

2022-2023 Annual Report of the Office of the Correctional Investigator

BACKGROUNDER I

Summary of Thematic Investigations

OVERVIEW

The 2022-23 Annual Report of the Office of the Correctional Investigator (OCI) was tabled in Parliament on November 1, 2023 and includes:

1. The Correctional Investigator's Message, which focuses on the Office's 50-year history and achievements.
2. Two thematic investigations: the rising cost of living behind bars and CSC's use of dry cells.
3. Several updates on issues of national concern, including: patient advocacy services; gender diversity policy; minimum security women; and CSC's fifth independent review on non-natural deaths in custody.
4. Part two of our ten-year update of *Spirit Matters*, looking into Indigenous issues in federal corrections. This update includes three major investigations:
 - i. *Unfulfilled Promises*: Investigation of Healing Lodges in Canada's Federal Correctional System.
 - ii. *A Straight and Narrow Road*: An Investigation into CSC's Pathways Initiatives.
 - iii. An Investigation of the Role and Impact of Elders in Federal Corrections.
5. Correctional Investigator's Outlook for federal corrections in 2023-24.
6. Statistical Annexes.

This year's report contains 22 recommendations, including 11 directed to the Correctional Service of Canada and 11 directed to the Minister of Public Safety.

A separate backgrounder summarizing the findings of the Ten Years since *Spirit Matters* investigations can be found on [our website](#).

THEMATIC INVESTIGATION

The Rising Cost of Living Behind Bars

Findings

- The Office has raised the issue of an inadequate and antiquated Inmate Pay system multiple times in previous public and media reporting, including a recommendation in the OCI's 2015-16 Annual Report that the Minister of Public Safety initiate a review of the system.
- The maximum rate of pay of \$6.90 per day has not increased or been indexed to inflation since it was first established in 1981.
- After mandatory deductions, including savings, incarcerated individuals make a paltry wage, far less than a dollar per hour. This wage is exploitive, demeaning and degrading.
- The payment and allowance system is so fundamentally flawed that it fails to substantively meet its primary legislative and policy objective, which is to encourage participation in programs as well as vocational and work opportunities behind bars.
- Since 1998, there has been a steady and accelerated erosion of purchasing power in federal corrections. Today, the impact of a series of cost of living increases has led to an environment of scarcity and insecurity.
- Many sentenced individuals live near or in a constant state of impoverishment and destitution, inside and outside prison. Moreover, the deprivations of an inadequate pay system feed a prison underground economy of violence, extortion and abuse that jeopardizes the safety and security of everyone.

Recommendations

1. The Minister of Public Safety initiate an immediate and comprehensive review of the Offender Program Assignments and Inmate Payments system in federal corrections. This review should ensure enhanced pay levels are indexed to inflation to reflect current and expected cost of living increases. At a minimum, a proposed increase to \$3.75 per hour is recommended, which reflects the hourly equivalent of the current top daily pay rate of \$6.90 (or \$1.15 per hour, based on a six hour workday) indexed to inflation going back to 1981. Proposed changes

arising from this review should be done in consultation with the incarcerated population and community organizations serving those behind bars and on parole.

2. Until a new payment and allowance model is adopted and put in place, CSC should immediately implement a series of interim measures that will help to offset costs and increase the purchasing power of federally incarcerated individuals, including:
 - a. Removing all mandatory deductions;
 - b. Adjusting the pay level criteria to allow for a larger proportion of individuals to receive Level A and Level B payment;
 - c. Ensuring goods that are essential to self-care and welfare (e.g., hygiene products) are provided free of charge; and,
 - d. Reviewing the purchasing catalogue and ensuring goods are more affordable and accessible.

THEMATIC INSPECTION

Dry Cells

Findings

- Under section 51 of the *Corrections and Conditional Release Act* (CCRA), the Warden may authorize the use of a 'dry cell' when a federally incarcerated individual is believed (on reasonable grounds) to have ingested or concealed contraband in their rectum.
- The practice normally involves strip searching the individual and placing them in dry cell detention, which is essentially a barren cell without plumbing, where the individual is under constant monitoring and observation.
- The Office has reported on this issue several times, and has continued to state that dry cell detention is a restrictive, degrading, and inhumane procedure for those subjected to it and for staff who must oversee these placements. These placements regularly exceed 72 hours, a practice that we have repeatedly recommended to be prohibited.

- In a series of inspections, the Office found significant inconsistencies in dry cell practices, local policies/directives, conditions, and basic entitlements provided to individuals across various institutions. The Office reviewed data from numerous cases of dry cell detention, noting additional inconsistencies in tracking, reporting and outcome data, depending on the region.

Recommendations

3. The Minister of Public Safety ensure that the new regulations require CSC to report publicly on the frequency, duration and outcomes (whether or if contraband is seized) of all dry cell placements starting in 2023-24, and going forward.
4. The Minister of Public Safety ensure that the new regulations require the decision to extend a dry cell placement beyond 72 hours to rest with the Regional Deputy Commissioner (RDC). The regulations should state that “under exceptional circumstances” where specific requirements are met, the RDC may extend dry cell placements by each 24-hour period, up to a maximum of 48 hours. Dry cell duration should never exceed five consecutive days.
5. CSC develop and provide clear, specific, and consistent national guidelines to ensure humane treatment for dry cell placements that includes specific criteria and guidance on items to be provided in terms of bedding and mattresses, food, personal hygiene and toiletries, access to phones, illumination and meaningful human interaction.

NATIONAL UPDATES

1. Patient Advocacy

Findings

- Under section 89.1 of the CCRA, CSC is required to provide federally incarcerated individuals access to patient advocacy services, in order to inform them of their rights and responsibilities regarding their medical care and facilitate access to healthcare services.

- Though funding has been provided, CSC has failed to implement an independent and external patient advocacy model, a standard in the community, maintaining that all health services staff advocate for their patients.
- The Office noted the impact of a number of factors at-play when providing medical care in the correctional setting, such as dual loyalties, mistrust in healthcare providers, and informed consent.

Recommendation

6. The Minister of Public Safety ensure that CSC take immediate action to develop and implement an *external* and *independent* patient advocacy model to provide access to health care advocacy services for all federally incarcerated individuals.

2. Gender Diversity Policy Review

Findings

- The Office has voiced concerns regarding institutional placements based purely on anatomy, the need for more consideration for the safety and rights of gender diverse individuals, and the need for a more comprehensive, single point of policy direction on issues related to gender identity and expression.
- Since the last time the Office reported on gender diversity issues (2018-19), CSC promulgated Commissioner’s Directive (CD) 100 – *Gender Diverse Offenders*, in May 2022.
- Further to the review, the Office identified a number issues, most notably the following: the need for external specialization at the regional and national levels; concerns surrounding the lack of clarity in decision-making language, particularly the means or intent of “overriding health and safety concerns” to deny placements; and, the absence of a safe reporting mechanism to combat abuse.

Recommendation

7. CSC take further action to address the needs and protect the rights of gender diverse individuals, including:
 - a. Creating an external advisory role to inform decision-making regarding gender diverse individuals.

- b. Clarifying the practice of “overriding health or safety concerns” by establishing parameters, further guidelines, and clear examples.
- c. Establishing new institutional mechanisms for gender diverse individuals to safely report abuse.

3. Minimal Options for Federally Incarcerated Women in Minimum Security Units

Findings

- Since their creation in 2014-15, standalone Minimum Security Units (MSUs) in women’s institutions have been under-utilized and under-supported, falling short of their intended purpose.
- An updated review by the Office points out several shortcomings from an environmental and physical perspective, and raises concerns surrounding the absence of meaningful activity and dedicated on-site case management personnel. Boredom, idleness and a lack of opportunities to take part in Temporary Absences (TAs) are commonplace. MSUs continue to see low occupancy rates and unnecessarily result in prolonged incarceration before release.

Recommendations

8. CSC conduct a review of MSUs with the goal of reallocating resources to ensure that minimum-security women benefit from community programs, services, and activities so that they are prepared at the earliest date possible to return to the community.
9. The Minister of Public Safety direct CSC to significantly increase the use of temporary absences and work releases for women in minimum security, to ensure they can regularly access the community to provide more options and enhance their opportunities for successful reintegration.

4. Fifth Independent Review Committee on Non-Natural Deaths in Custody

Findings

- Following the Office's investigation into the 2016 deadly riot at Saskatchewan Penitentiary, several findings and recommendations were made to the Minister of Public Safety with respect to the manner in which CSC investigates itself following in-custody deaths arising from prison riots, suicides in segregation, or use of force incidents. The Office called for the implementation of an external and independent investigation in these circumstances.
- The fifth Independent Review Committee (IRC) on deaths in custody, was tasked with examining ways of enhancing the transparency, credibility and accountability of CSC's investigation process.
- Its findings were released in February 2023. Though agreeing on the need for greater independence, that the IRC did not identify there was an immediate need to appoint an external, independent investigator to conduct such investigations.
- While disappointed by its conclusions on this point, the Office also notes that CSC has yet to respond to the IRC's recommendations and has not made substantial progress in implementing its recommendations.
- The Office remains convinced that an independent and external investigation is necessary in particular circumstances such as those noted above, and has updated our recommendation accordingly.

Recommendation

10. The Minister of Public Safety convene independent investigations under the *Inquiries Act* into prison riots resulting in death, suicides in Structured Intervention Units, use of force interventions involving death and murder committed by a federal parolee in the community.