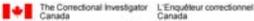





**CIAJ 2008 Annual Conference:
 Reasonable Accommodation and
 the Role of the State**

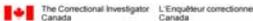
**Howard Sapers
 Correctional Investigator**

**Québec City
 September 25-26, 2008**



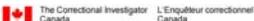

Overview

- Role and Mandate of the Office of the Correctional Investigator (OCI)
- Overall Legal Framework
- Three Issues Related to Accommodation:
 - Elderly Offenders
 - Religious and Spiritual Accommodation (Diets)
 - Aboriginal Offenders
- Conclusion


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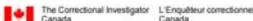
Mission of the OCI

- As Canada's federal prison Ombudsman offering oversight of federal Corrections, the Correctional Investigator contributes to public safety and the promotion of human rights by providing independent and timely review of offender complaints.
- The Correctional Investigator makes recommendations that assist in the development and maintenance of an accountable federal correctional system that is fair, humane and effective.


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Office of the Correctional Investigator




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Responsibilities of the OCI

Key Functions

- Individual inmate complaints
- Systemic Issues and policy review related to areas of complaint

Special Portfolios

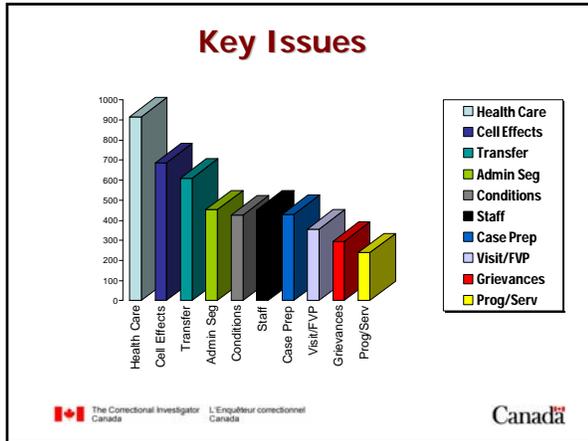
- Women's Issues
- Aboriginal Issues
- Investigations into Serious Injuries and Deaths / Use of Force
- Mental Health


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OCI Operations 2006-07

- ✓ 7662 inmate inquiries or complaints
- ✓ 4916 investigations
- ✓ 2701 offender interviews
- ✓ 407 days of visits to institutions
- ✓ 114 incidents of serious injury or death
- ✓ 1011 incidents involving Use of Force

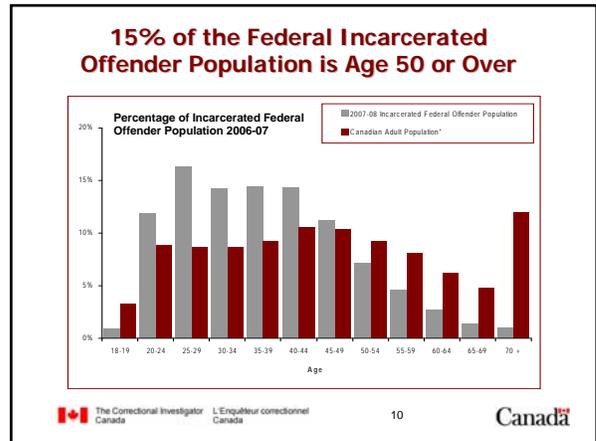

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- ### Key CCRA Principles
- The protection of society is the paramount consideration in the corrections process (s.4(a)).
 - Correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements (4(h)).
 - Offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence (s.4(e)).
 - The Service uses the least restrictive measures consistent with protection of the public, staff members and offenders (s.4(d)).
 - The Service shall take all reasonable steps to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates and the working conditions of staff members are safe, healthful and free of practices that undermine a person's sense of personal dignity (s.70).
- The Correctional Investigator Canada / L'Enquêteur correctionnel Canada
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Elderly Offenders

The Correctional Investigator Canada / L'Enquêteur correctionnel Canada
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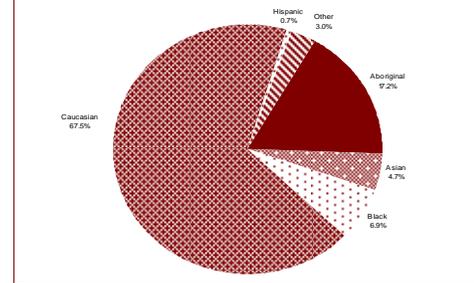
- ### Elderly Offenders
- Elderly offenders represent a large and growing special needs group within the federal inmate population.
 - The CSC completed a comprehensive internal review in 2000 which identified a wide range of areas that needed to be addressed so as to reasonably meet the needs of this population.
 - At the time, CSC considered the situation such a priority that it established a new division with the specific mandate to address issues associated with accommodation, palliative care, reintegration options and program development.
- The Correctional Investigator Canada / L'Enquêteur correctionnel Canada
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- ### Elderly Offenders
- In its March/April 2004 edition, the *Canadian Journal of Public Health* published "A Health Care Needs Assessment of Federal Inmates in Canada".
 - The Report noted that there had been a 60 per cent increase in the number of inmates aged 50 and over with an 87 per cent increase in those aged 65 and over since 1993.
 - The Report underlined the requirement for greater information on and specific attention to the health care needs of this growing segment of the inmate population.
- The Correctional Investigator Canada / L'Enquêteur correctionnel Canada
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Religious and Spiritual Accommodation

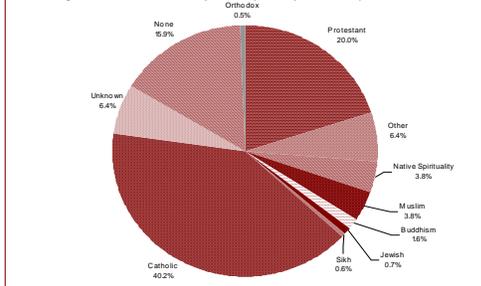
Diverse Offender Population

Percentage of Federal Offender Population (as of April 13, 2008)



Religious Identification of Offenders

Percentage of Federal Offender Population (as of April 13, 2008)



Religious and Spiritual Accommodation

Religious and Spiritual Accommodation means providing access to an adequate level of resources (leadership, opportunities for worship, educational resources, religious articles, dietary requirements) to allow offenders to practise their religion or spirituality as fully as they desire (up to a level that is generally available to people in the community) within the correctional setting.

Religious and Spiritual Accommodation

- CSC has an elaborate set of policies on religious and spiritual accommodation, including a 200-page *Manual on Accommodation of Religious and Spiritual Needs*.
- Overall, CSC has a good comprehensive policy framework which is consistent with its legislative framework.
- Issues of religious and spiritual accommodation brought to the attention of the OCI are most often related to security concerns being used to limit the exercise of offenders' rights and freedoms of conscience and religion as guaranteed by the *Charter* and as mandated in the *CCRA* and *CCRR*.
- Lack of staff awareness and training are also problematic.

Religious and Spiritual Accommodation: Legislative Framework

Corrections and Conditional Release Act (CCRA):

75. An inmate is entitled to reasonable opportunities to freely and openly participate in, and express, religion or spirituality, subject to such reasonable limits as are proscribed for protecting the security of the penitentiary or the safety of persons.

Legislative Framework (Cont'd)

Corrections and Conditional Release Regulations (CRR):

101. The Service shall ensure that, where practicable, the necessities that are not contraband and that are reasonably required by an inmate for the inmate's religion or spirituality are made available to the inmate, including

- (a) interfaith chaplaincy services;
- (b) facilities for the expression of the religion or spirituality;
- (c) a special diet as required by the inmate's religious or spiritual tenets; and
- (d) the necessities related to special religious or spiritual rites of the inmate.

100. (1) Every inmate shall be entitled to express the inmate's religion or spirituality ... to the extent that the expression of the inmate's religion or spirituality does not

- (a) jeopardize the security of the penitentiary or the safety of any person; or
- (b) involve contraband.

Religious Diets: CSC Policy

- The faith community is the final authority on any diet, not the inmate.
- Within a given faith tradition, there may be different branches which have different dietary teachings and requirements. It is important to consult the appropriate faith community to obtain diet information which is relevant and accurate.
- The specifics of the diet need only be consistent with what is accessible to the average person of any particular faith (faith community practice).
- Because religious practice often has cultural and ethnic correlates, it can be difficult at times to separate what is cultural and what is religious. Consultation with the faith community will help to determine usual dietary practice.

Extensive CSC Guidelines for Faith Communities and Diets

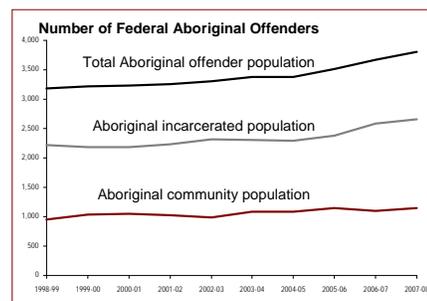
- | | |
|---|-------------------------------|
| • Aboriginal / First Nations Spirituality | •Mormons |
| • Baha'i | •Philadelphia Church of God |
| • Buddhism | •Rastafarianism |
| • Church of Christ, Scientist (Christian Science) | •Religious Society of Friends |
| • Christianity (Mainline Churches) | •Rosicrucianism |
| • Doukhobor | •Church of Scientology |
| • Hare Krishna | •Seventh Day Adventism |
| • Hinduism | •Siddha Yoga |
| • Islam | •Sikhism |
| • Jainism | •Sufiism |
| • Jehovah's Witnesses | •Taoism |
| • Judaism | •Transcendental Meditation |
| • Mennonites | •Unification Church (Moonies) |
| • Metropolitan Community Church | •Unitarianism |
| | •Wicca |
| | •Worldwide Church of God |
| | •Zoroastrianism |

Religious Diets: Roles and Responsibilities

1. The inmate:
 - Upon admission, indicates his/her religious affiliation.
 - Requests an appropriate religious diet from the Chaplain. This request should not include lists of foods.
 - Signs the requisition, thereby committing to follow the diet.
2. The Faith Community:
 - Is involved in teaching, pastoral care, counselling inmates (which may lead to conversion).
 - May attest to the membership of an inmate.
 - Defines the nature and quality of the diet.
3. The Chaplain:
 - Communicates with the faith community should questions arise.
 - Counsels the inmate on his/her responsibilities prior to diet authorization and in cases of inmate non-compliance as reported by Food Services.

Aboriginal Offenders

The Number of Federal Aboriginal Offenders is Increasing



Aboriginal Offenders

- Nationally, Aboriginal people are less than 3 percent of the Canadian population, but they comprise almost 20 percent of the total federal prison population.
- For women, this overrepresentation is even more dramatic – they represent 32 percent of women in federal penitentiaries.
- Overall incarceration rate for Aboriginal People in Canada is 983 per 100,000 adults. The rate for non-Aboriginal persons is 113 per 100,000 adults.

Aboriginal Offenders: Legislative Framework

The *CCRA* requires that CSC:

- Provides programs designed particularly to address the needs of Aboriginal offenders (s. 80).
- Establishes Aboriginal advisory committees to provide advice to CSC on the provision of correctional services to Aboriginal offenders (s. 82).
- Makes available the services of Aboriginal spiritual leaders or elders (s. 83).

Legislative Framework (Cont'd)

- The *CCRA* also allows the Minister to enter agreements with Aboriginal communities for the provision of correctional services to Aboriginal offenders (Section 81).
- If an Aboriginal offender expressed an interest, the *CCRA* states that CSC must give the Aboriginal community an opportunity to propose a plan for his or her release to, and reintegration into, the Aboriginal community (Section 84).

Aboriginal Offenders

CSC has implemented a number of very positive initiatives and programs for Aboriginal offenders, including the following:

- eight healing lodges;
- core Aboriginal programs, including Circles of Change, In Search of Your Warrior and Aboriginal Offender Substance Abuse Programming (under review and revision); and
- program-based and site-specific initiatives, such as Pathways, traditional circles, the Medicine Wheel Program, sentencing circles (for institutional offences), sweat lodge and longhouse teachings, and celebrations of cultural traditions and ceremonial practices.

Aboriginal Offenders: Challenges

- The gaps in correctional outcomes between Aboriginal and other offenders are widening, including:
 - The proportion of Aboriginal offenders under community supervision is significantly smaller than the proportion of non-Aboriginal offenders serving their sentences on conditional release.
 - Aboriginal inmates are released later in their sentences than other inmates.
 - Aboriginal offenders are consistently under-represented in minimum-security institutions.
 - Absence of Aboriginal programming in maximum-security institutions limits ability to be transferred to lower security institutions.

Conclusion

- Offender population is becoming more diverse and older.
- Cultural awareness and training are key.
- Diverse workforce representative of the inmate population enhance an organization's ability to effectively deliver its mandate.
- Need to respond to the special needs of elderly offenders and significantly improve key areas including accommodation, program development, palliative care, and reintegration options.
- Urgent need to close outcome gaps between Aboriginal and non-Aboriginal offenders and remove systemic barriers.



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