in the following paragraphs.

Some Data

5.16 According to the Correctional Service, 80% of inmates placed in involuntary administrative segregation are released prior to the first review of their cases (after 30 days) by the segregation review board. Furthermore, 93% of such inmates are released from segregation prior to the regional consideration of their cases (after 60 days). The average stay for inmates released within these delays is 18 days.

5.17 Insofar as voluntary administrative segregation inmates is concerned, 57% of them are released prior to the 30-day review of their cases by the segregation review board, while 77% of them are released before the 60-day review of their cases. The average stay for inmates released within these delays is 38 days.

5.18 The Correctional Service provided the Sub-committee with data on long-term administratively segregated inmates. As of May 31, 1999, there were 59 involuntary and 116 voluntary cases segregated for more than 90 days. Of the 59 involuntary cases, 11 had been segregated for between 90 and 120 days, 22 for between 120 and 180 days, and 26 for more than 180 days. Of the 116 voluntary cases, 22 had been segregated for between 90 and 120 days, 38 for between 120 and 180 days, and 56 for more than 180 days.

5.19 Since 1997, the Correctional Service has undertaken a national initiative to control the growth of administrative segregation and reduce it by the safe and secure reintegration of long-term administratively segregated inmates into the general prison population. In the summer of 1997, there were 163 inmates who had been administratively segregated for more than 120 days. By June 1998, this had been reduced to 98 inmates. As of May 31,1999, this population

was 144, and more recent data indicated it was in the vicinity of 125 inmates. Most of this population is made up of inmates who have voluntarily sought administrative segregation or are placed there for their own protection.

5.20 The Correctional Service has told the Sub-committee that since 1997 it has reduced the administrative segregation cell capacity by 20%.

Recent History

5.21 The administrative segregation process has been the subject of vigorous debate for many years, going back to the early 1980s and beyond. It has intensified in recent years since the proposals contained in the Arbour Commission Report were released in April 1996.[58] The commission of inquiry investigated the circumstances surrounding a number of events that occurred in April 1994 at the Kingston Prison for Women. It made findings of fact with respect to these occurrences and proposed a number of recommendations to address the broader policy issues to which they gave rise.

5.22 The commission of inquiry's findings of fact dealt with the segregation unit at the Prison for Women, strip searches, body cavity searches, involuntary transfers, the complaint and grievance process, the role of the Correctional Service Board of Investigation, and the role of the Correctional Investigator in these events. The policy issues addressed by the Arbour Commission Report included the development of a culture of rights within the Correctional Service, the management of segregation, the increase of accountability in operations, cross-gender staffing, Aboriginal women offenders and the healing lodge, and the future of women's corrections.

5.23 Madam Justice Arbour described the effect of segregation on inmates in the following terms:

> A number of studies have noted the additional impact of the treatment of inmates while in segregation. These include negative interactions with staff, the frequent violation of the rules and regulations governing detention in segregation, and the uncertainty of release for inmates held in administrative segregation. The findings that I made earlier support the conclusion that prolonged segregation is a devastating experience, particularly when its duration is unknown at the outset and the inmate feels that she has little control over it.
>
> The use of segregation by the Correctional Service for inmates in distress, including those who are at risk of self injury or suicide, is also problematic. The forced isolation of individuals from their social and physical supports, and human contact, is a profound form of deprivation. It can only heighten feelings of

> desperation and anxiety in situations of despair and high need.[59]

5.24 She later went on to make the following comment and proposal:

> The segregation review process that I have examined in this case was not operating in accordance with the principles of fundamental justice. The literature suggests that this is not unusual. Segregation is a deprivation of liberty. In my view there should be judicial input into the decision to confine someone to `a prison within a prison' .... There is no rehabilitative effect from long-term segregation, and every reason to be concerned that it may be harmful. I realize that there are circumstances where segregation, even prolonged segregation, may be inevitable. I see no alternative to the current overuse of prolonged segregation but to recommend that it be placed under the control and supervision of the courts. Failing a willingness to put segregation under judicial supervision, I would recommend that segregation decisions made at an institutional level be subject to confirmation within five days by an independent adjudicator. Such a person should be a lawyer, and he or she should be required to give reasons for a decision to maintain segregation. Segregation reviews should be conducted every 30 days, before a different adjudicator, who should also be a lawyer. ... [60]

5.25 In response to the Arbour Commission Report, the Correctional Service in June 1996 established a task force to conduct a comprehensive review of the use of segregation. Made up of members from both within and outside of the Correctional Service, the task force submitted its report in March 1997.[61] The report made findings and provided advice on a number of issues, including procedural compliance, improving the segregation review process, independent adjudication, population management, conditions of confinement, segregated women offenders, and segregated Aboriginal offenders.

5.26 The issue of an enhanced segregation review process and the role of independent administrative segregation review adjudication was the object of vigorous debate between and among task force members, who were from within and outside of the Correctional Service. In the end, they came up with the following two recommendations that were included in their report:

> Enhance the Segregation Review Process
>
> 2. Eight initiatives should be undertaken to enhance the segregation review process.
>
> (i) A standard operating procedure should be developed and adopted outlining the roles and responsibilities of all parties involved in the administrative segregation

process in the context of the relevant law, regulation and policy. Staff members and managers must be held accountable. Steps should be taken to include *compliance with the law* as a key factor in staffing, promotion and performance review processes.

(ii) A continuous education initiative must be targeted at staff members and managers with direct responsibilities for administrative segregation. The initiative must include training on the legal rights of Aboriginal people, more specifically, on their access to spiritual/cultural possessions and support, and the need to continue the healing process identified in the Correctional Plan. Further, OMS training on changes to the system with respect to the administrative segregation process must be immediately provided to all users who are involved in the process.

(iii) Institutions with segregation units should review the informal approaches used to prevent or discontinue segregation, and explore other alternatives, such as formal and informal mediation mechanisms.

(iv) More formal and disciplined segregation review hearings should be adopted. The Task Force recommends mandatory certification for all chairpersons of Segregation Review Boards.

(v) OMS should be recognized as the *principal file of record*.

(vi) Regional Segregation Review and Transfer Boards should be established in each region to expedite intra-regional transfers of segregated inmates. The Task Force also recommends that CSC create an Inter-Regional Transfer Board to arbitrate and effect transfers between regions.

(vii) Proposed changes to expedite the resolution of complaints and grievances initiated by segregated inmates should be integrated into the implementation of the enhanced model.

(viii) Scheduled and random audits should be performed to ensure that the segregation review process and the conditions of confinement in segregation units are in compliance with the law and policy.

The implementation of recommendations will have to be respectful of both Aboriginal and women offender requirements and rely on input from both internal and external specialists and stakeholders.

Experiment With Independent Adjudication

3. (a) CSC should experiment with a model for independent adjudication as soon as possible to evaluate both the impact of the operational requirements (organization, roles and responsibilities, and cost) and the benefits that may accrue to improving the fairness and effectiveness of the administrative segregation review process. The experiment should be used to determine not only how the *best blend* between an enhanced segregation review process and independent adjudication could be achieved, but also to determine if independent adjudication improves the fairness and effectiveness of decision making. The results of the evaluation should include the clear definition of the factors that indicate the benefits and deficits of using independent adjudication; an analysis of the impact that independent review has had on the decisions that were taken; recommendations on the *best model* and *best fit* for independent adjudication; and proposals of an action plan for implementation if the recommendation is to adopt the model.

3.(b) Experimentation with independent adjudication should be fast-tracked in order to ensure that evaluation results are available for review by EXCOM by the end of 1997. The Task Force has also considered the relationship between the proposed experiment with independent adjudication and the CCRA five-year review, which is presently underway. The Task Force is concerned that the window for legislative amendment provided by the review not be closed while the proposed experimental model is being implemented. The Task Force therefore recommends that, while experimentation is taking place, drafting of proposals for possible legislative amendments could occur. If regulatory measures are also deemed to be helpful then they could also be drafted in parallel.[62]

5.27 In May 1997, the Correctional Service established a working group on human rights under the chairmanship of Maxwell Yalden, former Chief Commissioner of the Canadian Human Rights Commission. It examined the Correctional Service's international and domestic human rights obligations and its human rights practices, and developed recommendations and strategies to better enable the Correctional Service to meet its human rights obligations.

5.28 The working group reported its findings and recommendations in December 1997.[63] It made the following comments on the above recommendations by the Task Force on 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.[64]

5.29 Instead of accepting recommendations from these three groups that some form of independent adjudication become part of the administrative segregation review process, the Correctional Service has taken steps to enhance the system already in place. Since 1997, it has undertaken a national initiative, with the results mentioned earlier in this chapter. This undertaking included the following elements :

- the provision of training and reference documentation to managers and operational staff on the proper use of administrative segregation;
- the development of alternatives to administrative segregation;
- a focus on the successful reintegration of long-term administrative segregation inmates into the general inmate population; and
- the appointment of senior level employees in each Correctional Service region to monitor all aspects of the administrative segregation review process and report to regional deputy commissioners.

5.30 The Correctional Service is to be commended for the initiatives it has undertaken. Although these efforts at enhancement go a considerable distance to satisfy, in part, the proposal made by the Task Force on Administrative Segregation, they do not go all the way. They do not, however, approach the recommendation on independent adjudication made by the Arbour Commission Report, or even the recommended limited experiment with independent adjudication made by both the Task Force on Administrative Segregation and the Working Group on Human Rights.

Independent Adjudication

5.31 The independent adjudication of administrative segregation cases was addressed in several submissions received by the Sub-committee. It was comprehensively dealt with by the Canadian Bar Association.[65] The Association recommended to the Sub-committee that the *Corrections and Conditional Release Act* should be amended to provide for independent adjudication of cases of administrative segregation.[66] The recommendation does not indicate after what period of time in segregation there would be access to independent adjudication. It also does not make a distinction between voluntary and involuntary administrative segregation.

5.32 Charlene C. Mandell, of the Queen's University Faculty of Law correctional law project, supported a variation of the Canadian Bar Association recommendation. She proposed that an

inmate confined in administrative segregation for more than 90 days have his case considered by an external reviewer independent of the Correctional Service. Subsequent independent reviews would be held every 60 days. She proposed that this change could be effected by amending either the Act or the Regulations.[67]

5.33 The Barreau du Québec supported the proposals on independent adjudication made in the Arbour Commission Report, set out earlier in this chapter,[68] as did the Canadian Association of Elizabeth Fry Societies.[69] Both the Canadian Criminal Justice Association[70] and the St. Leonard's Society of Canada[71] supported the limited experiment with independent adjudication proposed by the Task Force on Administrative Segregation. The John Howard Society of Canada[72] approved independent adjudication in principle and indicated support for a pilot project.

5.34 The Sub-committee believes there is a place for administrative segregation in the collection of techniques available to the Correctional Service for the effective management of the prison population and the fair administration of sentences of imprisonment meted out by the criminal courts. It must, however, be resorted to in the context of the duty to act fairly and the principles set out in section 4 of the Act, described in the introduction to this chapter. These principles are the residual rights of offenders, resort to the least restrictive carceral alternative, and a fair decision-making process.

5.35 The impact of administrative segregation on inmates has been graphically described by Madam Justice Arbour in the extract from her report quoted earlier in this chapter. As well, the physical and program constraints on administratively segregated inmates are severe. This was obvious to the Sub-committee in each of the segregation units it visited during its penitentiary tours. It must also be recognized, however, that the inmate population being managed by the Correctional Service in its administrative segregation units is a difficult one, posing serious challenges on a day-to-day basis.

5.36 Since 1997, the Correctional Service has taken important steps to enhance and monitor the segregation review process, find alternative approaches, and effectively reintegrate long-term administratively segregated offenders back into the general prison population. These enhancement and monitoring efforts should be continued and extended by the Correctional Service. They are, however, a complement to, and not a replacement for, the independent adjudication of actions affecting the residual rights and freedoms of inmates.

5.37 Administrative segregation removes inmates from normal daily contact with other offenders. It has the effect of making their access to programs, employment, services and recreation more difficult than it is for inmates in the general prison population. It has a dramatic impact on their residual rights. It makes the conditions of incarceration more stringent than they are for other inmates.

The Sub-committee's Position

5.38 For these reasons, the Sub-committee believes there is a need for the insertion of an independent decision-maker who will take into account all factors related to administrative segregation cases. It is not necessary for all segregation decisions to be made by this independent adjudicator. The Sub-committee believes that the Correctional Service should continue its efforts to develop alternatives to administrative segregation and find ways to safely reintegrate long-term administratively segregated inmates.

5.39 The Sub-committee believes that the process in place for the review by the warden of segregation cases after one working day and by the segregation review board after five working days should remain in place. The Sub-committee believes, however, there should be independent adjudication of administrative segregation cases 30 calendar days after the initial segregation decision. It may be necessary to distinguish between voluntary and involuntary cases and allow for independent adjudication in the former type of case 60 calendar days after the initial placement. Regular independent adjudication would occur subsequently every 30 or 60 days, depending on the nature of the case.

5.40 The period of 30 days was selected because this is the maximum period of segregation allowed for when it is imposed as a punishment for a serious offence by the independent chairperson, as part of the inmate discipline process. This threshold is proposed because there is little or no difference in the stringency of living conditions to which inmates administratively or punitively segregated are subject. Indeed, independent chairpersons could also be designated as the individuals who would exercise this independent adjudicative authority, since they would already be knowledgeable of and familiar with the law and day-to-day reality of federal penitentiaries.

5.41 As mentioned earlier, at the present time there is no maximum period for which an inmate can be administratively segregated. The Sub-committee believes this should not be changed. Many of the voluntarily administratively segregated inmates are long term. This is often the case because the realistic possibility of their reintegration into the general prison population is limited. Regular reviews of their cases by independent adjudicators will give an impetus to Correctional Service efforts to have them reintegrated, and ensure that their cases are under frequent reconsideration.

5.42 This proposed independent adjudication process would leave enough room and opportunities for the Correctional Service to seek alternatives to administrative segregation, including transfers to another institution. It would also allow preparation for the eventual successful reintegration of the inmate. Underlying all of this is the proper use of administrative segregation. For this to happen, it is essential that managers and operational staff be provided with appropriate levels of training and reference documentation. The Correctional Service must continue to do this in an ongoing, enhanced manner.

RECOMMENDATION 21

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to provide for the adjudication (by independent chairpersons appointed by the Solicitor General as part of the inmate discipline process) of involuntary administrative segregation cases every 30 calendar days and of voluntary administrative segregation cases every 60 calendar days.

SPECIAL HANDLING UNIT

5.43 During its visit to correctional facilities in the Quebec region, the Sub-committee toured the special handling unit, located as a distinct entity within the regional reception centre at Ste-Anne-des- Plaines. Because it is the only facility of its kind, it was believed that a visit to it was required to allow the Sub-committee to compare it with the maximum-security penitentiaries and segregation units it visited elsewhere in Canada.

5.44 Neither the *Corrections and Conditional Release Act* nor the Regulations provide an explicit, comprehensive description of the special handling unit, how inmates are sent to it, what is done with them once there, and how their incarceration in that facility is reviewed and monitored. To address these issues, it is necessary to consult the relevant Commissioner's Directive.[73]

5.45 The Commissioner's Directive describes the policy objective of the special handling unit as being to establish an environment where dangerous inmates are assisted and motivated to behave in a responsible manner, so as to allow them to be returned to a maximum-security institution. Dangerous inmates are defined as those whose behaviour has caused death or serious harm, or seriously jeopardizes the safety of others.

5.46 The Commissioner's Directive sets out a process to be followed to have a dangerous inmate transferred to the special handling unit. The regional deputy commissioner must review the case of any inmate who has committed an act resulting in death or serious harm. The inmate may be ordered transferred to the special handling unit by the regional deputy commissioner. This decision is to be carried out in a manner consistent with the Commissioner's Directive setting out the procedure and policy for the involuntary transfer of inmates.

5.47 Once at the special handling unit, an inmate is to be assessed and the National Review Committee is to determine whether the inmate is to remain at the special handling unit or be returned to a maximum- security penitentiary. The National Review Committee makes any

subsequent decisions with respect to the transfer of inmates out of the special handling unit. These decisions are to be made in a manner consistent with the Commissioner's Directive on inmate transfers. There is no limit on the length of time an inmate is to spend incarcerated in the unit. As well, there is no determined frequency as to when subsequent reviews have to take place. The Committee also monitors the ongoing activities of the special handling unit and collects data related to its operation.

5.48 The National Review Committee is made up of a bilingual assistant deputy commissioner (as chair), an associate warden of the special handling unit (as secretary), and at least two wardens from maximum-security institutions. The Committee reports functionally to the senior deputy commissioner and provides quarterly reports of its activity to that person.

5.49 The legal basis for the establishment and continued existence of the special handling unit was considered, along with other issues, by Madam Justice Tremblay-Lamer of the Federal Court in *Murray v. Canada* (Correctional Service, SHU, National Review Board Committee*)*.[74] She started by examining section 30 of the Act, which provides for the assignment of a security classification to an inmate. She then read this provision in the context of section 11 of the Act, which allows for any inmate to serve a sentence in any correctional facility. She thus concluded that because the Act does not assign security classifications to correctional facilities, the Correctional Service has discretion to transfer any inmate to any facility, regardless of personal security classification.

5.50 The legal basis for the existence of the special handling unit was graphically brought to the Sub- committee's attention by the Association des avocats et avocates en droit carcéral du Québec.[75] They argue there is no basis for placing inmates in the special handling unit since the Act does not provide for anything beyond maximum-security classification. Alternatively, they argue, if the special handling unit is a form of administrative segregation, it does not operate in a manner consistent with the relevant provisions of the Act allowing for the warden or a delegate to make the initial administrative segregation decision.

5.51 Although it is not necessary to accept the arguments set out by the Association, it has at least brought to the Sub-committee's attention the presence of some uncertainty as to the basis in law for the special handling unit and the review process now in place. Having visited the special handling unit, maximum-security institutions, and a number of segregation units, the Sub-committee can say with certainty that the former unit is on a different level of magnitude from the others. The security precautions are strict, with the consequence that inmate contact with others is even more constrained than in these other types of facilities. The inmate population is a difficult one, posing a unique challenge to those who have to work with it on a daily basis. The physical layout of the special handling unit is unique, having no parallel elsewhere among federal correctional facilities.

5.52 To recognize the reality of the special handling unit and provide it with a legal basis in the

inmate security classification system, the Sub-committee believes that an additional security classification level has to be added to the Act and Regulations. The existence of this additional level of inmate security classification is implicitly recognized in the Commissioner's Directive dealing with the special handling unit. This document describes the policy objective of the special handling unit as facilitating the reintegration of inmates into maximum-security institutions.

5.53 Further support for a new security classification level can be taken from comparing the definition, in the Commissioner's Directive, of dangerous inmates to be transferred to the special handling unit, with the definition of maximum-security inmates contained in the Regulations.

5.54 Paragraph 18(*a*) of the Regulations describes a maximum-security inmate as one who presents a high probability of escape and a high risk to the public in case of escape, or who requires a high degree of control and supervision within the penitentiary. In contrast, section 2 of the Commissioner's Directive defines a dangerous inmate who may be transferred to the special handling unit as one whose behaviour is such that it causes death or serious harm, or seriously jeopardizes the safety of others.

5.55 There is thus a clear distinction between the two types of inmate population described in these definitions. The distinction is clear enough to justify the development of a new security classification level to recognize the reality of the special handling unit.

RECOMMENDATION 22

The Sub-committee recommends that section 30 of the *Corrections and Conditional Release Act* be amended to add a new level of security classification to be known as special security and that section 18 of the *Corrections and Conditional Release Regulations* also be amended to define the new level of security classification.

5.56 At the present time, neither the Act nor the Regulations sets out the transfer, review and monitoring processes to which day-to-day operations of the special handling unit are subject. The administrative segregation and inmate discipline processes find their legal foundations in both the Act and the Regulations. Commissioner's directives on their own, without legislative and regulatory underpinnings, do not have the force of law. Even the legal underpinnings identified for the special handling unit in the Murray case mentioned earlier in this part of the chapter are, at best, in need of amplification.

5.57 The Sub-committee believes that the Act and the Regulations should make explicit provision for the special handling unit and the transfer, review and monitoring processes applicable to its day-to-day operation. This would have the effect of increasing the visibility of

the unit and provide another assurance that it is constituted and functions in ways consistent with the rule of law, the duty to act fairly, and the residual rights of inmates recognized in the Act.

5.58 Under this proposal, the role of the Special Handling Unit National Review Committee will continue to be at the core of the review and monitoring functions to be put into place. To provide the Committee with a high degree of credibility and an assurance that it will carry out its functions in a thorough, fair and unbiased way, it should draw some of its membership from experienced people outside of the Correctional Service.

RECOMMENDATION 23

The Sub-committee recommends that the *Corrections and Conditional Release Act* and the *Corrections and Conditional Release Regulations* be amended to provide a complete legal foundation for the continued existence of the special handling unit and the transfer, review and monitoring measures to which it is subject in its day-to-day operation. Provision should be made in these amendments for representation from outside the Correctional Service on the Special Handling Unit National Review Committee.

INMATE DISCIPLINE - INDEPENDENT CHAIRPERSONS

5.59 The basis for the disciplinary process applicable to inmates can be found at section 38 to section 44 of the Act and section 24 to section 41 of the Regulations. The Act describes the purpose of the discipline process as being to encourage inmates to conduct themselves in a manner consistent with the good order of the penitentiary. It asserts these provisions as the exclusive means for the discipline of inmates.

5.60 Section 40 of the Act sets out an exhaustive list of disciplinary offences to which this process applies. Some of them have their equivalents in criminal law, while others do not. Attempts at informal mediation of potential disciplinary situations are made mandatory. Notice and hearing of disciplinary charges are provided for in this part of the Act. Finally, section 44 of the Act provides sanctions for inmate disciplinary offences, ranging from a warning or reprimand to segregation for up to 30 days in the case of a serious disciplinary offence.

5.61 The Regulations provide details on the appointment of independent chairpersons, notice to inmates of disciplinary charges, the hearing of disciplinary charges and guidance on sanctions. They distinguish between minor and serious disciplinary offences without defining them, with the latter being subjected to more severe punishments.

5.62 Independent adjudication of inmate disciplinary offences was first proposed in the 1970s,

most prominently in the 1977 report of the Parliamentary Sub-committee on the Penitentiary System in Canada - the MacGuigan Committee. At that time, it recommended that inmate disciplinary hearings should be presided over by independent chairpersons.[76] This recommendation was ultimately accepted and implemented by federal correctional authorities.

5.63 As mentioned earlier in this chapter, the existence and appointment of independent chairpersons is not set out in the Act, but is provided for in the Regulations. Under section 24 of the Regulations, the Solicitor General appoints independent chairpersons from outside of the Correctional Service to hold office, during good behaviour, for renewable periods of up to five years. The Minister also appoints a senior independent chairperson for each region from among the independent chairpersons. The occupant of this senior position advises and trains independent chairpersons, ensures that disparities in sanctions imposed are kept to a minimum, and exchanges information with others in the same position in other regions.

5.64 Subsection 27(2) of the Regulations gives independent chairpersons sole and exclusive jurisdiction to hear and determine cases of serious disciplinary offences, other than in extraordinary circumstances. Wardens or designated Correctional Service staff members have jurisdiction to hear and deal with minor disciplinary offences. Only independent chairpersons have authority to impose sanctions for serious disciplinary offences set out in section 35 to section 37 and section 39 to section 40 of the Regulations. These include loss of privileges for up to 30 days; restitution of up to $500; fine of up to $50; the performance of extra duties for up to 30 hours; and segregation for up to 30 days, not to exceed 45 days in instances of consecutive segregation sanctions.

5.65 In its July 1999 response to the Sub-committee's written questions, the Correctional Service explained that the following criteria are taken into account in making recommendations to the Solicitor General concerning the potential appointment of independent chairpersons:

- judgment and level of expertise in the disciplinary hearing process for serious offences;
- capacity to influence and lead;
- length of independent chairperson experience, if any;
- bilingualism; and
- interest in and knowledge of the independent chairperson process.

5.66 As of July 1999, of the 43 then-current independent chairpersons, 34 were practicing or formerly practicing lawyers, one was a former judge, and one was a criminologist.

5.67 The adjudicative role played by independent chairpersons is essential to the fairness of the inmate discipline process. Not only must performance of their functions be fair and unbiased on a daily basis, but it must also be seen and conceived in such a way as to reinforce this expectation.

5.68 Earlier in this chapter, the Sub-committee recommended that independent chairpersons be charged with the responsibility of adjudicating administrative segregation cases every 30 or 60 days, depending on whether they are respectively involuntary or voluntary. The Sub-committee concluded that this function should be added to the duties of independent chairpersons because they already have experience adjudicating disputes in a correctional context.

5.69 More particularly, independent chairpersons are experienced with segregation. They have available to them the option of imposing segregation of up to 45 days as a disciplinary sanction. Subsection 40 (3) of the Regulations provides that inmates who are segregated for a serious disciplinary offence are to be accorded the same conditions of confinement as inmates who are administratively segregated.

5.70 The Criminal Lawyers Association proposed that the criteria for the appointment of independent chairpersons be specified in either the Act or the Regulations.[77] The Sub-committee agrees with the intent of this proposal, but notes that the Regulations already contain this provision.

5.71 The additions to the functions to be performed by independent chairpersons proposed by the Sub- committee demonstrate the importance it attributes to this position. The duty to act fairly is not just a series of procedural rules applicable to decision-makers. It also imposes an obligation on policy-makers to ensure that decision-makers exercising adjudicative authority do so in a fair and unbiased manner, indeed, in the absence of even an appearance or apprehension of bias.

5.72 One way for policy-makers to do this is to provide a clear statutory basis for the independent exercise of adjudicative functions. Including the process and criteria in the Act for the appointment of independent chairpersons will enhance their authority, provide permanence to the functions they perform, and make their adjudicative functions more open and transparent to those who want to scrutinize them.

RECOMMENDATION 24

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to allow for the appointment of independent chairpersons and senior independent chairpersons for five-year renewable terms, during good behaviour, by the Solicitor General. The amendment should specify that independent chairpersons are to exercise adjudicative functions with respect to administrative segregation and serious disciplinary offences. Finally, the amendment should set out criteria to be applied in the selection and appointment of independent chairpersons.

PAROLE BOARD REVIEW OF SUSPENDED PAROLE OR STATUTORY RELEASE

5.73 Section 135 of the Act deals with the suspension of conditional release where an offender has committed a new offence or breached a release condition. As described elsewhere in this report, there is also provision for the authorization of apprehension and reincarceration of such an offender until the Parole Board can conduct a hearing to determine whether the offender should be released back into the community or have his conditional release cancelled or revoked.

5.74 Subsection 135(4) and subsection 135(5) of the Act provide the Parole Board with the power to review the cases of these offenders, whose conditional releases have been suspended and who have been reincarcerated. These provisions do not, however, set out the delay within which the Parole Board has to render a decision on such cases. Subsection 163 (3) of the *Corrections and Conditional Release Regulations* requires the Parole Board to render a decision within 90 days of the referral of such a case to it, or the reincarceration of the offender.

5.75 The Criminal Lawyers Association recommended that this 90-day time frame should be reduced to 45 days. The following rationale was provided for this recommendation:

> The increase (from the former law) in time to 90 days before the Board has a hearing in a post-suspension situation is sufficient to end all attempts at reintegration, through loss of employment, schooling, housing, healthcare and family commitments for what may be very minor breaches of the release order, rather than any return to criminal behaviour. Again, as long as it is easier to let the National Parole Board make the decision and give all parties longer to do so, the prisoner' s ability to reintegrate is decreased.[78]

5.76 The Sub-committee attended a post-suspension Parole Board hearing during one of its correctional institution visits. The Board members conducting the hearing were aware of the impact of reincarceration on the offender's efforts at reintegration, and thoroughly canvassed the consequences of their decision.

5.77 The Sub-committee agrees with the submission and recommendation made by the Criminal Lawyers Association. In circumstances where an offender has been in breach of a release condition without committing a criminal offence, the case should be reviewed in a timely manner so that the necessary adjustments can be made and the offender may continue on the path of rehabilitation. The conduct of timely reviews and the rendering of the resulting decisions are an essential part of a fair and equitable decision- making process.

RECOMMENDATION 25

The Sub-committee recommends that subsection 163(3) of the *Corrections and Conditional Release Regulations* be amended to require the National Parole Board to render, wherever possible, post-suspension decisions within 45 days of case referral or offender reincarceration.

BOARD DISCLOSURE OF INFORMATION TO OFFENDERS

5.78 Section 141 of the Act deals with the provision of information to offenders by the Parole Board. It requires the Board to provide the offender with the information, or a summary of it, to be used in the consideration of a case. As well, it allows an offender to waive access to this information or the time frame before a case within which it must be provided.

5.79 Subsection 141(4) of the Act allows the Parole Board to withhold from the offender as much information as strictly necessary where it would not be in the public interest to disclose such information or where its disclosure would jeopardize the safety or any person, the security of a correctional institution or the conduct of any lawful investigation.

5.80 Information disclosure in a timely manner is essential for any offender to prepare for a case being considered by the Parole Board. Indeed, as stated elsewhere in this chapter, it is an important component of the duty to act fairly by which the Parole Board is bound.

5.81 Subsection 141(4) of the Act does not require the Parole Board to advise the offender of the withholding of such information or of the reasons for such a decision.

5.82 The Canadian Bar Association dealt with this issue in its brief to the Sub-committee.[79] It was recommended by it that the Parole Board should be prohibited from considering information not disclosed to an offender if such non-disclosure has not been communicated to the offender. The Sub-committee agrees with this submission. As well, it was recommended that subsection 141(4) of the Act be amended to require the Parole Board to advise an offender in writing of non-disclosure and the reasons for it. The Sub- committee adopts this recommendation as its own.

5.83 The duty to act fairly, in the Sub-committee's view, requires that offenders to whom information is not disclosed be at least advised of the reasons for non-disclosure. As well, fairness dictates that there should not be reliance on undisclosed information to make case-specific decisions if the offender has not been notified of this non-disclosure.

RECOMMENDATION 26

The Sub-committee recommends that section 141 of the *Corrections and Conditional Release Act* be amended to require the National Parole Board to advise an offender in writing of the reasons for withholding information to be used in the consideration of a case. The Parole Board should also be prohibited from considering withheld information where the offender has not been advised in writing of the reasons for non-disclosure.

NATIONAL PAROLE BOARD - APPEAL DIVISION

5.84 The Appeal Division is established under section 146 of the *Corrections and Conditional Release Act.* Prior to the adoption of the Act by Parliament in 1992, it had no legislative foundation. The Division is to consist of no more than six members, of whom one is designated vice-chairperson, appeal division. In July 1999 written responses to Sub-committee questions, the National Parole Board stated that the Appeal Division is made up of four full-time members, one of whom is the vice-chairperson.

5.85 A member of the Appeal Division may not sit on the appeal of a decision in which the member participated. Under subsection 105(3) of the Act, each member of the Parole Board, except for the chairperson and the executive chairperson, is assigned to a division of the Board in the instrument of appointment. As well, subsection 105(4) of the Act makes each member of the Parole Board an ex officio member of every division of the Board. With the approval of the chairperson, any board member may sit on a panel in any division. This means that Appeal Division members can sit on regional panels and regional board members can sit on Appeal Division panels.

5.86 Section 147 of the Act sets out the grounds for which an offender may appeal a Parole Board decision. There may be an appeal if the Parole Board panel, in making its decision:

- failed to observe a principle of fundamental justice;
- made an error of law;
- breached or failed to apply a Parole Board policy;
- based its decision on erroneous or incomplete information; or
- acted without or beyond its jurisdiction, or failed to exercise its jurisdiction.

5.87 The vice-chairperson of the Appeal Division may refuse to allow an appeal to go to a panel if it is frivolous or vexatious, beyond the jurisdiction of the Board, based on information not before the panel whose decision is being appealed, or the offender has 90 days or less to serve before the end of sentence. Section 168 of the *Corrections and Conditional Release Regulations* requires that a written notice of appeal must be sent to the Appeal Division within two months of the Board panel decision being reviewed.

5.88 On completion of its review of a decision, the Appeal Division can:

- affirm the decision;
- affirm the decision but order a further review;
- order a new review of the case; or
- reverse, cancel or vary the decision.

5.89 Parole Board panel decisions are reviewed by Appeal Division members reading the file considered by the first panel and listening to the audiotape of the hearing. There is no appeal hearing. Two members of the Appeal Division consider each appeal. If they are unable to agree on the outcome of the appeal, the case is considered by another two-member Appeal Division panel.

5.90 In its July 1999 response to the Sub-committee's written questions, the Parole Board stated that these appeals are not a consideration *de novo,* in which the merits of the original decision are to be considered and the Appeal Division would ordinarily substitute its decision for that of the original panel. Instead, this process was described as akin to judicial review, where the purpose is to ensure that the rules of natural justice and the duty to act fairly are respected. Other identified goals are to ensure that Parole Board policies are followed and to provide guidance to members of the Board to ensure some uniformity in decision making. The Appeal Division was also described as a source of peer review of Parole Board members' decisions.

5.91 The Sub-committee asked the Parole Board to give it some sense of the Appeal Division's caseload. In 1996-97, it received 517 review applications, compared to 540 in 1997-98, and 425 in 1998-99.

5.92 Serious concerns about the Appeal Division were brought to the Sub-committee's attention by the Association des avocats et avocates en droit carcéral du Québec.[80] Instances were pointed out where Appeal Division members temporarily participated in panels in regions from which they came, and regional board members temporarily participated in Appeal Division panel consideration of cases from their regions.

5.93 This situation was confirmed in part by the Parole Board's July 1999 written responses to the Sub- committee's questions. It was clearly indicated that Appeal Division members participate in regional board panels when there are case backlogs or delays in appointing new members to the National Parole Board. The Board's response indicates this is a relatively minor occurrence.

5.94 What is important here is not just that the appeal process be fair, but that it be free of even the apprehension or appearance of bias. The problem seems to be with the design of the Appeal Division contained in the Act. More particularly, section 105 allows for all members to be ex officio members of all divisions of the Board. It is acceptable for this to be the case in

relation to regional board members. It is not acceptable when it comes to members of the Appeal Division who sit in judgment of the decisions made by regional board members.

5.95 There is also confusion as to the nature of the functions to be performed by the Appeal Division. The relevant provisions of the Act seem to provide it with responsibilities akin to the judicial review functions performed by the Federal Court of Canada and provincial superior courts of original jurisdiction. Yet the Board describes the Appeal Division as being a source of peer review of decisions made by Parole Board panels, one of whose goals is to avoid an undue degree of disparity in decision making.

5.96 The Sub-committee believes the Act should be amended to clarify the role and functions of the Appeal Division. There must be a clear distinction between Parole Board members who sit on the Appeal Division and those who sit on panels in the regions. To allow cross-sitting, as is now the case, undermines both the first instance and appeal levels of Parole Board decision making. If there are backlogs in the regions, more effective case-management strategies should be developed and deployed, and additional Board members should be recruited, selected and appointed.

5.97 The decision-making responsibilities assigned to the Appeal Division by section 147 of the Act are, in many respects, similar to the judicial reviews conducted by the courts. Consequently, some Appeal Division members have to have legal training, or be lawyers, to carry out this administrative law review function effectively and fairly. The Parole Board informed the Sub-committee that as of July 1999, 21 of its permanent and part-time members were lawyers. The Sub-committee believes that at least one of the Appeal Division panel members reviewing a case should be a lawyer.

RECOMMENDATION 27

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to prevent National Parole Board members appointed to the Appeal Division from participating in any other parole decisions during their terms as members of that Division. Regional members of the National Parole Board should also be prevented from participating in Appeal Division decisions. At least one member of each Appeal Division panel reviewing a case should be a lawyer.

55# Brief, p. 3.

56# SOR/92-620, as amended.

57# More details can be found at Commissioner's Directive 590 (1997-01-24) entitled *Administrative Segregation*.

58# Commission of Inquiry into Certain Events at the Prison for Women in Kingston, *Report*, Public Works and Government Services Canada, Ottawa, 1996.

59# Ibid., at p. 187.

60# Ibid., at p.191-192.

61# Correctional Service Canada, *Reviewing Administrative Segregation: Commitment to Legal Compliance, Fair Decisions and Effective Results*, Task Force Report, March 1997.

62# Ibid., p. 68-69.

63# Correctional Service Canada, *Human Rights and Corrections: A Strategic Model*, Report of the Working Group on Human Rights, December 1997.

64# Ibid., p. 33.

65# Brief, p. 21-29.

66# Brief, recommendation 2.

67# Brief, p. 4.

68# Brief, p. 19-20.

69# Brief, p. 7-8.

70# Brief, p. 20-23.

71# Brief, p. 6-7.

72# Brief, p. 7-8.

73# Commissioner's Directive 551 (1997-05-28) entitled *Special Handling Units*.

74# (1996) 1 FC 247.

75# Brief, p. 12-13.

76# Parliamentary Sub-committee on the Penitentiary System in Canada, *Report to Parliament*, Ottawa, 1977.

77# Brief, p. 11.

78# Brief, p. 9-10.

79# Brief, p. 38-39.

80# Brief, p. 53-58.

CHAPTER 6:

OFFICE OF THE CORRECTIONAL INVESTIGATOR

6.1 Throughout its review of the Act, the Sub-committee heard testimony highlighting the importance of respecting offenders' rights inside our penitentiaries. Witnesses testifying on this point also emphasized that respecting the rights of offenders is essential to their reintegration into the community. Quoting the report tabled in Parliament in 1977 by the Sub-committee on the Penitentiary System in Canada, the Canadian Bar Association declared, "Justice for inmates is a personal right and also an essential condition of their socialization and personal reformation. It implies both respect for the person and property of others and fairness in treatment."[81]

6.2 The Sub-committee believes, it is essential that correctional authorities respect offenders' rights, particularly since 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."[82] The Sub-committee is therefore convinced that it is important to support independent organizations that are authorized to monitor respect for human rights, in particular the Office of the Correctional Investigator, which has the specific mandate to defend the rights of federally sentenced offenders.

6.3 This chapter is divided into two sections. The first section outlines the role and responsibilities of the Office of the Correctional Investigator within the criminal justice system and the powers conferred on that person under part III of the Act. The second section makes five recommendations that, in the opinion of the Sub-committee and a number of those it heard from throughout its review of the Act, are likely to improve the Office's effectiveness in carrying out its mandate.

OFFICE OF THE CORRECTIONAL INVESTIGATOR: ROLE, RESPONSIBILITIES AND POWERS

6.4 The Office of the Correctional Investigator was set up in 1973 under part II of the *Inquiries Act*, on recommendation by a commission of inquiry into a riot at the Kingston Penitentiary in the early 1970s.[83] Analysis of that event had highlighted the need to set up an independent agency to deal with complaints lodged by or on behalf of offenders, in order to reduce the risk

of riots in the penitentiaries and make the Correctional Service more open and accountable. Although the role and responsibilities of the Office of the Correctional Investigator have remained largely unchanged since 1973, the 1992 legislative reforms to the correctional system changed the Office's legal basis and clarified its powers, now defined in part III of the *Corrections and Conditional Release Act*.

6.5 The Correctional Investigator, appointed by Cabinet under section 158 of the Act, is responsible for the Office of the Correctional Investigator. The purpose of the Office, with a total of 17 employees, of whom 10 are investigators, is:

> To act as an Ombudsman on behalf of offenders by thoroughly and objectively reviewing a wide spectrum of administrative actions and presenting findings and recommendations to an equally broad spectrum of decision makers, inclusive of Parliament.[84]

6.6 Thus the main responsibility of the Office of the Correctional Investigator is to conduct investigations into problems experienced by offenders in the correctional system, both in institutions and under supervision in the community, in order to evaluate independently and impartially whether the Correctional Service is meeting its obligation to respect offenders' rights and entitlements. The powers of the Office of the Correctional Investigator are set out in detail in subsection 167(1) of the Act:

> It is the function of the Correctional Investigator to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner or any person under the control and management of, or performing services for or on behalf of, the Commissioner that affect offenders either individually or as a group.

6.7 As was noted by witnesses heard by the Sub-committee, the Correctional Investigator is in a good position to right wrongs experienced by individual offenders and bring to light systemic problems that lead offenders to lodge complaints. Quoting Madam Justice Louise Arbour's report on the events occurring in 1994 at the Prison for Women, the Barreau du Québec emphasized:

> [O]f all the independent observers of the Correctional Service, the Correctional Investigator is in a unique situation; he may both facilitate the resolution of individual problems and make public statements regarding systemic deficiencies in the Correctional Service.[85]

Powers of Investigation: Access to Correctional Service Information and Facilities

6.8 Powers of investigation into the organization being monitored and access to its information and facilities are essential to the effectiveness of an external monitoring agency. During its visits to correctional facilities in all parts of Canada and its meetings with Ron Stewart, Correctional Investigator, and investigators from the Office, the Sub-committee learned that the Act gives the Correctional Investigator unqualified access to Correctional Service information and facilities. It also gives him broad powers of investigation that allow him to get to the bottom of problems brought to his attention.

6.9 As a result, investigators working for the Office of the Correctional Investigator have full access to Correctional Service institutions and information held or controlled by the Correctional Service. They may require individuals to testify under oath. Under the Act, they may also commence investigations on their own initiative or at the request of the Solicitor General of Canada, an offender, or another complainant. They may also determine how and when the investigation is to be conducted. In carrying out their duties, investigators may visit penitentiaries on a regular schedule or without prior notice.

Complaint Settlement Procedure

6.10 In settling oral and written complaints lodged by offenders or on their behalf, investigators may act officially or unofficially. Most often, they first contact the penitentiary administrators in order to resolve complaints as promptly as possible. However, complaints that investigators are unable to resolve at the institutional level are brought to the attention of the Correctional Service's Regional Deputy Commissioner or Commissioner. It is the investigators' responsibility to identify the appropriate person to resolve the complaint expeditiously. As a last step, if the Correctional Investigator considers that the Correctional Service is not taking appropriate timely action, the complaint is brought to the attention of the Solicitor General, and may be published in the annual report or a special report by the Correctional Investigator.[86]

6.11 The Act requires the Correctional Investigator to advise the Solicitor General and Parliament annually of the Office's work by submitting a report describing its objectives, the strategies employed in the past year to achieve those objectives, and the results obtained. Under the Act, the Correctional Investigator may also submit special reports at any time during the year if that person believes a complaint must be addressed immediately. The Correctional Investigator reports to Parliament through the Minister. Section 192 and section 193 of the Act read as follows:

> **Section 192.** The Correctional Investigator shall, within three months after the end of each fiscal year, submit to the Minister a report of the activities of the office of the Correctional Investigator during that year, and the Minister shall cause every such report to be laid before each House of Parliament on any of the first thirty days on which that House is sitting after the day on which the Minister receives it.

> **Section 193.** The Correctional Investigator may, at any time, make a special report to the Minister referring to and commenting on any matter within the scope of the function, powers and duties of the Correctional Investigator where, in the opinion of the Correctional Investigator, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for the submission of the next annual report to the Minister under section 192, and the Minister shall cause every such special report to be laid before each House of Parliament on any of the first thirty days on which that House is sitting after the day on which the Minister receives it.

6.12 The Correctional Investigator's recommendations advise a broad range of decision-makers about problems in Canada's penitentiaries regarding general penitentiary administration, the quality of programs and services, internal problem-solving and grievance-settling procedures, transfers, administrative segregation, and respect for offenders' rights. Since the Correctional Investigator's recommendations are not binding, this power to make public statements and to advise a broad range of decision-makers is essential in carrying out the Office's mandate. In this regard, and in response to a recommendation by the Auditor General, the Correctional Investigator stated:

> This external consideration of issues, given the non-binding aspect of the recommendations, is central to an effective ombudsman operation. This matter is raised to emphasize that the responsibility for the resolution of issues, especially within an environment like corrections, does not rest solely with the government agency and the ombudsman.[87]

6.13 The relationship between the ombudsman and the organization being monitored is essential to the smooth operation of an external monitoring agency like the Office of the Correctional Investigator. The Sub-committee shares the opinion expressed in the 1997 Report of the Auditor General:

> An ombudsman's strength lies in the ability to persuade others of the value of any recommendation or opinion flowing from an investigation. Consequently, the working relationship between the ombudsman and the institutions within the scope of his or her mandate must be carefully balanced. The nature of the work implies that this relationship can be neither too cordial nor too adversarial. This balance of creative tension is not easy to achieve, but it is very important.[88]

6.14 In this regard, the Sub-committee learned that the Correctional Service and the Office of the Correctional Investigator recently implemented a memorandum of understanding setting out their respective dispute settlement roles and expectations and generally improving interaction between them. Although the Sub-committee hopes that this memorandum of

understanding will enhance the Office's effectiveness in addressing systemic problems, it believes that the results should be reviewed when the *Corrections and Conditional Release Act* is next reviewed. This point is discussed in greater depth in the last chapter of this report.

EFFECTIVENESS OF THE OFFICE OF THE CORRECTIONAL INVESTIGATOR IN CARRYING OUT ITS MANDATE

6.15 Although the Office of the Correctional Investigator is independent of the Correctional Service under the Act, the Sub-committee noted during its review of the Act that some people have an erroneous perception of the Office's position in relation to the Correctional Service, the organization it is responsible for monitoring.

6.16 The Sub-committee finds it worrisome that although the Office of the Correctional Investigator is not part of the Correctional Service, evidence heard by it indicates there is a major problem with the Office's perceived independence.

6.17 In order to ensure that the Office of the Correctional Investigator can effectively carry out its mandate, the Sub-committee therefore considers it important to enhance the perception of the Office's independence. As the Correctional Investigator noted in a recent document, the appearance of independence is just as important as the Office's actual independence:

> [T]he resolution of disputes in an environment traditionally closed to public scrutiny with an understandably high level of mistrust between the keepers and the kept, requires that the Office not only be, but be seen to be independent of both the Correctional Service and the Minister.[89]

6.18 In order to solve this perception problem, Jim Hayes, Director of Investigations, Office of the Correctional Investigator, emphasized to the Sub-committee that it would be preferable to amend the Act so the Correctional Investigator reports to Parliament directly, instead of through the Solicitor General, who is the minister also responsible for the Correctional Service:

> I think by reporting directly to Parliament we could strongly suggest that we don't work for a minister but for Parliament, and we make a report to them. People perceive us as having the same boss, so therefore we must "be in bed together." So perception can very often become reality.[90]

6.19 The Sub-committee believes it would be preferable for the Correctional Investigator to report directly to Parliament. This is also the view of a number of witnesses appearing before the Sub-committee including John Conroy; Yvon Dandurand of the International Centre for Criminal Law Reform and Criminal Justice Policy at the University of British Columbia; Kim Pate of the Canadian Association of Elizabeth Fry Societies; Amy Friedman-Fraser; lawyer

Julian Falconer; Thomas Mann and Robert Rowbotham of Prison Life Media; the Canadian Criminal Justice Association; and the Black Inmates and Friends Assembly of Toronto. The Sub-committee believes this amendment would enhance the Correctional Investigator's credibility and the Office's effectiveness in carrying out its mandate.

RECOMMENDATION 28

The Sub-committee recommends that sections 192 and 193 of the *Corrections and Conditional Release Act* be amended so that the annual and special reports of the Correctional Investigator are submitted simultaneously to the Minister and to Parliament.

6.20 Throughout its review of the Act, the Sub-committee heard evidence emphasizing the importance of setting up mechanisms for resolving disputes between the Correctional Investigator and the Correctional Service. Some witnesses were of the opinion that the Act does not adequately guarantee that issues raised by the Correctional Investigator will be addressed in a fair, reasonable and timely manner.

6.21 In order to improve the Correctional Service's openness, the Sub-committee believes that a parliamentary committee should explicitly be given responsibility for receiving and considering the Correctional Investigator's reports. Correctional Investigator Ron Stewart and lawyer Julian Falconer also hold this view. In the opinion of these witnesses and the Sub-committee, consideration by a parliamentary committee of issues raised by the Correctional Investigator could improve resolution efforts between these two organizations and more readily bring to light issues raised by the Correctional Investigator.

6.22 Given the importance of the principles of openness and accountability, the Sub-committee makes the following recommendation.

RECOMMENDATION 29

The Sub-committee recommends that section 192 and section 193 of the *Corrections and Conditional Release Act* be amended so that the annual and special reports of the Correctional Investigator are automatically referred to the standing committee of the House of Commons responsible for considering the activities of the Office of the Correctional Investigator.

6.23 In their testimony before the Sub-committee in Toronto, Amy Friedman-Fraser and lawyer Julian Falconer noted that one way to improve the Correctional Service's openness and accountability would be to have the Correctional Investigator report to Parliament, as does the Auditor General. According to Amy Friedman-Fraser, this measure would give the Correctional Investigator "actual status and authority [. . .] to effect change, thereby, as well, permitting

public access to the real nature of prison life, to the grievances in particular, and to the way in which these grievances are attended to by the institution and the regional headquarters and the national headquarters."[91] In order to improve the Correctional Service's openness, the Sub-committee also considers it preferable for the Correctional Investigator's report to include the responses by the Correctional Service to the recommendations it contains.

6.24 The Correctional Investigator is presently responsible for summarizing, in the reports, the responses by Correctional Service headquarters to the recommendations. The Sub-committee believes that the Correctional Service should be required to respond to each of the Correctional Investigator's recommendations, stating the action it has taken or intends to take in order to address the issues raised or, if no action is planned, giving its reasons for not acting. The Sub-committee believes that this procedure will give more authority to the Correctional Investigator's recommendations and improve the Correctional Service's accountability.

6.25 In light of the evidence it heard, the Sub-committee therefore believes that the Act should be amended so the Correctional Investigator report's format resembles that used by the Auditor General.

RECOMMENDATION 30

The Sub-committee recommends that section 195 of the *Corrections and Conditional Release Act* be amended so the responses by the Correctional Service to the recommendations by the Correctional Investigator are included in the Correctional Investigator's annual and special reports.

6.26 In Montreal, the Sub-committee heard evidence given by lawyer William Hartzog and the Drummond family. Dissatisfied with the Correctional Service's investigation into the death of their son, the Drummonds argued that in order to ensure impartial and independent investigations when an event results in serious injury or death of an inmate, the Correctional Investigator should be authorized to automatically conduct an investigation, even if the Correctional Service must carry out an investigation under section 19 of the Act.

6.27 At present, although section 19 of the Act requires the Correctional Service to give a copy of its investigation report to the Correctional Investigator, nothing in the Act requires the Correctional Investigator to conduct an in-depth investigation. In light of the Drummond family's evidence, the Sub-committee believes that the Correctional Investigator should conduct an investigation when an event results in serious injury or death for an inmate.

RECOMMENDATION 31

The Sub-committee recommends that section 170 of the *Corrections and*

> ***Conditional Release Act*** **be amended to require the Correctional Investigator to conduct an independent investigation when an inmate is seriously injured or dies, even if another investigation is already being conducted under section 19 or section 20 of the Act.**

6.28 In conclusion, the Sub-committee wishes to emphasize that the Office of the Correctional Investigator's effectiveness in carrying out its mandate depends largely on the budget allocated to it. According to the Correctional Investigator, the present annual budget of approximately $1.5 million does not make it possible to hire enough investigators. The Auditor General, too, in a recent audit of the Office, heard testimony from investigators that their number was insufficient. The report of the Auditor General emphasizes the problems resulting from the shortage of investigators as follows:

> The Office of the Correctional Investigator operates with a small staff. The staff have indicated that they feel overwhelmed by demand and volume. Our audit also found that the Office had problems with managing the work processes, providing timely responses to complaints and maintaining the number of visits to the institutions.[92]

6.29 The 10 investigators who work for the Office of the Correctional Investigator must process approximately 5,000 complaints each year. Although the Sub-committee realizes that the time required to conduct investigations depends on the nature of the complaints,[93] it is convinced that increasing the number of investigators can only benefit the correctional system as a whole. It would likely ensure better monitoring of the Correctional Service through more frequent penitentiary visits and investigations commenced on the Correctional Investigator's own initiative, as was pointed out by Jim Hayes, Director of Investigations, Office of the Correctional Investigator.

> **RECOMMENDATION 32**
>
> **The Sub-committee recommends that the budget of the Office of the Correctional Investigator be increased in order to expand the number of investigators and cover directly related expenses such as office equipment, communications, and travel required to conduct investigations.**

81# Report of the Sub-committee on the Penitentiary System in Canada, Supply and Services Canada, Ottawa, 1977, p. 87, quoted in the brief by the Canadian Bar Association, p. 10.

82# Correctional Service of Canada, Working Group on Human Rights, *Human Rights and Corrections: A Strategic Model*, December 1997, chapter 2.

83# Solicitor General of Canada, *Towards a Just, Peaceful and Safe Society* - Consolidated Report - *The Corrections and Conditional Release Act* Five Years Later - Report of the CCRA Working Group, 1998, p. 137.

84# Solicitor General of Canada, *Office of the Correctional Investigator: 1999-2000 Estimates*, Public Works and Government Services Canada, 1999, p. 11.

85# The Honourable Louise Arbour, *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, 1996, p. 195, quoted in the brief by the Barreau du Québec, 1999, p. 27.

86# Solicitor General of Canada, *Towards a Just, Peaceful and Safe Society* - Consolidated Report - *The Corrections and Conditional Release Act* Five Years Later - Report of the CCRA Working Group, 1998, p. 139.

87# Auditor General of Canada, "Chapter 33. The Correctional Investigator Canada," *Report of the Auditor General of Canada to the House of Commons*, December 1997.

88# Ibid.

89# Solicitor General of Canada, *Office of the Correctional Investigator: 1999-2000 Estimates*, Public Works and Government Services Canada, 1999, p. 11.

90# *Evidence*, June 2, 1999, 17:00.

91# *Evidence*, May 13, 1999, 16:55.

92# Auditor General of Canada, "Chapter 33. The Correctional Investigator Canada," *Report of the Auditor General of Canada to the House of Commons*, December 1997.

93# Ron Stewart, Correctional Investigator, stated, "[S]ome [complaints] we can solve that same day. Others get drawn out because they're much more complicated and more people are involved with them." *Evidence*, June 2, 1999, 16:45.

CHAPTER 7:

ADVISORY COMMITTEES TO THE CORRECTIONAL SYSTEM

7.1 The *Corrections and Conditional Release Act* recognizes the importance of penitentiaries being open to public involvement, and specifies in paragraph 4(*f*) that "the Service shall facilitate the involvement of members of the public in matters relating to the operations of the Service." The Sub-committee believes that this section is essential, since public involvement in the correctional process contributes to the quality of federal correctional services and is a good way of increasing public confidence in the criminal justice system. This opinion is also shared by a number of witnesses from whom the Sub-committee heard during its review of the Act.

7.2 Regular consultation with individuals who can act as the eyes and ears of various communities also helps protect society. It strengthens relationships between communities and correctional facilities and thus facilitates the reintegration of offenders into the community as law-abiding citizens. The Sub-committee is therefore firmly convinced that active public involvement in the correctional process has many benefits for offenders, the Correctional Service and society as a whole. These individuals and groups can often:

- seek out workplaces that can be used to set up employment and occupational training programs for offenders, and organize and develop community resources that will be helpful to offenders on conditional release;
- demystify penitentiary life and practices and act as channels of information to the public about the criminal justice system;
- inform communities and correctional managers and make them aware of problems with the provision and application of correctional services; and
- advise correctional managers and sound out community attitudes toward correctional services provided.

7.3 This chapter makes three recommendations about public involvement in the correctional process through advisory committees to the Correctional Service. Although the Sub-committee realizes that these recommendations address only some of the various forms of public involvement, it believes they will ensure a greater degree of consultation with communities, groups and organizations interested in criminal justice, when policies and programs for federally sentenced offenders are being developed and implemented. The Sub-committee believes increased consultation can only improve the correctional services provided in

penitentiaries and ensure that the correctional process meets the needs of Canadian communities.

7.4 Throughout its review of the Act, the Sub-committee heard from many organizations and volunteer groups working to make communities aware of what goes on in correctional facilities and the importance of joint efforts to reintegrate offenders into the community. Before making its recommendations, the Sub-committee wants to acknowledge the important work done by these volunteer groups and community organizations and encourage them to keep up their efforts to improve the criminal justice system.

CITIZENS' ADVISORY COMMITTEES

7.5 Although some penitentiaries in Canada have had the benefit of citizens' advisory committees since the early 1960s, it was only in the late 1970s that these committees began to be formed in all parts of Canada. According to José Gariépy, Vice-Chair of the National Executive Committee of the Citizens' Advisory Committees, broader activities for these committees were encouraged by the 1977 report of the Sub-committee on the Penitentiary System in Canada. For the first time, a report recognized publicly the importance of citizen involvement in monitoring and evaluating correctional services, and recommended that citizens' advisory committees be established "in all maximum, medium and minimum penal institutions".[94]

7.6 In response to ever-greater public involvement in citizens' advisory committees and increasing recognition of the public's role in the correctional process, the Correctional Service organized the first National Conference of Citizens' Advisory Committees in Ottawa in 1978. It established a national executive committee in 1979 to co-ordinate the activities of all advisory committees in Canada and to submit to the Commissioner of Corrections any recommendations on Correctional Service policies and programs made by local and regional advisory committees.

7.7 There are three levels of citizens' advisory committees within the correctional system: local committees, regional committees, and the National Executive Committee. At present, each penitentiary and almost every parole office in all parts of Canada has a citizens' advisory committee.[95] The Correctional Service therefore has the benefit of 60 citizens' advisory committees nationwide and the services of their approximately 400 volunteer members.

7.8 The *Corrections and Conditional Release Regulations* make institutional heads and parole office directors in all parts of Canada responsible for committee member recruitment and the smooth operation of citizens' advisory committees. Committee members are appointed by the institutional head or the parole office director, with the consent of the regional deputy commissioner. The regional citizens' advisory committees are made up of the chairs of the local committees or those persons' delegates. The National Executive Committee is made up

of one chair from each regional committee from the Correctional Service regions of the Pacific, the Prairies, Ontario, Quebec, and the Atlantic.

7.9 All committee members must work to carry out the mandate of citizens' advisory committees to help protect society and contribute to the quality of the correctional process by interacting with Correctional Service employees, the public and offenders, and by providing advice to Correctional Service managers.[96]

7.10 Citizens' advisory committees must also work to achieve six national objectives developed by the Correctional Service and all these committees nationwide. These objectives are set out in the document presented to the Sub-committee by the National Executive Committee, as follows:

> ensure that all citizens' advisory committees effectively carry out their missions and roles by ensuring that each citizens' advisory committee (CAC) reviews the parameters and responsibilities surrounding the CAC mandate and ensures the revised CAC orientation manual and promotion pamphlets are readily available and accessible to all members;
>
> ensure that all local CACs meet the standards set for active membership by encouraging CSC, in consultation with local CACs, to develop and implement an effective recruitment plan for new CAC members;
>
> ensure that all CACs support their roles and objectives by implementing an ongoing orientation and training plan with a particular emphasis on human rights issues as they affect inmates, staff and the public;
>
> ensure that CACs increase their visibility and accessibility in local communities through the use of public forums and engagements, so CAC members are viewed as informed, reliable and impartial observers of CSC;
>
> ensure that all CACs establish clearly defined local roles and objectives and work in collaboration with wardens and district directors to establish mutual expectations and required levels of administrative support; and
>
> ensure that all local CACs increase their awareness of and involvement in activities that contribute to CSCs' reintegration efforts.

7.11 José Gariépy, Vice-Chair of the National Executive Committee of the Citizens' Advisory Committees, presented the three main roles of citizens' advisory committees in his testimony before the Sub-committee. He said:

> Our prime function is to provide objective and independent advice to local and regional managers of the Correctional Service of Canada. Such advice may relate to correctional services in general, to the running of correctional facilities or to programs and their effects on the community. We also act as independent observers and we like to stress our independent status. We closely monitor the day-to-day activities of the Correctional Service in each of its facilities. We visit correctional facilities and meet on a regular basis with inmate committees, local board members and staff . Our third function is to serve as a communications link between the Correctional Service of Canada and the community. We educate and inform the public and increase their awareness of correctional issues. We organize forums, discussion groups and workshops. Our goal is to build a partnership between the community and different correctional facilities.[97]

7.12 José Gariépy emphasized the importance of the role of citizens' advisory committees as independent observers. He also stated that although the National Executive Committee acknowledged and recognized that "citizen involvement in correctional facilities and programs complements rather than replaces more authoritative external oversight mechanisms such as the Correctional Investigator, the Canadian Human Rights Commission and the courts,"[98] identification by citizens of policies and practices considered unfair or inadequate could only help improve correctional services.

7.13 On the basis of the discussion paper by the Correctional Service's Human Rights Division on enhancing the role of independent observers, José Gariépy also argued that the *Corrections and Conditional Release Act* should officially recognize citizens' advisory committees' roles and responsibilities as independent observers.[99]

7.14 At present, the only legal basis for citizens' advisory committees is found in section 7 of the *Corrections and Conditional Release Regulations*, which gives institutional heads and parole office directors discretion to establish citizens' advisory committees. Commissioner's Directive 023, however, goes further and requires that a committee be established for each federal penitentiary, and encourages parole office directors to establish these committees as well.[100]

7.15 The Sub-committee believes the three main roles of citizens' advisory committees presented by José Gariépy are important and deserve to be recognized in the Act; the Correctional Service could otherwise decide not to establish them in some institutions. José Gariépy made this point when he stated: "It's important that our status be recognized in law and that we not be at the mercy of wardens who could well decide that there's no longer any need for a citizens' advisory committee."[101]

RECOMMENDATION 33

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to include a provision requiring the Correctional Service to establish representative local citizens' advisory committees at each penitentiary and parole office in Canada, and including a general description of these committees' advisory, independent observer and liaison roles.

7.16 In accordance with the recommendations made in 1977 by the Sub-committee on the Penitentiary System in Canada, and recently reiterated by the coroner's jury investigating the October 1993 death of Robert Gentles at Kingston Penitentiary, the Regulations also provide that institutional heads or parole office directors shall "ensure that the Citizen Advisory Committee is representative of the community in which the penitentiary or parole office is situated." The Sub-committee considers it essential that local citizens' advisory committees be representative of the community; otherwise they would be unable to communicate with the community as a whole or act effectively in their advisory, independent observer and liaison roles. Moreover, in order to understand offenders' specific needs and help institutional heads effectively meet the needs of the offenders for whom they are responsible, the Sub-committee considers it important that the Correctional Service also try to recruit volunteers who are, as far as possible, representative of the offender population.

7.17 The Sub-committee therefore believes it is essential that the Correctional Service actively endeavour to increase the representation of groups that are under-represented on local citizens' advisory committees in all parts of Canada. To this end, the Sub-committee urges the Correctional Service to do all it can to solicit the participation of under-represented groups by, for example, holding public meetings, publishing announcements in newspapers, and seeking out volunteer organizations interested in correctional issues.

ABORIGINAL ADVISORY COMMITTEES

7.18 A number of witnesses heard by the Sub-committee during its review of the Act emphasized the importance of Aboriginal community participation in the correctional process, and pointed out that effective reintegration of Aboriginal offenders into the community is possible only if Aboriginal communities are actively involved in Correctional Service activities.

7.19 The Act does, in fact, recognize this need: Section 82 provides that the Correctional Service must establish and maintain National Aboriginal Advisory Committee and may establish local and regional Aboriginal advisory committees to advise it on the provision of correctional services adapted to the needs of the Aboriginal offender population. Section 82 states:

(1) The Service shall establish a National Aboriginal Advisory Committee, and

> may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders.
>
> **(2)** For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with aboriginal communities and other appropriate persons with knowledge of aboriginal matters.

7.20 In point of fact, although the Act gives the Correctional Service discretionary authority to establish regional and local Aboriginal advisory committees, Commissioner's Directive 702 provides for the mandatory establishment of regional Aboriginal advisory committees. Under this directive, the deputy commissioner of each of the Service's administrative regions is responsible for establishing such a committee.

7.21 At present, the Correctional Service thus has the benefit of five Aboriginal advisory committees, whose mandate is to advise the regional deputy commissioners on correctional services for Aboriginal offenders. However, there are no local Aboriginal advisory committees.

7.22 As in the case of citizens' advisory committees, the National Aboriginal Advisory Committee is made up of the chairs of each of the regional Aboriginal advisory committees. Although Commissioner's Directive 702 calls for a minimum of three meetings of the National Aboriginal Advisory Committee each year, this committee meets as often as necessary. For example, the Sub-committee learned that over the past two years the National Aboriginal Advisory Committee and the regional committees had considered a number of issues, including treatment programs for sex offenders, that are adapted to Aboriginal offenders' needs, the sections of the Act dealing with Aboriginal offenders, Aboriginal liaison services, elders, and the role of the National Aboriginal Advisory Committee itself.

7.23 In accordance with section 82 of the Act, Commissioner's Directive 702 also provides that the National Aboriginal Advisory Committee and the regional committees must regularly consult Aboriginal communities and any other appropriate individuals on issues affecting Aboriginal offenders, and that local Aboriginal advisory committees are to be established, as required.

7.24 In general, the Sub-committee believes consultation is essential to improving correctional services available to federally sentenced Aboriginal offenders and ensuring that the correctional process meets the needs of Aboriginal communities. This is also the view of Carol Montagnes, Vice-president of the Aboriginal Legal Service of Toronto. The Sub-committee is also convinced that Aboriginal communities can contribute greatly to improving correctional services by advising and assisting the Correctional Service in its search for solutions to the various problems and needs of federally sentenced Aboriginal offenders.

7.25 The Sub-committee is pleased to learn that there is currently a regional advisory committee in each of the Service's administrative regions. Nonetheless, to ensure that the Correctional Service cannot decide not to set up advisory committees in certain regions, the Sub-committee is of the opinion that it would be preferable to amend the Act so the Correctional Service is obliged to establish regional Aboriginal advisory committees in each of the Service's administrative regions

RECOMMENDATION 34

The Sub-committee recommends that section 82 of the *Corrections and Conditional Release Act* be amended to require the Correctional Service to establish regional Aboriginal advisory committees.

7.26 Since the Correctional Service has no local Aboriginal advisory committees, and seems to have had difficulty recruiting Aboriginal members of local citizens' advisory committees, the Sub-committee believes that the Correctional Service must increase its efforts to recruit Aboriginal members of these committees, when the proportion of Aboriginal persons in the offender population so warrants.

A NATIONAL WOMEN'S ADVISORY COMMITTEE

7.27 The *Corrections and Conditional Release Act* also recognizes the importance of regular consultation with appropriate women's organizations and any other individuals or groups with relevant expertise in developing and implementing programs adapted to the needs of women offenders. Section 77 of the Act provides as follows:

> the Service shall
>
> > *(a)* provide programs designed particularly to address the needs of female offenders; and
> >
> > *(b)* consult regularly about programs for female offenders with
> >
> > > (i) appropriate women's groups, and
> > >
> > > (ii) other appropriate persons and groups
>
> with expertise on, and experience in working with, female offenders.

7.28 This section of the Act provides for external consultation in the implementation and improvement of programs available to federally sentenced women offenders. Unlike section 82

of the Act on the mandate of Aboriginal advisory committees, section 77 is limited to consultation with groups, individuals and women's organizations about programs. As is described in the previous section of this chapter, the mandate of the Aboriginal advisory committees allows them to advise the Commissioner of corrections and regional deputy commissioners on correctional policies and procedures, and to initiate meetings to discuss subjects of concern to them.

7.29 In its brief to the Sub-committee, the Canadian Association of Elizabeth Fry Societies emphasized this significant difference between section 82 and section 77 of the Act:

> The legislated mandate of the National Aboriginal Advisory Committee is to "provide advice to the Service on the provision of correctional services to Aboriginal offenders." This more formal structure differs from the ad hoc process established for women under section 77.
>
> The structure promotes continuity and consistency amongst its participants, who work together to identify issues and develop positions with and for CSC. Furthermore, the mandate of the National Aboriginal Advisory Committee covers a broad range of "correctional services," contrary to the rather narrow focus on "programs" articulated by section 77 for consultations with women's groups. Also, the National Aboriginal Advisory Committee initiates issues, rather than limit its role and value by merely responding to issues raised by CSC.[102]

7.30 In order to solve this problem, Kim Pate, Director of the Canadian Association of Elizabeth Fry Societies, recommended that section 77 of the Act be replaced by a section requiring the Correctional Service to establish a national women's advisory committee responsible for advising the Correctional Service on providing correctional services to women offenders.

7.31 The fact that women offenders face special problems that call for special solutions was recognized by Lisa Addario, executive co-ordinator of National Associations Active in Criminal Justice; the St. Leonard's Society of Canada; and the Canadian Criminal Justice Association. They also recommended that a national women's advisory committee, similar to the National Aboriginal Advisory Committee, be established to help the Correctional Service to meet the specific needs of federally sentenced women offenders.

7.32 The Sub-committee fully supports these submissions and therefore believes that section 77 of the Act must be amended. It also agrees with Kim Pate and the Canadian Criminal Justice Association that a national women's advisory committee should be made up of individuals with experience and expertise on the need of women offenders, and persons with experience and expertise in women's issues, in general.

RECOMMENDATION 35

The Sub-committee recommends that section 77 of the *Corrections and Conditional Release Act* be replaced by a section requiring the Correctional Service to establish a national women's advisory committee responsible for advising it on providing appropriate correctional services to women offenders.

94# Report by the Sub-committee on the Penitentiary System in Canada, Supply and Services Canada, Ottawa, 1977, p. 126.

95# Some parole offices share a citizens' advisory committee with a penitentiary. Only four parole offices in the Ontario Region and three in the Atlantic Region do not yet have Citizens' Advisory Committees.

96# Correctional Service of Canada, *Annual Report: The Citizens' Advisory Committees*, Consultation Directorate, Corporate Development Sector, 1997-1998, p. 2.

97# *Evidence*, May 3, 1999, 15:35.

98# Brief, National Executive Committee of the Citizens' Advisory Committees to Correctional Service of Canada, 1999, Appendix C, p. 1-2.

99# At present, section 7(5) of the *Corrections and Conditional Release Regulations* provides that citizens' advisory committee members may have reasonable access to Correctional Service institutions, staff members, and offenders.

100# Commissioner's Directive 023 encourages parole office directors to establish citizens' advisory committees "unless other community ties are deemed more appropriate."

101# *Evidence*, May 3, 1999, 15:50.

102# Brief, p. 11.

CHAPTER 8:

VICTIMS' RIGHTS

8.1 Since the early 1980s, there have been numerous policy and legislative developments with respect to the rights and entitlements of victims. Most importantly, the *Criminal Code* was amended by Parliament in 1989 to allow for victim impact statements, victim fine surcharges, and to improve restitution and compensation measures. There have been other amendments to the *Code* and the *Young Offenders Act* since then. In adopting the *Corrections and Conditional Release Act* in 1992, Parliament for the first time clearly allowed legislatively for victim participation in the corrections and conditional release process.

8.2 In October 1998, the standing committee tabled its fourteenth report entitled *Victims' Rights - A Voice, Not A Veto* containing 17 recommendations. The standing committee proposed the adoption of a victims strategy, the establishment of an office for victims of crime, and recommended a number of changes to the *Criminal Code* and the *Corrections and Conditional Release Act* to be included in an omnibus bill containing a preamble setting out Parliament's legislative policy intention. The government's response to the standing committee's report in December 1998 was followed by the adoption by Parliament in June 1999 of Bill C-79, which contained a number of amendments to the *Criminal Code.* Neither the government response nor the subsequent legislation dealt with the Act, and further initiatives were left in abeyance, pending the report of the Sub-committee. The standing committee's report provides the point of departure for the Sub-committee's consideration of victims' issues. The Sub-committee reconsidered each of its recommendations for changes to the Act; however, this chapter also deals with other issues not addressed by the standing committee.

8.3 The Act deals with victims' concerns in several ways. First of all, Part I and Part II of the Act both contain definitions of who victims are. Secondly, the Act contains provisions with respect to offender information that can be received by victims from the Correctional Service and the Parole Board, and offender information they can provide to these agencies. Thirdly, the Act deals with the presence of observers, including victims, at Parole Board hearings.

8.4 As the standing committee said in its 1998 report, generally the needs of victims are not complicated. They want information about the corrections and conditional release system and the progress of the case in which they are involuntarily involved. They wish their voices to be heard at different stages of the corrections and conditional release process. They want redress where these rights are not respected. These issues are addressed in this chapter.

8.5 The Sub-committee believes the rights and needs of victims can be effectively addressed within the corrections and conditional release system without compromising or weakening its fairness or effectiveness. The Canadian Criminal Justice Association offers the following advice to the Sub-committee, which it follows in this chapter:

> Reasonable steps should be taken to accommodate the reasonable and legitimate demands of victims. What is most important is ensuring that the role of the victim does not launch another adversarial process, that the rights and interests of all parties are respected and that there is no opportunity for vengeance to become an influencing factor. Adjustments to current practice would be required, but, as usual, the system will manage to adjust.[103]

RECEIVING OFFENDER INFORMATION

8.6 Section 26 and section 142 of the Act deal with the provision, by the Correctional Service and Parole Board respectively, of offender information to victims, as defined by the Act. Both provisions deal with information that must be provided to victims or their families, on request. They also deal with information that may be provided to victims, on request, if the interest of the victim clearly outweighs the invasion of the offender's privacy resulting from the disclosure.

8.7 The following offender information must be provided to victims or their families on request:

- the offender's name;
- the offence for which the offender has been convicted;
- the court where the offender was convicted;
- the date the offender began to serve his sentence;
- the length of the sentence; and
- temporary absence, day parole, and full parole eligibility and review dates.

8.8 The following offender information may be provided to the victim or their family on request:

- the offender's age;
- the penitentiary where the sentence is being served;
- the date of release on temporary absence, work release, day parole, full parole, or statutory release;
- the date of a detention hearing;
- the conditions of temporary absence, work release, day parole, full parole, or statutory release;
- the destination of an offender on temporary absence, work release, day parole, full parole, or statutory release, and whether the offender will be in the vicinity of the victim while travelling to the destination;

- whether the offender is in custody, and if not, why not; and
- whether the offender has appealed a Parole Board decision (National Parole Board only).

8.9 There is a clear distinction between the two classes of offender information to be provided to victims or their families on request. The first category that must be provided to a victim consists of information that is largely already in the public domain and is available within other parts of the criminal justice system, especially in the form of criminal court records. Such information as the date a sentence commences, or the eligibility or review dates for various types of conditional release can be calculated based on publicly available information, and is a minimum impairment, if any, of an offender's privacy.

8.10 The second category that may be provided to a victim or their family on request is largely not in the public domain, and because it provides details of the management of an offender's sentence, is an infringement of privacy rights protected by the *Privacy Act*.[104] For these reasons, this type of information can only be provided to a victim after the responsible authority has applied the statutory test of balancing the interests of the victim against the privacy of the offender.

8.11 As indicated earlier in this chapter, one of the requests made by victims and those acting on their behalf is for more information about the case of the offender with whom they are involuntarily involved. This information on the management of the offender's sentence does two things. It allows victims to track the sentence and have a minimum sense of security with regard to where the offender is serving his sentence. It also allows the victim to determine whether they will be providing information to corrections and conditional release authorities about the impact on them of the offender's criminal act.

8.12 In urging that victims be provided with more offender information, Victims of Violence made the following argument:

> The offender's right to privacy prevents the victim from being kept informed as to whether the offender, for instance, is partaking in anger management courses or if he has been involved in violent acts within the prison. Many victims are related to the offender in their case and, upon release, the offender may come into contact with the victim and the victim's family. Should the family not have the right to know? There seems to be great secrecy surrounding the offender's conduct in prison even though this information could possibly benefit the victim.[105]

8.13 Victims are concerned about the level of risk an offender represents to themselves and to the community resulting from any form of conditional release. They believe they can measure that risk and make any adjustments they feel necessary if they have access to more information about the management of the offender's sentence than is already available to

them. To address this issue, the Canadian Resource Centre for Victims of Crime has submitted to the Sub-committee that:

> There is certain information that victims would like to have access to which is currently prohibited by law, such as: information on programs the offender has taken to address his problems and the success of these programs. If the victim gets a sense that the offender is taking genuine steps to improve himself, then there might not be such fear or concern when he is released.[106]

8.14 In the same vein, the Ministry of the Attorney General of Ontario Office for Victims of Crime made the following recommendation:

> ...Section 26 of the CCRA should be reviewed to assess what additional information should be supplied to victims but while some personal offender information should be protected, institutional conduct or activity relevant to risk should be released.[107]

8.15 After reviewing these arguments and others, the Sub-committee has concluded that the Act should be amended to allow for the provision of more offender information to victims requesting it. This information should relate to the management of the offender's sentence by corrections and conditional release authorities. More particularly, this additional information should allow the victim to have a sense of what the offender has done to address criminogenic factors while incarcerated. It should also allow the victim to have a sense of the offender's likelihood of reoffending and to take any necessary steps to cope with it.

8.16 The Sub-committee believes victims should have access to information about the offender's participation in programs, the offender's conduct while incarcerated, and the offender's reincarceration for having committed a new offence while on any form of conditional release.

8.17 However, because this type of information is invasive of the offender's privacy rights, the Sub-committee believes it should only be made available to the requesting victim after a privacy balancing test has been applied by the responsible authority. As well, because some of this information may be detailed and complex, it should be made available to victims or their families in a form adequate to assist them, while being minimally invasive of the offender's privacy rights.

> **RECOMMENDATION 36**
>
> **The Sub-committee recommends that paragraphs 26(1)(*b*) and 142(1)(*b*) of the *Corrections and Conditional Release Act* be amended to allow for the**

provision to victims, as defined in the Act, of offender information related to offender program participation, offender institutional conduct, and new offences committed by a conditionally released offender resulting in reincarceration.

8.18 Subparagraph 26(1)(*b*)(*ii)* of the Act allows the Correctional Service to provide a victim with information as to the penitentiary in which a sentence is being served. This provision was dealt with indirectly in part by recommendation 16 of the standing committee's 1998 report on victims' rights. It was recommended, among other things, that the Act be amended to require the Correctional Service to notify victims of anticipated offender transfers.

8.19 The issue of offender transfer from one penitentiary to another, among other matters, was addressed by Rosalie Turcotte for CAVEAT BC in her discussion paper entitled *Openness and Accountability Within the Correctional Service of Canada: A Time for Change*. In urging that section 26 be amended, she makes the following argument:

> Legislation should be created which would require CSC to advise and seek out the victims' views, prior to the decision being made, whenever a transfer is being contemplated by CSC in the routine administration of an offender's sentence.[108]

8.20 She goes on to recommend that subparagraph 26(1)(*b*)(*ii*) be amended to add the words `planned to be served,' so as to require the Correctional Service to advise a victim or family members of a transfer before it is effected. In her view, this would bring this development to the victim's attention and allow for the provision by them of information not in the offender's file that may be relevant to the institutional transfer decision.

8.21 Because the Act does not at the present time clearly allow for the provision of institutional transfer information to victims or family members before the actual transfer takes place, the Sub-committee agrees with this recommendation. Although the time within which transfers are effected is in most instances too compressed to allow for the provision of new information, this recommended amendment would at least provide the victim with notice of a planned, anticipated, or scheduled inmate transfer.

RECOMMENDATION 37

The Sub-committee recommends that subparagraph 26(1)(*b*)(*ii*) of the *Corrections and Conditional Release Act* be amended to allow for the Correctional Service of Canada to advise victims (as defined in the Act) in a timely manner, and wherever possible in advance, of the planned, anticipated, or scheduled routine transfer of inmates.

8.22 Recommendation 14 of the standing committee's 1998 victims' report proposed that the

Act be amended to facilitate victim access to audiotapes or transcripts of Parole Board hearings by making them available for consultation purposes. The purpose of this recommendation was to make offender information available to victims unable to attend a particular parole or detention hearing. As well, it would have the effect of opening up the corrections and conditional release system still more to Canadians.

8.23 The Parole Board does not at the present time produce transcripts of its hearings, although they are recorded on audiotape. To require the Parole Board to transcribe these audiotapes would represent a significant expenditure and delay victim access to the information revealed during a hearing. The Sub-committee therefore adopts standing committee recommendation 14 as its own, making it only applicable to audiotapes.

RECOMMENDATION 38

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to facilitate victim access, for consultation purposes at Correctional Service or Parole Board offices, to audiotape recordings of Parole Board hearings.

PROVIDING VICTIM INFORMATION

8.24 Section 140 of the Act allows for the presence of observers at Parole Board hearings. They have the right to attend, but not to participate in, these proceedings. Victims, as defined in the Act, are allowed to attend hearings as observers. The file of any offender appearing before the Parole Board will usually contain the victim impact statement and other sentencing court documents, as well as any other information provided by the victim concerning the impact of the offence on them.

8.25 Many victims and victims groups believe this is not adequate. They argue that victims should be able to participate directly and fully in Parole Board hearings. The standing committee dealt with this issue in recommendation 15 of its October 1998 victims' report. At that time, it recommended that the Act be amended to provide victims with a presumptive right to be present at Parole Board hearings and to read an updated victim impact statement, or to provide one by way of audiotape or videotape.

8.26 Similar recommendations were made to the Sub-committee by the Canadian Police Association,[109] the Ministry of the Attorney General of Ontario Office for Victims of Crime,[110] and the Canadian Resource Centre for Victims of Crime.[111] The Sub-committee agrees with these recommendations and with the position taken by the standing committee. It also wants to add several elements to the standing committee's recommendation.

8.27 The Canadian Criminal Justice Association, in reporting the views of a victim organization, offers the following cautionary note:

> ... hearings should not become a duplication of the trial and the participation of the victim should not become an adversarial process. That is not to be the objective, nor would it be a proper way of administering justice. Victims should be invited to comment on specific points:
>
> 1. Describe the impact of the offence on them.
>
> 2. Express their fear and apprehensions relative to a potential release.
>
> 3. Request that specific conditions be imposed to enhance their safety.[112]

8.28 The Sub-committee agrees with and adopts the sentiment of this caution as its own. Any statement presented to a Parole Board hearing in whatever form it takes should contain information dealing with issues arising since the offender was convicted. Among other matters, such a statement could deal with the continuing impact of the offence on the victim, any personal safety concerns the victim may have with regard to the offender, and any conditions the victim may believe should be applied to any form of conditional release. The victim should not comment on the sentence imposed by the court or on whether conditional release should be granted to the offender.

8.29 The Parole Board, in its July 1999 response to the Sub-committee's written questions, indicated that it was developing a comprehensive action plan in response to the standing committee's recommendation 15. In addition to establishing victim application processes, criteria for victim participation, and offender information-sharing requirements, the Parole Board's action plan has also begun to elaborate a process for conducting the hearing itself. Under the proposed process, the victim will read his statement at the beginning of the hearing, before the offender interview itself takes place. If a victim statement is to be presented on audiotape or videotape, it will take place at that same point. After this has occurred, the offender interview by Parole Board members will then take place, and the victim will be able to remain as an observer.

8.30 The Parole Board is to be commended for beginning to develop an action plan for implementation of the standing committee's recommendation. The Parole Board does, however, express some concern about the potential number of victims who will want to participate actively in its hearings. There are two definitions in the Act of victims who may receive offender information. The first is contained in section 2 and section 99 of the Act that define a victim as the person suffering the consequences of the offence or, in case of death, a spouse or relative of that person. The second definition is contained in subsection 26(3) and subsection 142(3) of the Act. They define a victim as a person suffering physical or emotional

harm at the hands of the offender, whether or not there has been a prosecution or conviction, so long as a criminal complaint was made or an information was laid under the *Criminal Code*.

8.31 The Sub-committee shares the Parole Board's concern. It believes victim participation in the Parole Board process should be enriched. But it should be done in such a way that it does not unduly disrupt the inquisitorial process already in place. A victim, as defined in section 2 and section 99 of the Act, should be presumptively permitted to read their statement in person, or have it presented in audiotape or videotape form, at the beginning of a Parole Board hearing. This victim has suffered the consequences of the offence for which the offender has been convicted, and has a direct interest in his conditional release. This does not prevent other victims, more particularly those defined in subsection 26(3) and subsection 142(3) of the Act, from submitting victim impact information in other forms and at other times to corrections and conditional release authorities. They will also still be able to attend Parole Board hearings as observers.

8.32 Victim presentations to Parole Board hearings are meant to communicate directly their concerns about an offender's release and the impact of the offence since conviction. This is done most effectively by victims themselves communicating this information directly to Parole Board members. To allow intermediaries or representatives to communicate this information on behalf of victims may cause hearings to become more complex and to bog down, leading to delays in decision making.

RECOMMENDATION 39

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to allow victims, as defined in section 2 and section 99, to presumptively attend and personally read statements, at the beginning of Parole Board hearings, that set out the impact of the offence on them since the offender's conviction, or any concerns they have about the conditions of any release. Such victims should also be able to present their statements on audiotape or videotape.

UNWANTED COMMUNICATIONS FROM OFFENDERS

8.33 Victims and organizations representing them have identified unwanted communications from offenders as a source of fear and distress. It takes the form of telephone calls, mail and communication through third parties. Although it may not occur that frequently, when it does it has a disturbing effect on victims and those close to them.

8.34 The standing committee dealt with this issue at recommendation 17 of its report, and described initiatives taken by corrections and conditional release authorities. More particularly, section 95 of the *Corrections and Conditional Release Regulations* permits a penitentiary

warden to prohibit an inmate from communicating by mail or telephone with any person, if the safety of any person would be jeopardized, or the recipient or intended recipient requests in writing that they not receive any inmate communications.

8.35 At that time, the standing committee urged the Solicitor General to take further steps to prevent unwanted communications from inmates in federal correctional institutions. Both the Ministry of the Attorney General of Ontario Office for Victims of Crime and the Canadian Resource Centre for Victims of Crime have made proposals on this issue to the Sub-committee. The Office for Victims of Crime recommended that the Solicitor General direct both the Correctional Service and the Parole Board to take administrative measures, including insertion of notice of offender non-contact remedies, into all victim publications and communications.[113] The Resource Centre for Victims of Crime recommended that section 95 of the Regulations be amended to remove any discretion wardens may have in prohibiting unwanted inmate contact with victims. They also urged better monitoring of inmate telephone calls.[114]

8.36 The Sub-committee welcomes these recommendations as presenting concrete, practical options for consideration. However, the Sub-committee believes a more comprehensive approach to this issue is required. The frequency of unwanted inmate communication and the means by which it happens must be determined before effective counter measures can be developed. Therefore a strengthened version of the standing committee's recommendation is preferred as providing a more comprehensive approach to this issue.

RECOMMENDATION 40

The Sub-committee recommends that the Solicitor General of Canada, in conjunction with the Correctional Service of Canada and the National Parole Board, develop a comprehensive strategy to prevent any unwanted communications from offenders in federal correctional institutions, especially with victims.

VICTIMS' INFORMATION AND COMPLAINTS OFFICE

8.37 Since Parliament adopted the *Corrections and Conditional Release Act* in 1992, both the Correctional Service and the Parole Board have undertaken a number of initiatives to provide victims with case-specific and general information. They have also engaged in a number of outreach and public education activities including, among others, the publication of pamphlets, fact sheets, and newspaper inserts.

8.38 The National Parole Board operates toll-free telephone lines in most of its regions. It also operates a decision registry that makes its conditional release decisions available to victims

and other interested persons, and facilitates the attendance of observers, including victims, at its hearings. Moreover, the Parole Board has appointed a community liaison officer at each of its regional offices, to assist in providing victims with services and information to which they are entitled under the Act. The Correctional Service has appointed victim liaison coordinators at each of its regional offices, community parole offices, and correctional institutions. In both cases, these functions are performed by Correctional Service and Parole Board employees in addition to other daily responsibilities. The Correctional Service and the Parole Board jointly provide victims with one-stop services in the Ontario and Pacific regions out of Board offices, where all offender files are located.

8.39 Community liaison officers and victim liaison coordinators perform the following core duties, among others:

- receive requests for information from victims;
- obtain information from police and other sources to ascertain victim status;
- inform victims in writing of their status and provide information;
- contact victims when significant developments occur;
- maintain information regarding victim contacts;
- ensure relevant information provided by victims is forwarded to decision-makers;
- refer victims in need of counselling and other services to appropriate sources; and
- provide victims with other sources of information such as the Parole Board Decision Registry and access to Parole Board hearings as observers.[115]

8.40 A number of victims and organizations representing their interests have told the Sub-committee that even though the Correctional Service and Parole Board have put these services into place, they do not always get satisfaction. They say they cannot always contact the right person within these agencies who can provide them with accurate, up-to-date, case-specific or general victim information. They also complain about getting different, and at times conflicting, offender information they have requested and to which they are entitled. They also feel they are not always treated respectfully by the persons with whom they have to deal. At times, victims' or their families' interests are not fully taken into account, nor are they adequately consulted by Correctional Service or Parole Board boards of investigation reviewing the circumstances of corrections and conditional release system breakdowns, with tragic consequences.[116]

8.41 Finally, victims believe they do not have an independent, disinterested office or authority to which they can have recourse to effectively deal with their complaints. This point was made by the Canadian Resource Centre for Victims of Crime when it said:

> Victims have no Correctional Investigator or any equivalent if they feel that their rights have been ignored or violated. There is no official office where victims can go if they have concerns/complaints about issues where they feel they have been

mistreated or are not getting access to the information they deserve.[117]

8.42 A number of organizations making submissions to the Sub-committee agreed with this submission and made proposals for dealing with the issues it addresses. For example, the Canadian Police Association recommended that the Office of the Correctional Investigator be expanded or a parallel entity be established.[118] The Ministry of the Attorney General of Ontario Office for Victims of Crime proposed that the Office of the Correctional Investigator be expanded to also receive victims' and correctional staff's complaints about the National Parole Board and provincial parole boards.[119] Victims of Violence,[120] Mothers Against Drunk Driving,[121] and the Canadian Resource Centre for Victims of Crime[122] proposed that the Act be amended to provide for the establishment of a victims' ombudsman office, equivalent to that of the Correctional Investigator.

8.43 The Sub-committee seriously considered each of these alternative proposals, and others, before making its findings and developing its recommendations. The Correctional Service and the Parole Board have taken substantial steps since 1992 to meet the needs and requirements of victims, their families, and those close to them. But still more has to be done.

8.44 Because the corrections and conditional release system is complex, victims and their families are at times confronted by an informational maze to which they are unable to find the entry point. They first have to determine what their rights or entitlements are. Once this is found out, they have to then determine whether the Correctional Service or the Parole Board is where they have to go. Finally, they have to figure out whether they have to go to a regional office, a community parole office, or a correctional institution to get the offender information to which they are entitled. If victims or their families are dissatisfied at any point in this maze, they have no outside complaint body at their disposal to provide assistance.

8.45 If a victim or family member is not satisfied with the conditional release information received from the Parole Board Decision Registry, there is no established complaints mechanism to which they have access. If a victim or family member is dissatisfied with the treatment received when attending a Parole Board hearing as an observer, there is no independent mechanism in place to which that person has access. The same applies to victims denied observer status who are unhappy with the reason given for their exclusion. Victims and family members unhappy with the information from, or the consultation by, boards of investigation have no complaints mechanism open to them.

8.46 After examining all of these issues, the Sub-committee has concluded that victims have identified two needs. The first of these needs is for a clearly identified entry point for access to information to which they are entitled. This is especially important where there are several possible sources within the Correctional Service and the Parole Board where this information can be obtained. This access point could be available to obtain the required victim information

directly or to direct the victim to the source in the corrections and conditional release system where it can be obtained.

8.47 The second need identified by victims and those representing them is for an independent mechanism that can receive, investigate and resolve complaints they have about their contacts with the Correctional Service and the Parole Board. This mechanism would not be restricted to addressing individual complaints, but would also have to be able to conduct system-wide reviews when necessary.

8.48 The Sub-committee is convinced that such an independent information and complaints mechanism is required, but does not believe it needs all the powers and resources accorded to the Correctional Investigator as a specialist ombudsman office. The Sub-committee is convinced, however, that the informational and complaints needs of victims and their families for timely assistance can be met by amending the Act to add part IV to it, establishing the victims' information and complaints office.

8.49 This office should be a supplementary source of victim information, building upon, not replacing, what the Correctional Service and Parole Board have put in place since 1992. It should both provide victims with direct access to information and indicate where in the corrections and conditional release system they can find it. It should independently investigate, resolve and report upon complaints it receives from victims, their families and those close to them. The office should not be restricted to investigating individual complaints, but should also be enabled to address the system-wide context for victim concerns.

8.50 Its jurisdiction, however, should be restricted to information and complaints about the federal corrections and conditional release system, leaving other matters such as provincial and territorial parole and corrections, and police and prosecution responsibilities, to other levels of government.

8.51 The proposed victims information and complaints office, as well as the Correctional Investigator (recommended elsewhere in this report), should, in the Sub-committee's view, be accountable to both the Solicitor General and Parliament. This can be done by having its special and annual reports tabled simultaneously with the minister and in both Houses of Parliament.

8.52 The Sub-committee believes that a thorough consideration of the office's special and annual reports will be encouraged if they contain Correctional Service and Parole Board reaction to its findings, conclusions and recommendations. Elsewhere in this report, the Sub-committee has recommended that section 195 of the Act be amended to require that the Correctional Investigator's special and annual reports contain the Correctional Service's comments, not just a summary of them prepared by the Correctional Investigator. The Sub-committee believes a parallel recommendation should apply to the proposed victims

information and complaints office.

8.53 Finally, for accountability to have real meaning, there has to be assurance that special and annual reports receive parliamentary consideration. At the present time, section 192 and section 193 require the tabling in each House of Parliament of the Correctional Investigator's special and annual reports. They are then referred, under the standing orders of the House of Commons, to the appropriate standing committee for consideration. There is, however, no requirement that a standing committee actually review any such report. Standing committees are masters of their own agendas and work plans; the House only rarely directs their work. The Sub-committee has considered this issue elsewhere in this report where, in dealing with the Office of the Correctional Investigator, it has recommended that the Act be amended to require that its reports be referred to the relevant standing committee of the House of Commons for consideration. The Sub-committee believes the same recommendation should also apply to its proposed victims information and complaints office.

RECOMMENDATION 41

The Sub-committee recommends that:

(a) the *Corrections and Conditional Release Act* be amended by adding part IV to establish the victims' information and complaints office, to have jurisdiction over victim-related activities of both the Correctional Service of Canada and the National Parole Board;

(b) this office be empowered to both provide information to victims as defined in the Act and to receive, investigate, and resolve individual and system-wide victim complaints; and

(c) the office be empowered to table its special and annual reports containing Correctional Service and Parole Board comments on its findings and recommendations, simultaneously with the Solicitor General of Canada and Parliament. The Act should provide for the referral for consideration of such special and annual reports to the appropriate standing committee of the House of Commons.

103# Brief, p. 19.

104# R.S.C. 1985, c. P-21, as amended.

105# Brief, p. 2.

106# Brief, p. 7.

107# Brief, p. 5.

108# Brief, p. 6.

109# Brief, p. 12.

110# Brief, p. 5.

111# Brief, p. 16.

112# Brief, p. 18.

113# Brief, p. 8.

114# Brief, p. 16

115# Solicitor General, Working Group Studying the Provisions and Operation of the *Corrections and Conditional Release Act*, *Provisions Relating to Victims*, February 1998, p. 18-19.

116# July 19, 1999 letter to the Sub-committee from Steve Sullivan, President, Canadian Resource Centre for Victims of Crime.

117# Brief, p. 11.

118# Brief, p. 12.

119# Brief, p. 7.

120# Brief, p. 3

121# Brief, p. 3.

122# Brief, p. 9-13.

CHAPTER 9:

CORRECTIONS AND CONDITIONAL RELEASE SYSTEM-WIDE AND LONG-TERM ISSUES

9.1 It has become evident to the Sub-committee, in the course of its work, that there have been many changes in the corrections and conditional release system since the advent of the present legislation. The most obvious are to be seen in the physical appearance of many institutions. Other less evident developments are more far reaching.

9.2 The makeup of the inmate/offender clientele has changed. The demands on correctional and conditional release institutions and personnel are greater and more complex. New and different ways of managing the corrections and conditional release system have evolved. Change has occurred at an accelerated pace, making it more and more difficult for those working in the system to effectively perform their increasingly complex functions with acceptable degrees of satisfaction. Victims, and Canadians in general, have become more demanding of the corrections and conditional release system, as their confidence in it has declined.

9.3 This concluding chapter of the report deals with these and other related issues. They are grouped together here because they both directly and indirectly affect all components of the corrections and conditional release system, as well as those who work within it and are subjected to it. Several longer-term matters are also dealt with here.

TRAINING ISSUES

9.4 Paragraph 4(*j*) of the Act deals with the provision by the Correctional Service of training, career development and good working conditions. Correctional staff are also to be provided with opportunities to participate in the development of correctional policies and programs.

9.5 During its institutional visits, the Sub-committee was often confronted with the workplace issues faced by corrections and conditional release staff on a daily basis. The questions of staff training and refresher training were raised everywhere the Sub-committee visited. They came up in the context of work functions to be performed, in which staff are confronted with a difficult clientele in a work environment characterized by complexity, operational and policy change, and constrained resources,

9.6 The Union of Solicitor General Employees addressed this issue in its brief to the Sub-committee. They recommended that paragraph 4(*j*) of the Act be amended to allow staff organizations to be involved in the process of developing correctional policies and programs, and to require the provision of standardized mandatory, ongoing appropriate training, to be monitored by the Correctional Service at the national level.[123]

9.7 The Sub-committee agrees with these recommendations. The addition of these provisions to the guiding principles proposed elsewhere in this report would recognize the difficulties facing corrections staff in their work environment and ensure that the employer provided them with the tools required to do their jobs effectively and safely. This amendment to the proposed guiding principles would provide a basis for the resolution of many training and related issues.

RECOMMENDATION 42

The Sub-committee recommends that paragraph 4(*j*) of the *Corrections and Conditional Release Act* be amended to allow for staff organizations to be involved in the process of developing correctional policies and programs, and to require the provision of mandatory, ongoing appropriate staff training.

9.8 Training issues are of importance not only to those involved in the corrections and conditional release process, but also to Canadians who are affected by it or drawn into it in some way. These matters were of serious concern to the coroner's jury reviewing the events related to the death of Robert Gentles during the October 1993 involuntary removal of him from his Kingston Penitentiary cell, and 11 of its 74 recommendations addressed correctional staff training issues. These recommendations dealt with, among other matters, CPR training, refresher training, cultural awareness training, cell extraction techniques, and dealing with uncooperative inmates. The Correctional Service responded officially to these recommendations in January 2000. At that time, it set out the steps being taken to provide proper training in relation to these issues to its employees.

9.9 The Sub-committee believes that high-calibre training for those working within the corrections and conditional release system is essential. It will not only allow personnel to do their jobs at a higher level of competence, but will also enable them to respect the legal obligations placed upon them by Parliament in adopting the Act in 1992. They will also be better able to face the constantly changing work environment they confront on a daily basis. Their level of work satisfaction will increase and morale at the workplace will also improve.

9.10 The Sub-committee has reviewed training and refresher training materials and courses offered by both the Correctional Service and the Parole Board. They represent laudable efforts by both agencies at offering responsive training initiatives to their personnel. However, course

materials and training techniques in themselves do not tell the whole story. Availability and accessibility of training opportunities are at least as important as the offerings themselves.

9.11 The Sub-committee was frequently told during its institutional visits that training and retraining opportunities were not always easy to come by. Several reasons were identified for this state of affairs. Sometimes the required training was not available when required. At other times, staff were unable to attend training sessions because other personnel were not available to replace them during their absences. At still other times, staff were unable to benefit from training because the budget allocation was inadequate, already spent, or reallocated to other functions. Some of the training offerings were criticized, by some of those the Sub-committee met, as being too academic and not directly related to day-to-day job requirements.

9.12 Front-line staff frequently told the Sub-committee during its institutional visits that the functions they perform on a daily basis were often not reflected in the job descriptions related to the positions held by them. As well, they complained that the on-the-job training they received was often cursory, abbreviated and incomplete. They also told the Sub-committee they were not always kept up-to-date in a timely, appropriate manner about legislative, regulatory, and policy changes related to their daily functions.

9.13 The Gentles coroner's jury recommended in its findings that Correctional Service employees receive training in anti-racism, cultural awareness and harassment. The Correctional Service responded that it would continue to provide this kind of training to all employees. It was obvious to the Sub-committee during its institutional and other visits that the ethnocultural make-up of the offender population has changed in the last number of years. It is equally obvious that this varies from region to region of the country. Because of this, it has become more important than ever that both the Correctional Service and the Parole Board extend their recruitment and training programs so as to reflect and address the changing ethnocultural make-up of the offender population.

9.14 In its July 1999 responses to the Sub-committee's written questions, the Correctional Service indicated that its training expenditure represented about 2% of its salary/wage envelope, compared with Statistics Canada's 3%, Health Canada's 2.6%, Public Works Canada's 1.7%, and the Public Service Commission's 1.1%.

9.15 Appropriate and relevant professional training of personnel and members is essential for the Correctional Service and the Parole Board to effectively carry out the important responsibilities conferred on them. The Sub-committee is not in a position to determine whether current training efforts are at a level to ensure that they are commensurate with the duties imposed by Parliament. But the Correctional Service and the Parole Board have both the capacity and the expertise to evaluate, on an ongoing basis, the efficacy of the training opportunities made available to personnel at all levels of both agencies.

9.16 Because the corrections and conditional release system is still very much in a transitional phase, this is an opportune time for the Correctional Service and the Parole Board to comprehensively assess the adequacy, availability, accessibility, relevance and efficacy of their training offerings and of their job classification systems. Once this is done, they should keep this area of their corporate activity under continuous review. This must be done, not only to provide personnel with relevant, appropriate training and job advancement opportunities, but also to make clear the philosophical goal of ensuring they are employed in a continuous-learning work environment.

RECOMMENDATION 43

The Sub-committee recommends that the Correctional Service of Canada and the National Parole Board comprehensively review their training and job classification programs to determine their adequacy, availability, accessibility, relevance and efficacy. This comprehensive review should ensure that: all positions have detailed job descriptions reflecting on an ongoing basis the functions actually performed by employees and members; all employees and members are provided with an amendable manual containing current information required to perform their functions; and all employees and members have access to national on-the-job training directly related to the functions to be performed by them. Once this has been completed, both agencies should keep their training and job classification programs under continuous review.

HEALTH CARE

9.17 The provision of health care services to inmates is provided for at section 85 to section 89 of the Act. The Correctional Service is required to provide every inmate with essential health care and reasonable access to non-essential mental health care intended to contribute to the inmate's rehabilitation and successful reintegration into the community. In this context, health care means medical care, dental care and mental health care. These are to be provided by registered health care professionals in conformity with professionally accepted standards.[124]

9.18 When the Correctional Service makes inmate placement, transfer, administrative segregation and disciplinary decisions, it is required to take into account the offender's state of health and health care needs. It must also take these factors into account in preparing inmates for release and their supervision in the community.

9.19 In reply to the Sub-committee's questions, the Correctional Service, in July 1999, provided the following information on its queries related to health care. In 1998-99, the Correctional Service spent $82 million on the provision of health care to offenders, including mental health care. This represented about 8% of its total budget, while 30% of the health care

budget was used to defray professional services provided by specialists, physicians, dentists, nurses, psychiatrists, psychologists and other health specialists. This represented the single largest expense within this budgetary allocation. Other major costs included $5 million for outside hospitalization, $4.6 million for laboratory work and radiology, and $5.3 million for medications.

9.20 The Correctional Service told the Sub-committee that it experienced difficulty in attracting registered health care professionals, especially psychiatrists and psychologists, to its employ. This is partly because the remuneration it can offer is not competitive with that available in the private sector or offered by other levels of government.

9.21 The Sub-committee asked the Correctional Service to identify emerging health care needs and developments. The following health care issues were identified in its July 1999 written reply to this question:

- the prevalence of infectious diseases, especially hepatitis and HIV;
- offender mental health needs;
- an aging offender population;
- the requirements for chronic and palliative care;
- the increasing need for offender health care education;
- the introduction of harm-reduction measures to avoid the consequences of inmate substance abuse and risky behaviour; and
- the continuous introduction of new assessment techniques and health care treatment delivery.

9.22 Finally, the Correctional Service indicated to the Sub-committee that it anticipated health care budgetary shortfalls in coming years because of increases in the costs of diagnostics and medication, and costs associated with assessment and treatment needs. It concluded by asserting that it required a $10 million annual increase in its health care budget to meet identified emerging health care and mental health care needs.

9.23 The Sub-committee visited a number of health care and mental health units in the correctional institutions it toured. It was clear that those working in these environments were faced with addressing serious health care issues, often on a daily basis. From the Sub-committee's observations, the health care and related personnel often functioned in an environment of reduced, if not shrinking, resources. Although they carried out their duties in this difficult environment, health care and related personnel met by the Sub-committee demonstrated a commitment to their responsibilities, with an underlying element of frustration brought on by the reality of the restrained resources they must work with every day.

9.24 The effective provision of health care by the Correctional Service to inmates is one of the issues that cuts across many other matters dealt with throughout this report. Inmate health

care is important at all stages of sentence management, from the time an offender is received into custody, through various decisions that have to be made, until the offender is conditionally released back into the community. It is not just the offender's well-being that is at stake, but also the health of all those with whom he comes into contact, both within and outside of correctional institutions.

9.25 The adequacy and availability of high quality health care was raised with the Sub-committee by health care personnel, inmates, citizen advisory committee members and others. They recognized that Correctional Service health care personnel were doing the best they could with limited resources, but delays in specialist health care services and the adequacy of timely assessment were raised as major issues. They were invariably linked to limited resources and the difficulty of access to medical specialists able to provide appropriate treatment.

9.26 Thomas Mann of Prison Life Media described this situation graphically when he told the Sub-committee:

> Although there are a large number of highly conscientious and dedicated health care professionals working within Correctional Service Canada, they're commonly overextended, with few resources and limited support staff. Their clients have common histories of low socio-economic backgrounds, low self-esteem, and acute substance abuse, all of which contributes to generally poor physical and mental health.
>
> Stress in the correctional health care workplace is often extreme, due to the physical environment, clientele, tension with the other prison staff and officials, as well as the torment of knowing Canadians are dying as a result of inadequate policies.[125]

9.27 Another issue of concern to both Correctional Service staff and inmates is the availability of medical and nursing staff 24 hours a day in correctional institutions. One of the consequences of recent cost restraint measures is that the availability of health care resources in many penitentiaries has been reduced. One approach taken has been to eliminate the overnight nursing shift in all but the most remote facilities. As a result, Correctional Service non-medical and non-health care personnel have been trained in and have provided first aid and other types of emergency treatment.

9.28 Thomas Mann of Prison Life Media described this situation in the following graphic terms to the Sub-committee:

> In most institutions, many with populations exceeding 500 prisoners, no health care at all is available between the hours of 10 p.m. and 6 a.m. Access to

> emergency services could take many hours in some circumstances. Skeleton correctional staff are not trained as medical staff and also are represented in reduced numbers. A number of deaths have resulted recently from heroin overdoses that, tragically, could have been avoided with the administration of the drug Narcanon. Prison staff are not allowed to administer this drug; only health care professionals, who weren't on duty.[126]

9.29 This issue was also addressed by the Union of Solicitor General Employees in its submission to the Sub-committee. They proposed that the Act be amended to require the Correctional Service to provide inmates with health care at all times - 24 hours a day, 7 days a week. The explanation given for the need for this recommendation is that budget cutbacks in health care have resulted in correctional staff, who are not registered health care professionals, being required to provide emergency medical care.[127]

9.30 The Sub-committee shares these concerns. Health care, in all its forms, should be provided by fully trained certified health care and medical professionals. This should be the general rule, other than in exceptional, exigent circumstances where these professionals are not available and medical necessity dictates immediate care by those who are present and have received the required training.

9.31 The Correctional Service has in recent years adopted a health care services policy whereby nursing professionals are, in most instances, the first line of approach to health and medical care inmate intervention requirements. This has been undermined, to a certain extent, by the policy decision to not require the presence of nursing services at all times in correctional facilities. This step was taken as a cost-cutting measure. It unfairly puts a burden on correctional staff, who are not certified health professionals, to provide emergency medical assistance. It also puts the health of offenders suffering health or medical crises in some jeopardy.

9.32 The Sub-committee believes that the delivery of high-calibre health care services is an essential need that must be fulfilled in the most effective and efficient way possible. Failure to do so will cause harm, not only to offenders, but also to those with whom they come into contact, both within and outside of correctional institutions. Correctional Service personnel are doing the best they can with limited resources, but it is obvious they can deliver more effective health care services with a modest budgetary increase.

> **RECOMMENDATION 44**
>
> **The Sub-committee recommends that the Correctional Service of Canada increase the budgetary allocation provided for inmate health care, using current or increased fiscal resources, so as to ensure the delivery of quality services from within or outside of the Correctional Service.**

9.33 Correctional Service employees, their union representatives and others brought several important health care service concerns to the Sub-committee's attention. Front-line employees have the most direct contact on a daily basis with offenders in correctional institutions, and are most likely to be aware of the medical care requirements of those in their charge. This also means that these front-line correctional employees are most likely to have to deal with medical emergencies that may have an immediate or eventual impact on their own health and safety.

9.34 They, therefore, have two different types of concerns. These employees want to have access to information about the health and medical status of inmates with whom they work. They also want to be assured there is adequate health care assistance readily available to deal with emergencies and unusual occurrences.

9.35 Section 13 of the Act provides as follows:

> The institutional head may refuse to receive a person referred to in section 12 into the penitentiary if there is not a certificate signed by a registered health care professional setting out available health information and stating whether or not the person appears to be suffering from a dangerous, infectious or contagious disease.

9.36 This section provides the warden of a correctional institution with the discretion to not receive into custody an offender for whom a signed health certificate has not been provided. Correctional Service employees dealing directly with inmates want to have access to health care information as early as possible in an offender's sentence, so they may take the required precautions to protect their own health. To this end, the Union of Solicitor General Employees recommended in its brief that the `may' in section 13 of the Act be replaced by `will.' They also recommended that this provision be further amended to require the Correctional Service to advise staff members of this health information.

9.37 The Union of Solicitor General Employees provided the following rationale for this recommendation:

> Currently all staff have peace officer status and may be in contact with inmates. They have the right to know health information which could have an impact on their own health and safety. The health and safety concerns of staff should override the privacy concerns of the offender.[128]

9.38 The Union of Solicitor General Employees also recommended there be a consequential amendment to subsection 23(1) of the Act. This provision requires the Correctional Service to take reasonable steps to acquire five different types of information about an offender who is sentenced, committed, or transferred to a penitentiary. It was recommended by this union that

a sixth category of such information be added, that is, "a certificate signed by a registered health care professional setting out available health information."[129]

9.39 The Sub-committee shares the concerns expressed by Correctional Service front-line staff about the potential impact of inmate health and medical conditions on their own well-being. They should be provided with the information required to take steps to protect their own health. This is especially important now that the incidence of infectious diseases is greater than it was in the past.

9.40 There are, however, other interests that have to be considered in addressing these issues. Although it may be reduced, offenders still have a reasonable expectation of privacy that is protected by both the Charter of Rights and Freedoms and the *Privacy Act*. Any scheme for providing correctional staff with greater access to offender health and medical care information must provide a test for balancing release of this information against the privacy rights of the offender. The Sub-committee, however, agrees with the Union of Solicitor General Employees that it is possible to develop such a scheme by amending section 13 and section 23 of the Act.

RECOMMENDATION 45

The Sub-committee recommends that section 13 of the *Corrections and Conditional Release Act* be amended to require the warden of a correctional institution to refuse to receive an offender if there is not a certificate signed by a registered health care professional at the time of admission or transfer. This section should be further amended to provide for correctional staff access to such health care information, only to the extent strictly necessary to take steps to protect their own health.

RECOMMENDATION 46

The Sub-committee consequentially recommends that section 23 of the *Corrections and Conditional Release Act* be further amended to require the Correctional Service to acquire health care certificate information mentioned in section 13 in relation to offenders sentenced, committed, or transferred to a penitentiary.

DRUGS IN PRISON

9.41 One of the issues that arose in virtually every correctional facility visited by the Sub-committee was the entry, presence and use of drugs in an environment where they are not supposed to be found. The Sub-committee also learned that the brewing, distribution and consumption of alcohol are serious problems in many correctional institutions. The

consequences of the presence of alcohol and drugs in correctional facilities can be devastating to both the correctional environment and to what corrections personnel are trying to achieve in working with offenders.

9.42 Many offenders become involved in criminal activity because of substance abuse problems. Still others participate in and are convicted of drug-related criminal offences. Many offenders have substance abuse problems when they are incarcerated, and their correctional plans often require that they participate in substance abuse programs as part of the preparation for their conditional release back into the community. The availability and consumption of alcohol and drugs undermines these efforts at addressing offenders' criminogenic factors.

9.43 There are other consequences resulting from the presence of drugs and alcohol in correctional institutions. The possession, distribution and trafficking in drugs are criminal offences. The unlicensed brewing of alcohol for sale and distribution is illegal. These criminal activities in correctional facilities are often accompanied by unacceptable behaviour.

9.44 Drugs are brought into correctional institutions by all kinds of people, who enter and leave them for a wide variety of reasons. This is often done under threat or other forms of duress. Once inside correctional facilities, the distribution of drugs often gives rise to many of the phenomena associated with the drug trade in the community, such as indebtedness, intimidation and violent confrontations. Some of this also happens where alcohol is brewed in correctional facilities.

9.45 The drug and alcohol trade adversely affects the safety and security of correctional facilities, putting both Correctional Service personnel and offenders in jeopardy from some of the resulting activities. Drugs and alcohol also undermine the progress made by inmates in their substance abuse and other program participation.

9.46 It is within this context that the Correctional Service has put a national drug strategy into place[130] to address these issues. The basic policy objective of this strategy is to establish a safe, drug-free institutional environment in which offenders can be successfully reintegrated into the community as law-abiding citizens. To this end, the Correctional Service asserts that it will not tolerate drug or alcohol use, or the trafficking of drugs in its facilities.

9.47 Each penitentiary warden is required to develop and apply drug strategies that are a balance of detection, deterrence, and treatment. To achieve these goals, they are directed to use urinalysis, risk assessment of the effect of alcohol or drug use or trafficking, administrative measures, and disciplinary sanctions.

9.48 The Sub-committee believes the presence of alcohol and drugs in Correctional Service institutions is a serious problem that must be vigorously addressed by direct preventive

measures. Correctional Service policy is that drugs and alcohol will not be tolerated in its facilities. This basic policy must be reinforced by strong interdiction measures.

9.49 These measures alone will not adequately address the consequences for inmates of illicit drug and alcohol use. The Correctional Service already has some of these other preventive and curative policies and programs in place. They should be expanded, and other innovative approaches to inmate substance abuse problems should be explored and implemented. This should be done both within penitentiaries and in the community. Dealing effectively with offender substance abuse problems and the health and other consequences flowing from them will make successful reintegration more likely.

9.50 The Sub-committee believes these substance abuse programs are, and will continue to be, undermined if the entry of drugs into correctional facilities is not substantially reduced. It has learned that one of the major sources of drug entry into correctional institutions is through different forms of smuggling by those who enter and have access to these facilities. It is, therefore, important to detect and prevent this form of drug entry, to the greatest extent possible.

9.51 One way of doing this is to search all those entering and leaving a correctional facility. Both the Act and the Regulations provide for searches of different levels of intrusiveness, depending on the circumstances. The Sub-committee does not believe this should be changed. It does, however, believe that each person entering and leaving a correctional institution should be searched in a non-intrusive way, to determine whether that person is carrying drugs. At the present time, many institutions have ion scanners that can perform this function. There are undoubtedly other ways of conducting non-intrusive searches, and they should be resorted to in appropriate circumstances.

9.52 Because the drug smuggling problem is a serious one, the Sub-committee believes everyone, including offenders, visitors, contractors, volunteers, correctional staff and others entering and leaving a penitentiary should be subject to non-intrusive searches for the presence of drugs.

RECOMMENDATION 47

The Sub-committee recommends that the search and seizure provisions of the *Corrections and Conditional Release Act* be amended to require the non-intrusive search for the presence of drugs of all those entering and leaving penitentiaries.

9.53 Section 62 of the Act requires the Correctional Service to post warnings, at the entrance to its correctional institutions and at the visitor control points, that visitors and their vehicles are subject to being searched under the Act and the Regulations. As a consequence of the

previous recommendation, anyone entering or leaving a penitentiary would be subject to a non-intrusive search for the presence of drugs. Therefore, the Sub-committee believes section 62 should be amended to reflect this proposal.

RECOMMENDATION 48

The Sub-committee recommends that section 62 of the *Corrections and Conditional Release Act* be amended so that at each penitentiary there is a warning conspicuously posted at the entrance or the visitor control point that any person or vehicle entering or leaving a penitentiary is subject to being searched under the Act or Regulations, explicitly including reference to searches for the presence of drugs.

9.54 The Sub-committee has learned that one of the sources of drug smuggling into correctional institutions is visitors. It cannot be doubted that visiting privileges play an important role in the rehabilitation and reintegration of offenders. They allow for and strengthen spousal, family and community ties. These contacts can take different forms, such as - open visits in common visiting areas and private family visits in units established for that purpose.

9.55 These important elements of an offender's rehabilitation and reintegration are seriously undermined when drugs are carried into a correctional facility during family and community visits.

9.56 It must be made clear to inmates and those visiting them in correctional institutions that drug smuggling by visitors will not be tolerated and will have consequences for both the offender and the visitor. Therefore, the Sub-committee has concluded that where it has been determined that a visitor to an inmate has attempted to carry drugs into a correctional institution, the offender's right to have visitors, as well a visitor's right to visit an inmate, should be suspended for a determinate period of time. The consequence of bringing this type of contraband into a penitentiary should be made known to both inmates and their visitors.

RECOMMENDATION 49

The Sub-committee recommends that the *Corrections and Conditional Release Act* and the Regulations be amended to allow the warden of a correctional institution to suspend for a determinate period of time the right of an inmate to have visitors and/or the right of anyone to visit an inmate where it has been determined that a visitor has attempted to bring drugs into a penitentiary.

9.57 Although the Sub-committee believes these and other correctional institution drug interdiction strategies are necessary, if implemented they will only go some way toward

stemming the flow of drugs. Even if these approaches are successful, the health care and other consequences will still have to be properly addressed in any credible drug strategy. Any problems associated with drug and alcohol use by inmates while in correctional institutions will largely be brought with them back into the community. Consequently, to be effective, any drug and alcohol abuse programs will have to be based in both institutions and the community.

MAXIMUM-SECURITY/SPECIAL-NEEDS WOMEN

9.58 The Kingston Prison for Women opened in 1934. From almost the time it opened, there have been calls from commissions and committees for its closure and replacement by other types of institutions. The most recent concerted effort at its closure began in 1990. In that year, the Task Force on Federally Sentenced Women in its report, *Creating Choices*, called for the closure of the Kingston Prison for Women and its replacement by four regional institutions for women and a healing lodge for Aboriginal women offenders. These new facilities were to be administered and provide offender programs based on a women-centered approach to corrections, different from that offered in male correctional institutions.

9.59 The federal government in 1990 announced that it accepted these proposals and set about the preparatory work necessary for their implementation. The Correctional Service during the mid-1990's opened four regional facilities in Truro, Nova Scotia; Joliette, Québec; Kitchener, Ontario; and Edmonton, Alberta. The healing lodge for Aboriginal women offenders was opened in Maple Creek, Saskatchewan. Federally sentenced women offenders were also incarcerated at the Burnaby Correctional Centre for Women under an exchange of services agreement with the British Columbia government.

9.60 Shortly after some of the regional institutions opened, a number of escapes and other events made it clear to the Correctional Service that these new facilities were not adequate or appropriate in their then-current form for a small proportion of federally sentenced women offenders. As a result, the Correctional Service took steps to have these maximum security and special needs women offenders incarcerated in small, self-contained units in men's correctional institutions and the still-open Kingston Prison for Women. This arrangement met with no one's satisfaction. The Correctional Service committed itself to finding a long-term, permanent solution to the issues surrounding the incarceration of this group of federally sentenced women offenders.

9.61 Because the Sub-committee was aware of the complexity of the issues surrounding the incarceration of federally sentenced women offenders, it visited as many of the women's correctional institutions as possible in the time available to it to carry out this review. The Sub-committee toured several of the regional facilities for women offenders, the healing lodge for Aboriginal women offenders, several of the small units for maximum security and special needs women offenders located in men's correctional facilities, and the remaining occupied parts of the Kingston Prison for Women.

9.62 It became clear to the Sub-committee, as it had for many before it, that the closing of the Kingston Prison for Women was long overdue. This should not be seen as a reflection on the front-line workers and management teams working with the federally sentenced women housed there - they were doing the best they could in difficult circumstances, dealing with a challenging offender population in an aged building, with a deteriorating plant and infrastructure.

9.63 The stand-alone units for maximum security and special needs women offenders visited by the Sub-committee were unsatisfactory for different reasons. Because they were built recently, the physical plant was not an issue. Each of them housed a small number of women offenders with different kinds of needs and criminogenic factors to be addressed. Consequently, the delivery of appropriate programs was difficult, although the front-line staff working with these inmates were committed to the challenge of doing the best they could in difficult circumstances. As well, the movement of these women outside of these units for health care and other needs often proved to be logistically difficult since any part of the men's institution near to the movement of any women offenders had to be shut down during their movement from place to place. Finally, there was some question as to the appropriateness of housing women in a male correctional facility, especially in light of the fact that many of these women had suffered abuse from men at some stage of their lives.

9.64 The Sub-committee's visits to several regional facilities for women offenders and the healing lodge for Aboriginal women were a sharp contrast to what had been seen elsewhere. To begin with, the institutions were recently built, with a cottage-type architecture, where the women inmates lived together in small numbers, taking responsibility for many of their daily housekeeping and other needs. They contained women classified as medium and minimum-security. The programing offered was women-centered, with a focus different from that offered in the traditional correctional environment. Many of the primary workers met by the Sub-committee in these facilities were brought in from elsewhere in the Correctional Service or from outside the Service, but with relevant experience and expertise acquired elsewhere. It was readily apparent that those working in these new facilities were committed to the values they represent and highly motivated to put them into practice.

9.65 The Sub-committee is acutely aware of the difficult issues underlying any approach to dealing fairly and effectively with maximum-security and special-needs women offenders. This may be one of the most intractable issues to be addressed both by this report and by the Correctional Service. It is likely not susceptible to a simple solution.

9.66 The Correctional Service in September 1999 announced its approach to these issues. Its `intensive intervention strategy' involves: upgrading the enhanced units at each of the four regional facilities so that they may house the maximum-security women now in male facilities; building new structured living environment houses for special-needs women in each of the regional facilities; and providing specialized programming through interdisciplinary teams to

both categories of women offenders. It is expected that this will be accomplished by September 2001, and that the Kingston Prison for Women will be closed in its entirety at that time.

9.67 It is not possible for the Sub-committee to comment critically on this strategy - it would be unfair to do so until it is further on in its implementation. Several general observations, however, are appropriate. When it announced this strategy, the Correctional Service allowed itself 24 months to implement it in its entirety. The Sub-committee expects that if this can be done more quickly than that, it should be - it is unacceptable to further delay the long-promised closure of the Kingston Prison for Women. The Sub-committee believes this Correctional Service strategy will have greater credibility with the public and others if there is involvement of the community and those interested in women's corrections issues in its further elaboration and implementation. This is a function that could be performed by the national women's advisory committee, whose establishment is recommended elsewhere in this report.

9.68 The Sub-committee recommends at the end of this report that there be another five-year review of the federal corrections and conditional release system. That recommendation also sets out some of the key issues it believes should be addressed at that time. Because of the complexity of the issues dealt with in this part of the chapter, and because the Correctional Service strategy is just under way and will have reached maturity in five years, the Sub-committee believes that the issues dealt with in this part of the report should also be considered as a central part of the next statutory review. Not only will the strategy have been completed by then, but the Correctional Service will also have had time to collect data and provide Parliament with its assessment of this strategy for dealing with maximum-security and special-needs women offenders.

DNA DATABANK LEGISLATION

9.69 The standing committee considered DNA databank legislation (Bill C-3) in the last session of this Parliament at the same time as it reviewed the DNA provisions (Bill C-104) already included in the *Criminal Code*. It released its findings and recommendations by tabling on May 15, 1998 its ninth report in the House of Commons.

9.70 That report contained an undertaking that the standing committee would review elements of the DNA databank legislation as part of its statutorily required review of the provisions and operation of the *Corrections and Conditional Release Act*. The establishment of this Sub-committee included, by implication, this undertaking within its mandate.

9.71 The standing committee described the undertaking in the following terms:

> The Committee agrees that it will, during its comprehensive review of the provisions and operation of the *Corrections and Conditional Release Act*,

reconsider the circumstances under which DNA samples can be collected retrospectively from offenders already serving sentences of imprisonment.

9.72 The Sub-committee has considered this issue and has decided not to make any findings or recommendations. It has come to this conclusion because it does not have sufficient data and other forms of information for it to make an informed review of this subject.

9.73 It should be noted, however, that the standing committee agreed, in its ninth report, to revisit the DNA databank legislation before the end of this Parliament. The purpose of this review will be to determine whether any legislative, technological or resource correction to that legislation is required. The issue referred to this Sub-committee should be dealt with in this broader context when the standing committee revisits the DNA databank legislation.

PLAIN LANGUAGE LEGISLATION

9.74 One of the complaints Canadians have about legislation is its complexity. Not only do legislators deal with complex issues of public concern, but they sometimes do so by adopting laws drafted in such a way as to be almost incomprehensible to the ordinary citizen. As can be expected, the *Corrections and Conditional Release Act* also suffers from this malady.

9.75 Many whom the Sub-committee heard from and met with complained about the complexity of the Act and the obscurity of much of its drafting style. These concerns were expressed by those who have to apply the law on a daily basis; those who have to provide training and be trained in the application of the Act; those whose sentences are administered under the Act; and those from outside the corrections and conditional release system who try to understand the Act and its application.

9.76 To fully understand the Act and its day-to-day application, it is not enough to read it on its own. Other documents must also be consulted, such as the Regulations, Commissioner's directives, institutional standing orders, institutional post orders, directives, policy manuals, and other similar instruments. These attempts to make a complex system easier to manage often have the opposite effect.

9.77 The complexity of the corrections and conditional release system is compounded by the drafting style exemplified in the Act itself. The Sub-committee came across a number of examples of

- overly complex drafting - see, for example, section 129 to section 132 of the Act dealing with detention during statutory release;
- related elements of conditional release programs found in widely separated parts of the Act - see, for example, section 17 of the Act dealing with escorted temporary absences and section 115 to section 117 dealing with unescorted temporary absences; and

- structurally related elements of the institutions established by the Act not located in close proximity to one another - for example, section 146 and section 147 of the Act establish the Appeal Division of the National Parole Board, while the core jurisdiction and functions of the Parole Board are established under section 103 to section 111.

9.78 The complex and sometimes obscure drafting style found in the Act makes it difficult at times to ascertain what Parliament intended to achieve. The Sub-committee believes legislation must be drafted so it is understandable by all citizens, and not just those with special expertise. It has therefore concluded that any amendments to the Act should be drafted in plain language to make them understandable by those subject to it, applying it, and interested in it. The Sub-committee also believes the Act in its present form should be reviewed, with the purpose of simplifying its structure, organization and language.

RECOMMENDATION 50

The Sub-committee recommends that the *Corrections and Conditional Release Act* be reviewed with the goal of simplifying its structure, organization and language.

RECOMMENDATION 51

The Sub-committee further recommends that any future amendments to the *Corrections and Conditional Release Act* be drafted in plain language.

PUBLIC EDUCATION

9.79 As a consequence of the complexity of the corrections and conditional release system, there is a prevalence of misinformation about it and, frequently, an absence of reliable information. This sometimes leads to conclusions and beliefs that are not justified by the facts.

9.80 The functions performed by the different elements of the corrections and conditional release system are very often not clearly understood. For example, there is often the mistaken belief that the Parole Board supervises conditionally released offenders. This function is actually performed by the Correctional Service. Different forms of conditional release are often confused with one another. As an example, it may be said that an offender has been released on parole, when they may be in the community under statutory release, probation, or judicial interim release (a form of bail); only the first of these is available under the Act.

9.81 This lack of reliable information has had the effect of undermining public confidence in the corrections and conditional release system. Both the Correctional Service and the Parole Board realize this and have taken steps to provide the public with information. This has been done by speaking and reaching out to community groups; meeting with newspaper editorial

boards; facilitating tours of correctional institutions and attendance at Parole Board hearings; cooperating in the production of television documentaries; participating in meetings and conferences; and producing and distributing pamphlets, fact sheets and newspaper inserts. Both agencies also maintain Internet Web sites, and have information and communications officers in all regions of the country.

9.82 Both the Correctional Service and the Parole Board are to be commended for these and other public education efforts, but they are not enough. On several occasions during the Sub-committee's travel to different parts of the country, the media were full of accounts of events occurring at correctional institutions it visited. Once there, the Sub-committee was able to determine that the accounts of these incidents communicated in the media were incomplete, misleading and oversimplified. Although the agencies had attempted to deal with these events, their efforts were not timely enough and, ultimately, were ineffective.

9.83 The Sub-committee believes both the Correctional Service and the Parole Board must review their communications and public education strategies with the goal of making them more effective in countering misinformation. Any effective communications and public education strategy should not just involve Correctional Service and Parole Board personnel.

9.84 Increased efforts should also be made to involve non-government organizations, including those with whom both agencies have contractual relationships as service providers. They should also involve the members of citizen advisory committees already in existence, and those whose establishment the Sub-committee recommends in this report. Former offenders, who have been successfully rehabilitated, should be included as examples of the corrections and conditional release system working effectively.

RECOMMENDATION 52

The Sub-committee recommends that the Correctional Service of Canada and the National Parole Board review their communications and public education strategies with the goal of countering misinformation about the corrections and conditional release system.

A FURTHER FIVE-YEAR REVIEW

9.85 As indicated earlier in this report, this review is the result of an obligation imposed by Parliament when it adopted the Act in 1992. In preparation for this process, the Department of the Solicitor General released a consultation paper and a number of related technical papers. A summary of the results of the Department's consultation was also published at a later date. All of these documents were used by the Sub-committee as resource material essential to its completion of this comprehensive review. The Correctional Service, the Parole Board, the Office of the Correctional Investigator, and the Department of the Solicitor General also

provided the Sub-committee with many documents and much of the data it requested.

9.86 All of this information enabled the Sub-committee to identify and address the issues considered in this report. A reading of this report, however, will make it clear that many matters it discusses are in flux because of recent changes and developments still on the horizon. This report provides policy-makers and legislators with the Sub-committee's views on the directions it believes the corrections and conditional release system should take.

9.87 The Sub-committee believes, however, that its work should not be the end of Parliament's role in relation to continued developments in corrections and conditional release. It is, indeed, just the beginning. The Sub-committee believes there should be another comprehensive review of the *Corrections and Conditional Release Act* by Parliament in five years. Parliament will be able to fully evaluate the corrections and conditional release system at that time, as it continues to evolve, and build upon the data gathered and information developed by the government institutions involved in this review.

RECOMMENDATION 53

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to require that a further comprehensive review of its provisions and operation be undertaken in five years by a committee of the House of Commons. If the Act is not amended, this review should commence within five years of the government response to this report. The next five-year review should be concentrated on: the steps undertaken to implement the findings and recommendations contained in this report; statutory release; maximum-security/special-needs women offenders; and the memorandum of understanding between the Correctional Service and the Correctional Investigator.

123# Brief, p. 2.

124# Further details can be found at Commissioner's Directives 800 (1997-12-22) entitled *Health Services*, and 850 (1995-05-01) entitled *Mental Health Services*.

125# *Evidence*, May 13, 1999, 10:50.

126# Ibid., 10:55.

127# Brief, p. 6.

128# Brief, p. 3.

129# Ibid., p. 4.

130# More details can be found at Commissioner's Directive 585 (1996-01-02) entitled *National Drug Strategy*.

RECOMMENDATIONS

RECOMMENDATION 1

The Sub-committee recommends that section 4 and section 101 of the *Corrections and Conditional Release Act* be amended so that the paramountcy of the protection of society is established as the (stand-alone) basic principle applicable to the Correctional Service of Canada and the National Parole Board. What remains of section 4 and section 101 is to be retained, as amended, as guiding principles.

RECOMMENDATION 2

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended by adding child pornography offences and criminal organization offences (as defined in section 2 of the *Criminal Code*) to the schedules. As it further amends criminal legislation, Parliament should consider adding other offences such as deceptive telemarketing to the schedules as a means of denouncing criminal conduct.

RECOMMENDATION 3

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to allow a police officer observing an offender to be in breach of a condition of any form of conditional release to arrest that offender without warrant.

RECOMMENDATION 4

The Sub-committee recommends that section 19 of the *Corrections and Conditional Release Act* be amended to require the Correctional Service to investigate and report to the Commissioner of Corrections on the job-related death of, or serious bodily injury to, correctional staff.

RECOMMENDATION 5

The Sub-committee recommends that section 17 of the *Corrections and Conditional Release Act* be amended to require that only Correctional Service staff be authorized to act as escorts in the escorted temporary absences accorded to maximum-security inmates.

RECOMMENDATION 6

The Sub-committee recommends that the Correctional Service of Canada increase its efforts and allocate additional resources (1) to obtain more quickly the information considered necessary to conduct offender intake assessments that are effective for offenders' safe reintegration into the community; and (2) to ensure that the information it receives is accurate and complete.

RECOMMENDATION 7

The Sub-committee recommends that the Correctional Service of Canada increase its efforts in community programs and allocate more resources to them, in order to ensure that offenders on conditional release receive the support considered necessary for their successful reintegration into the community.

RECOMMENDATION 8

The Sub-committee recommends that paragraph 4(*h*) and subsection 151(3) of the *Corrections and Conditional Release Act* be amended by adding offenders who are young, elderly, or have serious health problems to the list of offender groups considered to have special needs.

RECOMMENDATION 9

The Sub-committee recommends that the Correctional Service of Canada create a deputy commissioner for Aboriginal offenders position, with powers and responsibilities similar to those of the existing deputy commissioner for women position.

RECOMMENDATION 10

Since previous Auditor General of Canada audits of the process of reintegration into the community have not addressed issues specific to women or Aboriginal offenders, the Sub-committee recommends that the Auditor General carry out an evaluation of the process of reintegration into the community available to women, as well as an evaluation of the process available to Aboriginal offenders in the federal correctional system.

RECOMMENDATION 11

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to require Correctional Service Canada to review all cases eligible for statutory release in order to determine whether they should be referred to the National Parole Board for a detention review.

RECOMMENDATION 12

The Sub-committee recommends also that the *Corrections and Conditional Release Act* be amended to require the National Parole Board to review all cases eligible for statutory release in order to determine whether special conditions need to be attached to the inmate's release and, if so, to identify these conditions.

RECOMMENDATION 13

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to ensure that the accelerated parole review procedure is not available to offenders incarcerated for offences listed in Schedule II to the Act, regardless of whether there has been a judicial determination of parole eligibility.

RECOMMENDATION 14

The Sub-committee also recommends that the *Corrections and Conditional Release Act* be amended to ensure that the National Parole Board, in reviewing the cases of offenders eligible for accelerated parole review and determining whether they should be released on day parole or full parole, takes into account the general recidivism criterion.

RECOMMENDATION 15

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended in order to combine work releases and escorted and unescorted temporary absences into a single structure and to make the Correctional Service responsible for granting, renewing and extending these forms of conditional release at its discretion.

RECOMMENDATION 16

The Sub-committee recommends that a provision be added to the *Corrections and Conditional Release Act* providing offenders with the possibility of requesting National Parole Board reviews of Correctional Service decisions concerning escorted and unescorted temporary absences.

RECOMMENDATION 17

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to include, in the list of grounds for granting escorted and unescorted temporary absence release, participation in educational, occupational, and life-skills training programs.

RECOMMENDATION 18

The Sub-committee recommends that section 116 of the *Corrections and Conditional Release Act* be amended to allow institutional heads to grant escorted temporary absences for group activities considered likely to foster offenders' socialization.

RECOMMENDATION 19

The Sub-committee recommends that section 121 of the *Corrections and Conditional Release Act* be amended to make offenders serving life sentences or indeterminate sentences who are terminally ill eligible for parole on compassionate grounds. In these cases, the Act must provide that National Parole Board decisions are subject to approval by the Chair of the Board.

RECOMMENDATION 20

The Sub-committee recommends that section 121(1)(*d*) of the *Corrections and Conditional Release Act* be amended so that offenders subject to deportation orders under the *Immigration Act* are considered exceptional cases and may thus be granted parole solely for the purposes of deportation at any time during their sentences.

RECOMMENDATION 21

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to provide for the adjudication (by independent chairpersons appointed by the Solicitor General as part of the inmate discipline process) of involuntary administrative segregation cases every 30 calendar days and of voluntary administrative segregation cases every 60 calendar days.

RECOMMENDATION 22

The Sub-committee recommends that section 30 of the *Corrections and Conditional Release Act* be amended to add a new level of security classification to be known as special security and that section 18 of the *Corrections and Conditional Release Regulations* also be amended to define the new level of security classification.

RECOMMENDATION 23

The Sub-committee recommends that the *Corrections and Conditional Release Act* and the *Corrections and Conditional Release Regulations* be amended to provide a complete legal foundation for the continued existence of the special handling unit and the transfer, review and monitoring measures to which it is subject in its day-to-day operation. Provision should be made in these amendments for representation from outside the Correctional Service on the Special Handling Unit National Review Committee.

RECOMMENDATION 24

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to allow for the appointment of independent chairpersons and senior independent chairpersons for five-year renewable terms, during good behaviour, by the Solicitor General. The amendment should specify that independent chairpersons are to exercise adjudicative functions with respect to administrative segregation and serious disciplinary offences. Finally, the amendment should set out criteria to be applied in the selection and appointment of independent chairpersons.

RECOMMENDATION 25

The Sub-committee recommends that subsection 163(3) of the *Corrections and Conditional Release Regulations* be amended to require the National Parole Board to render, wherever possible, post-suspension decisions within 45 days of case referral or offender reincarceration.

RECOMMENDATION 26

The Sub-committee recommends that section 141 of the *Corrections and Conditional Release Act* be amended to require the National Parole Board to advise an offender in writing of the reasons for withholding information to be used in the consideration of a case. The Parole Board should also be prohibited from considering withheld information where the offender has not been advised in writing of the reasons for non-disclosure.

RECOMMENDATION 27

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to prevent National Parole Board members appointed to the Appeal Division from participating in any other parole decisions during their terms as members of that Division. Regional members of the National Parole Board should also be prevented from

participating in Appeal Division decisions. At least one member of each Appeal Division panel reviewing a case should be a lawyer.

RECOMMENDATION 28

The Sub-committee recommends that sections 192 and 193 of the *Corrections and Conditional Release Act* be amended so that the annual and special reports of the Correctional Investigator are submitted simultaneously to the Minister and to Parliament.

RECOMMENDATION 29

The Sub-committee recommends that section 192 and section 193 of the *Corrections and Conditional Release Act* be amended so that the annual and special reports of the Correctional Investigator are automatically referred to the standing committee of the House of Commons responsible for considering the activities of the Office of the Correctional Investigator.

RECOMMENDATION 30

The Sub-committee recommends that section 195 of the *Corrections and Conditional Release Act* be amended so the responses by the Correctional Service to the recommendations by the Correctional Investigator are included in the Correctional Investigator's annual and special reports.

RECOMMENDATION 31

The Sub-committee recommends that section 170 of the *Corrections and Conditional Release Act* be amended to require the Correctional Investigator to conduct an independent investigation when an inmate is seriously injured or dies, even if another investigation is already being conducted under section 19 or section 20 of the Act.

RECOMMENDATION 32

The Sub-committee recommends that the budget of the Office of the Correctional Investigator be increased in order to expand the number of investigators and cover directly related expenses such as office equipment, communications, and travel required to conduct investigations.

RECOMMENDATION 33

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to include a provision requiring the Correctional Service to establish representative local citizens' advisory committees at each penitentiary and parole office in Canada, and including a general description of these committees' advisory, independent observer and liaison roles.

RECOMMENDATION 34

The Sub-committee recommends that section 82 of the *Corrections and Conditional Release Act* be amended to require the Correctional Service to establish regional Aboriginal advisory committees.

RECOMMENDATION 35

The Sub-committee recommends that section 77 of the *Corrections and Conditional Release Act* be replaced by a section requiring the Correctional Service to establish a national women's advisory committee responsible for advising it on providing appropriate correctional services to women offenders.

RECOMMENDATION 36

The Sub-committee recommends that paragraphs 26(1)(*b*) and 142(1)(*b*) of the *Corrections and Conditional Release Act* be amended to allow for the provision to victims, as defined in the Act, of offender information related to offender program participation, offender institutional conduct, and new offences committed by a conditionally released offender resulting in reincarceration.

RECOMMENDATION 37

The Sub-committee recommends that subparagraph 26(1)(*b*)(ii) of the *Corrections and Conditional Release Act* be amended to allow for the Correctional Service of Canada to advise victims (as defined in the Act) in a timely manner, and wherever possible in advance, of the planned, anticipated, or scheduled routine transfer of inmates.

RECOMMENDATION 38

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to facilitate victim access, for consultation purposes at Correctional Service or Parole Board offices, to audiotape recordings of Parole Board hearings.

RECOMMENDATION 39

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to allow victims, as defined in section 2 and section 99, to presumptively attend and personally read statements, at the beginning of Parole Board hearings, that set out the impact of the offence on them since the offender's conviction, or any concerns they have about the conditions of any release. Such victims should also be able to present their statements on audiotape or videotape.

RECOMMENDATION 40

The Sub-committee recommends that the Solicitor General of Canada, in conjunction with the Correctional Service of Canada and the National Parole Board, develop a comprehensive strategy to prevent any unwanted communications from offenders in federal correctional institutions, especially with victims.

RECOMMENDATION 41

The Sub-committee recommends that:

(a) the *Corrections and Conditional Release Act* be amended by adding part IV to establish the victims' information and complaints office, to have jurisdiction over victim-related activities of both the Correctional Service of Canada and the National Parole Board;

(b) this office be empowered to both provide information to victims as defined in the Act and to receive, investigate, and resolve individual and system-wide victim complaints; and

(c) the office be empowered to table its special and annual reports containing Correctional Service and Parole Board comments on its findings and recommendations, simultaneously with the Solicitor General of Canada and Parliament. The Act should provide for the referral for consideration of such special and annual reports to the appropriate standing committee of the House of Commons.

RECOMMENDATION 42

The Sub-committee recommends that paragraph 4(*j*) of the *Corrections and Conditional Release Act* be amended to allow for staff organizations to be involved in the process of developing correctional policies and programs, and to require the provision of mandatory, ongoing appropriate staff training.

RECOMMENDATION 43

The Sub-committee recommends that the Correctional Service of Canada and the National Parole Board comprehensively review their training and job classification programs to determine their adequacy, availability, accessibility, relevance and efficacy. This comprehensive review should ensure that: all positions have detailed job descriptions reflecting on an ongoing basis the functions actually performed by employees and members; all employees and members are provided with an amendable manual containing current information required to perform their functions; and all employees and members have access to national on-the-job training directly related to the functions to be performed by them. Once this has been completed, both agencies should keep their training and job classification programs under continuous review.

RECOMMENDATION 44

The Sub-committee recommends that the Correctional Service of Canada increase the budgetary allocation provided for inmate health care, using current or increased fiscal resources, so as to ensure the delivery of quality services from within or outside of the Correctional Service.

RECOMMENDATION 45

The Sub-committee recommends that section 13 of the *Corrections and Conditional Release Act* be amended to require the warden of a correctional institution to refuse to receive an offender if there is not a certificate signed by a registered health care professional at the time of admission or transfer. This section should be further amended to provide for correctional staff access to such health care information, only to the extent strictly necessary to take steps to protect their own health.

RECOMMENDATION 46

The Sub-committee consequentially recommends that section 23 of the *Corrections and Conditional Release Act* be further amended to require the Correctional Service to acquire health care certificate information mentioned in section 13 in relation to offenders sentenced, committed, or transferred to a penitentiary.

RECOMMENDATION 47

The Sub-committee recommends that the search and seizure provisions of the *Corrections and Conditional Release Act* be amended to require the non-intrusive search for the presence of drugs of all those entering and leaving penitentiaries.

RECOMMENDATION 48

The Sub-committee recommends that section 62 of the *Corrections and Conditional Release Act* be amended so that at each penitentiary there is a warning conspicuously posted at the entrance or the visitor control point that any person or vehicle entering or leaving a penitentiary is subject to being searched under the Act or Regulations, explicitly including reference to searches for the presence of drugs.

RECOMMENDATION 49

The Sub-committee recommends that the *Corrections and Conditional Release Act* and the Regulations be amended to allow the warden of a correctional institution to suspend for a determinate period of time the right of an inmate to have visitors and/or the right of anyone to visit an inmate where it has been determined that a visitor has attempted to bring drugs into a penitentiary.

RECOMMENDATION 50

The Sub-committee recommends that the *Corrections and Conditional Release Act* be reviewed with the goal of simplifying its structure, organization and language.

RECOMMENDATION 51

The Sub-committee further recommends that any future amendments to the *Corrections and Conditional Release Act* be drafted in plain language.

RECOMMENDATION 52

The Sub-committee recommends that the Correctional Service of Canada and the National Parole Board review their communications and public education strategies with the goal of countering misinformation about the corrections and conditional release system.

RECOMMENDATION 53

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to require that a further comprehensive review of its provisions and operation be undertaken in five years by a committee of the House of Commons. If the Act is not amended, this review should commence within five years of the government response to this report. The next five-year review should be concentrated on: the steps undertaken to implement the findings and recommendations contained in this report; statutory release; maximum-security/special-needs women offenders; and the memorandum of understanding between the Correctional Service and the Correctional

Investigator.

APPENDIX A
TERMS OF REFERENCE

Parliament adopted the *Corrections and Conditional Release Act* in 1992 - it has been amended several times since then. The Act provides the legislative basis for the Correctional Service of Canada, the National Parole Board, and the Office of the Correctional Investigator.

The Correctional Service of Canada is responsible for the administration of the sentences of those serving terms of imprisonment in excess of two years. Through a variety of programs and services, it prepares inmates for their eventual return into the community. Once an inmate has been returned to the community under some form of conditional release, the Correctional Service of Canada is responsible for the supervision of that offender.

The National Parole Board is an independent administrative tribunal with exclusive authority to grant, deny, terminate or revoke the conditional release of federal inmates from federal institutions, and provincial and territorial inmates from provincial and territorial institutions in jurisdictions without their own parole boards. It also has authority to order inmates detained from their statutory release date to the end of sentence. It also deals with pardon applications under the *Criminal Records Act*.

The Correctional Investigator acts as an ombudsman for inmates serving sentences in federal institutions. Independent of the Correctional Service of Canada, he may investigate complaints on his own initiative, on request from the Solicitor General of Canada, or on receipt of a complaint from or on behalf of an inmate. To ensure independence, he reports to the Solicitor General, who receives his annual reports and tables them in both Houses of Parliament.

The *Corrections and Conditional Release Act* also defines and provides processes in relation to the following forms of conditional release : work release, temporary absence, day parole, parole, and statutory release.

The Act requires that its provisions and operation be comprehensively reviewed by a committee of Parliament. This Subcommittee is the committee designated for that purpose. As part of the process leading to this parliamentary review, the Solicitor General, in March 1998, released a Consultation Paper and a number of supporting technical papers. In October 1998, he released a report on the consultation he and his officials conducted between March and June.

In carrying out its review, the Subcommittee will refer to and make use of the work already done by the Solicitor General of Canada. It does not, however, necessarily consider itself to be bound or limited by the issues raised or addressed in the Solicitor General's Consultation Paper or the process following from it.

To assist those making submissions to it, the Subcommittee has identified the following general issues it expects to address during its process. This enumeration is not intended to be exhaustive or limiting - there are undoubtedly other matters that the Sub-committee should hear submissions about - those presenting briefs and appearing before the Sub-committee are invited to identify and address them.

- How effectively does the Correctional Service of Canada administer sentences and prepare inmates for their eventual return into the community? How well does this process assure both community safety and offender reintegration? How well does the Correctional Service of Canada provide accurate, timely information to the National Parole Board so that it may make fully informed conditional release decisions? How effectively does the Correctional Service of Canada supervise conditionally released offenders living in the community?
- Does the National Parole Board make appropriate conditional release decisions which take into account both community safety and effective offender reintegration? Do Board members have the accurate, complete, timely information required to make such conditional release decisions? Do Board members have access to the necessary expertise to make effective conditional release decisions?
- How effectively do the various conditional release decision makers deal with the granting, denial, termination or revocation of work release, temporary absence, day parole, parole, and statutory release? How effective are the provisions allowing for the possible detention of an inmate beyond statutory release date to the end of sentence?
- How effectively are the functions of the Correctional Investigator carried out? Should they be extended beyond their present scope to include such matters as the investigation of correctional or conditional release lapses with serious consequences? Should a similar office be established to assist victims with concerns about the Correctional Service of Canada and the National Parole Board?

DECEMBER 1998

APPENDIX B
LIST OF WITNESSES

ASSOCIATIONS AND INDIVIDUALS	DATE
Criminal Lawyers' Association Sandra Leonard, Chair, Corrections Committee	Tuesday, February 2, 1999
Church Council on Justice and Corrections Marie Beemans, Member	Tuesday, February 9, 1999
Prisoners' Rights Committee Sébastien Brousseau, President	
Quebec Association of Social Rehabilitation Agencies Jean-François Cusson, Project Agent	
Canadian Association of Elizabeth Fry Societies Kim Pate, Executive Director	Monday, February 15, 1999
John Howard Society of Canada Graham Stewart, Executive Director	
St. Leonard's Society of Canada Elizabeth White, Executive Director	
Canadians Against Violence Everywhere Advocating it's Termination Ben Doyle, Director of Communications Rosalee Turcotte, Assistant to the Director of Communications	Thursday, March 4, 1999

Conroy and Company

John Conroy, Q.C.

International Centre for Criminal Law Reform and Criminal Justice Policy, University of British Columbia

Yvon Dandurand, Director, Policy Development and Human Rights

Native Courtworker and Counselling Association of B.C.

Brian Chromko, Executive Director

Arthur Paul

Prisoners' Legal Services

Megan Arundel, Legal Advocate

Beth Parkinson, Legal Advocate

West Coast Prison Justice Society

Sasha Pawliuk, Member of the Board

"Barreau du Québec" Monday, March 8, 1999

Carole Brosseau, Lawyer, "Comité en droit criminel"

Jacques Normandeau, Lawyer, Montreal

Canadian Bar Association

Michael Jackson, Committee on Imprisonment and Release

Allan Manson, Committee on Imprisonment and Release

Tamra L. Thomson, Director, Legislation and Law Reform

Community Legal Information Association of Prince Edward Island Thursday, March 18, 1999

Ann Sherman, Executive Director

Cons for Christ

Mike Newman

Department of Community Affairs and Attorney General for Prince Edward Island

Verna Ryan, Manager, Adult Custody Division

Elizabeth Fry Society of Mainland, Nova Scotia

Rhonda Crawford

John Howard Society of New Brunswick

Brian Saunders, Executive Director

John Howard Society (Nfld. and Lab.)

Terry Carlson

Mi'Kmaq Justice Institute

Heidi Marshall

Miramichi Community Corrections Council Inc.

Tim Hoban, President

Nova Scotia Legal Aid

Philip C. MacNeil

St. Thomas University

Susan Reid-MacNevin, Associate Professor and Director of Criminology Department

Aboriginal Legal Services of Toronto Monday, March 22, 1999

Carol Montagnes,Vice-president

"Association des avocat(e)s en droit carcéral"

Stephen Fineberg, President

Canadian Criminal Justice Association

John Braithwaite, past-president

Gaston St-Jean, Executive Director

Cécile Toutant, President

Paul Williams, past-president

National Associations Active in Criminal Justice

Lisa Addario, Executive Coordinator

Queen's University

Charlene C. Mandell, M.A., LL.B., Associate Professor and Director, Correctional Law Project

Canadian Resource Centre for Victims of Crime Tuesday, April 13, 1999

Steve Sullivan, Executive Director

Union of Solicitor General Employees

Linda Davis, Senior Service Officer

Lynn Ray, National President

Victims of Violence Centre for Missing Children

Gary Rosenfeldt, Executive Director

As an Individual

Lynn Charron

Canadian Association of Chiefs of Police Monday, April 26, 1999

Pierre Sangollo, Director

Michael Shard, Inspector, Ontario Provincial Police

Vincent Westwik, General Counsel, Ottawa-Carleton Regional Police Service

Canadian Police Association

Boyd Campbell, Manitoba Vice-president

David Griffin, Executive Officer

Citizen's Advisory Committee Monday, May 3, 1999

José Gariépy, Vice-chairperson, National Executive Committee

Ron Warder, Chairperson, National Executive Committee

Alliance of Prisoners' Families Thursday, May 13, 1999

Sarah Fraser, Member

Amy Friedman Fraser, Member

Black Inmates and Friends Assembly

Everette Dehaney, Assistant to the Executive Director

Bev Folkes, Executive Director

Metro Action Committee on Violence Against Women and Children

Marilou McPhedran, Chair of the Board

Ministry of the Attorney General of Ontario

Scott Newark, Special Counsel, Office for Victims of Crime

Ontario Board of Parole

Dennis Murphy, Senior Member, Southern Region

Louis Théorêt, Senior Member

Operation Springboard

Margaret Stanowski, Executive Director

Prison Life Media

Thomas Mann, Chair

Valerie Phillips, Secretary

Robert Rowbotham, President

Spirit of the People

Michelle Murphy, Executive Director

As an Individual

Anthony N. Doob, Professor, Centre for Criminology, University of Toronto

Julian N. Falconer, Barrister-at-Law

Marnie Rice, Director of Research, Penetanguishene Mental Health Centre

John Howard Society Friday, May 28, 1999

Paul Williams, Executive Director

"Maison d'Intervalle inc."

Patrick Altimas, Executive Director

As Individuals

Marie-Andrée Bertrand, Professor Emeritus of Criminology, School of Criminology, University of Montreal

Georgina Drummond

Terrence Drummond

William Hartzog

Alice Katovitch

Jean-Jacques Ranger

Correctional Service of Canada Monday, May 31, 1999

Ole Ingstrup, Commissioner

Ministry of the Solicitor General of Canada

Hon. Lawrence MacAulay, Solicitor General of Canada

National Parole Board

Willie Gibbs, Chairman

Office of the Correctional Investigator Wednesday, June 2, 1999

Jo-Ann Connolly, Investigator

Jim Hayes, Director of Investigations

Ed McIsaac, Executive Director

Georges Poirier, Director of Investigations

Todd Sloan, Legal Counsel

Ron Stewart, Correctional Investigator

APPENDIX C
LIST OF SUBMISSIONS
(THIRTY-SIXTH PARLIAMENT, SECOND SESSION)

Aboriginal Legal Services of Toronto

Carol Montagnes, Vice-president

Alliance of Prisoners' Families

Amy Friedman Fraser, Member

"Association des avocat(e)s en droit carcéral"

Stephen Fineberg, President

B.C. Yukon Society of Transition Houses

Greta Smith

"Barreau du Québec"

Carole Brosseau, Lawyer, "Comité en droit criminel"

Marie-Andrée Bertrand

Black Inmates and Friends Assembly

Bev Folkes, Executive Director

Canadian Association of Chiefs of Police

Pierre Sangollo, Director

Canadian Association of Elizabeth Fry Societies

Kim Pate, Executive Director

Canadian Bar Association

Michael Jackson, Committee on Imprisonment & Release

Canadian Criminal Justice Association

Gaston St-Jean, Executive Director

Canadian Police Association

Boyd Campbell, Manitoba Vice-president

Canadian Resource Centre for Victims of Crime

Steve Sullivan, Executive Director

Canadians Against Violence Everywhere Advocating it's Termination

Rosalee Turcotte, Assistant to the Director of Communications

Lynn Charron

Church Counsil on Justice and Corrections

Rick Prashaw, Communications Coordinator

"Comité de Détenus - Donnacona 240"

Daniel McLean, President

Community Legal Information Association of Prince Edward Island

Ann Sherman, Executive Director

Cons for Christ

Mike Newman

Violet Cooke

Criminal Lawyers' Association

Sandra Leonard, Chair, Corrections Committee

Department of Community Affairs and Attorney General for Prince Edward Island

Verna Ryan, Manager, Adult Custody Division

Matthew DiMillo

Anthony Doob

Terrence Drummond

Julian Falconer

Gentleman Enterprises

Gaston Nicholas

John Howard Society

Paul Williams, Executive Director

John Howard Society (Nfld. & Lab.)

Terry Carlson

John Howard Society of Canada

Graham Stewart, Executive Director

John Howard Society of New Brunswick

Brian Saunders, Executive Director

Alice Katovitch

Matsqui

Jack Maurice

Emile Mennes, Esq.

Metro Action Committee on Violence Against Women and Children

Marilou McPhedran, Chair of the Board

Ministry of the Attorney General of Ontario

Scott Newark, Special Counsel, Office for Victims of Crime

Miramichi Community Corrections Council Inc.

Tim Hoban, President

Mothers Against Drunk Driving

Andrew Murie, Executive Director

Native Courtworker and Counselling Association of B.C.

Arthur Paul

Nova Scotia Legal Aid

Philip MacNeil

Office of the Privacy Commissioner of Canada

Bruce Phillips, Privacy Commissioner of Canada

Ontario Board of Parole

Dennis Murphy, Senior Member, Southern Region

Ken Sandhu

Ontario Halfway House Association

John Clinton, President

Operation Springboard

Margaret Stanowski, Executive Director

David Price

Prison Life Media

Robert Rowbotham, President

Prisoners' Legal Services

Beth Parkinson, Legal Advocate

Prisoners' Rights Committee

Sébastien Brousseau, President

Quebec Association of Social Rehabilitation Agencies

Johanne Vallée, General Director

Queen's University

Charlene Mandell, M.A., LL.B., Associate Professor and Director, Correctional Law Project

Jean-Jacques Ranger

Marnie Rice

Stewart Ryan

"Section de Donnacona local 10003 du Syndicat des Employé-e-s du Soliciteur général"

Seniors Group of Warkworth Institution

Helmut Buxbaum, Vice-chair

"Société Saint-Léonard du Canada"

Elizabeth White, Executive Director

St. Thomas University

Susan Reid-MacNevin, Associate Professor and Director of Criminology

Union of Solicitor General Employees

Lynn Ray, National President

Victims of Violence Centre for Missing Children

Theresa McCuaig

Gary Rosenfeldt, Executive Director

West Coast Prison Justice Society

Sasha Pawliuk, Member of the Board

APPENDIX D
INSTITUTIONS VISITED BY THE MEMBERS

PACIFIC

- Kent Institution
- Sumas Centre
- Ferndale Institution
- Pê Såkåstew Institution

MARITIMES

- Dorchester Penitentiary
- Springhill
- Nova Institution for Women

EDMONTON - MAPLE CREEK - WINNIPEG

- Edmonton Institution for Women
- Oklmaw Ochi Healing Lodge
- Stony Mountain Institution

KINGSTON - TORONTO

- Joyceville Segregation
- Prison for Women
- Isabel McNeil House
- Kingston Penitentiary

JOLIETTE - DONNACONA - STE-ANNE - MONTREAL

- Joliette Institution for Women
- Donnacona Institution
- Regional Reception Centre & the Special Handling Unit

Request for Government Response

The Committee requests that the Government provide a comprehensive response to its Report in accordance with Standing Order 109.

A copy of the relevant Minutes of Proceedings of the Sub-Committee on Corrections and Conditional Release Act (*Meetings Nos. 1 to 24 of the First Session of the Thirty-sixth Parliament also Meetings Nos. 1 to 14 of the Second Session of the Thirty-sixth Parliament*) is tabled.

Respectfully submitted,

Hon. Andy Scott
Chair

CANADIAN ALLIANCE

Official Opposition Minority Report on the Corrections and Conditional Release Act

JIM GOUK, M.P.
Kootenay-Boundary-Okanagan

What is the purpose and function of the Canadian criminal justice system? Is it established to provide rehabilitation to those who break the law? Is it a system designed to create deterrents to the commission of crime? Is it a system of retribution to simply punish those who break the law? Is it a system designed to identify societal problems and develop solutions to those problems? All of those are considerations in our justice system. However, the Canadian Alliance believes that each of those and other philosophies are only secondary segments of the true purpose of our justice system. That purpose is the protection of law-abiding citizens and their property. All other considerations must keep this prime purpose in mind. The majority report of the Sub-committee on the Corrections and Conditional Release Act (CCRA) recommends that the protection of society be a stand-alone provision to ensure that it is the primary emphasis of the CCRA. Unfortunately, several of the recommendations or lack thereof in the report contradict this stated intention.

Putting the protection of a law-abiding society first means that it is necessary to accept to some degree that the rights and privileges of those who obey the laws of this country are fundamentally different from the rights of those who do not. The system does not do this. Section 4 of the *Corrections and Conditional Release Act* (CCRA) states "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." The Canadian Alliance believes that any person who has been convicted in a Canadian court should temporarily lose some of their rights and privileges as a Canadian. Primary exceptions to this are basic Charter rights such as right to an attorney and the right to humane and healthful treatment. We define this as the right to be incarcerated in accommodations with reasonable environmental control, to be provided with basic personal care supplies, to be fed according to the Canadian nutrition guide, and to be provided with access to basic medical treatment. Beyond this, prisoners should have the ability to earn other rights and privileges such as more freedom within the prison, transfers to more desirable facilities, training programs, sports programs, visitor privileges, payment for work performance, canteen privileges, temporary absences and parole. Each of these rights and privileges must be earned by appropriate behaviour which in turn

means that they can also be taken away for inappropriate behaviour.

Over the course of the last year, the Alliance member of the Sub-committee visited prisons in every region of this country. While we have seen many good programs in operation, we have also seen prisons where the entire operation of the prison revolves around the need to keep two motorcycle gangs and those associated with them separated. In essence, officials need to operate two entirely separate prisons within a single facility. That suggests to us that the prisoners, rather than the prison officials, control those facilities. We have seen case after case of prisoners who break all the rules inside a prison, acting in ways that are beyond the comprehension of ordinary Canadians, and yet they still get many of the privileges extended to other prisoners including television, computers, conjugal visits and even parole consideration. We have heard prison staff and even various prisoners complain about the lack of control over these types of prisoners. Guards lament the fact that they have little ability to deal effectively with prisoners who destroy prison property, fight with other prisoners and attack guards either physically or by throwing excrement at them. Prisoners themselves complain about the interference of other prisoners in their attempt to serve their time quietly, learn a trade, obtain effective counselling, earn early parole consideration and even about basic personal safety. We believe that prisoners need to understand and experience the consequences of their actions in prison, both positive and negative. Law-abiding citizens experience this all the time, from early childhood through their educational time and into adulthood. The best way to make punishment effective is to mirror this consequence of action in prisons as well.

When you find a methodology that works in one area, it seems reasonable that you should try to expand those methods to other areas. There are now many young offender diversion programs in operation that have proven to be very effective in dealing with certain levels of youth crime and rehabilitating the offenders. The intent of these programs is to keep the offender from entering the court system and to give them a chance to straighten themselves out. In many federal ridings including that of our Sub-committee member, there are several young offenders' diversion programs in operation. Entry to these programs is initiated by local police authorities who recommend a young offender to the program. To qualify, it has to be a non-violent first offence, the young offender has to accept full responsibility for the offence, the victim has to agree to the diversion, and restitution has to be possible from the young offender. It is a very intense and emotional program for the offender. One location using this program has now processed well over one hundred first time young offenders with only a single incident of a repeat offence. That kind of success needs to be repeated.

If a program like this can work so well for youth, should we not utilize it for certain adult offenders? If someone commits a crime such as stealing cash from their employer and that person is tried, convicted and placed in prison, the employer becomes a victim because the stolen money is lost. Society becomes a victim through court and prison costs and if the offenders lose their drive or ability to re-establish their lives after being released, society becomes a victim again through social program costs or those associated with the person re-offending. The criteria should be similar to the youth diversion program: first offence, non-

violent crime, approval of the victim, restitution program. The applicable charge could be held without filing throughout the restitution period. A predetermined percentage of the offender's pay would be collected through the income tax system. Where the victim suffers a financial loss, the restitution would be paid directly to that victim or victims. Where the offence did not involve a specific victim or direct financial loss, the offender would pay the same percentage into a fund to be used for restitution of losses of victims in other situations. The period of repayment in such cases could be tied to the normal prison sentence for the offence committed. If at any time during the restitution period the offender is convicted of any indictable offence, the original charges are filed as well. This would reduce victim impact, court costs, prison costs and societal costs that often result from an offender's inability to rejoin society after being convicted.

For those non-violent first offenders who are convicted and sent to prison, we need to provide them with every opportunity for rehabilitation, early release and resumption of productive lives. To the greatest degree possible, they should be incarcerated in minimum security facilities with similar prisoners and should have the broadest access to earnable rights. Serious infractions of prison rules should place them at risk of being reassessed and transferred out of such a special facility.

All other prisoners should be assigned to medium or maximum security facilities according to level of crime, i.e. violent vs non-violent, repeat offences, escape risk and demonstrated or anticipated behaviour. Each should have the ability to earn rights but it should be progressively harder for violent criminals to earn those rights. Someone who earns a right and then loses it by breaking the rules should find it a little harder to earn that same right the next time.

Many offences committed inside prison that would warrant serious prosecution if committed outside of prison are treated as internal matters. A crime committed inside a facility should be subject to the same penalty as that crime committed outside of the facility. One specific incident we dealt with involved a Hepatitis C positive prisoner who attacked and bit two prison guards. The sentence for the offence was measured in days. If it had been committed on the outside, the sentence would have been measured in years. Also, sentences for offences inside the prison must be consecutively served or they have absolutely no meaning.

Parole should be earned through appropriate behaviour including willingness to participate in programs that address problems where applicable. Where a prisoner is approved for either a temporary absence or parole and then breaks the conditions of that release in a significant manner, a similar release should not be as easily attained the next time. In keeping with the premise that parole should be earned, the automatic release for most prisoners at two thirds of their sentence known as statutory release provisions should be revoked. We have heard witnesses on both sides of this issue. The witnesses and Committee members who did not support such a provision argued that without statutory release, most prisoners would not get released until the end of their sentence. They claim this would result in prison overcrowding and prisoners being released at the end of their sentence without any supervision. The

Canadian Alliance does not necessarily agree that most prisoners would not qualify if they knew from the beginning that their release was contingent on their prison behaviour. In a brief presented by the Canadian Criminal Justice Association it was stated, "Some inmates could end up serving more time, but that number might be offset by the number of inmates who, realizing that they will not be released automatically on a given date, may opt for a more active participation in programs, invest more earnestly in their own rehabilitation and, in the end be released much earlier than their statutory release date." Aside from that, what these witnesses and Committee members are really saying is "these prisoners can't qualify for an earned parole, so we should have a provision called statutory release that simply opens the door for them." The majority report recommends that all cases eligible for statutory release be reviewed by Correctional Service Canada to determine whether they should be referred to the National Parole Board for a detention review. However, even such a review will not stop the release of an inmate who has refused to participate in rehabilitation programs and has not followed prison rules, even to the extent of violent behaviour, unless it is believed that the offender will commit an offence causing death or serious harm to another person; a sexual offence against a child; or a serious drug offence. Even in these provisions, there is a reverse onus which places the burden of proof of these concerns on the Parole Board.

If these prisoners should actually be considered for release and are inappropriately being rejected by the National Parole Board as some witnesses and Committee members have suggested would happen, that is a Parole Board problem that needs to be addressed directly. If Corrections Canada is not providing the programs needed to aid prisoner rehabilitation, that problem needs to be dealt with directly. There is absolutely no justification for ignoring these problems and simply opening the door as an alternative.

For prisoners who either do not qualify for parole due to unacceptable behaviour or simply not applying for it, there should still be a mandatory parole period even at warrant expiry. It is unacceptable to public safety to have a situation where a prisoner has a serious behavioural problem, perhaps has never participated in any rehabilitation programs and may never have progressed beyond maximum security incarceration, suddenly have the door opened and be turned loose upon society. It is equally unacceptable to release prisoners on statutory release before the completion of their sentence if they have not taken steps to earn it, yet that is exactly what the majority report does. At the end of the day, the changes they propose will not protect society.

Changes to the Dangerous Offender and Long-Term Offender provisions need to be considered. Currently, these provisions can only be placed on a prisoner at time of sentencing. If the crime was not of a nature or repetition that called for dangerous offender or long-term offender designation at time of sentencing, the ability to reassess that designation should be available to authorities throughout that criminal's period of incarceration for serious additional offences inside the prison. Also, there should exist an ability to detain a prisoner even at warrant expiry where authorities can demonstrate with reasonable certainty that the prisoner would likely commit a serious personal injury offence after being released.

Victims' rights witnesses complained of prisoners who cancel a parole hearing a short time before the hearing for no particular reason. They complained that this creates a major problem for victims who plan to testify at those parole hearings and that this could be a major contributing factor for sudden hearing cancellations by the prisoner. They advised that a victim could have purchased a non-refundable seat sale ticket to travel to the hearing, and may have arranged for holidays from work. Cancellation of a hearing is an extreme hardship for people who are already victims. Where a prisoner cancels a hearing with no acceptable reason, that prisoner should not be able to reapply for a period of one year. Where a hearing is postponed by the Parole Board and the victim has notified authorities of his intention to attend the hearing and has incurred non-refundable expenses, the out-of-pocket costs incurred by the victim should be paid by the Parole Board budget.

The Canadian Alliance strongly believes in providing a second chance to those who earn it, but earn it they must. We need to show compassion to those who make a mistake and are remorseful about it. We also need to show a new level of firmness for those who continuously ignore society's rules.

The Canadian Alliance representative on the Sub-committee studying the CCRA worked in the spirit of cooperation with other Committee members. We initially compromised on some areas in an effort to gain unanimous agreement on certain major areas of concern. The rationale was that a unanimous report might carry more weight with the government and increase the chance of the recommendations being implemented. There are many good recommendations contained in the majority report with which we agree. However, one item that was critical to us was statutory release. Initially we reached agreement on this item. Unfortunately, the Committee saw fit to revisit this subject and reversed its decision. As a result, the Official Opposition has reviewed the legislation and written its own report on needed changes to the CCRA. This may result in the government report claiming that there was unanimous agreement in areas where there is not. In some instances, that agreement was given based on other agreements on which the government later reneged.

The following recommendations are divided into two separate categories. The first deals specifically with changes to the *Corrections and Conditional Release Act*. The second deals with changes which need to be implemented in other legislations that have a specific impact on the operation of Canadian prisons.

Canadian Alliance Recommendations for Changes to the CCRA

Although the Committee originally agreed to repeal statutory release, they reversed this decision.

1. *Repeal Statutory Release.*

In recommendation 20 of the majority report, the Committee proposes that offenders subject to deportation orders may be granted parole at any time during their sentence for the purpose of deportation. This could result in an offender convicted of a violent offence being set free into their own country within months of being convicted. This is clearly not acceptable. The only time such a provision should be considered is where the offender faces prosecution in his home country for serious offences that will expose him to incarceration for as long as he would have served in Canada.

2. *Offenders subject to deportation may be released to the authorities of their own country prior to parole eligibility only if they are subject to prosecution of serious crimes in their own country and Canada has received satisfactory assurances that they will in fact be prosecuted.*

3. *In the alternative to recommendation 2, where a person who is subject to deportation is wanted in their home country for prosecution of serious crimes in that country, charges in Canada should be stayed and the offender deported provided there is an agreement that they are subject to return to Canada on the Canadian charges if not convicted of their crimes in their home country.*

In the majority report, the narrative in section 9.71 dealing with DNA sample collection from offenders already serving sentences states that the Committee has considered this issue and decided not to make any findings or recommendations. It further claims that the reason for this abrogation of responsibility is a lack of sufficient data and other forms of information. First, the lack of data or information is due to a failure to request such information. It is readily available had the Committee chosen to deal with it. Second, DNA databanks are little more than a technologically advanced version of fingerprinting. It has no detrimental impact on an offender other than to be able to prove or disprove guilt where DNA evidence exists.

4. *Insert a provision in the CCRA to authorize the collection of DNA samples from all prisoners in federal institutions.*

Some prisoners who have applied for parole have walked into the hearing, seen victims present and simply walked out requesting a postponement of the hearing. In some cases, these victims have used their annual holidays to attend the hearing and have incurred travel costs which create financial hardship.

5. *Where a prisoner cancels a parole hearing without good cause, that inmate may not reapply for a parole hearing for a period of 12 months.*

6. *Where the Parole Board cancels a hearing and a victim has notified the Board of his intention to appear, the Parole Board shall reimburse the victim for all reasonable expenditures which cannot be otherwise recovered.*

Discipline inside prisons appears to be a major problem. Staff lament that there are few consequences for serious rule violations and violent behaviour by inmates. While prison officials should continue to deal with rule infractions, offences normally subject to criminal prosecution must be prosecuted by the courts.

7. *A crime committed inside a facility should be subject to criminal prosecution and the same penalty as that crime committed outside of the facility. Sentences received under this provision must be served consecutively.*

Section 4 of the CCRA requires the Correctional Service to use the least restrictive measures consistent with the protection of the public, staff and offenders. This places severe restrictions upon the Correctional Services ability to use lower security, less restrictive facilities as an incentive for good behaviour and higher security, more restrictive facilities as a punishment for failure to follow prison rules.

8. *Amend section 4 of the CCRA to allow Correctional Services to use higher restrictive measures for failure to follow institutional rules.*

Canadian Alliance Recommendations for Changes to other Acts which affect the CCRA

Youth diversion programs have demonstrated a better way to deal with first time, non-violent offenders. Success has been shown time after time, saving court and justice system costs and getting young offenders back on track to productive lives. There is no reason for not initiating a similar program for adult offenders who commit first time, non-violent offences with similar anticipated results. The framework for this already exists in section 717 of the *Criminal Code*. With a few changes, the success of youth diversion programs could work for certain adult offenders as well.

9. *Amend section 717 of the Criminal Code as follows:*

- *restrict application to first time offenders*,
- *only non-violent offenders shall be considered*,
- *focus on restitution to victims*.

In addition, the federal government must take steps to encourage provinces to establish diversion programs including funding provisions.

It has been stated by many witnesses and Committee members alike that the most dangerous situation in the release of a criminal from a prison is where a violent offender who has not attempted to take advantage of rehabilitation programs, never qualified for parole and perhaps

never even progressed beyond maximum security suddenly has the door opened at warrant expiry and is released without any supervision or controls. This has become one of the main justifications for statutory release. The government members on the Sub-committee believe that we should still provide early release to criminals who cannot qualify for earned parole. The Canadian Alliance agrees that it is desirable for prisoners to be released under the controlled circumstances that are normally associated with parole. However, we do not agree that this condition should be initiated where parole has not been earned. The alternative is to amend the *Criminal Code* to require that all federally sentenced prisoners be required to have a minimum period of six months of supervision upon release. If the prisoner does not qualify for parole during his sentence, then he would be subject to six months of supervised release upon warrant expiry.

10. *Amend the Criminal Code to require each federally sentenced prisoner to have a minimum period of six months supervised release. This period of supervision may be fulfilled through normal parole provisions or shall be upon warrant expiry if a prisoner does not qualify for parole during his sentence.*

Current provisions for Dangerous Offender or Long-Term Offender designations require the sentencing judge to make the designation only at the time of sentencing. This allows for the indeterminate detention of the designated prisoner for the protection of society. Studies indicate that some violent prisoners continue incorrigible behaviour inside prison facilities. No matter how great a risk is demonstrated by such prisoners, they cannot be reclassified as dangerous offenders or long-term offenders.

11. *Amend the Criminal Code to permit dangerous offender and long-term offender applications to be made at any time prior to the expiry of an offender's sentence where the offender has not responded to programming, and/or is considered to be a danger to society.*

Jim Gouk, M.P.

Canadian Alliance Member, Sub-Committee on Corrections and Conditional Release Act

PROGRESSIVE CONSERVATIVE PARTY

Dissenting Report of the Progressive Conservative Party on the CCRA

The Progressive Conservative Party concurs with the majority of the recommendations made by the Sub-committee with respect to the *Corrections and Conditional Release Act*. However, the PC Party was disappointed that the government recanted its initial commitment to deal with public concerns and amend the section of the *CCRA* dealing with statutory release.

Although, the PC Party would have liked to see the elimination of statutory release from the *CCRA*, we were initially buoyed by the commitment from the Liberal government to amend this dangerous practice of automatically releasing prisoners after serving only two-thirds of their sentence.

The PC Party is of the opinion that offenders in prison must earn release before they have completed their sentence. Similarly, certain rights and privileges should also be subject to discretionary granting and removal. Offering community reintegration during parole is not necessarily a risk to public safety. Yet, doing so automatically without proper vetting procedures certainly can be dangerous. Our Party is of the opinion that the public needs to have confidence in sentencing practices and procedures if there is to be faith in our corrections system.

The PC Party position would possibly necessitate the building of new prisons to house the increased number of incarcerated offenders. We understand that this could be an expensive proposition but we also feel that a price cannot be placed on public safety.

Under the current system of statutory release, Correctional Service Canada and the National Parole Board only review violent offences. In making their decisions, the NPB does not consider the negative attitudes of statutory release offenders and their unwillingness to undertake rehabilitative programs. As well, there are no clearly defined factors to be followed by the NPB when imposing special conditions on an offender's release.

For these reasons, we feel that after an offender has served their sentence, monitoring, supervision and treatment should be improved in order to reduce the risk of re-offending, thereby enhancing public safety. In fact, the two-thirds measurement could continue to be used as the standard for release but it should not be required in every case. All cases should be subject to a mandatory, parole style review, perhaps with a reverse-onus test. The PC Party is

of the firm belief that the concept of earned release as opposed to automatic release would better serve the public.

We recommend the elimination of statutory release and a return to greater accountability and confidence in sentencing. The rehabilitation of offenders must be balanced with the consideration of public safety concerns regarding statutory release.

Peter MacKay, M.P.

PC Member, Sub-Committee Studying the Corrections and Conditional Release Act

Minutes of Proceedings

Monday, April 10, 2000
(*Meeting No. 13*)

The Sub-committee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights met *in camera* at 3:37 p.m. this day, in Room 237-C, Centre Block, the Chair, Paul DeVillers, presiding.

Members of the Sub-committee present: Paul DeVillers, Jim Gouk, Ivan Grose, Peter MacKay, Lynn Myers, Jacques Saada and Tom Wappel.

Acting Member present: Michel Bellehumeur for Pierrette Venne.

In attendance: *From the Library of Parliament:* Lyne Casavant, Research Officer; Philip Rosen, Senior Analyst.

Pursuant to Standing Order 108(2), a statutory review of the *Corrections and Conditional Release Act*.

The Committee continued its consideration of a draft report.

It was agreed, - That the Sub-committee print 1,000 copies with special cover of its report.

It was agreed, - That members wishing to append a dissenting opinion to the Report submit it to the Clerk before May 5, 2000.

At 5:54 p.m., the Committee adjourned to the call of the Chair.

Roger Préfontaine
Clerk of the Sub-committee

Monday, May 8, 2000
(*Meeting No. 14*)

The Sub-committee on Corrections and Conditional Release Act of the Standing Committee on

Justice and Human Rights met *in camera* at 3:33 p.m. this day, in Room 308, West Block, the Chair, Paul DeVillers, presiding.

Members of the Sub-committee present: Paul DeVillers, Jim Gouk, Ivan Grose, Jacques Saada, Pierrette Venne, Tom Wappel.

In attendance: *From the Library of Parliament:* Lyne Casavant, Research Officer; Philip Rosen, Senior Analyst.

Pursuant to Standing Order 108(2), a statutory review of the *Corrections and Conditional Release Act*

The Sub-committee continued its consideration of a draft report.

It was agreed, - That the Sub-committee authorize the printing of dissenting opinions as appendices to the report, immediately after the signature of the Chair.

It was agreed, - That the Chair be authorized to make such grammatical and editorial changes to the report as may be necessary without changing the substance of the report.

It was agreed, - That pursuant to Standing Order 109, the Sub-committee requests the Government to table a comprehensive response to the report.

It was agreed, - That the Sub-committee's Report on Corrections and Conditional Release Act be adopted and that the Chairman present it to the Standing Committee on Justice and Human Rights.

By unanimous consent, it was agreed, - That members of the Sub-committee express their appreciation to the Chairman for an excellent job.

At 4:55 p.m., the Sub-committee adjourned to the call of the Chair.

Roger Préfontaine
Clerk of the Sub-committee

Wednesday, May 10, 2000
(*Meeting No. 52*)

The Standing Committee on Justice and Human Rights met at 3:35 p.m. this day, in Room 308, West Block, the Chair, Andy Scott, presiding.

Members of the Committee present: Reg Alcock, Michel Bellehumeur, Chuck Cadman, Aileen Carroll, Paul DeVillers, Ivan Grose, Peter MacKay, John Maloney, John Reynolds, Jacques Saada and Andy Scott.

Other Member present: Karen Redman.

In attendance: *From the Library of Parliament:* Lyne Casavant, Research Officer; Philip Rosen, Senior Analyst.

Appearing: *From the Department of Justice:* The Hon. Anne McLellan, Minister of Justice and Attorney General of Canada.

Witnesses: *From the Department of Justice*: Morris Rosenberg, Deputy Minister & Deputy Attorney General of Canada; Richard G. Mosley, Assistant Deputy Minister, Criminal Law Policy and Community Justice; Robert Bourgeois, Assistant Deputy Minister, Corporate Services.

Pursuant to Standing Order 81(6) and the Order of Reference dated Tuesday, February 29, 2000, relating to the Main Estimates for the fiscal year ending March 31, 2001, being read as follows:

ORDERED, - That Votes 1, 5, 10, 15, 20, 25, 30, 35, 40, 45 and 50 under JUSTICE, be referred to the Standing Committee on Justice and Human Rights.

The Chair called Votes 1, 5, 10, 15, 20, 25, 30, 35, 40, 45 and 50.

The Minister made an opening statement and with the other witnesses answered questions.

At 5:08 p.m., the sitting was suspended.

At 5:10 p.m., the sitting resumed *in camera*.

It was agreed, - That a dissenting opinion from the Progressive Conservative Party be appended to the report from the Sub-committee on Corrections and Conditional Release Act.

It was agreed, - That the report from the Sub-committee on Corrections and Conditional Release Act be adopted as the Third Report of the Standing Committee on Justice and Human Rights.

At 5:25 p.m., the Committee adjourned to the call of the Chair.

Roger Préfontaine
Clerk of the Committee