7

EXHIBIT VOL. 7

CULTURAL/SURVIVAL MATERIALS

BUCHAN, DERRICK & RING

BARRISTERS · SOLICITORS

Janice E. Beaton, B.A. (Hons.), LL.B.
Flora I. Buchan, B.A., LL.B.
Anne S. Derrick, B.A. (Hons.), LL.B.
Jacqueline L. Mullenger, B.H.Ec., LL.B.
Dawna J. Ring, B.A. (Hons.), LL.B.

Sovereign Building, Suite 205
5516 Spring Garden Road
Halifax, Nova Scotia
B3J 1G6
Fax. (902) 423-3544

Telephone (902) 422-7411

April 30, 1990

The Honourable Gregory T. Evans
Commissioner
Royal Commission of Inquiry into
Compensation for Donald Marshall, Jr.
c/o Mr. W. Wylie Spicer
McInnes, Cooper & Robertson
1601 Lr. Water St.
Cornwallis Place
Halifax, NS
B3J 2V1

Dear Mr. Commissioner:

RE: Materials Concerning Cultural Distinctiveness and Cultural Survival - Exhibit Vol. 7

It will be submitted in argument on behalf of Donald Marshall, Jr. that the fact that he is a Micmac, which was central to the issue of his conviction, is of pivotal importance in the matter of compensating him. Mr. Marshall is a member of a distinct cultural and political community. His unique cultural identity and the relationship to family and community arising out of this identity will be addressed in the context of compensation.

A variety of materials are included in this Exhibit to assist in providing further background relative to aboriginal cultural issues generally, and Micmac cultural, linguistic and political issues specifically. These materials are found at Tabs 3 to 7.

At Tab 8 through 16 are found materials specifically relevant to the issue of cultural survival and cultural survival camps. In argument on behalf of Donald Marshall, Jr., reference will be made to the relevance of a cultural survival camp concept to the issue of compensation for Donald Marshall, Jr.

Aboriginal Experience of Prison

It will be submitted that aboriginal prisoners have special problems and needs, stemming from their unique social, cultural and spiritual backgrounds. Special attention has been given to the differences inherent to the aboriginal prisoner by the Government of Canada.

Tab 1: Correctional Issues Affecting Native Peoples, Correctional Law Review, Working Paper No. 7, Solicitor General, February 1988, pp.(iii),5, 34-35.

Tab 2: Final Report: Task Force on Aboriginal Peoples in Federal Corrections, Solicitor General of Canada, 1988.

These materials are being filed to demonstrate that issues of aboriginal cultural distinctiveness have been documented extensively by the government of Canada (Solicitor General's Department in the context of the aboriginal offender).

The Government has recognized that the aboriginal offender experiences prison from a unique cultural perspective.

Micmac Culture

The structure and values of contemporary Micmac Society were observed and recorded by early settlers who made contact with the tribal communities.

Tab 3: Selections from Micmac Indians of Eastern Canada by Wallis and Wallis, University of Minnesota, 1955.

Traditional values and kinship structures have survived amongst the Micmac notwithstanding contact with contemporary urban society.

Tab 4: The Tribal Community in Industrial Society, Chapter 11, Urban Renegades, The Cultural Strategy of American Indians by Jeanne Guillemin, 1975. Columbia University Press.

Micmac women and the Micmac family occupy a special place in the Micmac Community.

Tab 5: Battiste, Dr. Marie, Mikmaq Women, Their Special Dialogue. (Summer 1989) 10 Canadian Woman Studies, p.61.

The Micmac language is a rich and ancient one. Its significance in the transmission of Micmac Culture is pivotal.

Tab 6: Battiste, Dr. Marie, Micmac Literacy and Cognitive Assimilation, Promoting Native Writing Systems in Canada, e.d. Barbara Burnaby, 1985.

The political structure of the Micmac nation dates back many hundreds of years.

Tab 7: The Covenant Chain, Drumbeat: Anger and Renewal in Indian Country (1989), Summerhill Press, e.d. B. Richardson, pp.75 to 76.

Materials re: Cultural Survival and Cultural Survival Camps

Tab 8. Elders gathering - May 14 - 17, 1985 (excerpt) Ontario Federation of Indian Friendship Centre Day 1: L'il Beavers

Tab 9. Native People in Urban Settings, Problems Needs and Services, by Frank Maidman, Ph.D. A Report of the Ontario Task Force on Native People in the Urban Setting, 1981. See the following excerpts:

From Chapter 2, Social Conditions, pp.24-25 on cultural awareness
From Chapter 4, Resources: Availability, Use and Effectiveness, pp.57-59.
Appendix II, Native Ideas on Self-Help Changes

Tab 10. Roles and Responsibilities of those Teaching or Interacting with Children. Ontario Federation of Indian Friendship Centres.

Tab 11. Values, Customs and Traditions of the Mi'kmaq Nation, by Murdena Marshall, B.Ed., Ed.M., unpublished manuscript.

Tab 12. Native Children in Treatment: Clinical, Social and Cultural Issues, by Terrence Sullivan, (1983) 1 Journal of Child Care, p.75. See pp. 83-87.

Tab 13. Suicide in the North American Indian: Causes and Prevention, from Proceedings of 1985 Meeting of the Canadian Psychiatric Association, Native Mental Health Section, October 4 - 6, 1985.

Tab 14. Micmacs Probe Need for a Survival School, from Micmac News, February 1990, p.41.

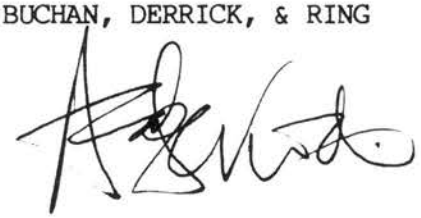
Tab 15. Saskatoon Native Survival School, by Robert Regnier from Our Schools, Our Selves, A Magazine for Canadian Educational Activists, October 1988, p.24.

Tab 16. Submission Concerning the 1985-86 Chapel Island Cultural Survival Camp, by Murdena Marshall

All of which is respectfully submitted,

Yours sincerely,

BUCHAN, DERRICK, & RING



Anne S. Derrick

ASD/har
Evans/Cultural
Marshall Comp. #2

Solicitor General Canada
Ministry Secretariat

Solliciteur général Canada
Secrétariat du Ministère

CORRECTIONAL ISSUES AFFECTING NATIVE PEOPLES

Correctional Law Review
Working Paper No. 7
February, 1988

Canada

CORRECTIONAL ISSUES AFFECTING NATIVE PEOPLES

Correctional Law Review
Working Paper No. 7
February, 1988
(reprinted with minor revisions June, 1988)

Since the completion of the first consultation, a special round of provincial consultations has been carried out. This was deemed necessary to ensure adequate treatment could be given to federal-provincial issues. Therefore, whenever appropriate, the results of both the first round of consultations and the provincial consultations have been reflected in this Working Paper.

The second round of consultations is being conducted on the basis of a series of Working Papers. A list of the proposed Working Papers is attached as Appendix A. The Working Groupof the Correctional Law Review, which is composed of representatives of the Correctional Service of Canada (CSC), the National Parole Board (NPB), the Secretariat of the Ministry of the Solicitor General, and the federal Department of Justice, seeks written responses from all interested groups and individuals.

The Working Group invites written submissions on the Correctional Issues Affecting Native Peoples working paper. Every effort will be made to follow up with in-person consultations with interested groups and individuals if at all possible. This will lead to the preparation of a report to the government. The responses received by the Working Group will be taken into account in formulating its final conclusions on the matters raised in the Working Papers.

Please send all comments to:

Alison MacPhail
Co-ordinator
Correctional Law Review
Ministry of the Solicitor General
340 Laurier Ave. West
Ottawa, Ontario
K1A OP8

CORRECTIONAL LAW REVIEW: CORRECTIONAL ISSUES AFFECTING NATIVE PEOPLE

EXECUTIVE SUMMARY

INTRODUCTION

Identifies the main focus of this paper, which is to highlight the serious problems faced by Native offenders in the correctional system, and to suggest legislative and policy approaches in correctional law reform that could ameliorate these problems. The issues and approaches to solutions are discussed within the context of the Correctional Law Review, and in view of the unique legal status that native people have in Canada.

PART I: THE NATIVE OFFENDER

Native offenders are an especially disadvantaged group in Canada. They are over-represented in the correctional system, and their proportion seems to be increasing. They have special problems and needs, stemming from their unique social, cultural and spiritual backgrounds. Native offenders are reluctant to participate in programs run by non-Natives, but there is increased participation in programs that have Native orientation and are run by Natives. Natives also do not benefit from release programs to the same extent as non-Natives. Problems are also created by low Native representation in the correctional service staff, despite efforts at affirmative action, and low representation on the National Parole Board.

PART II. THE LEGAL FRAMEWORK

Aboriginal people have a special and unique legal status in Canada. It is a product of aboriginal and treaty rights, and various constitutional and legislative provisions. Insofar as aboriginal persons are members of ethnic, religious or linguistic minorities, Canada also has international legal obligations to respect specified rights. The legal definition of the rights of aboriginal peoples is imprecise. However, the development of

aboriginal self-government is the major issue now facing aboriginal peoples and the government of Canada, as new institutions run by aboriginal peoples begin to assume greater control over critical areas of community life, including justice, law enforcement and correctional matters.

PART III. THE AMELIORATION OF CONDITIONS FOR NATIVE OFFENDERS

During the consultations on the Correctional Law Review the major questions for consideration will be whether legislative change would be helpful in ameliorating the conditions for Native offenders. Would either or both of the following two approaches be appropriate?

1. Through the development of special legislative provisions for Native people to assume greater control over the provision of certain correctional services to Native people.

   In enabling legislation, a significant degree of jurisdiction could be transferred to aboriginal communities or other organizations under a clearly stated legal relationship with the Solicitor General. Correctional services, parole and aftercare services could be provided in facilities operated by Aboriginal correctional authorities. Services provided would still have to meet the basic requirements of the law, and provide adequate containment of offenders.

2. The second approach would be to ameliorate the situation of Natives in correctional institutions through amendments to existing correctional legislation governing all offenders. This is a more limited approach, and entails no fundamentally new arrangements. Control would remain with the existing correctional system.

   Under this scheme there would be:

   - significant consultation with aboriginal authorities, through regional and national Aboriginal advisory committees.

- guarantees for native spirituality, culture and rehabilitation.

- greater aboriginal community involvement in release planning for Native offenders.

- increased efforts at affirmative action in hiring and promotion of Native staff, together with increased awareness training for correctional staff.

PART IV: CONCLUSION

The two approaches outlined in the paper are complementary, and could operate to improve the situation of incarcerated native offenders, while facilitating efforts of native communities and other native organizations to assume greater control of correctional services to Native offenders.

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NATIVE OFFENDERS

INTRODUCTION

The Correctional Law Review is an examination of federal correctional legislation through an in-depth analysis of the purposes of corrections and a determination of how the law should be cast to best reflect these purposes. The ultimate aim of the review is to develop legislation that accomplishes the following goals: i) establishes the correctional agencies in law and provides clear and specific authority for their functions and activities; ii) reflects the philosophy of Canadian corrections; and iii) facilitates the attainment of correctional goals and objectives. Such a legislative scheme is intended to promote fair and effective decision-making, be clear and unambiguous, facilitate operations, give guidance to corrections staff, be internally consistent, promote the dignity and fair treatment of inmates and reflect the interests of staff and of all others affected by the correctional system. The interest of the public and correctional administration and staff, as well as offenders, must therefore be taken into account in developing a legislative scheme.[1]

Native offenders constitute a group warranting specific attention both because of the special legal status of Aboriginal peoples and because of the serious ongoing problem of their substantial overrepresentation in the correctional system and other manifestations of their situation as a traditionally disadvantaged group. This latter issue was recognized by the 1984 Carson Report.

> Natives constitute up to 30 percent of the inmate population in at least one region of the Service. Since 1960, the growth rate of the Native population in federal institutions has doubled that of the non-Native population. Moreover, relative to non-Natives, only a small proportion of Natives are approved for conditional release programs (eg. temporary absences or parole), and most are released on Mandatory Supervision. The recidivism rate for Natives also is higher than for non-Natives.[2]

This paper begins with an examination of the continuing problem facing Native people in corrections by reviewing correctional processes as they relate to the Native offender and the larger

Native community. Part II discusses the legal context which must be considered in developing correctional legislation pertaining to Native people. This discussion includes possible implications for corrections of aboriginal rights and Native self-government, the Canadian Charter of Rights and Freedoms, The Constitution Act, 1982, and international law. Part III discusses the advantages and disadvantages of codifying provisions affecting Natives, and examines a number of specific issues, including Native spirituality, Native culture, correctional programming, transfers, parole and aftercare, as well as staff recruitment and training.

PART I: THE NATIVE OFFENDER

In this part, the problems associated with Native offenders in the correctional system will be reviewed. Some of these are problems inherited by corrections from other parts of the criminal justice system or the larger socio-economic system. Others are problems inherent in corrections itself, and concerning which corrections may be able to effect some meaningful change.

The most obvious problem is the large number of Natives in the system, in proportion to the number of Natives in Canadian society as a whole. Ironically, although it is distressing to see such high proportions of Natives in the correctional system, their small numbers, taken in absolute terms, in turn inhibit the mounting of a serious effort to provide programming within the existing correctional systems which will be responsive to Natives' needs. Compounding this is the fact that Native Canadians are not a homogeneous group, with a single language and culture. They therefore do not have a single set of problems for the correctional system to address. Not only are there several distinct aboriginal languages in Canada (there are 16 aboriginal languages that are in widespread use out of a total of 53 distinct aboriginal languages in Canada[3]), but the problems are different for status and non-status Indian, on and off reserves,and between rural and urban areas.

In the latest reported census figures, Native peoples made up only 2% of the population of Canada.[4] However, according to official statistics - which reflect varying definitions of "Native" and are thought by many to underestimate the numbers of offenders who consider themselves Native - about 9.5% of the penitentiary population is Native including about 13% of the federal female inmate population.[5]

In the West and North, the proportional representation is more dramatic, and indeed, is increasing. In the Prairie region, for example, Natives make up about 5% of the total population. However, in 1980, the Native population was 27.6% of the total Prairie federal inmate population; in 1987, it was 32.2%. In 1980, the Pacific Region showed a Native inmate population of 9.4%; in 1987, it increased to 12.2%.

The Native inmate population in Quebec has remained relatively stable, increasing from .2% in 1980 to .5% in 1987. In the same period, however, the percentage of Native inmates in the Atlantic Region dropped from 4.3% in 1980 to 2.6% in 1987. Similarily, Ontario dropped from 5.0% in 1980 to 4.0% in 1987.[6]

These figures are cited not to suggest a racist bias of individual criminal justice decision-makers or even of the system as a whole, but in order to illustrate that Natives represent a sizable minority in corrections, and to suggest that the root causes of their overrepresentation may be deeply buried in a breakdown in social structures outside the criminal justice system. Whatever the causes, however, it is clear that the numbers raise very real questions within corrections about how best to handle the needs and problems presented by Native offenders.

The social and economic situation of Native Canadians as compared to non-Native Canadians is discouraging. Generally, Native Canadians have a lower average level of education, have fewer marketable skills and have a higher rate of unemployment. The infant mortality rate for Indian children is twice the national rate, while life expectancy for those children who live past one year is more than ten years less than for non-Indian Canadians.

The rate of violent death among Indian people is more than 3 times the national average. The rate of suicide is nearly 3 times that of the total population of Canada, but in the 15-25 age range, the suicide rate is more than six times that of the total population in that age group.[7]

Studies also suggest that Native offenders, perhaps to an even greater extent than non-Native offenders, come from backgrounds characterized by a high degree of family instability and considerable contact with various types of institutions operated by social service and criminal justice agencies.[8] Native offenders show a high incidence of single-parent homes, family problems and foster home placements. The majority of Native offenders have long criminal records both as juveniles and as adults. Native offenders are also more likely to be admitted to correctional institutions for a violent offence than are non-Natives, although the reasons for this finding are difficult to trace clearly.[9] Alcohol abuse tends to be a serious problem for the majority of native offenders. Both the rate of alcohol abuse and the extent of individuals' abuse of alcohol are a greater problem for Native offenders than for non-Native offenders.

About half of the Native federal inmate population are status Indians, and of this group, about a third come from reserves. Generally speaking, most Native inmates now appear to come from urban areas, although still in considerably smaller proportions than do non-Native offenders. Where only some 15 years ago, 40% of the Native inmates in Stony Mountain Penitentiary were listed as having come from urban areas, the figure is now closer to 70%. Native offenders' rate of urban residence appears to be higher than for the Native population in Manitoba as a whole.[10]

Once the Native offender arrives in prison or penitentiary, further differences are observed. A substantial portion of Native inmates perceive themselves and are perceived by others as significantly different from their non-Native counterparts in terms of their attitudes, values, interests, identities and backgrounds.

Native inmates tend not to participate to any meaningful extent in general rehabilitation programs within penitentiaries. This seems to be true despite the significant enhancements made over the last few years in available programs and the expansion of services by Native organizations interested in providing corrections-related services and counselling. The Native offender participation rate is, however, higher for Native-specific programs involving private sector representatives such as Native Brotherhoods and Sisterhoods, and educational and cultural programs such as the Sacred Circle. Perhaps because of the increased openness of the correctional system to Native spiritual and cultural representatives, which is at least in part due to representations from Native organizations, and perhaps also because of the cultural revitalization taking place within certain Native communities, there seems to be an increase in Native culture and spiritual awareness among Native inmates.

Many Native offenders have special social, cultural and spiritual needs. These include the observation of such traditional group ceremonies and rituals as pipe ceremonies and the sweat lodge. For Native offenders who have not had much prior contact with traditional culture and spirituality, the opportunity for instruction and participation in these areas can become an important part of their incarceration experience. It can also provide a link to free Native communities.

A significant number of Natives serve their sentence in correctional institutions which are a considerable distance from their home communities. The problem is aggravated for female offenders, both Native and non-Native, because there is only one federal penitentiary in Canada for female offenders. The Correctional Service of Canada (CSC) attempts to alleviate these distance problems by using Exchange of Service Agreements, by which federal inmates may be placed in provincial prisons closer to home, and vice versa. However, distances remain a problem, particularly for offenders from northern and isolated areas, since the majority of provincial institutions are also in central locations. This has obvious effects on the maintenance of family and community ties.

Before CSC's transfer policy was changed to reflect the principle of keeping inmates as much as possible in their home regions, transfers exacerbated the problem of distance from an offender's home community. This in turn disrupted plans for the re-integration of offenders back into their families and peer communities. It was partly in order to respond to these types of re-integrative problems that the Carson Report recommended the establishment of more work camps and community correctional centres for Natives, and even the consideration of "separate medium-level security institutions designed for Native inmates, operated and managed by Native staff".[11] On this subject, Carson remarked that "we believe that staff-inmate relations will always remain somewhat strained in institutions run by non-Natives and populated by large numbers of Native inmates".

Consistent with these recommendations, 1988 should see the establishment of Native-run Community Correctional Centres in Alberta (Edmonton) and British Columbia (the lower mainland). These centres, to be run by Native community organizations, will offer life-skills programs, substance-abuse treatment, and culturally appropriate programs for native offenders.[12] The Pacific and Prairie regions are also seeking additional space in provincial work camps for natives.[13]

Differences between Natives and non-Natives are also observed in the release system. Native offenders tend to waive their rights to a parole hearing more often than do non-Natives, choosing not to be considered for parole. Native inmates are more unfamiliar with parole regulations than their non-Native counterparts. Even where Native offenders come from reserves, the Native community

often does not form part of the parole or other release plan, sometimes because the offender is unwelcome on the reserve or because there are more extensive supervision and rehabilitative resources located in urban areas, as compared to rural Native communities, or because the offender no longer feels linked to the reserve. Often the situation is caused by a complex set of interrelated factors.

In a six year study covering the period January 1, 1979 to December 31, 1985, in the Prairie Region of CSC, Native federal offenders had a slightly higher grant rate for unescorted temporary absences than did non-native offenders, but significantly fewer full paroles were granted to Natives (25.5% of Native applicants granted as opposed to 39.2% of non-Natives).[14] In Saskatchewan, however, these parole rate differences for federal offenders do not appear to hold true, and in fact Native federal offenders appear to receive parole more frequently than non-Natives. Following release, Natives have a higher rate of return to penitentiary, and are more likely to be revoked for "technical violations" than for new criminal convictions.[15]

Many people who work with Native offenders complain that the small numbers of Natives among National Parole Board members and staff contribute to a lack of understanding of Native offenders and a lack of parole plans which are suitable for Natives. Some Native representatives claim that parole criteria or the assessments made about individuals in preparation for parole hearings are inappropriate to Natives. It is also claimed that there is little input from Native communities into the parole preparation process and the development of an aftercare plan for Native offenders.

In response to these concerns, a Working Group was established by the Solicitor General in March 1987 to examine the process that Native offenders go through from the time of admission to a federal penitentiary until warrant expiry. The Working Group On The Re-Integration of Aboriginal Offenders as Law-Abiding Citizens is looking at ways of improving the opportunities for Native offenders to re-integrate into society through appropriate penitentiary placement, relevant institutional programs, improved preparation for temporary absences, day parole and full parole, and through improved and innovative supervision. The Working Group is consulting provincial and territorial governments, aboriginal communities and other organizations actively involved in the re-integration of Native offenders into society.[16]

Attempts to recruit and retain significant numbers of Native staff into the Correctional Service have had modest results. CSC has what amounts to an affirmative action program for the hiring of Native staff, but there is still a much lower proportion of Native staff than offenders at the local levels. Native staff who do work in the correctional setting often find themselves under pressure from both Native offenders on the one hand (who may put unrealistic demands on them because they are Native) and other staff. This pressure on Native staff often causes frustration and early departure from the Service.

Observations

Several common themes appear in key writings and reports about Natives in the correctional system.

First, it is very difficult for non-Native correctional workers to understand the social, cultural, spiritual and religious backgrounds of Native offenders and thus to understand the forces which affect many of them most strongly. The greater the lack of mutual understanding, the more compounded become the difficulties of running a correctional program.

Second, even where Native offenders make "model prisoners" in the sense that they cause little or no trouble in the institution, there has been a marked lack of success in persuading Native offenders to participate actively in programs of education and counselling provided for the general population. There appears to be a consensus among correctional authorities and aboriginal groups that a significant problem is that Native offenders appear to be largely unfamiliar with the workings of the correctional system. However, it does appear that Native offenders are most likely to participate in programs if they are run by Native organizations which are not identified as being a part of the system.

Third, there has been modest success at best in recruiting Natives to work in correctional settings, which is especially regrettable since Native offenders appear most likely to participate in regular CSC programs staffed by Natives and having a Native cultural orientation.

Fourth, the problem of Native criminality - like crime in the mainstream - is closely tied to the general socio-economic conditions experienced by Natives on and off reserves, and any solution to Native criminality must address these socio-economic conditions, which include unemployment, poverty, alcoholism and family breakdown. Nonetheless, the factors of violence, lengthy criminal record, alcohol abuse and lack of community ties are strongly associated with risk, and cannot be ignored when individual case management and release decisions are made.

All these themes lead many Native and non-Native observers to conclude that Native offenders are an especially disadvantaged group, that Native people should be more closely involved in the planning and delivery of correctional services, and that in some cases special services and programs should be established by and for Native offenders, either on or off Native land bases.

At the same time it must always be born in mind that Native offenders are not a homogenous group and that the large numbers of Native offenders who come from urban areas and who do not have strong links to Bands or reserves require approaches which involve urban native organizations as well as Bands or Tribal Councils.

PART II: THE LEGAL CONTEXT

Natives in Canada have a unique legal status. This status is the product of their treaty and/or aboriginal rights, and provisions of various constitutional documents. These rights, together with certain provisions in international law, have important implications for Natives and their relations with the justice system. In this chapter we will describe these elements in the legal framework relating to Natives.

Aboriginal Rights and Indian Self-Government

Constitutional jurisdiction to make laws concerning "Indians, and lands reserved for Indians" was given to the Parliament of Canada by section 91(24) of the Constitution Act, 1867. Many Native groups entered into treaties with representatives of the Crown in which they surrendered their claims to the land in return for reserves and other treaty rights.

More recently, certain rights of the aboriginal peoples of Canada were specifically included in the Constitution. The provisions related to these rights are contained in sections 25 and 35 of the Constitution Act, 1982. Section 25 states:

> 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:
> a) any rights or freedoms that may have been recognized by the Royal Proclamation of October 7, 1763; and
> b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

This section is important for any correctional legislation pertaining to Native people because it is probable that the "equality rights" section of the Charter (section 15), cannot be used to strike down any existing or other rights of Native people on the grounds that they discriminate against non-Natives. Thus, distinctions are likely not discriminatory if they flow from the rights of aboriginal peoples. In addition, as we discuss below at p.20, s.15(2) of the Charter permits ameliorative programs to

remedy disadvantages faced by individuals or groups quite apart from matters related to the rights of aboriginal peoples.

An even more important development for Native people was the constitutional entrenchment of existing aboriginal and treaty rights through the inclusion of section 35 in the Constitution Act, 1982[17]:

> 35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

There continues to be a variety of interpretations as to what these "aboriginal rights" mean in practice. Native leaders argue that a wide range of specific rights are implied in the meaning of aboriginal rights. Precise legal definitions await future constitutional conferences and court decisions. However, in dealing with issues of land claim settlements and self-government, a revised Comprehensive Land Claims Policy was adopted by the Government of Canada in December 1986. Within the framework of the policy, the Government of Canada is prepared to address a range of issues, including the key issue of self-government.

> The federal government's policy approach to self-government is to acknowledge the desire expressed by communities to exercise greater control and authority over the management of their affairs.... The objectives of the Government's policy on community self-government are based on the principles that local control and decision making must be substantially increased.... In the context of the comprehensive claims policy, self-government is an issue that is tied

> closely to the expressed need of aboriginal peoples for continuing involvement in the management of land and resources as well as in the development of self-governing institutions that recognize their place in Canadian society.[18]

For many native political leaders, self-government is undoubtedly the most pressing issue facing Native people today. At its most fundamental level it concerns the survival of Native peoples as distinct groups in Canadian society. However, just as there is no agreement as to the exact nature of aboriginal rights, there is also no consensus as to what, in a specific sense, is entailed in Native self-government. At the same time there is no doubt that it is seen as a desirable goal by government and Native people alike. Much has been accomplished toward implementing this goal, including: four constitutional conferences involving the Prime Minister, the provincial Premiers and Native leaders; a study by a special parliamentary committee (the Penner Report);[19] a major land claims settlement which includes self-government - the James Bay and Northern Quebec Agreement[20] and the North Eastern Quebec Agreement;[21] amendments to the Indian Act[22] to grant increased powers to local Native communities; federal self-government legislation - the Cree Naskapi Act[23] and the Sechelt Indian Band Self-Government Act;[24] and provincial legislation which allows Native people to provide certain social services in a manner that recognizes their culture, heritage and traditions.[25]

The movement towards Native self-government will have major implications for the Correctional Law Review because it can be anticipated that the criminal justice system, including corrections, will be a component of many comprehensive self-government negotiations.

Of course, there is immense variety among Native communities as to the priority they attach to criminal justice matters in their self-government negotiations, to say nothing of the differences in various Native groups' economic and other readiness to take over various functions. Criminal justice has been to date a much lower priority with Native organizations than issues such as education and health care. Within the criminal justice area itself, corrections has been a far lower priority than matters

such as policing and court operations. The Federal Government is conscious of the differing perspectives and needs that aboriginal communities bring to the process of defining self-government.

At the 1987 First Ministers Conference on Aboriginal Constitutional Matters, the Federal Government stated that it recognized the right of aboriginal peoples to self-government, and was prepared to support proposals for self-government that:

- provide explicitly for a process of negotiation amongst aboriginal peoples and governments to define and implement that right; ...
- permit aboriginal control over matters that directly affect them, this right to be applicable to all aboriginal peoples.[26]

Implied as part of the self-governing arrangements would be the authority to deliver services and programs.

The approach taken by the Federal Government in the Sechelt Indian Band Self Government Act[27] was to allow that Native community to determine the details of specific powers it wishes to assume. The Act is essentially enabling legislation which establishes the Sechelt community as a legal entity with responsibility for writing its own Constitution. Its Constitution can, within the limits specified in the legislation, define the powers and procedures of the community government, which would in turn allow the community to make laws in relation to a variety of areas.

While not going as far as the development of parallel institutions, the landmark James Bay and Northern Quebec Agreement between the federal government, the province of Quebec, and the Cree and Inuit of Northern Quebec, which was signed in 1975, provided for specialized correctional institutions, programs and services appropriately modified to meet the needs of Cree and Inuit offenders.[28] Sections 18 (Cree) and 20 (Inuit) set forth wide-ranging provisions related to the justice and correctional systems. With regard to corrections, section 18 provides for the following:

- detention facilities in the James Bay Territory;
- Cree staff where possible, and special training for Crees to

permit them to be employed in correctional institutions and in probation, parole, rehabilitation and aftercare services;
- language rights upon arrest or detention;
- Crees sentenced to imprisonment could be detained in northern institutions, after consultation with the Cree local authority;
- care in northern facilities of incarcerated Crees who are or become mentally ill or seriously physically ill during their incarceration;
- special facilities for young Crees under the ages of 21 and 16;
- programs and services appropriate for Crees, in the Cree language, where possible; and
- the undertaking of studies for the revision of the sentencing and detention of Crees, taking into account their culture and way of life.

Section 12 of the North Eastern Quebec Agreement contains similar provisions governing services to the Naskapis. These Agreements thus recognize not only that specialized programs and services have to be developed, but also that Native staff are vital to the provision of appropriate services to Native offenders and that Native communities can also play a critical role.

Although few steps have as yet been taken to implement the kinds of facilities and services described in the Agreement (in large part because of the higher priority given to other aspects of the Agreement), there appears to be some impetus now to look at how the corrections part of the Agreement could be implemented. The James Bay and Northern Quebec Agreement Implementation Negotiation, (established June, 1986), under the auspices of DIAND, is trying to resolve outstanding issues and focus action on implementation by various federal departments.

Legislative recognition of Native peoples' special situation is not confined to federal initiatives. In the area of child welfare, several provincial governments have enacted legislation which gives recognition to the principle that Native people should provide services to their own people in a way that reflects their culture, heritage and traditions. For example, in Ontario the Child and Family Services Act, 1984 [29] contains

several special provisions regarding Native people. The underlying approach is reflected in the Declaration of Principles, for example:

> f) to recognize that Indian and Native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and Native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concepts of the extended family...

The Act then details the ways in which native organizations can participate in or take over decisions affecting the provision of services to Indian and Native children. Some provisions of the Child and Family Services Act, 1984 relevant to Native people are included in Appendix B of this paper as an example of the kind of approach which has been tried in this area. The provinces of Alberta, Manitoba, New Brunswick and Nova Scotia have similar provisions with regard to Native child welfare.

Several provincial governments have also developed policies relating to education and health care that more accurately reflect the needs and aspirations of aboriginal people.

The various legislative initiatives outlined above recognize the need to ameliorate the situation of Natives through the provision of programs and services which reflect Native culture, heritage and traditions, and take the approach that such programs and services ideally should be provided by Natives, or at least with the involvement and advice of Native organizations.

While a great deal of attention has been directed toward status Indians living on reserves, much of the legislation pertains to Native people generally. Section 35 of the Constitution Act,1982 states that the aboriginal peoples of Canada include the "... Indian, Inuit and Métis people of Canada". Similarly, the Ontario Child and Family Services Act, 1984 is clear in stipulating that "... band and Native communities" is to be interpreted as including status, non-status and Métis people.

Clearly corrections initiatives designed to promote the re-integration of Native offenders must include all those of Native heritage, whether or not they are status Indian, Inuit or Métis, on or off reserves, from urban or rural areas.

As the previous discussion has demonstrated, there has been a growing recognition of the shortcomings of a system which uses the institutions of the dominant society with an expectation that Natives will benefit from them in the same ways as non-Natives. Both governments and Native people have agreed upon the need to work toward a new relationship, even if most of the specifics of this relationship have yet to be worked out. New institutional arrangements and programs that are based on Native values, culture and traditions may all be appropriate and important.

For some Native groups the assumption of power under some form of self-government based on traditional culture could simply be a continuation of what has been occurring all along. Others will develop new forms of government.

The Community Negotiations Branch of DIAND has funded many Native groups to carry out research to help them determine the most appropriate means of blending traditional institutional forms and customs with the contemporary situation. For some this will entail legislative schemes leading to the development of new institutions and programs. For example, a reserve in Manitoba is currently working on a plan to change its form of government from the band council system to a system based on traditional Native clans. Others will be content to make changes to the existing band council system.

The Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms has special significance in any discussion of a legal framework for correctional legislation. As a constitutional document, the Charter binds both the federal and provincial governments by guaranteeing fundamental rights to everyone. The Charter protects these rights from the powers of the state.

With the advent of the Charter, the courts have been given expanded power to decide on the constitutionality of legislation and the actions of state officials that may affect constitutionally protected rights and freedoms.

In section 15, the Charter offers new constitutional equality rights protections for minorities, including Native persons.

> 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex or mental or physical disability.

The adoption of this equality rights provision creates a new situation whereby policy issues related to equality rights which were formerly resolved through political processes have taken on a new constitutional dimension and are now potentially subject to judicial scrutiny. The previous part of this paper discussed some of the implications of Natives' unique legal status and the drive towards self-government. It remains to examine the legal implications for Native offenders of section 15.

Under section 15, an individual may challenge a policy or program (or absence of a policy or program) as violating the right to equality before and under the law, or to equal benefit and protection of the law. Most government programs are of course authorized by some form of law whether a statute or regulation, if only through the general authority of a department or agency. How section 15 will in fact be interpreted by the Supreme Court of Canada is as yet largely unknown, but arguments that unequal application of a program for which the law provides constitutes a denial of "equal benefit of the law" can be expected.

Even where a law or program is apparently neutral on its face, it may have a different impact on some minority groups than on the mainstream.[30] For example, it could be argued that the National

Parole Board, carrying out its responsibilities "... to grant release, and determine release terms and conditions" under the Parole Act, would be in violation of the Charter if decisions, procedures and conditions of parole could be demonstrated to de facto discriminate against Native inmates. In such a case the inmate would likely have to demonstrate that there is a differential treatment, not justified by valid government objectives (such as protection of the public) between Native parole applicants and non-Native parole applicants and that the distinction has the effect of denying the "protection" or "benefit" afforded to non-Natives or that there is a lack of sameness (equality) between what is afforded Native applicants and non-Native applicants. It would be argued that although the legislation does not single out Natives, the effect of the procedures is discriminatory.

This kind of discrimination is "systemic discrimination", or the adverse impact of an apparently neutral law or program. As a 1985 federal Department of Justice discussion paper states, "it is discrimination when neutral administration and law have the effect of disadvantaging people already in need of protection under section 15." ... [T]his form of discrimination is often not readily identified; it commonly takes statistical analysis to detect it."[31]

The parole release power is a good example of an obvious "benefit" created specifically in law to which no discrimination should attach. Perhaps a more complex question is posed by programs like inmate employment. Can it be argued by a Native inmate that the training and work offered to inmates is designed for and more beneficial to non-Natives than to Natives, and thus constitutes "systemic discrimination"? And should correctional legislation be developed which includes provision for special programs, plans, criteria or even institutions for Native offenders to prevent future discrimination?

The issue of "systemic discrimination" raises the question whether, under the Charter, the courts can impose obligations not just to redress imbalances or inequalities in legislative provisions and programs, but also to legislate in a positive way. Can a challenge under the Charter result in a court's finding that the government must pass legislation or provide programs to redress these imbalances?

It is still unclear how far the courts might go. Several forms of positive remedies (mandatory orders) are available to the courts which pertain to minority groups: orders to provide employment or a denied service to a victim of discrimination, to provide educational or government services to members of a minority group, or to carry out an affirmative action program for the benefit of a disadvantaged group.[32] Section 24 of the Charter is expansive in the extensive remedial powers it bestows on the courts. It states that "anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

In order to preclude, or at least minimize, litigation alleging "systemic discrimination" against particular groups, governmentsmay institute affirmative action programs in the form of special treatment or consideration for members of disadvantaged minorities. It is such legislation and programs that are referred to in section 15(2) of the Charter: "... Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups". The purpose of an affirmative action program is the achievement of a more proportional representation, or more equal treatment, of groups than currently exists, in the workplace and elsewhere.

Since equality of results - not just equality of opportunity - is the main concern of affirmative action programs, such programs must include both "equal opportunity" and "remedial" measures. Equality of opportunity alone is not enough because the differences and disadvantages of certain groups would lead to a continuance of discrimination against those groups. Equality of opportunity alone can perpetuate the effects of past injustice. A remedial program, therefore, is required to make affirmative action effective. In the workplace, this usually entails the establishment of numerical goals or targets and timetables for achieving them.

Affirmative action programs have become a common vehicle for redressing past discrimination and are usually voluntary. In certain circumstances, however, the establishment of such a

program can be imposed by federal or provincial Human Rights Commissions. For example, section 41 of the Canadian Human Rights Act, 1983 states:

> a) that such persons cease such discriminatory practice and, in order to prevent the same or a similar practice from occurring in the future, take measures including:
> i) adoption of a special program, plan or arrangement referred to in subsection 15(1) (i.e. an affirmative action program).

In the recent decision of the Supreme Court of Canada in Action Travail des Femmes and the Human Rights Commission v. Canadian National Railway Company, it was held that a tribunal under s. 41(2)(a) of the Canadian Human Rights Act can impose a prescribed employment equity program with specified quotas on an employer.[33]

Affirmative action programs for the hiring of Native people in the justice and correctional system are anticipated in sections 18 and 20 of the James Bay Agreement. For example, Cree and Inuit are to be employed in a variety of capacities:

> 18.0.34
> After consultation with the Cree local authorities or Cree Regional Authority, and when it will be appropriate to do so, Crees will be recruited, trained and hired in order to assume the greatest possible number of positions in connection with the administration of justice in the "judicial district of Abitibi".[34]

Similar programs have been instituted through policy in many federal and provincial correctional agencies. It can be anticipated that there will be increased demand for affirmative action programs as a means to ensure the adequate participation of Native people in the criminal justice system under both the Charter and human rights legislation. However a recent unreported case of the Manitoba Court of Queen's Bench suggests that in order to be protected by s.15(2), an affirmative action program must be rationally related to the cause of the disadvantaged state of the target group, and must be reasonable required in order to ameliorate the conditions of hardship of the group.35 Not all programs, therefore, may be Charter protected.

International Law

The final aspect of the legal context which requires consideration in developing correctional legislation is the variety of international obligations Canada has undertaken. These includethe UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its Optional Protocol, the International Covenant on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Economic, Social and Cultural Rights. Canada has also endorsed the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Article 27 of the International Covenant on Civil and Political Rights specifically addresses the rights of members of minorities within states where they exist:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.[36]

The Covenants are international treaties which are binding in international law, although they are not enforceable in domestic courts unless they are incorporated in domestic law. The UN Human Rights Committee receives information by way of regular reports from state parties under both Covenants, and by complaints from individuals under the International Covenant on Civil and Political Rights. A finding that a state has failed to observe the Covenants can result in censure by the Committee. The observation of covenants thus depends in large measure on the impact of international and domestic public opinion.

The provisions of the Covenants have not been directly incorporated into Canadian domestic legislation, and thus Canadians cannot resort to domestic courts to enforce compliance. However, the Canadian Charter of Rights and Freedoms specifically protects many of the human rights recognized in these documents. Furthermore, there is judicial authority to the effect that where legislation is ambiguous, it should not be given an interpretation that is inconsistent with Canada's international obligations.

In addition, the existence of international obligations such as those in the UN Covenants may often provide political support for arguments on behalf of minority groups.

An increasing number of Native groups are utilizing international law to support their efforts to gain control over their affairs through the formation of several international Native groups including the World Council of Indigenous People, the International Indian Treaty Council and the Inuit Circumpolar Conference.

PART III: AMELIORATION OF CONDITIONS OF NATIVE OFFENDERS

We have suggested that the high number of Native people coming into conflict with the law remains a serious problem for the correctional system and that programs designed to ameliorate the problem have, to a large extent, failed to achieve the desired results. As we noted earlier, Native offenders are not a homogeneous group linguistically, culturally or tribally. Native offenders thus have unique and various needs that require special measures to meet them.

In addition, the discussion has indicated that Native people in Canada are entering a new era in the history of their relations with the larger society. This is manifest in the development of two related legal and political issues: the movement toward Native people assuming more control over their own affairs through self-government, and their increased demands for their aboriginal and treaty rights, as well as any rights under the Charter and human rights legislation. These issues are, in turn, closely tied to the major cultural revitalization that is presently occurring in many Native communities across Canada. It can be anticipated that these movements will continue to gain momentum in the future.

Each of these developments has important implications for the future administration of the correctional system. The Correctional Law Review provides an opportunity to address at least some of the problems related to Native offenders and the correctional system. The CLR is of course concerned with correctional legislation and regulation, and not with operations. It is therefore limited in the types of solutions it can offer. The key question is: how much of the body of correctional rules, procedure, criteria and authority should be set out in law as opposed to a strategy of policy and operational improvements in programs and services?

A Note about Codification and the CLR

One of the fundamental premises of the CLR, and indeed the Criminal Law Review as a whole, is that the present correctional legislation is in need of revision because it "... is outdated, confusing, and often inadequately related to current realities".[37] Our second Working Paper, A Framework for the

Correctional Law Review, suggests that it is important for correctional legislation to take into account recent developments in the law and the wider justice system, particularly the Charter, which have an impact on corrections. The impact of the Charter " ... may require fundamental restructuring of the legislative scheme and a reorientation of its substance to be consistent with Charter demands".[38]

In addition, we suggested in the first Working Paper on Correctional Philosophy that a clear statement of correctional purpose and principles is necessary to form the basis of any revised correctional legislation (see Appendix C). In carrying out the task of revising the legislation, the interests of the correctional staff, inmates and the public must be considered and the resulting legislative scheme must be seen as fair by all people affected.

Appendix C contains the full statement of purpose and principles proposed by the Review. Of particular relevance are strategies c), d) and e), which emphasize the rehabilitation of the offender "... through the provision of a wide range of program opportunities responsive to their individual needs", and principle 1 which suggests that "... Individuals under sentence retain all the rights and privileges of a member of society except those that are necessarily removed or restricted by the fact of incarceration. These rights and privileges and any limitations on them should be clearly and accessibly set forth in law." In addition, principle 7 speaks to the need to involve the larger Native community in the correctional system. "Lay participation in corrections and the determination of community interests with regard to correctional matters is integral to the maintenance and restoration of membership in the community of incarcerated persons and should at all times be fostered and facilitated by the correctional services."

In the Framework Paper, it was suggested that correctional legislation should be sufficiently detailed to provide clear guidance with respect to correctional goals and objectives, and a structured framework for decision-making, while permitting sufficient flexibility for appropriate decisions by correctional staff.

The approach recommended in the Framework paper entails legislating the purpose and principles of corrections, the objectives of all major agency functions and activities and essential requirements but leaving the details to the initiative of those who must account for the functioning of the system. In this approach all elements of the legislation, including regulations, must be framed to be consistent with the stated purposes and principles. Specific policies will be developed by the correctional agencies themselves to reflect the philosophy.[39]

Given the Correctional Law Review's approach, a number of questions arise with regard to the situation of Native offenders and the Native community: Is the development of special legislative provisions for Native people an effective approach to the amelioration of the serious problems of the Native offender? With regard to such legislation, what specific approaches should be considered? What matters affecting the Native offender, as a special offender group, should be included in legislation and which should be set out in policy? What are the legislative implications for the Native offender of the purpose and principles of corrections?

It would appear that two broad issues must be addressed by the Correctional Law Review in its attempts to respond to the unique situation of the Native offender: (1) the extent to which legislative provisions can facilitate the assumption by Nativecommunities of control over correctional services to Native offenders, and (2) the recognition of the unique needs of those Natives who do find themselves in the correctional system.

These approaches are not intended to be mutually exclusive but rather could co-exist and, in the case of initiatives giving Native communities or organizations more control over corrections, would be viewed as options for the Correctional Service and Native organizations and communities to discuss. In these negotiations, it is important to be cognizant of the immense variety of circumstances among Native communities in terms of their readiness and willingness to assume control of their affairs. Any changes should be compatible with the enhancement of aboriginal community decision-making, and involve appropriate consultations with aboriginal people. Recognizing that increasing numbers of Native offenders come from urban

areas, it is particularly important that urban aboriginal organizations be included in the process of consultations. This implies that different legislative approaches will be appropriate to meet the diverse interests of Native offenders. In addition, any change in programs, policy and law affecting aboriginal people must not diminish treaty and aboriginal rights.

The CLR takes a two track approach to the problem. One is to encourage the creation of a new approach, in law and in policy, that incorporates aboriginal participation in and possibly control over correctional issues affecting aboriginal people, and to systematically involve aboriginal organizations in this process from the outset. The other is to improve the current system by putting specific protection in law with respect to important aspects of correctional programming vis-a-vis aboriginal inmates.

Enabling Legislation

This approach is the most far reaching in the sense that it entails a fundamental shift in the correctional system's legislative position. It would involve the inclusion in correctional or other legislation of measures to enable Native people to assume control of certain correctional processes that affect them.

Consistent with Federal Government policy discussed above at pp. 12-14, which supports approaches which permit greater aboriginal control over matters which directly affect them, it would be possible to transfer jurisdiction for providing at least some correctional services to Native groups under a stated legal relationship with the Solicitor General. One of the major issues for consultation is whether this type of legislation would be appropriate, and if so, what form it should take.

This paper has discussed the large number of different Native communities, and noted that many incarcerated Native offenders do not have strong connections with a particular Native community. If enabling legislation is developed, it will be important to frame it in sufficiently flexible terms to allow a wide variety of Native organizations or communities to participate in the provision of correctional services. An important question is how best to recognize the diversity of Native communities and communities and groups.

The services provided could range from the establishment of correctional institutions to the running of parole and aftercare facilities or other culturally appropriate services. The legislation will presumably need to be open-ended enough to take into account a wide variety of correctional arrangements which might result from the negotiations. In an effort to develop a culturally-based system or systems, Native groups may propose correctional facilities or services which are very different from existing structures.

It is true that most, if not all, of the correctional services and programs authorized under the proposed legislation could be implemented under the present legislative scheme through contracts with native organizations. However, while such enabling legislation may not be strictly necessary, it would nonetheless demonstrate a clear Government endorsement of the role of aboriginal organizations in the delivery of correctional services in the context of a new legislative framework for federal corrections. They would then be in a position to enter into negotiations with correctional authorities within an explicit legislative framework, and continuation of funding arrangements will not depend on government policies on privatization, or general voluntary sector involvement. This would have the effect of putting aboriginal groups in a stronger position to negotiate programs if they can point to specific supporting legislation.

Clearly there would have to be provision for adequate compensation to be paid to the Aboriginal correctional authority. However issues for consultation include whether agreements to transfer an aboriginal offender to an Aboriginal correctional authority should contain the consent of; a) the offender; b) the Aboriginal correctional authority; and c) the CSC. Should agreements also make reference to the conditions upon which the federal government would accept an aboriginal offender back into the federal correctional system, if such offender wishes to transfer from the custody of the Aboriginal correctional authority?

To some extent, of course, the Correctional Service of Canada already enters into arrangements of the sort contemplated by this kind of legislation. CSC contracts with various Native groups for the provision of halfway houses, parole supervision, and

other services required by Native offenders, although to date most of these arrangements have occurred in urban areas. A good example of a native organization currently engaged in providing correctional services for Native offenders is the Native Counselling Services of Alberta. Formed in 1970, and with 130 employees, NCSA offers programs in Family, Criminal and Young Offender Courtwork. As well, NCSA operates a minimum securitycamp, a young offenders group home, a community residential centre, parole and probation supervision (for adult and young offenders), Native Awareness Program, a family living skills program, a training department, a legal education-media department, and a research department. The NCSA also operates a fine options program and a community service order program. Funding is provided by the provincial and federal governments.[40] Of note is the fact that NCSA is an urban-based Native organization which provides corrections services to Native offenders from a variety of backgrounds.

The principal difference flowing from enabling legislation would be that while the current arrangement are created as a matter of policy through contracts, the new arrangements discussed here would be recognized in law and formalized through the designation of certain organizations and correctional authorities as providers of Native correctional services. This would give Native communities a clear legal basis from which to negotiate changes in the way services are delivered to Native offenders, and would give a greater measure of security to the Native organizations providing the services.

A key issue for consultation is the extent to which agreements made between the Aboriginal correctional authorities and the CSC for transferring offenders should contain detailed specification of the programs and services to be delivered, as well as the appropriate standard of services. Flowing from this, to what extent should the government assure itself on a regular basis that the services provided in this way meet certain basic requirements, such as the protection of the rights of the offenders involved, and other minimum standards, as well as the provision of adequate containment for offenders who are being cared for off reserves, in the larger community.

Due to the large number of issues of this type, it might be alsohelpful to include provision for regular consultation between the Government and Native communities on the subject of these services.

As we noted earlier, placing these sorts of provisions in correctional legislation would not preclude the negotiation of broader self-government initiatives by Natives groups and the federal government. What this approach would allow is the transfer of suitable correctional authorities to Native communities in the absence of a more comprehensive agreement.

It is also worth mentioning that such arrangements could in many cases involve federal, provincial and Aboriginal authorities in a given area.

Should federal correctional or other legislation include enabling provisions which would provide explicit authority for Native communities or organizations to assume control of certain correctional processes that affect them? What should these provisions contain?

Reform of Existing Correctional Legislation

This approach represents a more limited attempt to ameliorate the problems of the Native offender than the previous proposals in that no fundamentally new arrangements are envisioned and the focus of control remains with the existing correctional system. It entails the development of a legislative scheme which recognizes the unique status of Natives as well as Native offenders as a particularly disadvantaged offender group and therefore deserving of particular consideration for the reasons discussed earlier in this paper. The intent of this approach is twofold: (1) the codification of selected aspects of the operation of the correctional system as they pertain to Native offenders, that is, to specifically protect such things as native spirituality, and (2) the formal encouragement of greater involvement of the Native community and Native institutions in the correctional system. Details as to the components of corrections which might be included in the legislation are discussed below.

Codification of certain Native offenders' concerns accomplishes two central goals of the Correctional Law Review. First, the legislative scheme suggested would be consistent with the purpose and principles of corrections as set forth in Part I, and would permit Native offenders to enforce the provision in the courts if necessary, something they are not able to do if the protection remains only in policy. Second, the proposed approach to codification would ensure that correctional legislation is in line with Charter requirements as well as Canada's obligations under international law.

Value of Specific Provisions in Correctional Legislation with Respect to Aboriginal Offenders

The unique status of Canada's aboriginal peoples, and their acute problems once they arrive in correctional care suggests that there is merit in statutory entrenchment of appropriate protections.

Legislation in this area would clearly demonstrate the government's concern to improve the situation of aboriginal people in corrections. Parliamentary approval in the form of legislation will be a solid guarantee of the implementation and survival of what is a significant policy development. Grounding aboriginal corrections policy in legislation gives such policy greater authority, and provides explicit protection for specific entitlements such as religious freedom.

a) Consultation with Native Authorities

Several provincial precedents for this approach to legislation affecting Native people currently exist, as we have seen, in the areas of child welfare, family services, social welfare, health care and education. These initiatives have been implemented largely because the generalized policy and program approach has failed to adequately address Native people's needs in these areas. They are intended to give Native people a greater role in providing services to their own people. There has been a recognition that, despite numerous attempts to develop special programs and involve Native people in their delivery, the situation has not improved significantly and a new approach is

required. The enactment of provisions in law which required agencies to provide specific services and to involve native people in the process has been determined by many provincial governments to be the most appropriate approach.

Even where Indian and Native communities do not take over correctional services entirely, they, together with aboriginal advisory bodies with experience and expertise on aboriginal customs and/or offenders can and should advise governments as to the kinds of programs and services which are appropriate for aboriginal offenders, and how these might best be delivered. In the correctional context, both CSC and NPB have, as a matter of policy, established National Native advisory committees, and CSC Prairie Region has established a regional committee. These committees advise on Native correctional policy and programs. This approach could be expanded to all regions, and even to the local institutional level.

The question for the Correctional Law Review is whether or not this approach should be mandated in legislation. Although the composition of the Committee would not be detailed in legislation, it will be important to comment on the appropriate membership for such committees, for example, service providers, political organizations and community organizations.

Should correctional law provide for a requirement like the following?

1. The Correctional Service of Canada shall regularly consult with Aboriginal communities and with recognized aboriginal advisory bodies with experience and expertise on aboriginal customs and offenders, about the provision of programs and services to aboriginal offenders, by

(a) establishing an Aboriginal advisory committee to provide advice on national policy issues relating to Aboriginal offenders;

(b) where requested by an Aboriginal community or recognized aboriginal advisory body, establishing a Regional Aboriginal Advisory Committee to provide advice on regional policy issues relating to aboriginal offenders. Regional Aboriginal Advisory Committees will form part of an overall National Aboriginal Advisory Committee;

(c) where requested by an Aboriginal community or recognized Aboriginal advisory body, and where practical, establishing an Aboriginal Advisory Committee to provide advice to a particular institution or parole office about programs and services for Aboriginal offenders; and

(d) the Aboriginal Advisory Committee would provide advice, upon request, to other jurisdictions.

At the local level, this provision would entitle bands, Native communities and urban-based experts on Aboriginal matters to play a strong advisory role in respect of institutions located nearby. For a variety for reasons, however, including the isolated location of many penitentiaries, and the fact that many federal inmates are incarcerated far from their home communities, it is important also to have a national advisory committee which can provide policy advice on Native programming generally.

An alternative to, or possibly in addition to, the national committee would be regional committees. Such committees would be able to respond more directly to regional differences among native communities, although some coordination at the national level might still be desirable. Should legislation provide for regional committees as well as a national committee?

b) Programs of Native Spirituality, Culture and Rehabilitation

The Correctional Law Review's statement of purpose and principles covers, in a general way, the need for "encouraging offenders to prepare for eventual release and successful re-integration in society through the provision of a wide range of program opportunities responsive to their individual needs" (see Appendix C). To the extent that this principle will ensure the provision of programs to meet the needs of all offenders, therefore, Native-related programming will be assured.

Two questions are raised by this issue, however: first, should there be a special guarantee in law respecting Native-related programs; and second, how clearly can Natives' unique needs be defined, in law or in fact?

It is clear that many Natives have special needs surrounding Native spirituality and the observance of ceremonies, and many Native offenders give positive reports of the Native Elder programs in CSC and other institutions. Beyond spiritual and related cultural needs, however, the unique program needs of Natives are not well understood or documented by correctional systems. It appears that across the country, Native and non-Native offenders could benefit from educational, vocational and alcohol programs, as well as programs designed to improve social skills. Whether Native inmates should be receiving more of the same type of programming given to non-Native inmates - but perhaps with Native staff running the programs - or require a different type of correctional program or experience, is not well understood, at least by traditional correctional systems.

Since the federal correctional system is already committed to providing suitable programming for Natives, there would appear to be no conflict in principle with a statutory guarantee of Native programming. One practical question which arises, however, is in what circumstances the guarantee would operate. Should the sole Native inmate in a penitentiary receive the full range of Native-related programs which would be offered in, for example, a Prairie institution like Stony Mountain Penitentiary?

One approach to this question would be to rely on the general guarantees for all inmates which have been proposed in the Correctional Philosophy and Correctional Authority and Inmate Rights papers.[41]

This approach could be criticized as not providing sufficient guidance as to Native offender program needs. The general objective, for example, of providing "programs responsive to individual needs" may not necessarily lead to programs which take into account the various Native attitudes, traditions and orientation. It has been suggested that, to be effective, correctional programs for Natives must in fact adopt such an orientation, even if their ultimate practical aims are to teach job skills, reduce alcoholism, or achieve any of the other objectives which are pertinent to the inmate population as a whole. Similarly, since complaints continue to arise about the recognition of Native spirituality as a religion, and about the particulars of Native spiritual observance, some critics would support special guarantees.

Should correctional law supplement general guarantees with particular references to Native program needs, such as the following?

2. **The correctional system shall make available programs which are particularly suited to serving the spiritual and cultural needs of Aboriginal offenders and, where numbers warrant, programs for the treatment, training and reintegration of Aboriginal offenders which take into account their culture and way of life.**

3. **Aboriginal spirituality shall be accorded the same status, protection and privileges as other religions. Native Elders, spiritual advisors and ceremonial leaders shall be recognized as having the same status, protection and privileges as religious officials of other religions, for the purposes of providing religious counselling, performing spiritual ceremonies and other related duties.**

4. **Where numbers warrant, correctional institutions shall provide an Aboriginal Elder with the same status, protection and privileges as an institutional Chaplain.**

5. **The correctional service shall recognize the spiritual rights of individual Aboriginal offenders, such as group spiritual and cultural ceremonies and rituals, including pipe ceremonies, religious fasting, sweat lodge ceremonies, potlaches, and the burning of sweetgrass, sage and cedar.**

This wording would acknowledge both that the freedom to practice one's religion is protected in the Canadian constitution, and the special place of spiritual and cultural values in native traditions. The proposed wording would require that Natives be given access to spiritual and cultural programs, regardless of their numbers in the population. This is in conformity with existing Correctional Service of Canada policy. The Service established a Commissioner's Directive on Native Offender Programs and prepared a "Native Spirituality Information Kit" to acquaint correctional staff with elements of Native spiritual practice. The CSC policy " ... accords Native religion status and protection equal to that of other religions. It extends to Native individuals under its supervision, those opportunities necessary to practice religious freedom which are consistent with

the prudent requirements of facility security. This shall include access to appropriate space and materials, Elders, spiritual advisors, publications and religious objects or symbols".[42] Natives in institutions occasionally report, however, that there are still problems with the recognition of Native spirituality as a religion. Placing the existing policy in law would enshrine these more specific guarantees, although not all of the detail proposed above need necessarily be included in legislation.

The wording of this draft provision also mandates other special Native programming, where numbers warrant. This might include such things as special halfway houses exclusively for Natives, as recommended by the Carson Report. It might also include the creation of alcohol treatment programs which draw on Native spiritual concepts as part of the treatment approach, as suggested by the Native Sisterhood at the Prison for Women. The provision acknowledges without precisely defining these other unique needs or how to respond to them. The breadth of this language allows for analysis and negotiation of the needs and appropriate programs for Natives at the local level, where discussion of real needs is most likely to be informed and practical.

The draft wording would allow for these programs to be delivered by private Native groups and individuals (as spiritual ceremonies and teaching are now delivered in CSC institutions). The provision would not require correctional authorities to offer programs directly, but only to make them available. This would apply equally to all Natives.

c) Transfers

It was seen earlier that another area of concern among Native offenders is transfers and the long distances from home often involved in serving a sentence of incarceration. We have seen that the Carson Report recommended a general policy of retaining inmates in their home region. This is now formal CSC policy.

Some Native experts have recommended that the institutional placement of Native offenders be specifically guaranteed in legislation in order to ensure their incarceration in the region in which they were sentenced, thereby facilitating the participation of the larger Native community in the correctional process.

The proposals made in Correctional Authority and Inmate Rights appear to encompass this concern, at least in part by circumscribing the criteria which may justify a transfer of any inmate and prescribing a procedure for involuntary transfers. A question for consultation is whether there are unique considerations in respect of transfer of Native offenders which need to be the subject of a special guarantee.

d) Release

For Native offenders who come from reserves, a particular concern has been expressed about release planning and the degree to which releasing authorities are willing to consider paroling or releasing on mandatory supervision a status Indian offender to the reserve, perhaps under the supervision of status Indian community members. Some Native representatives claim that correctional and releasing authorities do not sufficiently consider the Native community's need for the offender's return to the community as a worker and family member, or the community's willingness to supervise the offender or otherwise play a vital part of the re-integration plan. Correctional authorities, by contrast, suggest that bands often do not really wish to accept an offender back, or that when they do, the community does not play the active role in his supervision or re-integration which is necessary to protect society and fulfill other criteria for parole.

It would appear that these arrangements can only be addressed on a local, specific level. However, it has been suggested that perhaps correctional law should require that bands and Nativecommunities receive notice of a Native band member's parole application or mandatory supervision plan, with his or her consent and providing he or she has expressed an interest in returning to the reserve.

Perhaps such a provision might read as follows:

6. With the offender's consent, and where he or she has expressed an interest in being released to his or her reserve, the correctional authority shall give adequate notice to the Aboriginal community of a band member's parole application or approaching date of release on mandatory supervision, and shall give the band the opportunity to present a plan for the return of the offender to the reserve, and his or her re-integration into the community.

This provision would permit, without requiring, individuals or organizations within a Native community to act as direct or indirect supervisors of a given offender's release. (Existing correctional law gives authorities the power to designate community groups or individuals to act as release supervisors.) Arrangements for indigenous supervision on reserves, of a formal or informal nature, would be worked out at a local level. There are examples of such an approach: the Dakota-Ojibway Tribal Council, for example, has an arrangement with the provincial government whereby the band provides probation supervision for Native offenders on the reserve. The province contributed funds for the initial training of community members to act as probation officers.

e) Native Correctional Workers and Native Awareness Training

The Carson Report suggested, and many Native experts believe, that in order to be effective, correctional programs for Native offenders would have to be delivered by predominantly Native staff. The draft provisions set out earlier in this Part do not require Native staffing for Native programs, but do require that the programs offered be "suited to serving" Native needs or "take into account" their culture and way of life. If, as many believe, only a program delivered by Natives can be truly suited to Natives, then this wording may achieve that result indirectly.

This raises, however, another issue important in itself, which is the hiring of Native correctional staff by traditional correctional systems. It will be recalled that the James Bay Agreement contemplates both special programs for Native inmates and hiring programs for Native staff. CSC has in place an affirmative action program for the hiring of new staff members of Native origin. Known as the Action Plan, it was designed to increase the hiring of Native staff in the CSC, and has been in operation since 1985. Natives have been hired as correctional officers and parole officers, if they meet the basic requirements for the position. They are trained in the normal fashion, and must complete a two year probationary employment period, which is the entry level required of everyone. Competition for higher positions requires 3 - 4 years of experience in the entry level positions. As the Action Plan has only been in operation for 3 years, no Natives have yet advanced to higher positions.

However, it appears that they will be considered for higher positions as a result of their experience, and promoted in the usual way, as any qualified staff of CSC.

There still exist barriers to acceptance of aboriginal correctional workers due to cultural differences. In the past, the stigma of being aboriginal often led to a lack of acceptance on the part of other correctional staff. However, as their numbers grow, and through sensitization of other staff, there is a greater acceptance of aboriginal people. More Natives are staying, and this too adds to a greater acceptance of Natives in the service.

Education has proven to be a barrier to Native staff in competition for some positions. For parole officers, for example, CSC requires a B.A. in criminology. There are no programs offered to assist Natives in CSC to get such a degree, and they must therefore do it on their own. For some positions, however, (e.g. correctional officers), experience in the field of corrections or with juveniles could replace any specific educational requirements.[43]

While the Action Plan has had some success, it is still widely felt that more Native staff would be desirable for CSC, especially at local (penitentiary and district office) levels. Many Native leaders also feel the program should involve affirmative action in promotion as well as hiring, and in management positions.

The hiring and effective management of staff to meet the relevant needs of various offender groups (women, francophones, and Natives) runs through many aspects of corrections. For Natives, the arguments for Native offenders working primarily with Native staff are particularly compelling; they include not just spiritual and cultural bonds, but an understanding which it is claimed can be achieved only after long study by people from the cultural mainstream. Practically, as we saw earlier, Native inmates participate in correctional programs less actively than do non-Natives. Perhaps the participation rate in the same programs, run by Native staff, would be no better. There are good reasons for hiring Native staff to work with Native inmates,

reasons which extend into the security and release areas. It should be made clear, however, that Native staff need not work exclusively with Native offenders. Employment mobility for trained Native staff is also important.

Provisions requiring affirmative action programs need not necessarily be included in legislation. The question for the CLR is whether, in light of the particular situation of Native offenders, a legislated requirement is appropriate, for example:

7. There shall be an affirmative action program for the hiring and promoting of aboriginal professional staff to work with aboriginal offenders.

Recognizing, however, that there is difficulty in attracting Natives to correctional work, the correctional authority shouldgive specific Native awareness training to all staff coming into contact with Native offenders.

It is recognized that such awareness training is not a panacea, but is essential so long as the number of Native staff at the penitentiary and district office level is insufficient, considering the numbers of Native offenders. CSC already holds, as a tenet of its corporate mission, that staff members recognize special needs of offenders. A special Commissioner's Directive was developed: "To ensure that the needs and constructive interests of native offenders are identified and that programs (including native spiritual practices) and services are developed and maintained to satisfy them."[44] Each region in CSC in fact now provides, proportional to the number of Native offenders in the region, Native awareness training on a regular basis for selected staff.

PART IV: CONCLUSION

This paper has identified the major problems faced by Native offenders in the correctional system. Over-representation in the system and the lack of Native-oriented programming run by Native creates problems for both Native offenders and the corrections system.

The approaches outlined in this paper are made within the context of the Correctional Law Review, and in view of the unique legal status that aboriginal peoples have in Canada. These approaches are consistent with developments in aboriginal self-government, whereby aboriginal people will be able to assume control of essential elements in community life, which might include certain justice, law enforcement and correctional matters.

A two-pronged approach has been suggested as possible for the amelioration of the problems faced by Native offenders and the correctional system. At the base of each approach is that aboriginal people should be more closely involved in the planning and delivery of correctional services, and that any direction for change should include the development of special services oriented to the unique needs of Native offenders. The two approaches are compatible with each other and indeed are complementary. They could be pursued either separately or together.

The first approach is that special legislative provisions could turn over a significant degree of jurisdiction to aboriginal-run correctional organizations. Correctional services, parole and after-care services could be provided by Aboriginal correctional authorities within a clearly defined legal relationship with the Solicitor General.

The second approach would be to incorporate in existing correctional legislation proposals that specifically deal with Native needs in corrections. Under this scheme there would be increased native consultation through regional and national Aboriginal Advisory Committees. Programs specifically geared to Native cultural and spiritual needs would be guaranteed, and rehabilitation and release programs would be specially designed for Native people. Affirmative action in hiring and promotion of Native staff is essential to this approach, as is increased Native awareness training for all correctional staff.

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APPENDIX A

LIST OF PROPOSED WORKING PAPERS OF THE CORRECTIONAL LAW REVIEW

Correctional Philosophy

A Framework for the Correctional Law Review

Conditional Release

Victims and Corrections

Correctional Authority and Inmate Rights

Powers and Responsibilities of Correctional Staff

Correctional Issues Affecting Native Peoples

Federal-Provincial Issues in Corrections

Mental Health Services for Penitentiary Inmates

International Transfer of Offenders

APPENDIX B

CHILD AND FAMILY SERVICES ACT, 1984, Statutes of Ontario 1984, c. 55

Approvals and Funding

13 (3) An approved agency that provides services to Indian or Native children and families shall have the prescribed number of band or Native community representatives on its board of directors in the prescribed manner and for the prescribed terms...

Part X: Indian and Native Child and Family Services

192. The Minister may designate a community, with the consent of its representatives, as a Native community for the purposes of this Act.

193. The Minister may make agreements with bands and Native communities, and any other parties whom the bands or Native communities choose to involve, for the provision of services.

194. 1) A band or Native community may designate a body as an Indian or Native child and family service authority.

2) Where a band or Native community has designated an Indian or Native child and family service authority, the Minister,
a) shall, at the band's or Native community's request, enter into negotiations for the provision of services by the child and family service authority; ...

195. Where a band or Native community declares that an Indian or Native child is being cared for under customary care, a society or agency may grant a subsidy to the person caring for the child.

196. A society that provides services or exercises power under this Act with respect to Indian or Native children shall regularly consult with their bands or Native communities about the provision of the services or the exercise of the powers and about matters affecting the children, including:
a) the apprehension of children and the placement of children in residential care...

APPENDIX C

STATEMENT OF PURPOSE AND PRINCIPLES OF CORRECTIONS

The purpose of corrections is to contribute to the maintenance of a just, peaceful and safe society by:

a) carrying out the sentence of the court having regard to the stated reasons of the sentencing judge, as well as all relevant material presented during the trial and sentencing of offenders, and by providing the judiciary with clear information about correctional operations and resources;

b) providing the degree of custody or control necessary to contain the risk presented by the offender;

c) encouraging offenders to adopt acceptable behaviour patterns and to participate in education, training, social development and work experiences designed to assist them to become law-abiding citizens;

d) encouraging offenders to prepare for eventual release and successful re-integration in society through the provision of the wide range of program opportunities responsive to their individual needs;

e) providing a safe and healthful environment to incarcerated offenders which is conducive to their personal reformation, and by assisting offenders in the community to obtain or provide for themselves the basic services available to all members of society;

The purpose is to be achieved in a manner consistent with the following principles:

1. Individuals under sentence retain all the rights and privileges of a member of society, except those that are necessarily removed or restricted by the fact of incarceration. These rights and privileges and any limitations on them should be clearly and accessibly set forth in law.

2. The punishment consists only of the loss of liberty, restriction of mobility, or any other legal disposition of the court. No other punishment should be imposed by the correctional authorities with regard to an individual's crime.

3. Any punishment or loss of liberty that results from anoffender's violation of institutional rules and/or supervision conditions must be imposed in accordance with law.

4. In administering the sentence, the least restrictive course of action should be adopted that meets the legal requirements of the disposition, consistent with public protection and institutional safety and order.

5. Discretionary decisions affecting the carrying out of the sentence should be made openly, and subject to appropriate controls.

6. All individuals under correctional supervision or control should have ready access to fair grievance mechanisms and remedial procedures.

7. Lay participation in corrections and the determination of community interests with regard to correctional matters is integral to the maintenance and restoration of membership in the community of incarcerated persons and should at all times be fostered and facilitated by the correctional services.

8. The correctional system must develop and support correctional staff in recognition of the critical role they play in the attainment of the system's overall purpose and objectives.

APPENDIX D

SUMMARY OF QUESTIONS AND RECOMMENDATIONS

Should federal correctional or other legislation include enabling provisions which would provide explicit authority for Native communities or organizations to assume control of certain correctional processes that affect them? What should these provisions contain?

1. The Correctional Service of Canada shall regularly consult with Aboriginal communities and with recognized aboriginal advisory bodies with experience and expertise on aboriginal customs and offenders, about the provision of programs and services to aboriginal offenders, by

(a) establishing an Aboriginal advisory committee to provide advice on national policy issues relating to Aboriginal offenders;

(b) where requested by an Aboriginal community or recognized aboriginal advisory body, establishing a Regional Aboriginal Advisory Committee to provide advice on regional policy issues relating to aboriginal offenders. Regional Aboriginal Advisory Committees will form part of an overall National Aboriginal Advisory Committee;

(c) where requested by an Aboriginal community or recognized Aboriginal advisory body, and where practical, establishing an Aboriginal Advisory Committee to provide advice to a particular institution or parole office about programs and services for Aboriginal offenders; and

(d) the Aboriginal Advisory Committee would provide advice, upon request, to other jurisdictions.

2. The correctional system shall make available programs which are particularly suited to serving the spiritual and cultural needs of Aboriginal offenders and, where numbers warrant, programs for the treatment, training and reintegration of Aboriginal offenders which take into account their culture and way of life.

3. Aboriginal spirituality shall be accorded the same status, protection and privileges as other religions. Native Elders, spiritual advisors and ceremonial leaders shall be recognized as having the same status, protection and privileges as religious officials of other religions, for the purposes of providing religious counselling, performing spiritual ceremonies and other related duties.

4. Where numbers warrant, correctional institutions shall provide an Aboriginal Elder with the same status, protection and privileges as an institutional Chaplain.

5. The correctional service shall recognize the spiritual rights of individual Aboriginal offenders, such as group spiritual and cultural ceremonies and rituals, including pipe ceremonies, religious fasting, sweat lodge ceremonies, potlaches, and the burning of sweetgrass, sage and cedar.

6. With the offender's consent, and where he or she has expressed an interest in being released to his or her reserve, the correctional authority shall give adequate notice to the Aboriginal community of a band member's parole application or approaching date of release on mandatory supervision, and shall give the band the opportunity to present a plan for the return of the offender to the reserve, and his or her re-integration into the community.

7. There shall be an affirmative action program for the hiring and promoting of aboriginal professional staff to work with aboriginal offenders.

FINAL REPORT

TASK FORCE ON ABORIGINAL PEOPLES IN FEDERAL CORRECTIONS

FINAL REPORT
TASK FORCE ON ABORIGINAL PEOPLES IN FEDERAL CORRECTIONS

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Members of the Task Force

Steering Committee:

O. Ingstrup
former Chairman
of the National Parole Board,
currently CSC Commissioner

J.H. Rayner
Assistant Deputy Minister
Indian Services,
Department of Indian
and Northern Affairs

C. Nuttall
Assistant Deputy Solicitor General
Programs Branch
Department of the Solicitor General

T. Sawatsky
Director,
Offender Management
Correctional Services of Canada

C. Cunningham
Native Counselling Service
of Alberta

K. Louis
Senior Board Member
National Parole Board,
Pacific Division

R. Dicerni
Assistant Under Secretary
of State - Citizenship

Working Committee:

E. Buller
Special Advisor, Natives
Ministry Secretariat,
Department of the Solicitor General

S. Divorski
Senior Research Officer
Corrections Research
Ministry Secretariat
Department of Solicitor General

M. Horn
National Programme Consultant,
Natives,
Ministry Secretariat,
Department of the Solicitor General

M. Beane
Native Offenders Programme
Correctional Service of Canada

D. Chatain
Special Project Executive
Indian Services,
Department of Indian
Northern Affairs

R. Jacobs
Director,
Native Citizens' Directorate,
Secretary of State

H. Chevalier
Senior Advisor, Native Issues
National Parole Board

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Chapter 1

INTRODUCTION

Aboriginal people have been a concern of the Ministry of the Solicitor General of Canada since the early 1970s. Although they comprise 2.5 per cent of Canada's population, approximately nine per cent of federally incarcerated inmates are Aboriginal people.

The full extent of the problem is not known because statistics under-estimate the extent of Aboriginal representation in the federal correctional system. Conversely, Aboriginal people are under-represented as employees within the correctional system.

We do know that fewer Aboriginal offenders are granted full parole by the National Parole Board; when granted some form of release, it is later in their sentence; and they are more likely to have their parole revoked.

Responses to these problems are complicated by the fact that Aboriginal offenders are not a homogeneous group. They differ in terms of their constitutional and legal status, and the cultural differences of their Aboriginal nations of origin.

A. Mandate and Activities

Prompted by the Solicitor General of Canada, the Task Force on the Reintegration of Aboriginal Offenders as Law–Abiding Citizens was established in March 1987 to:

> Examine the process which Aboriginal offenders (status and non-status Indians, Metis, and Inuit) go through, from the time of admission to a federal penitentiary until warrant expiry, in order to identify the needs of Aboriginal offenders and to identify ways of improving their opportunities for social reintegration as law–abiding citizens, through improved penitentiary placement, through improved institutional programs, through improved preparation for temporary absences, day parole and full parole, as well as through improved and innovative supervision.

Partly because of the difficulty of obtaining reliable statistical data, which will be demonstrated in Chapter IV, and partly because of the urgency to put into place practical and efficient mechanisms to respond to the specific needs of Aboriginal offenders, the Task Force opted for an approach based on exhaustive consultation rather that one of empirical research. The Task Force consulted with federal institutional staff and Aboriginal inmate groups, Parole Board staff and members, and CSC staff Aboriginal communities, and many other groups and organizations actively pursuing the goal of successful social reintegration of Aboriginal offenders.

In responding to its mandate, the Task Force first reviewed reports published over the past ten years and used a synthesis of their recommendations as a basis for extensive consultations across Canada (see Appendix I for detailed list).

B. Organization

The Task Force was organized into Steering and Working Committees. The Steering Committee comprised the Chairman and the Senior Board Member, Pacific Region, National Parole Board (NPB); the Assistant Deputy Solicitor General, Corrections Branch, Solicitor General Secretariat; the Director, Offender Management, Correctional Service of Canada (CSC); the Assistant Deputy Minister, Indian Services, Department of Indian Affairs and Northern Development; the Assistant Under Secretary of State, Citizenship Branch, Secretary of State of Canada; and one member of the Native Advisory Committee to CSC. The Working Committee comprised officials of the same departments and agencies.

The agencies and departments involved in the Task Force offer a wide range of programs either specifically for Aboriginal offenders, or having the potential to support the successful reintegration of Aboriginal offenders. The participants in this Task Force are:

Ministry of the Solicitor General

The Ministry of the Solicitor General has responsibility for the Royal Canadian Mounted Police (RCMP), the Correctional Service of Canada (CSC), the National Parole Board (NPB) and the Canadian Security Intelligence Service (CSIS). As well, the Solicitor General plays a lead role in national policing and corrections.

- **Secretariat**

The Solicitor General maintains a Secretariat to provide advice, support and direction with respect to legislation, policy and programs relating to his mandate, as well as to provide a coordinating role for initiatives involving more than one agency of the Ministry.

Aboriginal issues are a priority within the Secretariat's Corrections Branch, which conducts research on Aboriginal corrections issues, supports demonstration or experimental projects that test innovative approaches to community corrections, and provides assistance for information development and technology transfer. In addition, the Secretariat coordinates many interdepartmental and federal-provincial corrections activities and consultation with non-governmental organizations.

- **Royal Canadian Mounted Police**

The RCMP has a mandate to enforce Canadian laws, prevent crime, and maintain peace, order and security. The RCMP provides cost-shared policing services under federal-provincial agreements with all provinces

and territories except Ontario and Quebec. In addition, the RCMP provides contracted policing services to 191 municipalities in those same provinces and territories.

- **Correctional Service of Canada (CSC)**

CSC contributes to the protection of society by exercising safe, secure and humane control of offenders while helping them to reintegrate into society.

The Correctional Service of Canada is responsible for over 19,000 inmates sentenced to federal institutions. In 1987, CSC's program was delivered through 44 institutions, 16 community correctional centres (CCC) and 70 parole offices. In addition, CSC provides services through contracts, including contracts with Aboriginal organizations.

- **National Parole Board (NPB)**

The National Parole Board's mandate is:

i) to exercise exclusive authority for the conditional release of all federal inmates;

ii) to make conditional release decisions on cases of those inmates in provincial custody where the province does not have a provincial parole board; and

iii) to make investigation and recommendation for pardons and for the exercise of the Royal Prerogative of Mercy.

The Mission of the National Parole Board expresses its major concerns as follows:

"The National Parole Board as part of the criminal justice system makes independent, quality conditional release decisions and clemency recommendations. The Board, by facilitating the timely reintegration of offenders as law-abiding citizens, contributes to the protection of society."

Department of Indian Affairs and Northern Development (INAC).

The Department of Indian Affairs and Northern Development (INAC) has responsibility to:

-fulfill the obligations of the federal government arising from treaties, the Indian Act and other legislation;

-provide for the delivery of basic services to status Indian and Inuit communities;

-assist Indians and Inuit to acquire employment skills and develop businesses;

-negotiate the settlement of Indian and Inuit claims;

-support constitutional discussions regarding the definition of the rights of Aboriginal peoples and related matters;

-provide transfer payments to the governments of Yukon and Northwest Territories;

-support the economic development of the North and protect the Northern environment including Arctic seas; and

-foster the political development of the Northern territories and coordinate federal policies and programs in the North.

Department of Secretary of State

The mandate of the Secretary of State of Canada for citizenship development and multiculturalism has led to a series of initiatives specifically designed to assist Aboriginal peoples to define their socio-cultural needs in an Aboriginal-specific context as well as within the framework of Canada's overall population.

C. Principles

The Task Force recognized the Solicitor General's corporate objective of creating a just, equitable, and humane correctional system, and the principles contained in the mission statements of the National Parole Board and Correctional Service of Canada (see Appendix II).

In attempting to synthesize the recognized need to establish enhanced Aboriginal programs and services within the existing Ministry mandate, policies, and objectives, the Task Force established the following set of principles to guide the development of recommendations and strategies:

Principle 1

That the focus of the Task Force be restricted to matters within the Solicitor General's responsibilities while recognizing that many of the problems leading to the over-representation of Aboriginal people in federal prisons are unrelated to the role of the Solicitor General;

Principle 2

That Aboriginal inmates must have access to all services and programs offered to the general population;

Principle 3

That Aboriginal offenders, like other offenders, must be given the opportunity to derive maximum benefit from the correctional process even where this means making specific provisions for Aboriginal offenders;

Principle 4

That where Aboriginal-specific services are to be provided under contract, their development and delivery should normally be by recognized Aboriginal organizations, agencies and communities;

Principle 5

That where existing policies and programs already advocate a distinct approach to meet the special needs of Aboriginal offenders, the intent is to clarify and reinforce those existing policies and procedures, in addition to establishing mechanisms for implementing the recommendations contained in this report and monitoring the progress of their implementation;

Principle 6

That awareness and sensitivity with respect to Aboriginal cultures and peoples is required in order to respond to the aforementioned principles;

Principle 7

That the report of the Task Force must offer practical recommendations and viable options which will have an impact on increasing the chances for the Aboriginal offender's successful reintegration into society.

Chapter 2

THE REQUIREMENT FOR ABORIGINAL-SPECIFIC APPROACHES

The Task Force confirmed that Aboriginal offenders face unique difficulties in obtaining and completing parole, and that, even when they face the same problems as non-Aboriginal inmates, unique solutions are required because of their cultural and socio-economic backgrounds.

The Task Force concluded that, to provide for equitable decision-making and equivalent opportunities for successful reintegration, policies, structures, and programs of the Ministry must serve to enhance Aboriginal participation within the corrections system. The Ministry must also increase Aboriginal control over programs and services as much as possible under existing law. This conclusion results from consideration of three contexts that delimit appropriate treatment of Aboriginal offenders. These contexts, described in the next sections, are legal, socio-economic, and spiritual. The following discussion describes some of the essential aspects of these factors but is in no way exhaustive.

The Legal Context [1]

The special legal status of Aboriginal peoples is a product of Aboriginal and treaty rights, and various constitutional and legislative provisions. Insofar as Aboriginal persons are members of ethnic, religious or linguistic minorities, Canada also has an international legal obligation to respect specified rights.

Constitutional jurisdiction to make laws concerning "Indians, and lands reserved for Indians" was given to the Parliament of Canada by virtue of Section 91(24) of the **Constitution Act, 1867.** Many Aboriginal groups signed treaties with the Crown in which they surrendered their claims to a portion of the land in return for reserves and other treaty rights.

More recently, certain rights of Aboriginal peoples were specifically affirmed in the Constitution. The provisions related to these rights are contained in Sections 25 and 35 of the **Constitution Act, 1982.** Section 25 states:

> 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any Aboriginal, treaty, or other rights or freedoms that pertain to the Aboriginal peoples of Canada including:
>
> a) any rights or freedoms that may have been recognized by the Royal Proclamation of October 7, 1763, and
>
> b) any rights or freedoms that now exist by way of land claims, agreements or may be so acquired.

This section is important for any correctional legislation pertaining to Aboriginal people because it is probable that the "equality rights" section of the Charter (Section 15) cannot be used to strike down any existing or other rights of Aboriginal people on the grounds that they discriminate against all other Canadians. Thus, distinctions in programs or services are likely not discriminatory if they flow from the rights of Aboriginal peoples.

This section is specially significant, given 5.15(2) of the Charter, which permits ameliorative programs to remedy disadvantages faced by individuals or groups. This section provides that:

> 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.
>
> (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Even when a law or program is apparently neutral at face value, it may have a different impact on some minority groups than on mainstream Canadians. For example, it could be argued that the National Parole Board, carrying out its responsibility " ... to grant release, and determine release terms and conditions" under **the Parole Act**, would be in violation of the Charter if decisions, procedures and conditions of parole could be demonstrated to *de facto* discriminate against Aboriginal inmates.

This kind of discrimination may be termed "systemic discrimination." It occurs when an apparently neutral law or program has an adverse effect. As a 1985 federal Department of Justice discussion paper states, "It is discrimination when neutral administration and law have the effect of disadvantaging people already in need of protection under Section 15. This form of discrimination is often not readily identified; it commonly takes statistical analysis to detect it."

In order to preclude, or at least minimize, litigation alleging "systemic discrimination" against particular groups, governments may institute affirmative action programs in the form of special treatment or consideration for members of disadvantaged minorities. "It is such legislation and programs that are referred to in Section 15(2) of the Charter when it states: "...Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups."

Since equality of results - not just equality of opportunity - is the main concern of affirmative action programs, such programs must include both "equal opportunity" and "remedial" measures. Equality of opportunity alone is not enough because the deficit situation of certain groups is such that they would continue to be seriously disadvantaged. Equality of opportunity alone will not remove the effects of past injustice. A remedial program, is therefore, required to make affirmative action meaningful.

It is significant that not only does the Charter make legitimate such considerations, but it also opens the door to legal challenges by individuals if such programs are not provided. How Section 15 will, in fact, be interpreted by the Supreme Court of Canada is, as yet, unknown.

The Socio-Economic Context [2]

Crime committed by Aboriginal people - like crime in general - is related to the socio-economic conditions experienced by Aboriginal people on and off reserves. Any reduction in crime must address these socio-economic conditions.

The socio-economic conditions of Aboriginal peoples, as compared to other Canadians, are discouraging. Generally, Aboriginal Canadians have a lower average level of education, fewer marketable skills, and a higher rate of unemployment. The infant mortality rate for Indian children is twice the national rate, while life expectancy for those children who live past one year is more than ten years less than for children of the Canadian population as a whole.

The rate of violent death among Indian people is more than three times the national average. The overall suicide rate is nearly three times that of the total population. In the 15-25 age range, the suicide rate is more than six times that of the total population.

Studies also suggest that Aboriginal offenders, perhaps to an even greater extent than non-Aboriginal offenders, come from backgrounds characterized by a high degree of family instability. Usually they have had a great deal of contact with various types of social services and criminal justice agencies. Aboriginal offenders show a high incidence of single-parent homes, family problems and foster home placements. The majority of Aboriginal offenders have long criminal records both as juveniles and as adults.

The individual and socio-economic characteristics of Aboriginal offenders will be discussed in detail in Chapter 3. It is evident that the greater socio-economic disadvantage of Aboriginal offenders points to the need for special remedial treatment.

The Health Context

The traditional Indian view of health, which is still maintained to this day, is that the term "health" means a state of complete physical, mental, social and spiritual well-being. This concept is more encompassing and holistic than the European-Canadian model of health which focuses on disease and infirmity.

The current federal policy for the provision of Indian and Inuit health services and quality of care should be comparable to standards enjoyed by other Canadians. The goal of the policy is to increase the level of health in Native communities by a program of health care which is generated and maintained by the communities themselves.

Attainment of this goal is based on three "pillars":

- socio-economic and cultural development

- Native-controlled planning, budgeting and delivery of health programs;

- adaptation of federal, provincial and municipal health services to meet the specific needs of Native communities.

The federal health policy for Indian and Inuit people recognizes the special relationship that both are committed to preserve. The policy recognizes and flows in part from the traditional Indian view of health and commitment of Indian people to preserve and enhance their culture and traditions. The movement to return to the practice of traditional medicine by both Indian and Inuit people is one that is slowly gaining momentum.

The socio-economic circumstances demanding special treatment for Aboriginal offenders include their cultural and spiritual background. Programs that are appropriate for non-Aboriginal offenders may not work for Aboriginal people because of those social characteristics. This point will be given detailed attention in Chapter 5.

A Spiritual Context

While significant differences exist among cultural and spiritual practices of Aboriginal nations, such as those between Indian and Inuit peoples, the importance attached to the teachings of the Circle is evident in many Aboriginal societies and in most, if not all, Sisterhoods and Brotherhoods. Many call it the Sacred Circle because of the deep and abiding lessons intrinsic to it.

The Sacred Circle represents a cycle with no beginning or end. Because of its symmetry, the Sacred Circle represents balance and harmony which is the ideal state for human life and for the world.

The Creator gives people constant reminders of the Circle's importance. The sun, moon and stars are circles. Many other creations, such as trees and medicine plants, are also round.

Among many Aboriginal nations, the number four has profound spiritual significance. When placed with the Sacred Circle, the number four gives many additional lessons. There are the four stages of human growth: child, youth, adult and elder. Each has its own place in the cycle of life, and each follows the others in a natural progression. At the completion of life's fourth stage, the cycle of life begins again.

The Creator made the four directions and the four winds to demonstrate the relationship of the Sacred Circle and the number four. The Creator made the four seasons, which follow each other around the Circle of the yearly cycle. Each has its own place and time. Because they are part of a Circle, each season is considered equal, although different, to ensure the balance and harmony of the Circle. If any season were removed from the Circle, the Circle would lose its

balance and harmony; the Circle would be broken and the Creator's design for the world would be dishonoured.

Many Aboriginal nations recognize four sacred colours: black, red, white and yellow. These colours may be seen as representing the four primary peoples of mankind. As with all other creations, the four peoples have their own place in the Sacred Circle.

To maintain the Creator's design of balance and harmony within the Creation, each people must recognize their own place in the Circle and recognize that, while different, they must treat each other equally. If one people were to try to become the same as another, the result would be imbalance and disharmony. Disservice is done to the Creator if the differences of the four peoples are not recognized and honoured. The Sacred Circle would lose its harmony if the four peoples were not treated equally. Because of many Aboriginal peoples' deep roots in their own culture, the delivery of service to those individuals must take their spiritual and cultural background into account, including such values as art, language, family and community. Aboriginal-specific programs and services are thus warranted whenever they are required to ensure the same opportunity and equality of results.

Chapter 3

CORRECTIONAL CONTEXT

A. Correctional Process

The Task Force recognized that the requirement for Aboriginal-specific approaches must take place within the existing corrections and parole processes until such time as existing constitutional or legislative frameworks may be changed to enable different approaches.

The case management process is the basic means by which all sentences are managed. The process is designed to ensure that all relevant information about individual offenders is coordinated and focussed to produce a clear understanding of a case at any given time during a sentence. Such an understanding is required to assist offenders in making adjustments required for their successful reintegration with society as law-abiding citizens. From another perspective, the information is critical to the protection of society in that it identifies the institutional control measures required for each offender. The case management process identifies those individuals who may be safely released and specifies the conditions of their release.

The case management process represents a logical flow of events in the administration of a sentence. It includes initial and periodically updated assessments of the needs and problems of offenders. Based on the assessments, the offender's security requirements can be determined and their problems and needs professionally addressed. The needs include treatment or training within the institution, and extend to plans for accommodation, employment, training, and treatment on release. Before any major decision is made concerning security level or any form of conditional release, a summary of the offender's record, assessment, treatment plan and progress is presented to the decision-makers.

To be effective, the case management process requires reliable information about the offender. Some of that information, such as convictions and work history, is objective and easily obtainable. Other information is sometimes dependent on human interpretation. While necessary, this subjective information can lead to erroneous conclusions about an offender. Experienced practitioners avoid such pitfalls to the extent possible, and the team approach to case management favoured by the Correctional Service is designed to further reduce the danger that an offender or a situation will be misrepresented to the decision makers.

B. The Forms of Conditional Release

All offenders are, at some point in their sentence, eligible for one or more of the various types of conditional release.

There are four types of conditional release.

A temporary absence is often the first release an inmate will be granted. Temporary absences are occasional leaves granted for medical, rehabilitation or humanitarian reasons. They may be with or without escort.

Inmates serving a definite sentence (i.e., one that has an end, unlike a life or an indeterminate sentence) are normally eligible to be considered for an unescorted temporary absence after having served one-sixth of their sentence.

Day parole is a bridging program which facilitates the management of the critical transition between total incarceration and full conditional release on parole or mandatory supervision. It provides selected offenders an opportunity to participate in approved community-based activities while returning, as required, to a correctional facility. Inmates serving a definite sentence are normally eligible to be considered for day parole after having served one-sixth of their sentence.

Under full parole, offenders are entitled to spend the remainder of their sentence in the community under supervision, subject to conditions set by the NPB. Inmates serving a definite sentence are generally eligible for review for full parole after serving one-third of their sentence or seven years, whichever is less.

Offenders sentenced to life imprisonment for murder are subject to clearly defined eligibility requirements. Persons convicted of first degree murder (planned and deliberate murder, the murder of a police officer, or a prison employee) are not eligible for full parole consideration for 25 years. Eligibility for full parole consideration for persons convicted of second degree murder (any murder that is not first degree) is determined by the sentencing judge, on recommendation of the jury, at between 10 and 25 years. In both cases, inmates become eligible for unescorted temporary absences and day parole three years before their full parole eligibility date. Of the 12,674 inmates currently incarcerated in federal institutions (March 31, 1987), 351 are serving sentences for first degree murder and 991 for second degree.

Anyone convicted of murder and serving more than 15 years before full parole eligibility may apply after 15 years for a judicial review by a Superior Court judge and a jury to either reduce the remaining period before eligibility, or to be declared eligible for parole consideration immediately. To date, one case has been heard by the court and reviewed by the National Parole Board.

Persons who are paroled while serving life sentences remain on parole for life.

C. The Parole Process

The National Parole Board contributes to the protection of society by providing offenders with opportunities to establish themselves in the community as law-abiding citizens through the timely transition from the institution to the community in the safest possible manner.

Section 10 of the **Parole Act** sets forth three criteria which must be met in order for the National Parole Board to grant parole to an offender:

1. in the case of full parole, the inmate has derived the maximum benefit from imprisonment;

2. the reform and rehabilitation of the inmate will be aided by the grant of parole; and

3. the release of an inmate on parole would not constitute an undue risk to society.

The wording of Section 10 lends itself to an interpretation focussed on risk and the protection of society. The National Parole Board considers criterion 3 as the single most important criterion and criteria 1 and 2 as supportive of criterion 3. In other words, risk is the overriding factor.

Eligibility requirements are such that all offenders must serve a certain portion of their sentence under institutional conditions. Conditional release programs recognize both an offender's potential to change and the difficulty of transition from the institution to the community.

The **Parole Act** and Regulations require that a review for full parole be carried out for all federal inmates on or before their full parole eligibility date. Where full parole is not granted, a date is normally set for a subsequent review within two years, and every two years thereafter.

Offenders who are denied release or whose release is revoked may apply for a review of the decision to the Appeal Division of the National Parole Board. The Appeal Division may affirm or modify the decision or request that a new review be conducted at the regional level.

The **Parole Act** was amended in 1986 to authorize the National Parole Board, according to established criteria and procedures, to retain in custody until warrant expiry, or place under strict residential conditions, certain inmates who committed certain specified offences, who caused harm to their victims and who are considered likely to commit an offence causing death or serious harm to another person before the end of their sentence. Some inmates who have committed one of the specified offences, causing serious harm, may be judged by the National Parole Board as unlikely to cause serious harm prior to the end of their sentence. In such cases, they may be released on mandatory supervision. However, they will not be entitled to remission if that release is revoked. Because they no longer qualify for time off for good behaviour, they are, in effect, allowed only one chance in the community under mandatory supervision.

When the National Parole Board has granted conditional release, the inmate must sign a certificate that sets out the conditions of release. Many of the conditions are mandatory and are imposed on any inmate released on parole or subject to mandatory supervision. In addition, the inmate may be given some special conditions related to a particular behavioural pattern that is linked with an increasing probability of committing a crime (e.g. abstain from intoxicants).

Suspension of parole or mandatory supervision may occur because of a violation of the release conditions or because there are reasonable grounds to believe that a continuation of the release will endanger the public.

When conditional release is suspended, the offender is returned to custody and an investigation is started immediately. At any time during the following 14 days, the suspension may be cancelled if it is determined that the reasons for the suspension are not of continuing concern. When a case is referred to the National Parole Board, the Board may return the offender to prison.

D. Aboriginal-Specific Correctional Programs

The Native Liaison Support System began in the early 1970s as a result of a demonstrated need for community support and advice to Aboriginal offenders. The concept quickly grew from that original need to an extensive network of organizations and agencies across Canada that aid and assist the Aboriginal offender.

A number of Aboriginal organizations are currently engaged in Aboriginal inmate liaison duties. Many also offer other programs and services, such as halfway houses, spirituality, job placement, education, substance abuse and a variety of other services for Aboriginal offenders and their families. Some Aboriginal organizations providing a range of these services under contract to CSC are:

B.C.	Allied Indian and Metis Society
Alberta	Native Counselling Services of Alberta
Saskatchewan	Gabriel Dumont Institute
Manitoba	Native Clan Organization Inc.
Ontario	Owe Taninkega Mani
Quebec	Para-Judicial Native Counselling Services of Quebec

In addition to the above, the Correctional Services of Canada contracts at the regional level with colleges and universities for specialized programs to meet other needs of Aboriginal offenders, such as education, carving and heritage programs.

In 1985, a policy on Aboriginal spirituality was set out by the Correctional Service of Canada. This policy appears as Appendix III. Until that time, individual staff in institutions recognized the need for Aboriginal programs, and sought to address it. It was through their efforts and the evolution of Aboriginal corrections organizations that CSC is in a much better situation than twenty years ago. The policy on "Native Offender Programs," established in January 1987, contributes to the further development of Aboriginal offender programs across the country.

The combined efforts of both Aboriginal organizations and institutional staff assist Aboriginal offenders to successfully reintegrate with society as law-abiding citizens.

• *Ministry of the Solicitor General*

The Ministry of the Solicitor General has an active role in the development of Aboriginal corrections policies and programs. Specific projects and program initiatives of the Secretariat, the National Parole Board, the Correctional Service of Canada and the RCMP include:

Secretariat

The Secretariat Corrections Branch chairs the Correctional Law Review Project of the government's general Criminal Law Review. The Correctional Law Review Working Paper No. 7, "Correctional Issues Affecting Native Peoples", describes a number of legislative options relating to the correctional issues facing Aboriginal offenders and Aboriginal communities. The development of specific policies is left to the correctional agencies themselves.

The Branch provides for demonstration projects and the development of research in the field of Aboriginal corrections.

The Women in Conflict with the Law program, initiated in 1983, has funded 44 projects and activities targeted towards women who are involved with crime or who are at risk of coming into conflict with the law. The priorities for this are northern and Aboriginal women. Among the eight projects administered by Aboriginal people are the following:

- Opportunity for Advancement and Elizabeth Fry Society of Toronto have developed a group work model for women in corrections and will test it with an Aboriginal group;

- the Skokum Jim Friendship Centre in Whitehorse has developed a self-help group model to help women access existing community resources;

- The Montreal Native Friendship Centre has completed a needs assessment for those aboriginal women who are prostituting; and

- Family Life Skills Program (FLIP), sponsored by the Native Counselling Services of Alberta, has developed a group and individual counselling model to teach social and life skills.

National Parole Board

The National Parole Board is a decision-making agency, and as such, is not responsible for the delivery of programs to offenders. However, its interest in rendering appropriate decisions about Aboriginal offenders is reflected in a number of projects and initiatives designed to enhance decision-making in the case of Aboriginal offenders.

Mission Statement

In the principles contained in its Mission document, the National Parole Board recognizes the need to address specific issues relating to the social and cultural differences of offenders.

National Parole Board Member Selection Criteria

These were approved by the Solicitor General and provided to the Privy Council Office. At present, there are a few Aboriginal persons serving as either full time, temporary or community members.

Advisory Committee on Aboriginal Issues

This committee is chaired by an Aboriginal member from the Pacific Division of the National Parole Board, and comprises two additional members of the National Parole Board and two staff persons. They report directly to the Chairman of the National Parole Board.

Pre-Release Decision Policies

The National Parole Board has begun applying its pre-release decision policies. These policies are intended to make National Parole Board decisions more understandable. They specify how offenders can reduce their risk of re-offending and gain parole. The criteria make specific mention of Native spirituality, Elder counselling and other culturally oriented programs.

RCMP

Special Constable Program

Begun in 1974 in conjunction with the Department of Indian Affairs, it is designed to place Native Special Constables on reserves and adjacent areas, with a particular emphasis on crime prevention and community relations. In 1986-87, the RCMP employed 129 Native Special Constables in all provinces except Quebec, Ontario, and New Brunswick.

Cross-Cultural Training Program

A course given to RCMP recruits during their six-month training program. The course is intended to improve relationships between the police and the groups they are policing and to ensure that the services provided reflect the needs of the community.

Correctional Service of Canada

Native Advisory Committee

This committee advises the Correctional Service of Canada on Native programs and initiatives and meets twice yearly.

Native Spirituality Program

A program providing opportunities for spiritual development and guidance for Aboriginal offenders in federal facilities.

Native Liaison Worker Services

These services are for liaison with Aboriginal inmates to provide advice, assistance, counselling and community resource development. Although these services are funded by the Correctional Service of Canada, they are administered by Native organizations.

Native Brotherhoods/Sisterhoods

These associations, run by Aboriginal inmates, act as self-help groups and are the focus of cultural and spiritual activities in the institutions. Such groups exist in most federal institutions.

Employment Affirmation Action Program

This program is designed to encourage the employment of Aboriginal people at all levels within the Correctional Service of Canada.

Important programs offered in some regions include:

Native Alcohol and Drug Counselling Program

Provides group and individual counselling to Aboriginal offenders. It also provides for community resource development, referrals and follow-up.

Native Academic Upgrade Program

Improves learning skills of Aboriginal offenders. It also teaches living skills and upgrades the level of education of Aboriginal offenders.

Community Residential Services

These halfway houses for Aboriginal offenders are located in British Columbia, Alberta, Manitoba and Ontario. They are run by Aboriginal service-delivery agencies and are funded by CSC.

Supervision of Aboriginal Inmates

Native organizations provide supervision for inmates on parole and mandatory supervision in the Prairies region.

Sensitivity to Aboriginal Culture.

A program aimed at non-Native staff so that difficulties and problems encountered by Aboriginal offenders can be better understood and dealt with, e.g., in Prairies, training is offered to all staff who deal with Aboriginal inmates.

- ***Indian and Northern Affairs Canada (INAC)***

Indian Affairs and Northern Development funds a variety of programs and services that assist in the reintegration of offenders into their communities through the release and post-release processes. These include social services, post-secondary and cultural education, economic development and employment training programs, and policing and housing programs.

INAC supports band and tribal councils and a variety of Indian organizations which respond to the needs of offenders. It works with other federal departments in support of their programs for Indians.

INAC also sponsors new initiatives to encourage the design and control of programs by Indians through alternative funding arrangements, claims negotiations and self-government initiatives.

- *Department of Secretary of State*

The Department of Secretary of State, through its Citizenship Branch, assists Aboriginal people in defining and participating in the social, cultural, political and economic issues affecting their lives in Canadian society. Specifically, six programs are administered by the Native Citizens Directorate which serves status and non-status Indians, Metis and Inuit organizations and Native-initiated and managed projects.

- *Department of Justice*

The mandate of the Department of Justice for criminal law, access to justice for criminal law, access to justice programs, such as legal aid, justice policy development, constitutional and related issues has led to the establishment of policy and program activities directed specifically to the concerns of Aboriginal peoples including:

- Support of criminal courtworker services to Native accused under cost shared financing arrangements with provinces and the territories. The courtworker program seeks to promote the fair and equitable treatment of Native people involved in criminal proceedings particularly an understanding of their rights and of court procedures.

- A program to encourage non-status and Metis students to enter the legal profession by defraying costs associated with obtaining a degree in law.

- Ongoing participation in the self-government negotiations process, with a particular concern for issues touching upon justice administration.

Chapter 4

A STATISTICAL PROFILE OF FEDERAL ABORIGINAL OFFENDERS AND THEIR CONDITIONAL RELEASE

A. Size of the Aboriginal Inmate Population

As indicated in Chapter I, Aboriginal people represent a greater proportion of federal inmates than of the Canadian population as a whole. Moreover, the numbers are growing. The rate of growth of the Aboriginal offender population has exceeded that of the general inmate population every year since 1982-83 (see Table 1). This is probably due, in part, to the different rates of growth that have been noted for the Aboriginal and non-Aboriginal populations in Canada generally. It may also reflect the fact that Aboriginal people are now more likely to identify their cultural origins to correctional officials. The number of male inmates in the general federal population, including federal offenders in provincial institutions, fell 1.3 per cent between 1985 and 1987, while the Aboriginal inmate population grew 3.5 per cent. However, because Aboriginal offenders still comprise a small proportion of the total federal offender population, this proportion has only grown from 8.8 per cent in March of 1983 to 9.6 per cent in March of 1987. The Prairies region has the largest growth rate of Native inmates. In March 1983, Aboriginal offenders comprised 27.3 per cent of the inmate population in the Prairies. The figure increased to 31 per cent by March 1987.[3,4]

Despite these increases, the proportion of self-identified Aboriginal inmates in federal penitentiaries, excluding federal offenders in provincial prisons, was 8.8 per cent in March of 1987, virtually unchanged from 8.7 per cent in March of 1983. This may be partially due to greater use of exchange of services agreements for Aboriginal offenders. In March of 1983, Aboriginal offenders made up 17.3 per cent of federal offenders in provincial prisons, and by March of 1987, this figure had increased to 24.7 per cent.

The creation of national policies, programs and standards is complicated by the variation in the proportion and numbers of Aboriginal offenders from region to region. As shown in Table 2, the proportion of Aboriginal inmates as of December 31, 1987, ranged from 32.7 per cent in the Prairies region to less than 1 per cent in Quebec. The difficulty posed by this variation becomes more evident when one considers that although, according to official statistics, there are 730 Aboriginal inmates spread among 11 institutions in the Prairies region, there are only 26 in the 10 institutions in Quebec.

The delivery of programs to Aboriginal offenders is further complicated by variation in the security levels of the institutions. Access to programs varies according to security levels, and as is shown in Table 3, Aboriginal and non-Aboriginal offenders differed in terms of the security levels of the institutions in which they were placed. However, the nature of the data does not permit any definite conclusions about the impact of these differences on access to programming or the probability of release. Nearly twice as many Aboriginal

TABLE 1

ABORIGINAL AND NON-ABORIGINAL INMATE POPULATION RATE OF GROWTH*

(1982-83 to 1986-87)

Fiscal Year	Non-Native % Growth Per Year	Native % Growth Per Year
1982-83	9.4	15.2
1983-84	5.0	8.7
1984-85	4.5	5.2
1985-86	3.7	5.7
1986-87	-1.3	3.5

* Includes federal inmates maintained in provincial institutions

Source: Correctional Services of Canada Offender Population Forecast 1987-88 to 1994-95

TABLE 2

REGIONAL DISTRIBUTION OF ABORIGINAL INMATE POPULATION AS A PERCENTAGE OF THE TOTAL INMATE POPULATION*

Region	Total Inmate Population	Aboriginal Inmate Population	Aboriginal Inmate As Percentage of Total Inmate	Distribution of Aboriginal Inmate Population by Region
Pacific	1531	208	13.5	18.1
Prairies	2231	730	32.7	63.9
Ontario	3383	146	4.3	12.8
Quebec	3475	26	.75	2.3
Atlantic	1025	33	3.2	2.9
National	**11873**	**1143**	**9.6%**	**100.0%**

* Includes provincial inmates in federal institutions

Source: Correctional Service of Canada Population Profile Report 31.12.87

inmates were placed in multi-level security institutions (24.6 per cent as compared to 12.6 per cent). Only 17.8 per cent of Aboriginal inmates as compared to 27.8 percent of non-Aboriginal were in S4 institutions. Also 8.1 per cent of Aboriginal inmates compared to 15.6 per cent of non-Aboriginal were in minimum security (i.e., S1 and S2).

It appears that the variation in the levels at which Aboriginal and non-Aboriginal offenders are placed is influenced by limitations with respect to the types of institutions available close to the home community of the offender. For example, the only major institution available in Saskatchewan is the multi-level

TABLE 3

ABORIGINAL AND NON-ABORIGINAL INMATE POPULATION DISTRIBUTION BY SECURITY LEVEL OF HOLDING INSTITUTION*

Level of Security	# and % Native Inmate Population		# and % of Non-Native Inmate Population	
S1	4	(4%)	115	(1.0%)
S2	85	(7.7%)	1535	(14.6%)
S3	154	(13.9%)	988	(9.4%)
S4	197	(17.8%)	2909	(28.8%)
S5	235	(21.1%)	1773	(16.9%)
S6	161	(14.5%)	1829	(17.4%)
Multi-Level Security	273	(24.6%)	1329	(12.6%)
Total	1109	(100.0%)	10478	(100.0%)

* As of December 31, 1987, security level designations have been reduced to three: minimum (S-1, S-2), medium (S-3, S-5) and maximum (S-6)

Source: Correctional Service of Canada Population Profile Report 31-12-87

Saskatchewan Institution, accounting for 175 of the 273 multi-level placements of Aboriginal offenders. Similarly, Stony Mountain Penitentiary, the major institution in Manitoba, accounts for 150 of the 235 S5 placements of Aboriginal offenders. The proportion of Aboriginal offenders in S6 (maximum security) institutions was slightly lower than the proportion of non-Aboriginal offenders.

B. Characteristics of Aboriginal Inmates

Problems posed by the relatively high numbers of Aboriginal offenders in the system are further compounded by the fact that Aboriginal people are not a homogeneous group. Their needs and characteristics vary according to their particular cultural groupings and differences such as whether they are status or non-status Indian, Metis, or Inuit, and of rural or urban origins. As of December 31, 1987, 74.1 per cent of the Aboriginal inmate population were North American Indian, 23.3 per cent Metis, and 2.4 per cent Inuit.

A study of CSC Prairie region Aboriginal inmates' files found that, as of 1984, 20.4 per cent were born in communities of over 10,000 people, 35 per cent in communities of between 100 and 10,000 people, 28.5 per cent in communities less than 25 kilometres from a centre of more than 100 people and 15.3 per cent from isolated or more rural communities.[5]

The implications of their rural and urban origins are complicated by their transition to urban communities. At the time of their admission to a federal institution, 67.2 per cent of Aboriginal offenders had been residing in communities of over 10,000 people, compared to the 20.4 per cent born in communities of this size.

TABLE 4

DISTRIBUTION BY REGION OF NORTH AMERICAN INDIAN, METIS AND INUIT OFFENDERS IN FEDERAL INSTITUTIONS*

Region	Total Native Inmate Population	% of North-American Indian	% of Metis	% of Inuit
Atlantic	33	87.8	3.0	9.0
Quebec	26	61.5	7.6	30.7
Ontario	146	89.7	8.2	2.0
Prairies	730	69.3	28.7	1.9
Pacific	208	79.8	20.1	0.0
Total	**1143**	**74.1**	**23.3%**	**2.4**

* Includes provincial inmates in federal institutions

Source: Correctional Service of Canada Population Profile Report 31-12-87

As noted in Chapter 2, it has generally been acknowledged that federal Aboriginal offenders come from seriously disadvantaged backgrounds. Aboriginal inmates are even more disadvantaged in some respects than other inmates. A study in progress provides socio-demographic information on a sample of 84 Aboriginal federal inmates and 793 non-Aboriginal inmates who became eligible for release in 1983-84.[6] Preliminary findings indicate that: alcohol abuse was identified as a problem among 76 per cent of the Aboriginal inmates in comparison to 64.6 per cent of non-Aboriginal inmates. Under 20 per cent of the Aboriginal offenders had a grade 10 education or less, compared to more than 30 per cent of other offenders. Employment rates also varied, with less than 17 per cent of Aboriginal offenders employed at the time of their offence, in comparison to nearly 30 per cent of non-Aboriginal offenders.

A variety of other problems are evident as well. Only 22.5 per cent had any vocational training and about two-thirds had no previous skilled employment.

These figures do not necessarily suggest that Aboriginal offenders are poor candidates for release because of poor community ties and prospects. Rather, the indicators of positive community ties may be different in Aboriginal than non-Aboriginal communities and may not appear in offender files or be used for release decision-making. These data do suggest, however, that Aboriginal offenders are likely to have important needs that should be addressed by institutional programs and release planning.

The criminal profiles of Aboriginal inmates also create impediments to their early release. Seventy-three per cent of Aboriginal inmates as of December 31, 1987, were guilty of crimes of violence, compared to under 60 per cent of other inmates. If robbery is excluded, 55 per cent of Aboriginal offenders had committed an offence against the person, in comparison to fewer than 35 per cent of other inmates.[7,8]

However, the greater incidence of violent crimes should not be taken as an indication that Aboriginal offenders are not as good candidates for release as others. The sentence lengths that they are serving tend to be somewhat shorter, suggesting that their offences may be less serious. In fact, 47.8 per cent of Aboriginal offenders and 37.4 per cent of non-Aboriginal offenders in federal penitentiaries on December 31, 1987, were serving aggregate sentences of less than four years. The apparent discrepancy between the prevalence of violent offences and sentence lengths may also be the result of variations in the likelihood of apprehension or charging practices.

C. Female Offenders

As of March 31, 1987, Aboriginal females comprised 14.2 per cent of the 164 women in federal prisons.[9] North American Indians comprised 11.4 per cent of the female inmate population and Metis another 2.8 per cent. The proportion of Aboriginal offenders has decreased by over 4 per cent from the figure of 18.44 per cent at the end of fiscal year 1982-83.[10]. As with the federal Aboriginal offender population generally, the proportion of federal female offenders in provincial institutions who are Aboriginal offenders has increased, from 18.2 per cent in fiscal year 1982-83 to 25.3 per cent at the end of fiscal year 1986-87.

Of the 164 women in federal prison, 144 were in the Prison for Women. Of the 21 female Aboriginal offenders in federal penitentiaries, two were not in the Prison for Women.

D. Conditional Release

Aboriginal offenders are less likely than other federal inmates to be released on parole instead of mandatory supervision. Table 5 shows that during 1987, the proportion of releases of Aboriginal offenders on full parole was 18.3 per cent, compared with 42.1 per cent for non-Aboriginal offenders. In 1983, the full parole ratio was nearly three to one in favour of non-Native offenders. Between 1983 and 1986, the proportion of full parole releases of Aboriginal inmates increased while that of non-Aboriginal inmates decreased. In 1987, following implementation of the new National Parole Board Mission Statement, the proportion of parole releases increased dramatically for both groups.

The consequence of this difference in proportion of full parole releases is that a greater proportion of non-Aboriginal offenders are serving their sentence in the community. On May 11, 1988, 32.5 per cent of Aboriginal offenders were in the community, compared with 43.2 per cent of non-Aboriginal offenders (see Table 6). In particular, it should be noted that only 10.2 per cent of Aboriginal offenders were serving their sentence on full parole, compared with 23.9 per cent of non-Aboriginal offenders. The proportions in the community on day parole were quite similar, at 6.8 per cent and 7.9 per cent respectively.
Table 7 shows that the proportion of Aboriginal offenders serving their sentence on full parole has increased steadily from 7.2 per cent on December 31, 1983. The proportion of non-Aboriginal offenders serving their sentence on full parole decreased from 23.5 per cent at the end of 1983 to 21.8 per cent at the end of 1986. This figure increased to 24 per cent at the end of 1987, following implementation of the National Parole Board's new mission statement.

TABLE 5

RELEASES OF ABORIGINAL AND NON-ABORIGINAL OFFENDERS TO FULL PAROLE AND MANDATORY SUPERVISION (1983-1987)*

YEAR	ABORIGINAL OFFENDERS			NON-ABORIGINAL OFFENDERS		
	Parole Releases	MS Releases	Proportion Parole/MS	Parole Releases	MS Releases	Proportion Parole/MS
1983	62	377	14.1%	1726	2412	41.7%
1984	70	374	15.8%	1545	2556	37.7%
1985	73	419	14.8%	1518	2821	35.0%
1986	70	375	15.8%	1628	2923	35.8%
1987	85	379	18.3%	1993	2747	42.1%

*Exlcudes releases for continuation of parole or MS

Source: Correctional Service of Canada Offender Information System

TABLE 6

ABORIGINAL AND NON-ABORIGINAL OFFENDERS SERVING THEIR SENTENCES IN THE COMMUNITY AS OF MAY 11, 1988*

Total Offenders	Number on Mandatory Supervision	Number on Full Parole	Number on Day Parole	Total in Community
Aboriginal Offenders				
1689	244 (15.5%)	162 (10.2%)	108 (6.8%)	514 (32.5%)
Non-Aboriginal Offenders				
18376	1943 (11.4%)	4068 (23.9%)	1346 (7.9%)	7357 (43.2%)

*Includes those continuing previous parole and MS release

Source: Correctional Service of Canada Offender Information System

It also appears that Aboriginal offenders who are paroled may serve a greater proportion of their sentence prior to being paroled. As is shown in Table 8, nationwide, Aboriginal offenders granted full parole had served 51.3 per cent of their sentence prior to being paroled, as compared to an average of 45.7 per cent of sentence for all offenders.

The fact that Aboriginal offenders serve a greater proportion of their sentence in prison is borne out in a study of all offenders eligible for parole in the period 1980-81 to 1982-83. This study found that while 16 per cent of Caucasian

TABLE 7

ABORIGINAL AND NON-ABORIGINAL OFFENDERS SERVING THEIR SENTENCES IN THE COMMUNITY AS OF DECEMBER 31, 1983-1987*

YEAR	ABORIGINAL OFFENDERS			NON-ABORIGINAL OFFENDERS		
	Number of Offenders	Number of MS	Number On Parole	Number of Offenders	Number on MS	Number On Parole
1983	1344	194 (14.4%)	97 (7.2%)	15500	1672 (10.8%)	3648 (23.5%)
1984	1448	207 (14.3%)	117 (8.1%)	16080	1769 (11.0%)	3583 (22.3%)
1985	1543	231 (15.0%)	130 (8.4%)	16434	1988 (12.1%)	3491 (21.2%)
1986	1480	235 (15.9%)	135 (9.1%)	16572	2089 (12.6%)	3613 (21.8%)
1987	1523	222 (14.6%)	145 (9.5%)	16718	2019 (12.1%)	4007 (24.0%)

*Includes offenders on continuation of previous parole and MS release

Source: Correctional Service of Canada Offender Information System

TABLE 8

PERCENTAGE OF SENTENCE SERVED PRIOR TO GRANTING OF FULL PAROLE FOR OFFENDERS GRANTED FULL PAROLE (1987)

REGION	ABORIGINAL OFFENDERS	ALL OFFENDERS
ATLANTIC	33.2	42.3
QUEBEC	44.4	46.8
ONTARIO	52.9	44.7
PRAIRIES	53.7	47.1
PACIFIC	51.3	45.1
NATIONAL	51.3	45.7

Source: Correctional Service of Canada Offender Information System

offenders were released after having served 36 per cent or less of their sentence in prison, this was true for only 4 per cent of Aboriginal offenders.[11]

There are two main possible reasons for differences in the relative numbers of Aboriginal and non-Aboriginal offenders serving their sentence in the community on full parole. Aboriginal offenders may be more likely to forgo their right to be considered for parole, or there may be differences in the likelihood of being granted parole.

Table 9 shows that in fiscal years 1984-85 through 1986-87, there were more negative decisions for Aboriginal offenders seeking full parole than for other inmates. For 1986-87, 20.5 per cent of decisions in respect of Aboriginal offenders resulted in the granting of parole, in comparison to 38 per cent of the decisions made regarding non-Aboriginal offenders. The proportion of decisions resulting in the granting of full parole to Aboriginal offenders has shown a consistent decline, from 25.6 per cent in 1984-85 to 20.5 per cent in 1986-87.

The data regarding grant rates appear to contradict previously presented data showing increases in the proportions of full parole releases of Aboriginal offenders and of Aboriginal offenders serving their sentence on full parole. The apparent discrepancies may be because the grant rate information pertains to the number of decisions regarding full parole, not the number of offenders about whom decisions are made, and because more than one full parole decision may be made about the same offender in a given year. For example, if there is an increase in the number of offenders being refused parole on several occasions within the year, the grant rate could show a decrease, even if the number of offenders released on full parole remained the same.

Table 10 shows that there have been small differences in the proportion of decisions in which day parole has been granted, and that the proportion of decisions in which Aboriginal offenders have been granted day parole has remained fairly constant for the three years under consideration.

The study of all offenders becoming eligible for release in fiscal years 1980-81 through 1982-83 found substantial differences in the proportions of Aboriginal and non-Aboriginal offenders being released on parole regardless of the general category of offence considered (e.g., robbery with violence, break and enter).[12] However, another study of all offenders released in 1979, 1980 and 1981 found

TABLE 9

DECISIONS TO GRANT FULL PAROLE TO ABORIGINAL OFFENDERS AND NON-ABORIGINAL OFFENDERS, 1984/85 - 1986/87

YEAR	ABORIGINAL OFFENDERS		NON-ABORIGINAL OFFENDERS	
	Total Decisions Taken	Number of Decisions to Grant F.P.	Total Decisions Taken	Number of Decisions to Grant F.P.
1984/85	328	84 (25.6%)	4319	1679 (38.9%)
1985/86	372	85 (22.8%)	4840	1606 (33.2%)
1986/87	438	90 (20.5%)	5429	2065 (38.0%)

Source: National Parole Board

TABLE 10

DECISIONS TO GRANT DAY PAROLE TO ABORIGINAL OFFENDERS AND NON-ABORIGINAL OFFENDERS, 1984/85 - 1986/87

YEAR	ABORIGINAL OFFENDERS		NON-ABORIGINAL OFFENDERS	
	Total Decisions Taken	Number of Decisions to Grant D.P.	Total Decisions Taken	Number of Decisions to Grant D.P.
1984-85	454	264 (58.1%)	6017	3937 (65.4%)
1985-86	506	290 (57.3%)	6003	3830 (68.3%)
1986-87	564	328 (58.2%)	6364	4374 (68.7%)

Source: National Parole Board

that Aboriginal offenders were more likely to have their release revoked than were other groups of offenders, again regardless of the general category of offence under consideration.[13] Overall, 55.9 per cent of Aboriginal offenders and 66.2 per cent of Caucasian offenders completed their sentence without revocation of conditional release.

The higher failure rate for Aboriginal offenders should not be taken as an indication that they necessarily pose a greater danger to the community. A number of the issues raised during the consultations of the Task Force provide explanations that could account for the difference in release success rates of Aboriginal and non-Aboriginal offenders. For example, it was frequently argued that inappropriate conditions are imposed on the release of Aboriginal offenders, that enforcement of their conditions of release might be more stringent, that support and resources upon release are inadequate, and so forth. If the actions recommended in this report are implemented and successful, the result will not only be a change in the numbers of Aboriginal offenders in federal penitentiaries, but also an increase in their successful reintegration with the community.

E. Background on Available Data

Although the Correctional Service of Canada maintains extensive computerized information on Aboriginal offenders, problems inherent to this type of information and its management affect its utility. It is commonly held that the count of Aboriginal offenders is an underestimate. The determination of ethnicity is made on the basis of self-identification by the inmate. It is believed that some Aboriginal offenders may be reluctant to acknowledge their ethnicity on admission to an institution. Moreover, the distinctions among status and non-status Indians, Metis and Inuit can be difficult to make. In particular, the

Correctional Service had not attempted to distinguish between status and non-status Aboriginal offenders prior to 1983. Although admission forms now allow the distinction, it is not frequently made.

Data from a study of conditional release decision-making, currently being analyzed, provides exhaustive information on male Aboriginal and non-Aboriginal offenders alike. The data includes a sample of inmates becoming eligible for release for the first time in 1983-84 and a sample released in 1983-84.

The sample of Aboriginal offenders appears to be too small for analytical purposes, especially when considering North American Indians, Metis and Inuit separately within each of the release and eligibility samples.

Important changes in parole policies and procedures have occurred since 1983-84. Although the data are still useful in examining the risk posed by offenders, they are somewhat dated for an examination of decision outcomes. The data set excludes some variables, such as community of origin or residence, which are important in discussing the characteristics of Aboriginal inmates.

The current Offender Information System contains more recent detailed information on offender characteristics. However, information not currently appearing in the Population Profile reports cannot be recovered without writing complex new programs separately for Aboriginal and non-Aboriginal offenders. The Offender Management System currently under development is expected to allow detailed data on Aboriginal offenders to be more easily recovered.

A study is currently being considered that would obtain current information on the use of special conditions, additional terms and special instructions in the release of Aboriginal and non-Aboriginal offenders in the Prairie region. This information would be considered in relationship to suspension revocations and key offender characteristics.

ISSUES AND RECOMMENDATIONS

Issue

1. Available data currently underestimates the proportion of federal Aboriginal offenders.

Recommendation

1.1 The Correctional Service of Canada should examine the possibility of updating information on the ethnicity of inmates at points after admission.

1.2 Efforts should be made to improve the reporting of the status and non-status Aboriginal distinction.

Issue

2. Detailed information comparing female Aboriginal and non-Aboriginal inmates is virtually non-existent.

Recommendation

2.1 A study should be conducted of Prison for Women files from several years in order to provide a detailed profile of the characteristics and processing of Aboriginal female offenders and a comparison with non-Aboriginal counterparts.

Issue

3. Nation-wide statistics are not regularly available on certain key characteristics regarding the management of Aboriginal offenders.

Recommendation

3.1 Statistics on inmate participation in programs should provide a breakdown of the numbers and ratio of participating Aboriginal and non-Aboriginal offenders.

3.2 Procedures should be developed by The Correctional Service of Canada to collect, and regularly report on, the numbers of Aboriginal offenders residing in CRCs and CCCs on a given day.

3.3 Procedures should be developed by The Correctional Service of Canada to collect, and regularly report on, the use of exchange of services agreements for Aboriginal offenders.

Issue

4. Sufficient detail is not currently available on factors concerning decisions to release Aboriginal offenders.

Recommendation

4.1 The Correctional Service of Canada should examine the feasibility and means of recording the community of origin of Aboriginal inmates as part of its ongoing information reporting.

4.2 The development of the Offender Management System should be monitored to ensure that information on Aboriginal offenders can be readily accessed.

4.3 Ongoing studies being undertaken by the Ministry of the Solicitor General should be assessed by the Ministry Secretariat in terms of the completeness of their coverage of Aboriginal offender issues. Studies should be developed in coordination with The Correctional Service of Canada and National Parole Board to address any gaps that may exist.

Chapter 5

CASE DECISION MAKING

BACKGROUND

The administration of inmates' sentences includes a number of decisions that have significant impact on their interests and welfare. The major decisions include: classification or reclassification (which determine where and at what level of security an inmate will be placed), transfers and relocation between institutions; escorted and unescorted temporary absences; and the various types of parole release. These major decisions, however, are the culmination of a series of intermediate decisions which occur during the case management process. For example, the decision to reclassify or transfer an inmate is normally made on the basis of a Progress Summary Report. Progress Summaries of a case also support a decision to grant or reject an inmate's application for temporary absence or parole.

The Progress Summary itself is the product of a number of decisions by case management teams and their supervisors. Although they are intended to be comprehensive, the summaries contain information which, for practical purposes, must be selective. The data they contain must be organized in a manner that permits a conclusion and suggests a recommendation. The conclusion and recommendation are themselves judgements and subjective decisions. In summary, the Case Management Team (CMT) feeds the process leading to major decisions, but in also must make decisions of its own.

The Case Management Team consists of a Case Management Officer, and any other staff member who has significant involvement with the inmate. In some institutions, the Native Liaison Worker participates as an *ex officio* member of the Case Management Team.

The Case Management Team, in concert with the inmate, draws up a set of goals through the use of two processes: needs analysis and individual program planning. Needs Analysis establishes the needs of the offender, for example, education and substance abuse counselling. Individual Program Planning is the course that is charted by both the inmate and staff to fulfill the demonstrated need.

When an inmate submits a request for parole, a community assessment is conducted. The Parole Officer will then interview family, friends, potential employers or other members of the community to determine community support for the inmate. Once this assessment is completed, it is sent to the institution to be included in the Progress Summary,

Police play an integral role in the decision-making process. Officers are regularly required to undertake community assessments, especially in rural and isolated communities, and inform the National Parole Board about the community's acceptance of the released inmates. In addition, inmates are often required to make regular appearances before the police in their communities.

Finally, the police may exercise discretion in reporting parole and mandatory supervision violations, thereby affecting an inmate's success in reintegration.

In addition to community assessments, institutional staff also provide information to the National Parole Board that will assist in decision-making. Psychologists and preventive security officers regularly provide reports to the National Parole Board through the Case Management Team. Psychologists assess Aboriginal offenders throughout their sentence using a variety of assessment tools, such as the Minnesota Multi-phasic Inventory (MMPI). Any staff member who has had significant involvement with a particular inmate may be asked for input.

The National Parole Board has permanent Board members who operate from its five regional offices and national headquarters. The **Parole Act** allows for the appointment of a maximum of 36 full-time members. The Act also contains provisions for the appointment of temporary and community Board members. Temporary members are called upon to assist the permanent members in order to alleviate their workload. Community members have decision-making authority only in cases involving inmates serving life or indeterminate sentences. Full-time and temporary members are appointed by the Governor-in-Council, whereas the community members are appointed by the Solicitor General in consultation with the Chairman of the National Parole Board. While the National Parole Board is limited to 36 full time members, there are no numerical limitations on appointments of temporary and community members. The use of their services however, is limited by the number of person-years allotted to the National Parole Board by Treasury Board.

Parole reviews are conducted by way of a hearing or by a paper review, and each of the members involved in the review of the case has one vote. The number of votes required for a decision varies according to the length of the sentence the inmate is serving.

When the National Parole Board reviews a case, the documentation, including a recommendation prepared by the Case Management Officer (Community), is placed at their disposal. In cases where a hearing takes place, the Case Management Officer will appear before the Board to support the recommendation to approve or deny the application for parole.

Requests for transfer to lesser security also require a report from the Case Management Team.

The National Parole Board members located at national headquarters constitute the Appeal Division of the National Parole Board. They review, on paper, requests for re-examination by inmates who have been denied day or full parole, or whose releases have been revoked.

ISSUES AND RECOMMENDATIONS

A. The Assessment of Aboriginal Offenders

Aboriginal offenders are assessed repeatedly throughout their sentence using a variety of assessment procedures, tools and criteria. These assessments are conducted in support of decision-making, program assessment and case management. They may include assessment of a range of characteristics such as risk, psychological state, and personal needs.

The National Parole Board is conducting an evaluation of its release decision-making policies to examine how they apply to Aboriginal offenders. Statistical information on recidivism is not being applied to Aboriginal offenders until its validity has been assessed.

Issue

5. Although assessments are to be encouraged because they improve the objectivity of decision-making, in the past, they have not, for the most part, been validated in terms of their applicability to Aboriginal offenders. Therefore, it has been argued during the consultations and mentioned in previous studies (e.g. Solicitor General's Study of Conditional Release)[14,15] that they may not apply as effectively to Aboriginal offenders.

Recommendation

5.1 The current assessment tools, criteria, and procedures being used should be evaluated as to their validity for Aboriginal offenders. Where specialized techniques, such as psychological testing are involved, the appropriate professionals or professional organizations should be consulted.

Strategy

The Secretariat of the Solicitor General, in consultation with the CSC, NPB, and the Department of Health and Welfare, could solicit the assistance of professional societies (such as the Canadian Psychological Association) in identifying assessment and treatment techniques for use with Aboriginal offenders.

Furthermore, professional staff who are called upon to make assessments of offenders in the performance of their duties should be provided with intensive, enriched Aboriginal awareness training to ensure a high degree of sensitivity to the cultural differences of Aboriginal offenders.

Issue

6. The concern was raised in the course of the consultations that Aboriginal offenders appear to be particularly affected by the Parole Act provisions that allow the National Parole Board to detain dangerous

offenders until their warrant expiry date. Because the offences of Aboriginal offenders usually involve violence and are alcohol or drug-related, the current interpretations of these provisions may be inappropriate in assessing the need to detain Aboriginal offenders.

Recommendation

6.1 It is recommended that the detention provisions contained in the **Parole Act** be specifically assessed as to their applicability to Aboriginal offenders, with a view to determining how they are being applied to Aboriginal offenders so that the legislators can be fully apprised of how the Act affects Aboriginal offenders.

Strategy

The current review by the Secretariat, CSC, and NPB of the detention provisions could include an Aboriginal offender component, with specific recommendations on the application of the provisions to Aboriginal offenders and, where necessary, suggest other, more appropriate methods to determine the likelihood of persistent dangerous behaviour among Aboriginal inmates.

B. Use of Elders as Assessors

Background

Within traditional Aboriginal societies, Elders played a significant role in counselling community members in appropriate behaviour, maintaining peace and harmony among community members and generally acting as grandparent to the community. While traditional societies have evolved over the centuries, the sense of security given a community by Elders and the trust they evoke have generally remained high.

Possibly in recognition of the peace and harmony generated by Elders, their involvement within federal institutions has increased dramatically over the past decade. But although Elders are directing ceremonies with greater frequency and providing more counselling to Aboriginal inmates, there was the strong perception among several people consulted that Elders are underutilized in an important aspect of correction - the assessment of Aboriginal inmates as to their readiness for transfers, temporary absences or parole.

It has been argued that assessment tools, such as the Minnesota Multi-Phasic Inventory (MMPI), developed by professional non-Aboriginal people, are inappropriate to individuals from some classes of society and certain cultures. Questions have been raised as well about the capability of an individual from a particular socio-cultural, economic and professional background to assess individuals who do not share the same background and perceptions.

Several individuals and organizations consulted believed that Elders could provide a more accurate assessment of an inmate's capacity to successfully complete parole for a number of reasons, including: (a) an Elder's understanding of Aboriginal communities and their degree of acceptance of a

released inmate; (b) an understanding of Aboriginal spiritual and cultural programs, and whether the inmate has benefited from those programs; and (c) the willingness of Aboriginal inmates to discuss their problems and aspirations with Elders who, in turn, listen to the inmates in an appropriate manner.

Issue

7. Those who believe that Elders can provide a more accurate assessment of Aboriginal inmates than other professionals used by CSC were not in agreement as to the extent of using Elders as assessors or of having Elders replace other professionals in providing assessments to the National Parole Board.

Recommendation

7.1 It is recommended that Elders, upon request of an inmate and the Elder's acceptance, be permitted to submit an assessment to the National Parole Board on behalf of the inmate. Such assessments would be given the same weight as other professional inmate assessments.

The Elder's perspective could add significantly to the understanding of the case and thus facilitate a more equitable decision.

Strategy

The willingness of Elders to serve as assessors could be appraised by requesting either regional Councils of Elders or Native Advisory Committee members to canvass Elders currently involved with institutional activities. The names of those willing would be shared with institutional staff, inmates, inmate liaison workers and regional National Parole Board officials.

A process should be developed to ensure that liaison workers assist Elders to minimize linguistic difficulties on the preparation of an assessment in either English or French. Where necessary, the liaison worker may be required to write the assessment.

The assessment prepared by an Elder should be attached to all other professional appraisals provided to the National Parole Board. Comments from the Case Management Team indicating the degree of support for the Elder's assessment could be attached to the Elder's appraisal.

C. The Need for Aboriginal Employees and Officials

Background

Employment of a significant proportion of Aboriginal people in the correctional system would assist good communications and greatly enrich the professional treatment of Aboriginal offenders. However, despite determined efforts in the past to recruit Aboriginal people, further action is required to increase the number of Aboriginal employees. Existing affirmative action recruiting programs in CSC have had the positive effect of meeting their target of 1 per

cent. As of March, 1988, 1.2 per cent of CSC staff had identified themselves as being of Aboriginal ancestry. The "we-they" dynamic has been a reason for the paucity of Aboriginal people willing to accept employment within the system.

Those Aboriginal individuals who do take jobs in the Service are torn between the conflicting expectations of their correctional colleagues and the Aboriginal offenders. Some of the Working Committee's correspondents have alleged that, with little in the way of support mechanisms to deal with the resulting stress, Aboriginal staff resign early in their careers. Clearly, a new strategy is required to place more Aboriginal personnel in the correctional system.

It is important that cultural distinctions be observed for both Aboriginal staff and Aboriginal inmates. Recognizing four categories would be useful, namely: traditional persons; persons in transition; bi-cultural; and assimilated. Persons in transition are those whose culture is Aboriginal who are moving towards non-Aboriginal culture but as yet have limited functional experience with non-Aboriginal society. Bi-cultural persons are those who are experienced in both Aboriginal and non-Aboriginal societies. Assimilated Aboriginal persons are those individuals who function more easily in non-Aboriginal environments. Consultations led to the conclusion that Aboriginal people considered bi-cultural are best suited for employment and should thus be the group targeted for recruitment by CSC.

The Ministry of the Solicitor General has made an effort over the past few years to recruit and train Aboriginal staff. For example, the RCMP has a Native Special Constable Program to assist in the policing of reserves and remote communities. A number of Aboriginal people have been named to the National Parole Board over the years; the Board has established a target whereby 2 per cent of its staff will be self-identified Aboriginal people by 1991. The Correctional Service of Canada's Offender Programs Directorate has one program specifically designated for Aboriginal offenders and an Aboriginal-specific position within their Prairie regional office. CSC has established a target of 1 per cent of its staff to be self-identified Aboriginal people.

Issue

8. Communications is inevitably difficult because of the social and cultural differences between Aboriginal inmates and non-Aboriginal staff. For example, some inmates the Working Committee consulted said that they felt misunderstood by staff and, consequently, have tended to refuse all but the necessary interaction. This situation does not foster good communication with staff who are striving to keep up with the demands of inmates actively seeking involvement with them. On the other hand, staff who have a knowledge of and sensitivity to Aboriginal culture, are in a better position to overcome whatever cultural distance exists.

   The number of Aboriginal people employed within the Ministry's correctional agencies and Secretariat is insufficient when viewed in the light of either the percentage of Aboriginal people incarcerated in federal institutions, or the percentage of Aboriginal people in the Canadian population.

Recommendation

8.1 Increased Aboriginal employment within the Ministry of the Solicitor General would be a first step towards addressing perceived deficiencies in trust and communication between Aboriginal offenders and correctional administrators.

This approach could have several advantages: it would provide for better communications between offenders and the administration (staff and Board members); it would increase the awareness and sensitivity of decision-makers about the Aboriginal culture, thus leading to better quality decisions; it would provide role models for both Aboriginal offenders and for the staff; and finally, it would create a climate of greater trust and confidence within the system.

Strategy

The Solicitor General could develop appropriate affirmative action targets for the Secretariat and correctional agencies in cooperation with the Public Service Commission's Office of Native Employment.

Issue

9. When Aboriginal people are employed within the correctional system, they face a number of problems related to their employment.

The consultation revealed that Aboriginal staff find it very difficult to cope with the expectations of various groups. Consultation with Aboriginal inmates revealed myriad opinions ranging from the view that only Aboriginal staff should deal with Aboriginal inmates to the view that Aboriginal people should not be permanent employees within the correctional system. Aboriginal staff are often torn between the expectations of their colleagues and those of the Aboriginal offenders. They feel they must perform "better than the best" and that little is available in the way of support mechanisms to deal with the resulting stress.

Recommendation

9.1 It is recommended that Aboriginal staffing be approached in a manner which recognizes the many difficulties encountered by Aboriginal people who work in the correctional system, and the need to hire staff who can function in both Aboriginal and non-Aboriginal societies.

It is also recommended that strategies be developed to ensure the provision of adequate support for Aboriginal staff.

Strategy

A Task Force on Aboriginal Employment could be established by the Solicitor General to recruit and employ Aboriginal people in selected federal institutions and as parole officers on a pilot project basis. The Task Force could include representatives from the Ministry Secretariat and correctional agencies,

Canadian Employment and Immigration Commission (CEIC), Public Service Commission (PSC) and representatives from Aboriginal organizations.

The Ministry of the Solicitor General could, through this Task Force:

- review the results of the National Indigenous Development Program (NIDP) which was implemented in the Prairie Region by CSC to determine how it can be expanded and exploited;

- identify and reduce the barriers to the recruitment of Aboriginal staff;

- assess which Public Service Commission and other federal programs available to minority groups may be appropriate for hiring Aboriginal corrections staff;

- examine, and possibly modify, the recruitment criteria to substitute relevant experience for academic qualifications;

- institute Aboriginal employee counselling and support programs;

- recruit Aboriginal staff in a manner similar to the approach taken by CSC for the recruitment of female staff; i.e., place a number of Aboriginal personnel in the same institution/office at the same time;

- encourage Aboriginal employees to further their education in specialized fields by affording them educational leave with pay.

To complement the above, the Ministry of the Solicitor General could accept the offer from members of the CSC Native Advisory Committee to train, within their agency, prospective candidates for employment within the corrections system.

Issue

10. Aboriginal offenders and corrections/parole staff in all regions expressed an urgent need for Aboriginal National Parole Board members, especially from the Prairies and Northern areas. The view was that an expanded number of Aboriginal Board members would tend to involve Aboriginal communities and increase communication and trust between the National Parole Board and Aboriginal offenders. This would in turn lead to parole decisions which are consistent with conditions in the North and Aboriginal communities.

Recommendation

10.1 Effort should be made to increase the number of Aboriginal people on the National Parole Board by appointing more Aboriginal community members.

Strategy

The Solicitor General could consult with his counterparts at Indian and Northern Affairs Canada and the Secretary of State, as well as with various Indian, Metis and Inuit organizations to obtain the names of prospective candidates for appointment as permanent and temporary members to the National Parole Board.

Issue

11. One of the concerns raised in the course of the consultation process was the need for a structure that guarantees the availability of Aboriginal expertise at the regional and national level.

Recommendation

11.1 It is recommended that an Aboriginal person be hired in each of the regional and national offices of the CSC and NPB.

Strategy

Two possible options exist: (a) existing available person-years can be dedicated for these positions; or (b) a submission can be made to increase the Solicitor General's person-year complement. A combination of these two options may be required to obtain the desired result.

D. Role of the Police

Background

Many of those consulted did not favour police involvement in pre-release community assessments. On the one hand, the majority of Aboriginal inmates expressed the strong belief that they could not get a fair assessment by the police. Inmates were of the opinion that the police automatically give negative assessments because they do not want to deal with released offenders in their jurisdictions. On the other hand, police often feel pressured by community leaders and the victim's family to write negative assessments.

In many communities, released inmates are required to report to their local police detachment on a regular basis. Many inmates expressed the concern that this requirement forced them into continued contact with the arresting officer and served to remind the community that they had been in a federal institution. In many remote locations, the police have become the primary supervisors for released inmates. The police expressed concern that their time could be put to better use, and some officers consulted did not understand the purpose of this requirement.

Many Aboriginal inmates and representatives from Aboriginal organizations suggested that the police may not exercise the same degree of discretion in determining whether to report parole and mandatory supervision violations for Aboriginal offenders as they do with non-Aboriginal offenders.

Issue

12. The varying perceptions of inmates and the police regarding the frequency and reasons for negative police assessments have often led to tensions between the police and offenders or Aboriginal communities.

Recommendation

12.1 Police responsible for contributing to community assessments in Aboriginal communities should be given appropriate training.

Strategy

As part of police training, orientation prior to assignment to Aboriginal communities should include discussions on the various pressures affecting officers conducting community assessments.

Recommendation

12.2 Other sources of information regarding community acceptance of Aboriginal offenders should be used in addition to, or as an alternative to, police reports whenever possible.

Strategy

The movement towards community-based policing in Aboriginal communities may significantly reduce the tensions experienced between police and communities through a better understanding of policing functions and community needs.

Issue

13. The police are often used as part of the parole supervision process. This cuts into their other duties and may add to resentment between the offender and police.

Recommendation

13.1 It is recommended that alternative methods of offender reporting be established in those communities prepared to assume that function.

Strategy

As part of the community assessment process, tribal councils and Native organizations, or other community leadership structures, could be asked to assume a role in the supervision of released inmates.

On a regional basis, the National Parole Board and CSC could, along with relevant law enforcement agencies, look for alternative methods of reporting that would meet the needs of the National Parole Board, CSC, the police, the community and the offender.

E. The Need for Increased Awareness and Sensitivity

Background

Consultation with Aboriginal offenders, Liaison Officers and Aboriginal groups has pointed to a communication gap between the offenders and the authorities. In addition, those consulted perceived a lack of understanding on the part of decision-makers about Aboriginal Peoples and Cultures. CSC personnel and members of the National Parole Board have described their uneasiness when reviewing the cases of Aboriginal offenders. This uneasiness is due to their lack of familiarity with Aboriginal culture and lack of understanding of the reactions of Aboriginal offenders in an interview situation.

Training sessions and workshops have been held at the national regional, and local levels to increase the sensitivity of Ministry personnel to Aboriginal cultures. At the present time, however, a systematic Ministry approach to cross-cultural training does not exist.

Issue

14. The lack of cultural awareness among corrections decision-makers is often perceived by offenders as insensitivity. This, in turn, results in a lack of trust and confidence by the offenders in the people who are responsible for rendering decisions.

Recommendation

14.1 It is recommended that a Ministry policy be developed to address the need for awareness and sensitivity among Ministry staff and officials of the ways and culture of the Canadian Aboriginal nations.

Strategy

This policy could be developed by the Secretariat, following:

a) a determination of awareness training needs for specific target groups within the Ministry, including Board members and staff, CSC and RCMP staff and Secretariat officials;

b) an assessment of the policy's impact on staff, staffing and operations; and

c) an assessment of the policy's implications.

Issue

15. A variety of approaches may be required as part of a cultural awareness policy because of:

   a) the differing needs and priorities for information and awareness;

   b) the regional variations in the number and proportion of Aboriginal inmates; and

c) the variations in the availability of resources to implement awareness training.

Recommendation

15.1 To implement the above policy, it is recommended that the Secretariat in consultation with the agencies develop proposals for training on Aboriginal cultures for presentation to the Solicitor General. The consolidated proposals would form a training plan for the correctional components of the Ministry that would be assessed annually.

Strategy

The Secretariat and agencies could identify their respective needs for training, taking into consideration the following factors:

1. the nature of their involvement with Aboriginal people;

2. the various groups of staff within the organization and the degree of their interaction with Aboriginal offenders;

3. the number of Aboriginal offenders within each region.

The proposal could also address the timeliness, content and format of the training as well as mechanisms for the evaluation of its effectiveness. For example, the training could:

- be part of the initial orientation program;

- be ongoing as part of continuing education rather than one-time sessions;

- include direct experience, for example, on-reserve training sessions and visits to Aboriginal communities and organizations;

- provide for continued exposure to significant events pertinent to Aboriginal corrections such as Native Brotherhood functions, conferences and workshops; and

- include information on such issues as spirituality (provided by Elders), the conditions and resources in Aboriginal communities (with special reference to Northern communities) and the value of the Brotherhoods and Aboriginal programs.

The training should be contracted to Aboriginal individuals or agencies, unless compelling circumstances indicate otherwise.

In considering the above, assistance could be sought from Employment and Immigration Canada, Indian and Northern Affairs Canada and the Department of the Secretary of State for suggestions as to the training and development of current staff.

The yearly employee evaluation should also assess the efforts made by affected personnel to better understand the Aboriginal culture.

Issue

16. The current recruitment and selection processes for new employees do not allow the Ministry to adequately assess their ability to work effectively with Aboriginal offenders.

Recommendation

16.1 It is recommended that the heads of agencies within the Ministry of the Solicitor General develop appropriate tools to assist in hiring staff who have the capability of working with Aboriginal offenders, for those positions which require significant interaction with Aboriginal offenders.

Strategy

CSC and the RCMP should identify those staff whose positions bring them in direct contact with Aboriginal offenders.

The statement of qualifications of identified key positions should include knowledge of Aboriginal cultures and peoples as part of the essential requirements. In addition, the rated requirements should include experience and ability to work with Aboriginal peoples and an ability to speak one or more Aboriginal languages.

The Secretariat, in consultation with the CSC and the RCMP, should review and assess existing recruitment and selection tools that may be adaptable to the needs of the Ministry. As Indian and Northern Affairs Canada has experience in developing requirements for rating the capacity of candidates to work with Aboriginal offenders, that Department should be consulted.

F. Waivers

Background

The **Parole Act** allows inmates to waive their right to a parole hearing and/or to a parole review. If an inmate waives the right to a hearing, the National Parole Board will review the case on the basis of the information available on the case file, without the benefit of meeting the inmate. If the inmate waives the right to a review, the National Parole Board is not obligated to study the case. The offender who waives the right to either a hearing or a review may do so conditionally, for example, until such time as confirmation of acceptance to a half-way house has been given. In any case, offenders who waive such rights may change their minds. They do not forfeit their right to a hearing review.

On the other hand, an inmate who is refused parole, either at a hearing or on the basis of a paper review, cannot re-apply for parole until six months have elapsed following the denial. Exceptions are the revelation of new facts or events which

may significantly alter the chances for release, or a request for a review of the denial by the Appeal Division of the National Parole Board. When the inmate applies for parole six months after a denial of release, the case preparation must be updated and the chances are that the actual review will not occur for a further four months. Therefore, it is likely that an inmate whose parole has been denied will not be considered again for parole for ten to twelve months following the denial decision.

These alternatives and their effects appear to create a lot of confusion. Some correctional staff do not understand the waiver process: Many Aboriginal inmates consulted by the Working Committee have asserted that Case Management Officers are encouraging them, sometimes in subtle ways, to waive their parole hearings. Often Native Liaison Officers are, at the same time, encouraging the inmates to present themselves at their hearings.

The communications from the National Parole Board also vary, depending upon the region involved. For example, one region wishes to systematically discourage the use of waivers whereas in another region, members consider waivers acceptable in some circumstances, particularly in situations where the inmate's release plan requires more time for completion.

Issue

17. During the consultation process, the Working Committee heard concerns that waivers by Aboriginal inmates occur at a higher rate than that of other offenders. The current understanding between the Correctional Service of Canada and the National Parole Board is that waiver rates will not be allowed to exceed ten per cent nationally.

It should be noted that ill-advised encouragement to waive, particularly in cases where an inmate waives the right to a review of the case, carries the serious consequence of limiting the discretionary powers of the National Parole Board.

Recommendation

17.1 It is recommended that clear and concise information be made available to both correctional staff and inmates as to the available options regarding waivers.

17.2 It is recommended that waivers be closely monitored and in a detailed fashion.

17.3 It is recommended that the National Parole Board and CSC develop a clear national policy concerning waivers and ensure that the policy is understood by all decision-makers.

Chapter 6

PROGRAMS AND SERVICES

The policies of the Correctional Service of Canada dealing with social, cultural, recreational and educational matters have, over the years, enabled the development of a number of programs and services for Aboriginal inmates. For example, a policy on Citizens' Advisory Committees provides a framework for the activities appropriate to the needs of the ethnic inmate groups. This has led to the formation of national and Prairies Region Native Advisory Committees. The Commissioner's Directive on Native Offender Programs has also fostered the development of appropriate services and programs for Aboriginal offenders.

Because of the size and complexity of federal corrections, it is not surprising that there are broad regional variations in approach. However, the variations in the quality and availability of programs may be greater than necessary for a national service.

Part of the cause may be related to the way Aboriginal-specific programs are funded. Most Aboriginal-specific programs and services are delivered at local or regional level. Programming is decentralized because the needs and interests of Aboriginal offender groups vary by location and over time, as do the community resources available to meet those needs and interests. For example, traditional West Coast wood carving might appeal to inmates in the Pacific region where artisans are available to teach the craft.

The funding for many Aboriginal programs is at the discretion of the management of institutions. Unlike the budgets at the national and regional levels, institutions' budgets do not contain resources specifically allocated to Aboriginal offender programs. Consequently, funding is based on the total number of inmates contained within an institution, without regard to its ethnic composition. For that reason, it is difficult to determine how much is spent on programs for Aboriginal offenders

A. Pre-Release Programs and Services

- *Program Delivery*

Background

During the consultation process, Aboriginal inmate groups and individuals have invariably expressed the need for Aboriginal-specific programs that are sensitive to their cultural perspectives. They have been supported in their plea for such Aboriginal-specific programs by Liaison Workers, Elders and Aboriginal volunteers.

The Task Force determined a number of reasons for specific programs for Aboriginal offenders.

- As stated earlier, the distrust between inmates and staff is heightened when Aboriginal inmates are in a position where they must relate to non-Aboriginal program staff.

- Participation of Aboriginal inmates in some programs is inhibited by cultural barriers, program process and, sometimes, by language. For example, some Aboriginal inmates are uncomfortable with the Christian derivation of materials and process in Alcoholics Anonymous.

  On the other hand, the same inmates will respond positively to the teachings of the Medicine Wheel and to the trusting intimacy: features of Sacred Circle groups which focus on alcohol abuse. Even literacy training may be affected because of different approaches to learning and different problems requiring different solutions.

- Some Aboriginal inmates fear revealing themselves to non-Aboriginal inmates within the dynamics of group treatment situations.

An expanded Commissioner's Directive on Native Offender Programs issued in January, 1987, specifies that the needs of Aboriginal offenders should be clarified by specifying under what conditions existing programs or services are insufficient. Where the needs are not being met, the Directive specifies that consideration should be given to developing Aboriginal-specific programs.

A growing number of Aboriginal-specific programs have been developed in some institutions to respond to the needs of Aboriginal offenders, including needs related to substance abuse, life skills and adult basic education. These programs have been well received. CSC has also approved a plan whereby Aboriginal substance abuse programs will be delivered in all major institutions.

Issue

18. There was no consensus among corrections staff as to whether Aboriginal-specific programs are needed or warranted. For those who believe that Aboriginal-specific programs are appropriate, there was no consensus as to which programs should be given priority.

Recommendation

18.1 The Commissioner's Directive should specify that programs specific to the needs of Aboriginal inmates are required whenever:

a) sensitivity to the needs of Aboriginal offenders by other inmates is a factor (e.g. group counselling);

b) language is a factor;

c) differences in cultural approaches to learning require different techniques; and

d) the problems addressed by the programs have a different basis for Aboriginal inmates than for non-Aboriginal inmates.

Strategy

CSC Research and Evaluation and the Secretariat Corrections Branch could identify specific program areas requiring special programs.

The current CSC review of its health services could take into consideration the health problems more specific to Aboriginal people.

Because of the budgetary implications of implementing some parallel Aboriginal programs, the cost of such programs should be assessed during the Multi-Year Operational Plan (MYOP) exercise.

Recommendation

18.2 The correctional system should make available programs which are particularly suited to serving the spiritual and cultural needs of Aboriginal offenders. Where numbers warrant, programs should be offered for the treatment, training and reintegration of Aboriginal offenders which take into account their culture and way of life.

Strategy

Depending on the final outcome of the Correctional Law Review, legislation could be adopted to address this recommendation.

Issue

19. Protective custody inmates are housed in a separate section of an institution for a variety of reasons, including a history of sexual offences, outstanding gambling debts to other inmates, etc. Their common characteristic is that they believe they would not survive in the general inmate population.

Their exclusion from the general population makes the provision of programs awkward, especially for Aboriginal offenders. Staff and inmates were of the opinion that Aboriginal inmates in protective custody were not receiving equitable programming because of the reluctance of Liaison Workers and Elders to visit protective custody units.

Recommendation

19.1 The Correctional Service of Canada should ensure that Aboriginal service organizations recognize that the provision of services to Aboriginal offenders in protective custody is included in contractual agreements.

Strategy

The regional contract administrator for the CSC should ensure that contracts specify the inclusion of Aboriginal inmates in protective custody, and that the directors of Aboriginal-controlled organizations providing contract services are

aware that failure to provide services to these inmates can be considered a breach of contract.

Institutional program evaluation staff should monitor the provision of services to Aboriginal inmates in protective custody and report any concerns in this regard to the regional contract administrator.

- *Spiritual Practices*

Background

In response to national policy, most regions have established Councils of Elders who assist in resolving issues related to the practice of traditional Aboriginal spirituality in institutions.

At a recent disturbance in a major federal institution, the Aboriginal inmates abstained from any participation. Some observers have attributed this to the positive influence of spiritual practices.

The practice of allowing traditional Elders to perform spiritual services for Aboriginal inmates began in 1972 at Drumheller Institution. The practice has expanded across the country in varying degrees and has been supported by national policy since 1985 (This policy is outlined in Commissioner's Directive #702, attached in Appendix IV). It is clear that the opportunity to engage in traditional spirituality has been seized enthusiastically by Aboriginal, and some non-Aboriginal, inmates. The practice of traditional spirituality includes solitary pursuit as well as group ceremonies which must be led by a qualified practitioner.

In addition to the Commissioner's Directive on Aboriginal spiritual practices, CSC has also developed a Commissioner's Directive on religious services and programs (CD #750), which is attached in Appendix III. Furthermore, CSC has attempted to increase the level of knowledge and understanding of Aboriginal spirituality through the development and distribution of information packages.

The National Parole Board has also adopted a policy recognizing that Aboriginal spirituality and Aboriginal-specific programs have the same value in assisting Aboriginal offenders as other programs have for non-Aboriginal offenders.

Issue

20. Medicine and pipe bundles can range in size from the size of a marble to a pouch large enough to enclose a large bowl and stem of a ceremonial pipe. They are leather bags and are often secured with leather thongs.

    Pipes and sacred bundles, which are often integral to a spiritual practice, are subject to inspection by security personnel when the Elders visit the institutions. If the bundle is handled by security personnel, it may be viewed as having been desecrated.

Most Elders are prepared to remove the contents of bundles for visual inspection, but object to their being handled by officers. Depending upon the tradition of an individual Elder, unauthorized handling is a desecration requiring that the bundle be purified and rededicated. As well, the x-raying of bundles is often considered taboo.

Recommendation

20.1 To complement the national directive, regional instructions and standing orders should be developed addressing the issue of security clearance for Elders' sacred bundles and ensuring sensitive handling of those bundles.

Strategy

The Regional Instructions or orders should be drafted after consulting with Elders, or the contracting agencies, to ensure that security imperatives and the requirement for sensitive procedures are met.

CSC should expand and update the information contained in the spirituality packages and ensure that they are available within institutions.

In order to reinforce this recommendation, consultations on the Correctional Law Review Working Paper on Native Peoples should examine the legislative option that:

> The correctional service shall recognize the spiritual rights of individual Aboriginal offenders, such as the right to group spiritual and cultural ceremonies and rituals, including pipe ceremonies, religious fasting, sweat lodge ceremonies, potlatches, and the burning of sweetgrass, sage and cedar.

Issue

21. Despite the Commissioner's Directive on Native Offender Programs, Elders are sometimes not permitted into segregation or dissociation areas.

Recommendation

21.1 The issue of access to segregation and dissociation should be addressed by giving contracted Elders the same status as Chaplains.

Strategy

Paragraph 3 of the Commissioner's Directive #750 on Religious Services and Programs could be amended to include Aboriginal Spiritual Elders contractually engaged to attend to inmates. Consequently, the revised paragraph would read:

> 3. Aboriginal Spiritual Elders on contract shall be accorded the same recognition in the institution as chaplains in indeterminate positions.

Paragraph 6 of the same Commissioner's Directive could be amended to include Aboriginal Spiritual Elders contractually engaged to attend to inmates. Consequently, the revised paragraph would read:

> 6. Chaplains and Aboriginal Spiritual Elders shall have access, at all times, to all areas of the institution to minister to inmates and staff; normal consideration shall be given to security requirements, personal safety and established working hours of inmates.

Within the context of consultations on the Correctional Law Review Working Paper on Native Peoples, consideration should be given to the legislative options outlined regarding Aboriginal Spirituality, specifically:

> Aboriginal spirituality shall be accorded the same status, protection and privileges as other religions. Native Elders, spiritual advisors and ceremonial leaders shall be recognized as having the same status, protection and privileges as religious officials of other religions, for the purposes of providing religious counselling, performing spiritual ceremonies, and other related duties.
>
> Where numbers warrant, correctional institutions shall provide an Aboriginal Elder with the same status, protection and privileges as an institutional chaplain.

Issue

22. Conflict has arisen between Aboriginal inmates and correctional staff about the frequency of sweat lodges and other ceremonies in the federal institutions.

Recommendation

22.1 Guidelines should be developed regarding the minimum number of sweats and other ceremonies in any federal institution. The guidelines must reflect a balance between inmate needs and institutional requirements.

Strategy

Meetings could take place between recognized Elders or a Council of Elders and institutional staff to determine the appropriate number of sweats and other ceremonies in a given year.

The issue of minimum number of ceremonies should be addressed by the CSC Native Advisory Committee.

The decision about the number of institutional ceremonies should be supported by adequate resources for these activities.

In order to reinforce this recommendation, consultations on the Correctional Law Review Working Paper on Native Peoples should examine the legislative option that:

> The correctional service shall recognize the spiritual rights of individual Aboriginal offenders, such as the right to group spiritual and cultural ceremonies and rituals, including pipe ceremonies, religious fasting, sweat lodge ceremonies, potlatches, and the burning of sweetgrass, sage, and cedar.

- *Federal-Provincial Exchange of Services Agreement*

Background

Exchange of services agreements exist in every province and territory, except Ontario. They afford the federal inmates transferred to provincial facilities the opportunity to serve their sentence in closer proximity to their home communities and the supports available in those communities. At the same time, provincial inmates may be transferred to a federal penitentiary for various reasons. Most agreements are limited to the costs of correctional transfers. Recently, some agreements, such as the agreement concerning the Grierson Centre in Edmonton, have contained references to program delivery.

Issue

23. Except for more recent exceptions, exchange of services agreements do not contain any provision respecting the delivery of programs and services and therefore, the Ministry cannot guarantee transferred inmates that they will receive programs and services that are at least equivalent to those received by Aboriginal inmates incarcerated in federal institutions.

Recommendation

23.1 Any new exchange of service agreement with provinces or territories should contain minimum standards for the provision of programs and services to federal Aboriginal offenders. At the earliest opportunity, existing agreements should be amended to include such standards.

Strategy

The example of the proposed Agreement with Alberta for the operation of the Grierson Centre by the Native Counselling Service of Alberta could be used as a guideline in drafting future agreements.

Exchange of service agreements should stipulate the reciprocal requirement for governments to provide annual reports outlining the services provided to Aboriginal inmates.

- *Female Aboriginal Offenders*

Background

The Prison for Women in Kingston, Ontario, is the only federal institution for female offenders in Canada. Aboriginal female offenders and other female offenders will often opt to serve their sentences in a provincial facility in order to be closer to their home community and, more important, to their children.

The Prison for Women has implemented an array of programs for Aboriginal offenders. However the difficulties encountered by male Aboriginal offenders in integrated programs are also acutely experienced by female Aboriginal offenders.

The shortage of day parole facilities, which is a problem for Aboriginal male offenders, is even more acute for female offenders. This causes difficulties for the National Parole Board when considering the grant of any form of release on day parole.

The recommendations for male Aboriginal offenders regarding Exchange of Service Agreements, greater utilization of home placements and Aboriginal-specific programs within the institutions also apply to female Aboriginal offenders, namely:

- that the current CSC efforts to expand the use of exchange of service agreements should be endorsed and the latter should include provisions for programs, delivery standards and annual reporting;

- that because of the inability to grant conventional day parole in some cases, greater utilization should be made of individual homes in place of half-way houses; and

- that the Commissioner's Directive on Aboriginal-specific programs should be modified to give clear direction as to the circumstances under which Aboriginal-specific programs should be provided.

In 1984, the Ministry of the Solicitor General implemented the Women in Conflict with the Law (WICL) initiative. The major objective of this-five year program was to increase the number of community agencies providing support to female offenders in a more coordinated manner.

Issue

24. A consequence of incarceration of female Aboriginal offenders at the Prison for Women is a *de facto* severance of family relationships due to the distance between their home community and the institution.

Although the same comment could be made for many male offenders, female offenders usually find it very difficult to re-establish themselves in a normal way of life after their release because their husband or companion is not likely to have awaited their return, and the children are usually dispersed in foster homes.

Recommendation

24.1 Because of the geographical distribution of women incarcerated in the Prison for Women, ways must be found to increase the opportunities for incarcerated women to meet regularly with their families.

Strategy

Various options have been offered by the groups consulted as to the possible implementation of such a program such as:

- the granting of extended temporary absences to allow female Aboriginal offenders to visit their families when distance is a factor;

- short-term transfers under an exchange of service agreement; and

- coordination of transportation for family visits with agencies currently providing services to federal female inmates.

Issue

25. The small number of female offenders overall, and the relatively small number of female, as compared to male, Aboriginal offenders often inhibits the development of programs and services required to meet their needs.

Recommendation

25.1 Where appropriate, Aboriginal-specific programs must be developed for Aboriginal female offenders even though such programs may be less efficient than programs for males given the low number of participants that may result.

Strategy

The exercise to determine adequate Aboriginal-specific programs discussed earlier should consider the needs of Aboriginal female inmates.

The differences in resource requirements should be factored into the MYOP.

Issue

26. Due to the small number of Aboriginal female inmates, innovative programming may be required.

Recommendation

26.1 The Ministry should explore the potential to develop a holistic approach that treats a variety of problems within the context of a single program for Aboriginal female offenders at the Prison for Women.

Strategy

Officials from CSC and the Secretariat could explore alternate forms of programming.

Issue

27. There is a serious lack of day parole facilities for Aboriginal female offenders.

Some women require a more structured environment and more counselling immediately after release than would be available in a private home placement situation. Furthermore, private home placements may not be as easily found for Aboriginal female offenders who have a history of violent behaviour.

Co-ed facilities are not considered a viable alternative in the long-term for Aboriginal female offenders who have a history of sexual abuse.

Recommendation

27.1 Adequate bed space must be found for released Aboriginal female offenders in key locations across Canada.

Strategy

Negotiations could take place with other jurisdictions to either:

a) purchase adequate bed space in existing CRCs; or

b) share the costs for the establishment of new facilities.

- *Inuit Offenders*

Background

As indicated in Chapter IV, Inuit offenders represent 2.4 per cent of the total Aboriginal population in federal penitentiaries. The majority are incarcerated in the Prairies (24) and in the province of Quebec (8), although all regions with the exception of the Pacific have a few. Their small numbers create many of the same problems as were previously noted with respect to female Aboriginal offenders.

The Inuit offenders are also in a unique, and very difficult, situation. There are no Inuit-specific programs available for them within the institutions, and their limited knowledge and understanding of either official language of Canada prevents them from participating in other programs that are available.

Incarceration requires the Inuit to adapt to a situation that is difficult for any offender, but which is completely foreign to their experience. They must learn to live within a closed environment, in a different climate, hearing a strange language, and eating unfamiliar foods.

Contact with their families is very difficult to maintain, and is thus usually non-existent. Although life in their home community may change and evolve, they have no way of learning about these changes.

The decisions that are made in the course of an inmate's sentence are based on a series of assessments, and favourable decisions are dependent upon demonstration of positive progress. Given the lack of assessment tools which are validated for Inuit offenders, language difficulties, and the lack of professional staff knowledgeable about the Inuit culture, Inuit offenders find it difficult to demonstrate any progress. They are usually "model" inmates, but in reality they gain very little from their incarceration and it is unlikely to assist them in modifying their behaviour.

The same strategies that have been offered for maintaining the community ties of other Aboriginal offenders should be assessed as to their applicability to Inuit offenders. Specifically:

- greater use should be made of exchange of service agreements for the incarceration of Inuit offenders;

- consideration should be given to greater use of private home placements for Inuit offenders; and

- the suggested strategy for family visits for female Aboriginal offenders should also be considered for Inuit offenders.

Issue

28. There are no institutional programs specifically designed to assist Inuit offenders.

Recommendation

28.1 It is recommended that CSC provide programming specifically designed for Inuit offenders.

Strategy

Inuit offenders could all be located in one or two institutions, allowing those who do have a knowledge of the English and Inuit languages to serve as interpreters.

At least one staff member could be hired to provide counselling and services to Inuit offenders.

Through the auspices of the Secretary of State, arrangements could be made for the Inuit Broadcasting Societies to make videos about Northern communities available to Inuit offenders in their language.

Arrangements with the Inuit Communications Societies could also be made through the Secretary of State for the provision of other forms of communication, for example, newspapers, to Inuit offenders.

Similar arrangements could be made with the National Film Board for the rental of programs and documentaries about Northern communities.

- *Liaison Services*

Background

Through contractual arrangements with private Aboriginal service organizations, The Correctional Service of Canada provides Aboriginal liaison services to Aboriginal offenders in all but one of its regions. The number of such workers and the areas of their deployment vary from region to region, based on the number of institutions and the number of Aboriginal inmates within them. In the Atlantic region, there are currently no liaison workers to serve any of the four institutions. In the Quebec region, one worker provides service in all nine of the institutions. The Ontario region's nine institutions are served by three workers. The Prairies Region, with the highest density of Aboriginal offenders, has four workers deployed to cover the eight institutions in the region.

Although task specialization is beginning to take place in institutions covered by more than one worker, the following tasks are considered to be the more significant services performed by the workers:

- assisting in the orientation of recently admitted Aboriginal inmates;
- providing support and assistance to the spiritual Elder;
- participating in case management team meetings on an ad hoc basis to provide information and cultural interpretations;
- guiding the Native Brotherhood, or other groups with similar aims, in planning its social, cultural, spiritual, recreational and peer-help activities; and
- providing liaison between institutions and inmates communities.

Other services are provided by the workers whenever the need arises. For example, they provide crisis counselling to assist staff members in establishing rapport in emergency situations. They also act as consultants in conceiving and developing new programs and services.

The National Parole Board has recognized the value of the role played by the Native Liaison Worker and has accepted the principle that Liaison Workers could, on request, be present at hearings without interfering with the offenders' right to be assisted by a person of their choice.

Issue

29. In the Atlantic region, an attempt to decentralize responsibility for providing liaison services in institutions has been unsuccessful due to limited financial resources. This made it impossible to fund both the liaison service and other important Aboriginal programs and services at the same time. The result is that, at the present time, there are no liaison services in this region.

Based on the number of Aboriginal inmates in the Quebec region, one worker would appear, on the surface, to be sufficient to meet liaison needs. However, the distribution of inmates in many institutions over a large geographic area belies appearances because travel consumes too much worker time; consequently, many needs cannot be met.

During consultations in the Ontario region, the Working Committee was presented with concerns that there are too few workers for the number of institutions in the region and consequently, the service from the workers is inconsistent and unreliable.

In the Prairie region, no liaison services are provided to inmates in the Regional Psychiatric Centre, which houses a significant number of Aboriginal inmates. Additionally, the worker-to-inmate ratios at the Saskatchewan Institution, High Maximum Security Unit Complex, the Saskatchewan Farm Annex, Bowden Institution, and Edmonton Institution were scarcely adequate.

The four workers allocated to the Pacific region must provide service to eight institutions. While the worker-to-inmate ratios are not unfavourable, workers could provide more comprehensive service if one were assigned to each major institution. By means of such an arrangement, workers would have the advantages of operating in a single environment as well as putting to better use the time now spent on travel.

The Working Committee was presented with two additional concerns of staff and inmates in a number of locations. These pertain to female inmates and to those inmates who are in protective custody.

At the Prison for Women, the staff reported that the vast majority of the inmates have histories of sexual abuse or exploitation by men. For that reason, the staff believe that the inmates would relate better to female liaison workers than to the male workers who are presently assigned to the prison.

In several locations, both staff and inmates observed that liaison workers rarely provide services to inmates in protective custody.

Some groups consulted observed that liaison workers are selected, in a large measure, on the basis of their knowledge of Aboriginal communities and culture. Many have not had work experience in correctional settings, and some are not fully effective in their duties within penitentiaries until they have gained experience in federal corrections. Consequently, some means should be found to train the workers before they are assigned to institutions.

Another concern identified by the Working Committee was that the different methods of funding liaison workers across the country would tend to lead to varying expectations of liaison services from region to region. While some regional variation is understandable, it is believed that the existence of national minimum standards for liaison services would ensure consistent expectations.