



OFFICE OF THE CITIZENS' REPRESENTATIVE

SUBMISSIONS ON NEW CORRECTIONAL LEGISLATION

INTRODUCTION

On August 25, 2010 the Department of Justice announced that it would undertake consultations in its efforts to draft new correctional legislation for the Province. A consultation discussion paper was drafted and is available at www.justice.gov.nl.ca/just. This document represents the Office of the Citizens' Representative's response to that consultation discussion paper.

The Office of the Citizens' Representative has provided a province-wide ombudsman service since 2002. In that capacity it receives complaints from inmates in the Province's correctional facilities. These complaints allege that an inmate has been treated unfairly. These submissions arise from the collective experience of the staff of this Office along with targeted research undertaken in response to the Department's request for submissions.

The submissions are limited to the matters which are properly dealt with in legislation. The solutions to the operational, funding and facility maintenance problems which have arisen in our correctional system are not easily codified in legislation. This Office acknowledges the ongoing efforts of the Department to address these issues in its response to the "Decades of Darkness: Moving Towards the Light" prison review.

DISCUSSION

We are pleased to address the issues outlined in the August 25, 2010 discussion paper in the order they were presented.

1. *What in your opinion should be the authority, standards and duties expected of community corrections staff (e.g. probation officers), and of prison staff (e.g. correctional officers), that should be included in a new Correctional Services Act.*

There are several North American jurisdictions that currently have codes of conduct as policy directives including Nova Scotia and Prince Edward Island.

While the Department of Justice *Operational Procedures Manual* for adult corrections touches on several areas of correctional officer conduct, including confidentiality, conflict of interest, public complaints and appropriate attire, this document is dated and in need of replacement.

RECOMMENDATION:

The Director of Corrections and Community Services be given statutory authority to establish and amend a comprehensive code of conduct for corrections staff and prison staff in a new Correctional Services Act.

With respect to the content of the code the core requirements should be:

- (i) A statement requiring respect for the legal and human rights of offenders and the United Nations resolution on Minimum Standards for the Treatment of Prisoners.
- (ii) Express standards regarding operational duty:
 - (a) attentiveness to duty;
 - (b) reporting for duty;
 - (c) violating provincial or federal laws;
 - (d) violating directives;
 - (e) violating orders from an officer of superior rank;
 - (f) promptly reporting workplace accidents;
 - (g) truthfulness in reporting;

- (h) the provision of testimony in a court of law or offender disciplinary hearings; and,
 - (i) falsification or unauthorized alteration or removal of records.
- (iii) Defined parameters for relationships with offenders, including but not limited to:
 - (a) reporting relatives or personal acquaintances that are offenders;
 - (b) the express prohibition of emotional, romantic or sexual involvement with offenders;
 - (c) the express prohibition of violence, profanity, intimidation etc. subject to use of force rules (correctional officers);
 - (d) the prohibition of financial or business dealings with offenders or probationers, including but not limited to such matters as serving as a fiduciary, accepting or making loans, or cosigning promissory notes;
- (iv) Defined parameters for relationships with colleagues and the public including not engaging in conduct that would bring the Adult Corrections Division into disrepute;
- (v) Prohibition of the importation of contraband;
- (vi) Rules on the collection, handling and dissemination of personal information subject to the *Access to Information and Protection of Privacy Act* and the *Personal Health Information Act* (to be proclaimed);
- (vii) Defined rules or required adherence to DOJ or provincial government anti-discrimination/harassment policies;
- (viii) A statement on the drug / alcohol / smoke-free workplace;
- (ix) Prohibition against abuse of position for personal gain;
- (x) Prohibition of accepting or soliciting gifts, gratuities, bribes, or other rewards;
- (xi) Defined conflicts of interest;
- (xii) Limitations on political activities;

- (xiii) Unauthorized use of DOJ property;
- (xiv) Rules regarding secondary employment by a correctional officer or probation officer;
- (xv) Reporting without reservation any illegal behaviour or violations of the code of conduct; and,
- (xvi) Reporting any inducement or instruction to violate the code of conduct.

2. *What in your opinion are the behaviours and expectations that should be included in a new Correctional Services Act to be placed on offenders/inmates to counter criminal lifestyles?*

Offenders placed in custody should also be instructed on the subject of personal conduct that will lead to criminal or administrative sanction and/or disruptions in privileges.

RECOMMENDATION:

The Director of Corrections and Community Services be given statutory authority to establish and amend a comprehensive code of conduct for offenders in a new Correctional Services Act.

Recommended provisions of any such policy should include, but are not limited to, the criminal and/or internal disciplinary abhorrence of:

- (i) Assault and related acts;
- (ii) Threats, extortion and “strong-arming;”
- (iii) Attempting or planning an escape;
- (iv) Possession of escape materials; including keys or lock picking devices (may include maps, tools, ropes, material for concealing identity, etc.);
- (v) Possession or manufacture of a weapon, ammunition, explosive or incendiary device;
- (vi) Procuring, or attempting to procure, a weapon, ammunition, explosive or incendiary device; aiding, soliciting or collaborating with another person to procure a weapon, ammunition, explosive or incendiary device or to introduce or convey a weapon, ammunition, explosive or incendiary device into a correctional facility.

- (vii) Possession of plans, instructions, or formula for making weapons or any explosive or incendiary device
- (viii) Sexual misconduct;
- (ix) Riot, disturbances and unauthorized group activity;
- (x) Unauthorized relationships and disrespect;
- (xi) Lying and falsification;
- (xii) Unauthorized possession, manufacture, or consumption of drugs or any intoxicating substance;
- (xiii) Procuring or attempting to procure, unauthorized drugs;
- (xiv) Aiding, soliciting, or collaborating with another to procure unauthorized drugs or to introduce unauthorized drugs into a correctional facility;
- (xv) Unauthorized possession of drug paraphernalia;
- (xvi) Misuse of authorized medication;
- (xvii) Refusal to submit urine sample(s), or otherwise to cooperate with drug testing, or mandatory substance abuse sanctions;
- (xviii) Gambling, dealing and other related offences;
- (xix) Contraband including, *inter alia*, pornography, cellular phones, and tobacco products;
- (xx) Misuse of institutional computers;
- (xxi) Possession of any unauthorized computing device;
- (xxii) Destruction, alteration, or misuse of property;
- (xxiii) Possession of property of another;
- (xxiv) Fire violations;
- (xxv) Tattooing and self-mutilation;
- (xxvi) Causing, or attempting to cause the death of another;
- (xxvii) Causing, or attempting to cause bodily harm to another;

- (xxviii) Hostage taking, including any physical restraint of another;
- (xxix) Throwing, expelling, or otherwise causing a bodily substance to come into contact with another;
- (xxx) Throwing any other liquid or material on or at another;
- (xxxi) Tampering with locks, or locking devices, window bars; tampering with walls floors or ceilings in an effort to penetrate them;
- (xxxii) Fighting – with or without weapons, including instigation of, or perpetuating fighting;
- (xxxiii) Physical resistance to a direct order;
- (xxxiv) Disobedience of a direct order;
- (xxxv) Establishing or attempting to establish a personal relationship with an employee, without authorization from the Superintendent of Prisons, including but not limited to:
- Sending personal mail to an employee at his or her residence or another address not associated with the department of rehabilitation and correction.
 - Making a telephone call to or receiving a telephone call from an employee at his or her residence or other location not associated with the DOJ.
 - Giving to, or receiving from an employee, any item, favor, or service.
 - Engaging in any form of business with any public employee; including buying, selling, or trading any item or service.
 - Engaging in, or soliciting, sexual conduct, sexual contact or any act of a sexual nature with a DOJ employee.
- (xxxvi) Any act not otherwise listed, knowingly done which constitutes a threat to the security of the institution, its staff, other inmates, or to the acting inmate;
- (xxxvii) Attempting to commit; aiding another in the commission of; soliciting another to commit; or entering into an agreement with another to commit any of the above acts; and,

(xxxviii) Any violation of other published institutional rules, regulations or procedures.

3. ***What in your opinion are the offender / inmate rights that should be specified in the new Correctional Services Act.***

Any statement of offenders/inmates' rights that are to be specified should be accompanied by a mechanism to ensure that a remedy exists for a violation of those rights. It is trite to state that a right without a remedy is no right at all.

There currently exists constitutional and legislative codification of rights which are available to inmates. They have the benefit of the protections contained in the *Charter of Rights and Freedoms* and the *Human Rights Act*. Inmates also have the right to unfettered access to the Citizens' Representative pursuant to the *Citizens' Representative Act*.

Attached is Appendix A in the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Standard Minimum Rules are lengthy and an effort has to be made to summarize these rights. Each person entering a correctional facility should be given a copy of that summary and the full document centering around the rights.

RECOMMENDATION:

The new Corrections Service Act should contain a provision stating that inmates incarcerated in provincial correctional facilities have the rights outlined in the United Nations Standard Minimum Rules for Treatment of Prisoners.

As indicated earlier, the codification of rights without an adequate mechanism to remedy a breach of those rights renders the right sterile. As discussed in more detail later in this submission, this Office recommends that a panel of adjudicators be appointed to hear serious disciplinary complaints against prisoners. Members of that panel could also be convened to hear serious allegations of violations of the United Nations Standard Minimum Rules.

This process will need to be reviewed and refined. Consultation with community groups and prison administrators will have to take place to determine what constitutes a serious violation of those Minimum Rules.

RECOMMENDATION:

The new Corrections Service Act should establish a panel of adjudicators. Members of that panel will sit to hear serious violations of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

4. *What should be taken into account in drafting the new Correctional Services Act to address the needs of women offenders.*

Female offenders are an often-overlooked subset of correctional populations. Like other sectors of the correctional population, they often need substance abuse and accountability programming. More specific to their profile however, they require additional resources like family and parenting programs as well. The Office of the Citizens' Representative encourages the Department of Justice to consult with appropriate womens' groups and others with a background and expertise in dealing with female offenders about the provisions of a new correctional facilities act.

5. *What should be taken into account in drafting the new Correctional Services Act to address the unique cultural needs of Aboriginal Offenders.*

It is widely acknowledged that aboriginal offenders are over-represented in Canadian correctional systems. This subset requires both standard programming and cultural programming wherever available. The Office of the Citizens' Representative encourages the Department of Justice to consult with people with a background in dealing with aboriginal offenders about the provision of new *Corrections Service Act*.

6. *Should a new Correctional Services Act provide for an advisory group with representation from the community to offer suggestions which may be used to improve the system.*

Citizens do not often view correctional facilities as part of their communities. They are often perceived as foreign, dangerous and menacing institutions which must be tolerated in an effort to keep citizens safe and secure. This perception belies the fact that correctional institutions house people who come from the community and once their sentences are served, are released back into the community. Family and friends of inmates have community ties which can facilitate rehabilitation and renewal. Because of the nexus between inmates and the community a community advisory group could serve a useful role in the administration of correctional facilities.

The purpose of the committee would be twofold. First, it would bring a range of community opinions about corrections to the administration of the correctional facilities. Second, it would be an opportunity for opinion leaders in society to gain a much better understanding of the challenges experienced by inmates and correctional officers who live and work in those facilities. As opinion leaders the committee would have the potential to disseminate a better understanding of the importance of a well functioning prison facility to a healthy society.

RECOMMENDATION:

The new Correctional Services Act should provide for an advisory group with representation from the community to offer suggestions which may be used to improve the system.

7. *Do you have any suggestions as to the composition of such a Committee.*

The group should have broad representation from the public and interested community groups. The committee would preferably be a mix of professional and lay persons, with a citizen as chair, and should include representation by a senior official of the Adult Corrections Division. Efforts should be made to include a variety of members of the Province's faith based committees.

8. *RE: Internal discipline and the Correctional Review's finding that "policy be developed which outlines two distinct categories of inmate offences – and that serious violations hearings be conducted by an independent chairperson."*

A careful analysis of past inmate violations will have to be undertaken in an effort to appropriately define what constitute a serious inmate offence. Once the term is defined it should be communicated to all inmates upon incarceration.

Discipline court proceedings for serious offences would require certain procedural safeguards. While the hearing would have to take place expeditiously, adequate notice of the hearing would have to be provided to the inmate. The hearing would have to abide by the basic rules of procedural fairness which dictate the inmate would have to know the case against him or her and have a right to be heard before an independent, unbiased tribunal. The hearing should be digitally recorded. Some form of a written or digitally recorded decision of the tribunal should be available to the inmate.

A call for an expression of interest for tribunal members should take place. The pool of candidates could include people who have a well-grounded sense of public service. A

vetting process for application will have to be implemented. While a legal education might be an asset, people from many professions should be encouraged to apply. A short training program would provide the necessary information about the nature of prison offences, procedural fairness, assessment of evidence and decision making.

RECOMMENDATION:

The new Corrections Service Act should make provision for a disciplinary court to be in place for serious inmate violations which would be governed by the rules of procedural fairness.

9. *Further matters for comment.*

Mandatory Review

To avoid complacency and to adapt to changes in this critical area of public service this Office recommends that public consultation and a statutory review of the new Correctional Services Act should be conducted every five years. Statutory reviews are already enshrined in the *Information and Protection of Privacy Act* and the *Workplace Health, Safety and Compensation Act*.

RECOMMENDATION:

The new Corrections Service Act should contain a provision which requires a mandatory five-year review of its content.

Whistleblowing Program

All staff of the provincial correctional facilities should have access to a public interest disclosure (whistleblowing) program. Allegations of gross mismanagement or serious breach of the Corrections Act, its regulations and policies should be expeditiously investigated by a person independent of the correctional chain of command. Persons who complain or assist in the investigation should be prohibited from representation. The person designated to investigate these complaints should have broad investigatory powers.

Consultations should take place on the best person or agency to undertake these investigations. One possible agency, as discussed next, is a recommended Investigative and Compliance Review Bureau.

RECOMMENDATION:

The new Corrections Services Act should contain a provision providing for the implementation of a public internal disclosure (whistleblowing) program.

Investigative and Standard Review Bureau

Without limiting the statutory authority of the Office of the Citizens' Representative, the new Corrections Services Act should establish an Investigative and Compliance Review Bureau for adult correctional facilities and probationers in this review. Based on a model already operating in British Columbia the Bureau would:

- (i) report directly to the Deputy Minister;
- (ii) investigate complaints from provincial offenders and probationers;
- (iii) review appeals of disciplinary hearings;
- (iv) inspect facilities and processes;
- (v) participate in critical incident reviews such as deaths or injuries in custody;
- (vi) make recommendations based on investigative findings.

Additionally, the Bureau would have the responsibility of undertaking whistleblowing complaints.

RECOMMENDATIONS:

1. The Director of Corrections and Community Services be given statutory authority to establish and amend a comprehensive code of conduct for corrections staff and prison staff in a new Correctional Services Act.
2. The Director of Corrections and Community Services be given statutory authority to establish and amend a comprehensive code of conduct for offenders in a new Correctional Services Act.

3. The new Corrections Service Act should contain a provision stating that inmates incarcerated in provincial correctional facilities have the rights outlined in the United Nations Standard Minimum Rules for Treatment of Prisoners.
4. The new Corrections Service Act should establish a panel of adjudicators. Members of that panel will sit to hear serious violations of the United Nations Standard Minimum Rules for the Treatment of Prisoners.
5. The new Correctional Services Act should provide for an advisory group with representation from the community to offer suggestions which may be used to improve the system.
6. The new Corrections Service Act should make provision for a disciplinary court to be in place for serious inmate violations which would be governed by the rules of procedural fairness.
7. The new Corrections Service Act should contain a provision which requires a mandatory five-year review of its content.
8. The new Corrections Services Act should contain a provision providing for the implementation of a public internal disclosure (whistleblowing) program.