THE OFFICE OF THE CORRECTIONAL INVESTIGATOR AND HUMAN RIGHTS: AGING, DISORDERED AND ABORIGINAL OFFENDERS IN CANADIAN FEDERAL CORRECTIONS

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ABSTRACT

The Correctional Investigator of Canada will present the role of his Office, and the importance of applying a human rights lens to prison oversight work. Focusing on the challenges associated with addressing the unique needs of aging, mentally disordered and Aboriginal offenders, the presentation will draw on casework to illustrate issues affecting these growing populations in federal penitentiaries. The presentation will highlight established and emerging best practices, as well as current gaps and limitations in the management of special needs offenders. The presentation will conclude by discussing the extent to which Canada's correctional authority needs to adapt services, programs and physical infrastructures to accommodate the needs of aging, disordered and Aboriginal offenders.

INTRODUCTION

Role and Mandate of the Office of the Correctional Investigator

The Office of the Correctional Investigator (OCI) was established in 1973 in response to a Commission of Inquiry into a prison riot at the maximum security Kingston Penitentiary (one of the oldest prisons in continuous use in the world, first commissioned in 1835), which resulted in five correctional officers being taken hostage, two prisoner deaths, 13 serious prisoner injuries and the destruction of a portion of the penitentiary. The Inquiry described the conditions of confinement that prevailed at Kingston Penitentiary in April 1971 as "repressive and dehumanizing." It identified the need for an independent body to address inmate complaints in a timely and accessible manner.[1]

For its first 20 years, the Office operated as a permanent Commission of Inquiry under part II of the *Inquiries Act.* On November 1st, 1992, the *Corrections and Conditional*

[1] *Report of the Commission of Inquiry into Certain Disturbances at Kingston Penitentiary during April, 1971*, Chair: J.W. Swackhamer, Q.C., April 1972.

Release Act (CCRA) came into force, giving the Office its legislative authority. The Correctional Investigator is mandated by Part III of the *CCRA* as an Ombudsman for federal prisoners. The Office investigates complaints made by, or on behalf of, offenders sentenced to two years or more of imprisonment in a federal penitentiary.[2] The Office provides timely, independent, thorough and objective monitoring of the federal correctional system by ensuring that decisions, acts and/or omissions of the Correctional Service of Canada (CSC or Service) are in compliance with policy, law, and rules of natural justice. Independence, impartiality, confidentiality and respect for human rights are at the core of the Office's work. The work performed by investigative staff is rooted in the principle that offenders, like every other Canadian, should be treated fairly and in accordance with the rule of law.

The Office is completely independent of the CSC and the Minister of Public Safety. OCI staff have full access to all CSC documents, staff and offenders, including the right to enter and inspect any premises under the control or management of the Service. The Office decides when and how an investigation will be commenced, conducted and terminated. When reviewing offender complaints, the Office determines whether CSC has acted fairly, reasonably and in compliance with law and policy.

The day-to-day addressing of offender complaints comprises the bulk of the work of the OCI. Not all complaints are subject to an investigation. In many cases, a complaint may be resolved by conducting a file review, telephone inquiry or an on-site visit. Some complaints may be unfounded, beyond the Office's jurisdiction or raise additional issues for review. Complaints usually focus on an act/or decision by the CSC that concerns compliance with policy or procedures. These cases often involve a determination of fairness, as opposed to policy adherence. Other issues may be subject to a systemic investigation or raised in the Office's Annual Report which is tabled in Parliament.

[2] Sentences of imprisonment less than two years are served in provincial and territorial jails. The OCI does not have jurisdiction over these offenders.

The Office continues to pursue six well-established areas of systemic inquiry and priority:

1. Access to mental and physical health care
2. Prevention of deaths in custody
3. Conditions of confinement (crowding, use of force, segregation)
4. Aboriginal corrections
5. Access to programs
6. Issues affecting federally sentenced women.

As of 2012, the OCI had a full-time staff complement of 32 employees, most of whom are directly involved in addressing offender complaints and conducting reviews or investigations. Normally, on an annual basis, maximum security penitentiaries are visited four times, medium security facilities three times and minimum security facilities once per year. During fiscal year 2011-2012, the OCI:

- Received more than 18,700 toll-free telephone calls/inquiries
- Addressed more than 5,700 offender complaints
- Conducted more than 800 use of force reviews
- Interviewed more than 1,600 offenders
- Conducted 144 legislated reviews of serious incidents involving assault, self-injury, death in custody and attempted suicide
- Spent a cumulative total of 369.5 days in federal penitentiaries.

Top 6 areas of inmate complaint brought forward to the Office in 2011-12 were:

1. Health Care (11.99%)
2. Conditions of Confinement (8.31%)
3. Administrative Segregation (7.38%)
4. Transfer (7.05%)
5. Cell Effects (6.58%)
6. Staff (5.34%)

Human Rights in Corrections

Correctional culture is strong and difficult to change. Abuse of authority in an environment largely closed to public view is an ever present concern. Historically, there can be no doubt that this operating reality has, on occasion, masked unfairness, inequity and

even brutality from public view.[3] Outside intervention (often by the Courts or special Parliamentary Commissions) and independent monitoring is necessary to ensure penitentiaries remain safe, humane and effective. Accountability and transparency are hallmarks of a modern correctional system.

International and domestic human rights instruments and standards unanimously affirm that all persons deprived of their liberty have the right to be treated fairly and humanely, and not to be subjected to cruel or degrading treatment. Domestic human rights instruments, such as the *Canadian Charter of Rights and Freedoms,* echo these principles in the Canadian context. The legislation governing federal corrections in Canada includes these key human rights provisions:

- ✓ the notion of retained rights and proportionate measures
- ✓ safe and humane custody
- ✓ fair and forthright decision-making
- ✓ respect for gender, linguistic, ethnic and cultural differences
- ✓ recognition of the unique needs of women, Aboriginal people and persons with mental health concerns
- ✓ working and living environments free from practices that undermine human dignity

The very nature of incarceration – the loss of autonomy, physical and social isolation and deprivation of liberty – raise obvious human rights concerns. Privacy, mobility, assembly and association rights are severely compromised in a context where the

[3] For the Canadian experience see: *Report of the Commission of Inquiry into Certain Disturbances at Kingston Penitentiary during April, 1971 op. cit*.; *Report of the Sub-Committee on the Penitentiary System in Canada* (1976) Chair: Justice MacGuigan*;* Office of the Correctional Investigator, *Report on Allegations of Mistreatment of Inmates at Archambault Institution Following the Events which Occurred on July 25, 1982* (1984); Office of the Correctional Investigator, *Special Report of the Correctional Investigator Concerning the Treatment of Inmates and Following Certain Incidents at the Prison for Women in April 1994 and Thereafter* (1995); *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (1996) Chair: Justice Louise Arbour; Office of the Correctional Investigator, *A Preventable Death* (2008)*;* Office of the Correctional Investigator, *Unauthorized Force: An Investigation into the Dangerous Use of Firearms at Kent Institution Between January 8 and January 18, 2010: Final Report (2011).*

correctional authority has exceptional and significant powers to regulate nearly every aspect of an inmate's life and routines: eating, sleeping, hygiene, contact with family and friends, access to medical services, remunerated work or education. Complaints dealing with issues that may appear trivial or mundane may in fact raise serious human rights concerns in the prison context.

In the long-term, the failure to comply with human rights provisions hinders the rehabilitation of offenders and decreases public safety. Inmates may have access to very good rehabilitation programs; however, if they live within an environment disrespectful of human rights, program gains may be eroded within a short period of time. Observing human rights standards in prisons is based upon on the idea that such standards work better than any other known alternative. Compliance with human rights obligations increases the odds of releasing more responsible citizens from our penitentiaries.[4]

KEY CHALLENGES IN CANADIAN FEDERAL CORRECTIONS

Context and Profile

Canada's incarceration rate of 117 per 100,000 general population (adults and youth) is high relative to most western European countries.[5] As of July 2012, there were more than 23,000 offenders under federal sentence (two years or more). Approximately 15,000 are incarcerated (including 600 women inmates), and an additional 8,700 offenders are serving their sentence in the community. In 2008-09 (latest available data), there were 23,700 incarcerated provincial inmates (serving a sentence of less than two years) including 13,600 remanded to custody. Another 109,400 provincial offenders were on probation or parole.

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[4] Sapers, H. & Zinger, I. (Fall 2010). "The Ombudsman as a Monitor of Human Rights in Canadian Federal Corrections." *Pace Law Review, 30*(5), 1512-1528.

[5] *Corrections and Conditional Release Statistical Overview: Annual Report 2011*, Public Safety Canada available at http://www.publicsafety.gc.ca/res/cor/rep/2011-ccrso-eng.aspx

Relatively few crimes result in a sentence to a federal penitentiary. In 2010, there were approximately 2.4 million crimes reported to police.[6] 5,400 offenders were admitted to federal correctional facilities in 2010-11.

The mandate of CSC is to contribute to public safety by administering sentences of two years or more as imposed by the courts. The CSC operates 57 facilities, 16 Community Correctional Centres (CCCs) and 84 parole offices and sub-offices. It employs more than 17,000 full-time employees (most of whom work in an institution). CSC's current budget (FY 2011-2012) is $3 billion, which represents a 43.9% increase from FY 2005-2006. The annual average cost of keeping a federal inmate behind bars has increased from $88,000 in 2005-06 to over $113,000 in 2009-10. It now costs $578 per day to incarcerate a federally sentenced woman inmate and just over $300 per day to maintain a male inmate. In contrast, the annual average cost to keep an offender in the community is about $29,500.[7]

At admission to federal custody, 8 in 10 of offenders have a history of substance abuse and over 60% report that drugs and/ or alcohol was a direct contributing factor to the commission of their crime. In addition, 38% of offenders show symptoms associated with mental health problems which require follow-up with a mental health professional. Many offenders with substance abuse issues also report concurrent mental health concerns.

Reflecting broader demographic patterns, the offender population in Canada is varied and diverse, presenting a complex set of personal/emotional, criminogenic, mental and physical health care needs. The inmate population is comprised of a number of vulnerable and disadvantaged groups in society. Compared to the general Canadian population, offenders tend to come from backgrounds of:

- physical, emotional, or domestic abuse;
- social disadvantage and low socioeconomic status;
- low educational attainment;
- substance abuse; and,

[6] *Ibid*.
[7] *Ibid*.

- unstable employment.

Just as Canadian society is growing older and more ethnically and culturally diverse, so too is the offender population. This changing and complex profile is placing increasing pressures and strains on the correctional system to provide safe and secure accommodation and custody, meet growing mental health and physical health care needs, and respond to the special needs of aging, minority and Aboriginal offenders.

Federal prisons are increasingly experiencing population pressures.[8] From March 2010 to March 2012, the inmate population grew by 1,000 with no new cell capacity added to accommodate the increases. Between March 2011 and April 2012, the number of double-bunked offenders (two inmates housed in a cell designed for one) increased by 33%. As of July 2012, more than 18% of federal inmates were double-bunked. Prison crowding is linked to higher incidences of institutional violence and unrest, lower reintegration rates, higher rates of use of force incidents, and is a factor in the spread of infectious diseases, such as Hepatitis C, which is 40 times more prevalent in prison, and HIV, which is between 7 and 10 times more prevalent in prisons than in the rest of Canadian society.

AGING OFFENDERS

Canadian prisons are increasingly home to offenders aged 50 years or older. In Canada, and many other jurisdictions, the 50-year old benchmark is used to refer to aging or older offenders. The literature suggests that the natural aging process is accelerated by as much as ten years or more in an institutional (custodial) setting. Currently, aging offenders comprise almost 20% of the federal inmate population, representing a 50% increase since 2005.

[8] To address current and projected offender population increases, CSC is engaged in one of the largest prison expansion projects in Canadian correctional history. In the period between March 2008 and January 2011, CSC announced over $600M in planned capital spending to create more than 2,700 new or retrofitted cells at 30 facilities. Construction has begun on many of these units, with projected completion dates ranging from 2012 to 2014.

The increasing proportion of older offenders behind bars reflects the changing demographics of an aging Canadian society. The median age of the offender population upon admission to federal custody is 33 years, which is increasing slightly each year. An increasing number of offenders are entering federal penitentiaries later in life. In 2009-10, 20.3% of admissions to federal custody were offenders between the ages of 40-49 (up from 16.3% at the start of the decade). Finally, the cumulative impact of policy, sentencing and legislative reforms (e.g. introduction of mandatory minimum penalties, elimination or tightening of parole eligibility criteria, expansion of indeterminate sentencing designations) means that a greater percentage of offenders are serving an increasing proportion of their sentence in custody rather than some form of community supervision. This "stacking effect" means that an increasing percentage of offenders are spending longer prison sentences and growing old behind bars as a consequence.[9]

As offenders age, they often require accommodation in services, programs, and/or housing to meet their individual needs. Prisons were built to house a younger, healthier inmate profile. The physical design and infrastructure of a typical federal penitentiary are often not appropriate to the needs of aging offenders. Retrofitting institutions with special assistive devices and equipment to meet everyday housing, ambulatory, toileting, bathing, fresh air and nutritional needs of an aging offender population is expensive and not always possible due to limits in infrastructure. Accessing fresh air exercise, participating in yard or gym or engaging in other regular social routines and institutional activities can be challenging for aging offenders with physical impairments. Some institutions have adopted peer support systems, or co-located aged offenders on a specialized range or unit to better meet their needs. Even rather modest infrastructure modifications – installation of ramps, hand rails and other assistive devices, for example – can make a big difference.

Aging offenders seldom access existing counselling, educational or vocational prison programs. The current rehabilitative program model in Canada is focused on 'intensity' levels, 'employability' and practical job market skills that may hold little relevance for an

[9] Approximately 3,200 offenders, representing approximately 21% of the incarcerated population, are currently serving a life or indeterminate sentence in a federal penitentiary. Most will eventually become an 'older' offender before they are even considered eligible to apply for parole. The average time served in prison for first-degree murder in Canada is 28.4 years, greater than most other advanced democracies.

older offender serving a long prison sentence. Older offenders may require specific accommodations in order to participate in correctional programming (i.e. more frequent rest breaks, shorter sessions). Programming is an important component of preparing an offender for community reintegration, but it needs to be responsive to the life status of an aging person.

Aging offenders use a disproportionate share of prison health-care services due to higher rates of both mild and serious health conditions. Treatment of mild health problems, such as arthritis, hearing deficits, or loss of eyesight, requires access to daily medications and specialized services within the community (i.e. audiologists). Many medications for minor ailments and pain relief are only available for purchase through the inmate canteen.[10]

Treatment of chronic diseases and illnesses associated with aging – including cancer, emphysema, dementia, diabetes and cardiovascular disease – often requires access to specialized expensive outside medical facilities. Some aging offenders find it difficult to maintain normal everyday institutional routines (eating, dressing, hygiene) as a result of progressive physical impairment and/ or disease. Some older offenders require palliative care as a result of terminal illness. Providing end of life care in a prison setting is expensive, and often presents a number of ethical and operational challenges for health care and correctional staff. Coordinating exceptional or compassionate releases for terminally ill offenders is an onerous and lengthy process, and ultimately results in very few releases to the community. Many offenders, in fact, will die in prison in less than dignified circumstances.

At Bath Institution, which is a medium security facility in the Ontario region, 35% of the total offender population is aged 50 or older. In a group meeting with the OCI, the offenders stated that they live in fear for their physical safety. Intimidation and muscling are pervasive concerns for older, more vulnerable persons. The group brought forward cases of physically challenged offenders being bullied to the top bunk by cellmates. Others

[10] The inmate pay system in federal penitentiaries is based on engagement in programming and daily work. Many aging offenders are simply unable to work or attend programming, resulting in very limited purchasing power at the inmate canteen.

reported having to give up meals or their prescription drugs to younger offenders. Few of these concerns are ever reported to staff.

In its 2010-11 Annual Report, the Office made a series of recommendations to address gaps in service delivery for aging offenders. The Office continues to monitor CSC's progress against these recommendations:

1. The Service develop a more appropriate range of programming and activities tailored to the older offender, including physical fitness and exercise regimes, as well as other interventions that are responsive to the unique mobility, learning, assistive and independent living needs of the elderly inmate.

2. Where necessary, CSC hire more staff with training and experience in palliative care and gerontology. Sensitivity and awareness training regarding issues affecting older offenders should be added to the training and refresher curriculums of both new and experienced staff.

3. Where new construction is planned, age-related physical and mental impairments should be part of the infrastructure design, and include plans and space for a sufficient number of accessible living arrangements.

4. The Service prepare a national older offender strategy for 2011-12 that includes a geriatric release component as well as enhanced post-release supports.

5. The Service's practices and procedures for preparing terminally ill offenders for 'release by exception' consideration be independently reviewed to ensure CSC standards are being met and that cases are being prepared with appropriate diligence, rigour and timeliness.

DISORDERED OFFENDERS

The category of 'disordered offenders' includes a wide variety of mental health concerns that range from depression, suicidal ideation to cognitive disabilities, traumatic brain injuries or foetal alcohol spectrum disorder (FASD). Offenders with mental health concerns present a number of operational challenges in the prison setting. These offenders often present symptoms of mental illness that may be considered maladaptive in the correctional environment, including: disruptive or malingering behaviours, unhygienic behaviours, aggression or self-harm. Offenders exhibiting problematic behaviours in the

institutional setting may not be cognizant of how their behaviour contributes to the interventions taken by front-line staff.

The prison environment is not therapeutic. In some cases, incarceration serves to exacerbate the symptoms of mental illness. Prisons are increasingly crowded, noisy and chaotic places. Daily routines may change without warning to address institutional safety and security concerns. These conditions of confinement often pose a number of obstacles for offenders with mental health issues, particularly those individuals whose symptoms may be affected by changes to routine, surveillance measures, and increased or decreased social stimuli. Use of force and security-based interventions in response to symptoms of mental health distress often result in excessively restrictive and isolated conditions of confinement, including time in segregation and use of physical restraints.

In terms of prevalence, the proportion of federal offenders with mental health needs has more than doubled between 1997 and 2008.[11] 62% of offenders at admission to a federal penitentiary are identified as requiring some level of psychological or psychiatric service.[12] The prevalence rate of mental health problems for women offenders is estimated at 70%. Incidents of serious self-injurious behaviour (e.g. cutting, slashing, head-banging) in federal prisons have risen dramatically in the last 5 years.[13] For FY 2010-11, there were 822 incidents of self-injury. The suicide rate is 7 times higher in federal penitentiaries than the rest of Canadian society.[14] Use of force interventions involving mentally ill offenders are increasing. In terms of mental health functioning, this is a complex and compromised population with several deficits.

The federal correctional system faces increasing capacity, service delivery and resource challenges in providing appropriate and adequate mental health services. Vacancy rates for mental health professionals in Canadian corrections – e.g. psychiatrists, psychologists, clinical nurses – are high due to licensing requirements, salary discrepancies

[11] Public Safety Canada, *Corrections and Conditional Release Statistical Overview: Annual Report 2008*.
[12] Correctional Service Canada, Review of Mental Health Screening at Intake – Internal Audit, February 2012.
[13] Correctional Service Canada, *Self-Injury Incidents in CSC Institutions Over a Thirty-Month Period,* December 2010.
[14] Public Safety Canada, *Corrections and Conditional Release Statistical Overview: Annual Report 2011.*

and workload concerns. It is not uncommon for a medium security penitentiary to have only one psychiatrist servicing a population of 600 inmates. In addition to providing counselling and therapeutic care, mental health professionals are required to conduct 'threat/risk' assessments for use in parole hearings and for other criminal justice professionals, reducing therapeutic time with inmates.

Individual cases pursued by the Office often reveal systemic shortcomings. For example, the Office recently investigated the case of a female offender who was engaged in a series of self-injurious incidents that increased in both severity and duration just prior to her conditional release. Despite documented mental health concerns and poor institutional adjustment, she spent the vast majority of her sentence in segregation. On almost every occasion of self-injury, her behaviour was met with overly restrictive, punitive and security-based interventions that often necessitated use of force, including the adoption of the standing control restraint technique to manage her.[15] A comprehensive clinical treatment plan to address this offender's chronic mental illness was never fully implemented. Significantly, the challenging and defiant behaviours that this offender presented while in federal custody have virtually ceased since her release to the community.

In federal corrections, there are five regional psychiatric facilities for offenders with significant mental health concerns. These centres have increased resources and mental health care staff to address acute mental health concerns. However, a growing demand for these services often results in a "revolving door" scenario where only the most disordered offenders in the acute stages of their illness are admitted only to be rotated back to their original penitentiary once stabilized. Although CSC is beginning to pilot "intermediate" mental health care units in regular penitentiaries, this component of the Service's overall mental health strategy has not yet received adequate funding or priority.

That said, there have been some significant improvements in recent years:

- ✓ Multi-million dollar investments in primary mental health care

[15] This technique requires the offender to stand, in leg irons and high profile rear wrist locks, until self-injurious behaviour ceases, which can be hours. In this case, pressure was applied to the rear wrist locks to induce discomfort when she was not compliant or had attempted to drop to the floor.

- ✓ Delivery of front-line mental health awareness training
- ✓ Revised policies in managing self-injury, use of physical restraints, voluntary and informed consent
- ✓ Mental health screening and assessment system at admission
- ✓ Clinical discharge planning to support mentally disordered offenders being released into the community.

And yet, despite these improvements, significant and persistent challenges remain:

- o Inadequate support and training provided to staff managing serial self-injury.
- o Limited sharing of information between front-line and health care staff, often resulting in conflicts between security and health care interventions.
- o Over-reliance on control measures and an escalation of the security response, including disciplinary charges, physical restraints, use of inflammatory spray and segregation placements, to manage self-injurious behaviours.
- o Placements and transfers of self-injurious offenders to maximum security facilities to manage risks that they pose mostly to themselves not others.
- o Transfers in and out of CSC treatment centres and outside hospitals to address administrative issues (e.g. staff fatigue, lack of bed space, staffing ratios) rather than mental health needs.
- o Lack of comprehensive mental health needs assessments and treatment plans.

These areas of concern point to continuing clinical and operational dilemmas confirming that, while penitentiaries are not hospitals, some inmates are in fact patients. In terms of ensuring sustained progress, the following measures appear necessary:

1. Create intermediate mental health care units in regular penitentiaries.
2. Recruit and retain more mental health professionals.
3. Treat self-injurious behaviour as a mental health, not security, issue.
4. Increase capacity at the Regional Treatment Centres.
5. Prohibit the use of long-term segregation of offenders at risk of suicide or serious self-injury.
6. Expand the range of alternative mental health service delivery partnerships with the provinces and territories.
7. Provide for 24/7 health care coverage at all maximum, medium and multi-level institutions.

ABORIGINAL OFFENDERS

Aboriginal people (First Nations, Métis and Inuit) represent approximately 4% of the Canadian adult population, and yet comprise 21% percent of the federally incarcerated population. On any given day there are more than 3,000 Aboriginal offenders in federal penitentiaries. Since FY 2000-2001, the number of Aboriginal inmates in federal custody increased by 37.3%. Currently, more than 1 in 3 federally sentenced women are Aboriginal in descent. Nationally, the incarceration rate for Aboriginal peoples is estimated to be 9 times that of the rest of the country. Some federal institutions in the Prairie region of Canada are comprised of more than 50% Aboriginal inmates.

The treatment of Aboriginal peoples in Canada includes a social history of dislocation, disadvantage, assimilation and discrimination. In 1999, this unique history, and its impact on the Aboriginal peoples of Canada, was formally recognized in the landmark Supreme Court of Canada decision of *R. vs. Gladue* (*Gladue*),[16] and re-affirmed in the March 2012 decision *R. vs. Ipeelee*.[17] The *Gladue* decision attempts to address the overrepresentation of Aboriginal offenders by recognizing the unique systemic and background factors that place Aboriginal peoples at a disadvantage in the criminal justice system. Compared with non-aboriginal offenders, Aboriginal offenders tend to be: younger; incarcerated for more violent offences; more extensive involvement in the criminal justice system; and, considered higher need/risk in terms of employment, education and family. *Gladue* recognizes that Aboriginal offenders are more adversely affected by incarceration and less likely to be rehabilitated due to culturally inappropriate approaches to correctional programming and management.

In response to *Gladue*, CSC has implemented policy changes requiring that all decisions affecting the retained rights and liberties of Aboriginal offenders consider *Gladue* social history considerations.[18] CSC has also developed and implemented several plans

[16] *R. v. Gladue* (1999) 1 S.C.R. 688.
[17] *R. v. Ipeelee* (2012) SCC 13.
[18] Aboriginal social history considerations can include, but are not limited to: effects of the residential school system, family or community history of suicide, experience in the child welfare or adoption system, experiences with poverty, level or lack of formal education, family or community history of substance abuse.

and/ or frameworks for Aboriginal corrections, and expanded the number of culturally sensitive programs for Aboriginal offenders.

Despite these efforts, access to culturally-sensitive programming and services continues to be limited. For example, special provisions of the *Corrections and Conditional Release Act* (*CCRA*) to allow for the transfer of care and custody of Aboriginal offenders to their communities have been severely underutilized. In the 20 years since the enactment of the *CCRA*, CSC has only concluded agreements for 108 community beds – less than 3% of the Aboriginal inmate population. There are a number of reasons for the underutilization of these provisions, including: restricted access (only minimum security offenders are eligible for consideration and lack of facilities); lack of sustained funding and adequate resources; reluctance of Aboriginal communities to participate; limited understanding and awareness within CSC of Aboriginal peoples, cultures, spirituality and approaches to healing; uneven application of *Gladue* principles in correctional decision-making, and; strained relationships between CSC officials and First Nations peoples.

The practical effect of not meeting legislative requirements means that the gap between Aboriginal and non-Aboriginal offenders continues to widen on nearly every indicator of correctional performance. Consequently, Aboriginal offenders are:

- More likely to serve more of their sentence behind bars before first release.
- Under-represented in community supervision populations and over-represented in maximum security institutions.
- More likely to return to prison on revocation of parole.
- Disproportionately involved in institutional security incidents, use of force interventions, segregation placements and self-injurious behaviour.

These outcomes perpetuate conditions that further disadvantage Aboriginal offenders in federal corrections.

THE WAY FORWARD

The CSC faces a number of challenges associated with managing a more complex, diverse and compromised offender profile. Addressing the complex and diverse needs of

aging, mentally disordered, and Aboriginal offender populations will require significant investments in infrastructure, capacity and planning. New construction and retrofitting is only one part of the equation. The other is investment to increase program delivery and service capacity.

Canada is in the midst of its largest prison expansion projects in its correctional history. Even still, the number of accessible living arrangements needed for offenders with physical impairments will be insufficient (only 433 beds). Health care needs are addressed on an individual basis and do not take into account the unique needs of a growing proportion of aging offenders. A national strategy for aging offenders to include plans and resources to meet current and anticipated capacity demands in the areas of physical health care, accommodation, program development and independent care and living is urgently required.

Managing offenders with mental and physical disabilities is difficult and complex in a prison setting. The demands on specialized services and programs for offenders struggling with mental illness, impaired or debilitated by disease, addiction or age is projected to increase. The system is struggling just to keep pace.

The differential outcomes between Aboriginal and non-Aboriginal offenders in Canada continues to widen. Despite legislative, policy and procedural amendments intended to help stem the tide of Aboriginal over-incarceration, the needs of Aboriginal offenders have not been fully met, discriminatory barriers affecting outcomes have not been removed and successful reintegration has not improved. The use of special legislative provisions and access to culturally-appropriate programming and services needs to be significantly enhanced.

In the case of aging, disabled and Aboriginal offender groups, additional effort is required to ensure that health care, mental health, mobility and reintegration needs are addressed. This requires the cooperation and support from provincial health authorities, justice system partners, non-governmental agencies, First Nations communities and groups, and other stakeholders. Ensuring the best possible outcomes for offenders upon release requires a more integrated continuum of care approach.

In terms of the way forward, as Correctional Investigator I have identified three priorities for immediate action:

1. Implementation of a funded and prioritized *National Strategy for Mental Health and Corrections* to bring integration and coordination of services in a continuum of care model. Such a strategy would include recognition of the need for non-prison based resources to manage and treat offenders suffering from acute mental illness.

2. Creation of a *National Roundtable for Preventing Deaths in Custody* to share lessons learned, disseminate best practices and effect change to prevent deaths in places of detention (inclusive of correctional institutions, remand facilities, police lock-ups and psychiatric hospitals).

3. Appointment of a *Deputy Commissioner for Aboriginal Corrections* with singular responsibility for improving correctional outcomes for federally sentenced Aboriginal offenders.

It is my belief that addressing these three priority recommendations will help ensure public safety and protect the human rights of offenders.

The Office of the Correctional Investigator and Human Rights: Aging, Disordered, and Aboriginal Offenders in Canadian Federal Corrections

Presentation to the 10th World Conference of the International Ombudsman Institute

Wellington, New Zealand
November 12-16, 2012

Howard Sapers
Correctional Investigator of Canada

Outline of Presentation

1. Context and Challenge
   - Canadian Corrections by the Numbers
   - Offender Profile
   - Corrections and Human Rights
2. The Office of the Correctional Investigator
   - Role and Mandate
3. Human Rights Challenges in Corrections
   I. Aging Offenders
   II. Mentally Disordered Offenders
   III. Aboriginal Offenders
4. Concluding Remarks and Way Forward

Canadian Corrections by the Numbers

Federal Adult Corrections (2011-12)

- Offenders serving a sentence of two years or more.
- 14,400 male and 600 women federal inmates.
- Approximately 9,000 federal offenders under community supervision.
- Correctional Service of Canada (CSC) has 18,500 employees and manages 57 federal penitentiaries with a $3.0 billion annual budget.
- Average annual cost of maintaining a federal inmate:
  - $111,000 per male inmate; and
  - $211,000 per woman (FY 2009/10).
- CSC adding 2,700 new cells in the next 2 years and closing 3 institutions (1,000 inmates) in the next 3 years
- $3B budget in FY 2011-12 (40% increase from FY 2005-06)

Canadian Corrections by the Numbers

Provincial Adult Corrections (2009/2010)

- Offenders serving sentences of less than two years.
- 23,700 incarcerated provincial inmates (including 13,600 remand).
- 109,400 provincial offenders on probation and parole.
- Majority of provinces are building new cell capacity.

Office of the Correctional Investigator

- The Office of the Correctional Investigator (OCI) acts as an Ombudsman for offenders under federal sentence.
- The Correctional Investigator is independent of the Correctional Service and the Minister of Public Safety.
- The Office was established in 1973 and entrenched in legislation in November 1992.
- Legislation gives the Office the authority to investigate offender complaints related to “decisions, recommendations, acts or omissions” of CSC.

OCI By the Numbers

- The Office has 32 staff, the majority of which are directly involved in the day-to-day addressing of inmate complaints.

In 2011-2012:

- Received more than 18,700 toll-free telephone calls/inquiries
- Addressed more than 5,700 offender complaints
- Conducted more than 800 use of force reviews
- Interviewed more than 1,600 offenders
- Conducted 144 legislated reviews of serious incidents involving assault, self-injury, death in custody and attempted suicide
- Spent a cumulative total of 369.5 days in federal penitentiaries.

Top Areas of Inmate Complaint

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4. Transfer (7.05%)
5. Cell Effects (6.58%)
6. Staff Performance Issues (5.34%)

Human Rights and Corrections

- Prisons are largely closed to public view; in a closed system, the potential for abuse of state and/or correctional authority remains ever-present.
- Outside intervention by the courts and Parliament, independent oversight and external review have been necessary to make progress.
- Inmates need an independent and impartial vehicle to resolve their problems in a timely fashion.
- External oversight assists in the maintenance of a safe, effective and accountable correctional system.
- Compliance with human rights obligations increases the odds of releasing a more law-abiding citizen.

Aging Offenders

Aging Offenders: Issues of Concern

- Growing number of offenders aged 50 years and older in CSC custody – 50% increase in older offenders in past decade
- Operational challenges associated with accommodating an aging population in facilities designed for a younger profile of offenders
- Need for more appropriate and relevant correctional and vocational programming for older offenders
- Dilemmas of providing end of life care in a prison setting
- Lack of a national strategy for managing elderly offenders in federal custody
- Compassionate release of terminally ill offenders is rare, often dismissed on procedural/technical criteria

Aging Offenders: Recommendations

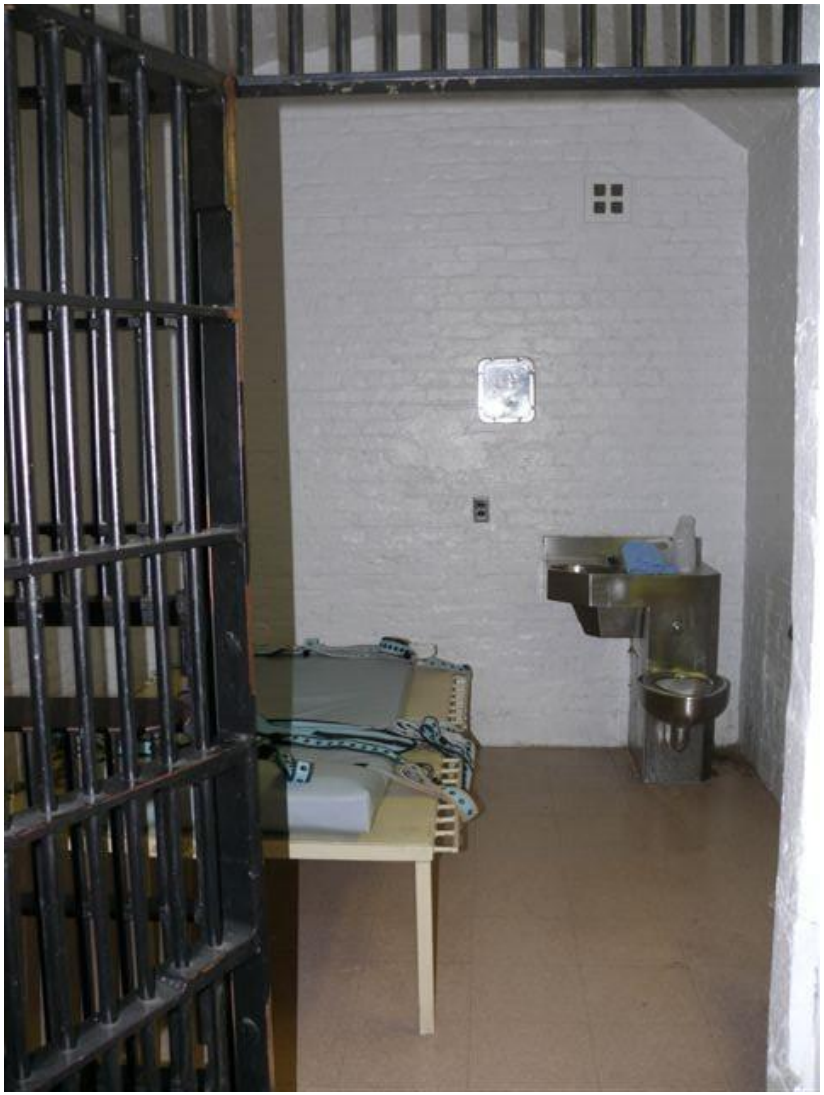
1. The Service should develop a more appropriate range of programming and activities for older offenders, as well interventions responsive to their unique mobility, learning, assistive and independent living needs.

2. Where necessary, CSC hire more staff with training and experience in palliative care and gerontology. Add sensitivity and awareness training to curriculums of both new and experienced staff.

3. Where new construction is planned, age-related physical and mental impairments should be part of the design and include plans and space for sufficient number of accessible living arrangements.

4. Service should prepare a national offender strategy in 2011-12 that includes a geriatric release component as well as enhanced post-release supports.

5. Practices and procedures for preparing terminally ill offenders for ‘release by exception’ consideration should be independently reviewed.



Mentally Disordered Offenders

Mental Health: Prevalence and Concerns

- Proportion of federal offenders with mental health needs has more than doubled between 1997 and 2008.

- 36% of offenders at admission are identified as requiring some level of psychological or psychiatric services. The prevalence rate of mental health problems for women offenders is estimated at 70%.

- Incidents of serious self-harming behaviour in federal prisons have risen dramatically in the last 5 years. For FY 2010-11, there were 822 incidents of self-injury.

- Offenders with mental health problems are more often:
  - Victims of violence, intimidation and bullying.
  - Placed in administrative segregation.
  - Classified at higher security levels.
  - Unable to complete correctional programs.
  - Released later in their sentences.

Mental Health: Challenges

- Support and training provided to staff managing serial self-injury
- Sharing of information between front-line and health care staff – conflicts between security and health care interventions
- Over-reliance on control measures and an escalation of the security response to manage self-injurious behaviours
- Placements and transfers of self-injurious offenders to maximum security facilities to manage self-induced risks
- Transfers in and out of CSC treatment centres and outside hospitals to address administrative issues (e.g. staff fatigue, lack of bed space, staffing ratios) rather than mental health needs
- Lack of comprehensive mental health needs assessments and treatment plans

Mental Health: Recommendations

1. Create intermediate mental health care units in regular penitentiaries.

2. Recruit and retain more mental health professionals.

3. Treat self-injurious behaviour as a mental health, not security, issue.

4. Increase capacity at the Regional Treatment Centres.

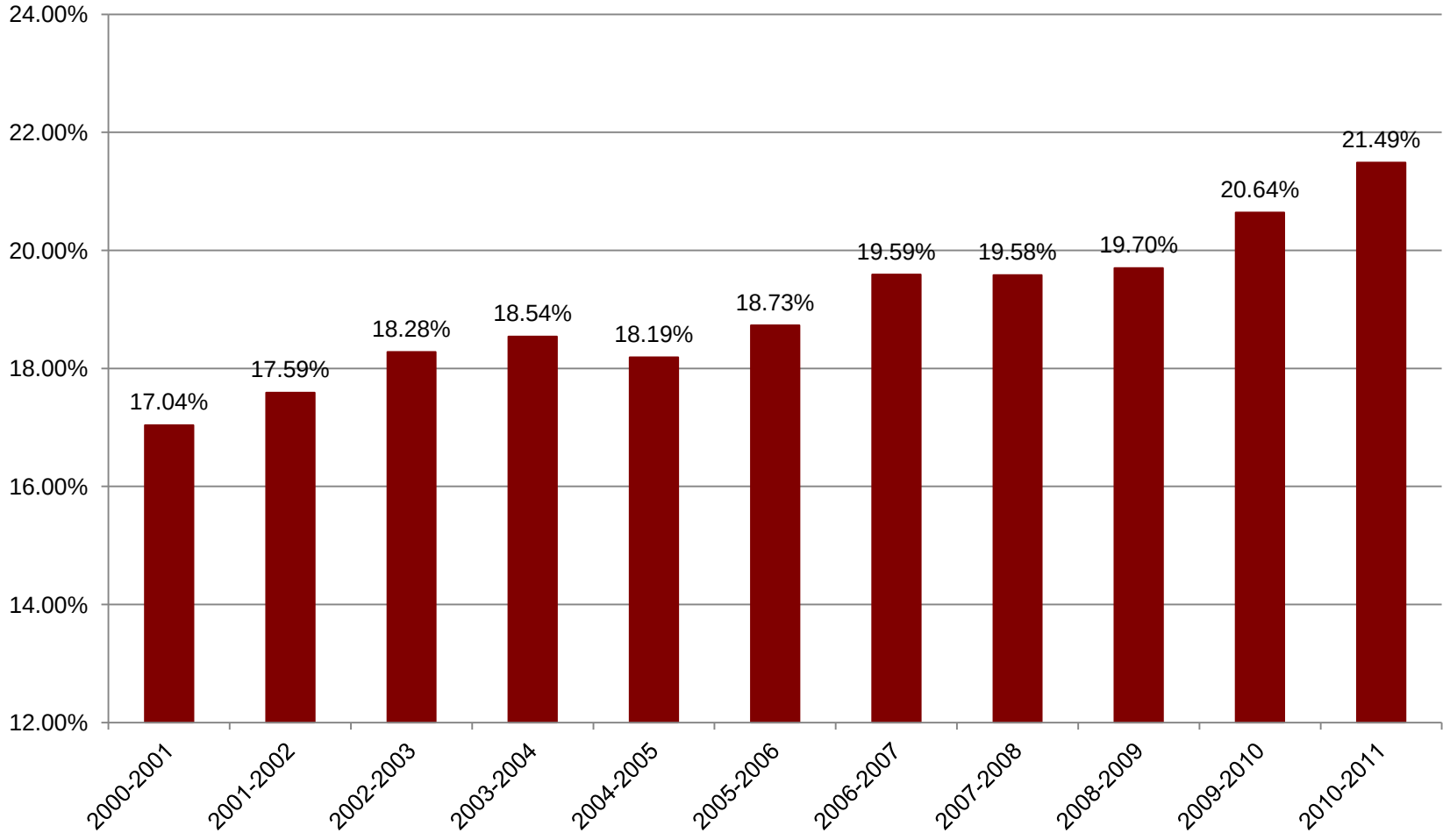
5. Prohibit the use of long-term segregation of offenders at risk of suicide or serious self-injury.

6. Expand the range of alternative mental health service delivery partnerships with the provinces and territories.

7. Provide for 24/7 health care coverage at all maximum, medium and multi-level institutions

Aboriginal Offenders

The Proportion of Federally Incarcerated Aboriginal Offenders is Increasing



Source: CSC Corporate Reporting System, as of 2011-10-09

Aboriginal Offenders: Outcomes

- Aboriginal offenders lag significantly behind non-Aboriginal offenders on nearly every indicator of correctional performance:
  - Classified as higher risk and higher need in categories such as employment, community reintegration and family supports.
  - Released later in their sentence (lower parole grant rates), most at Statutory Release (2/3) or Warrant Expiry dates
  - Classified as maximum security
  - Over-represented in segregation and maximum security
  - Disproportionately involved in use of force interventions
  - More likely to return to prison on revocation of parole

A Legacy of Mixed Messages

- Despite legislative, policy and procedural amendments intended to help stem the tide of Aboriginal over-incarceration:
  - the rights of Aboriginal offenders have not been fully realized
  - discriminatory barriers affecting outcomes have not been removed
  - successful reintegration has not improved.

- Points to lack of capacity to address the unique social, cultural and historical circumstances that contribute to Aboriginal offending in Canada

The Way Forward

1. Implementation of a funded and prioritized *National Strategy for Mental Health and Corrections* to bring integration and coordination of services in a "continuum of care" model. Strategy to include recognition of the need for non-prison based facilities to treat offenders suffering from acute mental illness.

2. Creation of a *National Roundtable for Preventing Deaths in Custody* to share lessons learned, disseminate best practices and effect change to prevent deaths in places of detention (inclusive of correctional institutions, remand facilities, police lock-ups and psychiatric hospitals).

3. Appointment of a *Deputy Commissioner for Aboriginal Corrections* with singular responsibility for improving correctional outcomes for federally sentenced Aboriginal offenders.

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