

**INMATE RIGHTS
AND
GRIEVANCE OPTIONS**

**JOHN HOWARD SOCIETY OF ALBERTA
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EXECUTIVE SUMMARY

Prison conditions have changed over time, and along with these were changes in treatment of offenders. New ideas emerged in regards to the treatment, the punishment and the reform of inmates.

In the beginning, inmates had no rights. Today's inmates have more rights, which are provided for under the Canadian Charter of Rights and Freedoms, the Corrections and Conditional Release Act (CCRA) and regulations and the Commissioner's Directives.

The inmate grievance system emerged in response to a growing concern for prisoner rights. If a federal inmate has a grievance, he/she should attempt to resolve the problem by first talking to correctional staff. If the inmate is still not satisfied, he/she can turn to an inmate grievance committee if one is available at the institution. If the inmate does not agree with the decision rendered by the committee, an appeal can be made to the warden of the institution. If the warden's decision is not satisfactory in the eyes of the inmate, an appeal can be made to the Deputy Commissioner at Regional Headquarters and then to the Commissioner of Correctional Services Canada.

When a federal inmate is not satisfied with the decision which the internal inmate grievance process rendered, the inmate can enlist the aid of the Federal Correctional Investigator. The Correctional Investigator receives many complaints, and the most frequent complaints are related to the institution's conditions, transfers, temporary absences and visits.

The grievance process is different for inmates in provincial institutions. Inmates must first place their grievance in writing to the Director of the institution. If the inmate does not agree with the Director's decision, an appeal can be made to the provincial Ombudsman. The Ombudsman investigates complaints against departments, boards and agencies of the provincial government, and does so independent of the government. The Ombudsman receives a large number of complaints about Correctional Services.

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INTRODUCTION

This paper looks at the issue of prisoner rights and the opportunities that are available in order to address inmate grievances. The emphasis will be on the Alberta experience. In particular, the roles and functions of the Alberta Ombudsman and the Federal Correctional Investigator are examined, including a brief history of both offices. Furthermore, the principles of the John Howard Society are examined in relation to inmate concerns. This paper also briefly examines the early history of both prison conditions and prisoner treatment. In relation to present day inmate concerns, the paper looks at the nature of complaints and alternatives for resolution.

EARLY PRISON CONDITIONS IN CANADA

In 1831, a legislative committee in Upper Canada (now Ontario) raised the issue of prison size and administration. It was found that the existing jails were too small and primitive, creating a breeding ground for destructive and hardened criminals. In an attempt to resolve these problems, Kingston Penitentiary was constructed, becoming the first penal institution to be opened in Upper Canada. The Penitentiary was opened in 1835 while still under construction and served as a new home to those prisoners serving sentences of two or more years. Kingston Penitentiary quickly developed a reputation of being a tough place to do time, as illustrated in its four basic principles of discipline and control: Prisoners should be kept in solitary confinement when not at work; a strict rule of silence should be maintained, but they were permitted to communicate with the guards; a regime of discipline was to be enforced, constant collective employment would keep the convicts busy.

The penal system at this time believed in punishing to deter (Packer, 1971, p. 103). Kingston Penitentiary was not immune to this way of thinking. The use of the cat-o-nine tails (a whip with nine knotted lines fastened to a handle) and the rawhide was frequent. There could be as many as 40 public whippings in one morning (Gosselin, 1982, p. 72). Kingston's severe guidelines are illustrated in the amount of floggings handed out for petty infractions:

- Laughing and talking: 6 lashes, cat-o-nine tails
- Talking in wash house: 6 lashes, rawhide
- Threatening to knock convict's brains out: 24 lashes, cat-o-nine tails
- Staring about and inattentive at breakfast table: bread and water
- Leaving work and going to privy when other convict there: 36 hours in dark cell and bread and water (Gosselin, 1982, p. 72).

Around 1867, the idea of incentives as a form of criminal reform evolved, granting well-behaved prisoners privileges such as "lights at night for reading, frequent letter-writing opportunities, and membership in the chapel choir" (Calder, 1985, p. 298). The removal of privileges became a more common form of punishment as deprivation and isolation were more effective than flogging as a means of control.

As time progressed, a higher degree of incentive for inmates was sought, and the creation of remission for good conduct occurred, known as "time off for good behaviour." By demonstrating good behaviour and participating in institutional programs, inmates today could earn up to 15 days of remission off his or her sentence every month.

INMATE RIGHTS

In the early days of imprisonment, inmates had no rights other than to be held in custody without being wilfully put to death and to be released upon expiration of their prison terms. All of an inmate's civil rights were extinguished upon being incarcerated (Gosselin, 1982). The offender's stay in prison was to be as unpleasant as possible, for it was only right that he should live a life inferior to the "poorest free man" (Calder, 1985, p. 298). This attitude toward inmates most likely developed due to criticisms from the public who believed that prisoners led a better life than many other individuals.

Today's inmates have more rights. Rights are guaranteed under the Canadian Charter of Rights and Freedoms. The rights specified under the Charter have the greatest degree of procedural safeguards of all rights given to inmates (Correctional Service of Canada, 1997). The Charter outlines rights pertaining to the freedom of conscience and religion; freedom of expression; freedom of peaceful assembly; freedom of association; life, liberty and security of the person; protection from arbitrary detention and imprisonment; reasons for detention; right to counsel; validity of detention; protection from cruel and unusual treatment or punishment; equality; and language.

The Corrections and Conditional Release Act (CCRA) also guarantees certain rights to inmates. These rights include: the right to safe and humane custody; the right to be dealt with in the least restrictive way; the residual rights which are those of any member of society, except those necessarily restricted or removed by virtue of incarceration; the right to forthright and fair-decision-making and to an effective grievance procedure; the right to have sexual, cultural, linguistic and other differences and needs respected; and the right to participate in programs designed to promote rehabilitation and reintegration (Working Group on Human Rights, 1997).

INMATE GRIEVANCE PROCEDURES

It is out of concern for prisoner rights and prison conditions that the need for a channel for inmate grievances emerged. At present, there are several avenues that an inmate can pursue in order to address a grievance. These avenues can be laid out in the following way:

Inmate Grievance Procedure

FEDERAL	PROVINCIAL
Correctional Investigator 8	
Commissioner of Correctional Services Canada 8	Provincial Ombudsman 8
Deputy Commissioner at Regional Headquarters 8	Director of Institution 8
Warden of Institution 8	Correctional Staff 8
Inmate Grievance Committee (where available) 8	Inmate
Correctional Staff 8	
Inmate	

Internal Grievance Procedures

Before an inmate attempts to file a written complaint with either the Ombudsman or the Correctional Investigator, he or she should first try to resolve the problem through the internal grievance procedure, and before going through the inmate grievance process, inmates are advised to first talk to staff to try to solve the problem informally.

Federal institutions

The institutions have different policies for dealing with complaints:

- 1) Within each institution, there is an inmate grievance clerk, entitled the Institutional Grievance Coordinator. This individual meets with the inmate to discuss the complaint. Often, the inmate can settle the grievance informally. If the inmate wishes to pursue the grievance formally, the clerk will assist in putting the grievance in writing and in submitting the complaint.
 - Some institutions have Inmate Grievance Committees, composed of two staff and two inmate members, and chaired by a non-voting person who may be either a staff member or an inmate. Written complaints must be submitted to them and they subsequently render a decision on the issue.

- In those institutions that do not have a grievance coordinator or grievance committee, the inmate must make a written complaint of the grievance and address it to the appropriate authority, such as the unit manager, the correctional supervisor, or the health care manager. At Bowden Institution in Alberta, a written complaint must be sent to the Chief of Administration who subsequently passes the complaint on to the proper authority.

- The inmates at Edmonton Institution have an alternate means to voice a grievance. The inmates can make a written complaint and submit to the appropriate authority, as mentioned above, or they can turn to the Arbitration and Mediation Society. This Society is a community based, non-profit organization that assists in mediating disputes. This Society helps by setting up a panel of peer inmates and a redress officer. The Arbitration and Mediation Society resolves up to 90% of grievances it receives. The Society investigates whether the complaint is justified, and whether a hearing is necessary. If so, a hearing is held, and a written report of the Society's recommendation is submitted to the Warden of the Edmonton Institution.

- 2) If an inmate does not agree with a decision rendered at the initial complaint stage, an appeal can be made to the Warden of the penitentiary. The Warden holds a grievance hearing with the inmate.
- 3) If the Warden's decision is not satisfactory in the eyes of the inmate, an appeal can be made to Regional Headquarters. The Regional Deputy Commissioner makes the decision at this level.
- 4) If the answer from regional headquarters is not agreeable, an appeal can be made to the Commissioner of Corrections.
- 5) If the inmate does not agree with the decision from the Commissioner, an appeal can be made to the Federal Correctional Investigator.

The objective of the internal grievance procedure is to establish an inmate grievance procedure at every penitentiary in order to provide a fair and timely means to resolve grievances about matters falling within the responsibility of the Commissioner of Corrections (Solicitor General Canada, 1987, p. 115).

Provincial institutions

For inmates serving sentences in provincial institutions, the grievance process is somewhat different:

- The inmate should try to resolve matters by talking with correctional staff.
- If the problem cannot be resolved by involving correctional staff, the inmate must write to the Director of the institution.
- If the inmate does not agree with the decision from the Director, he/she can file a complaint with the provincial Ombudsman.

External Grievance Procedures

The Correctional Investigator

Attempts were made in 1978 to instate a chief ombudsman for Canada, but the government was not interested in the idea of a federal ombudsman and so it has not been formally pursued again. Although there is no official federal ombudsman, the government has in place three 'specialized' federal ombudsmen. They are known as the Commissioner of Official Languages, the Privacy Commissioner and the Federal Correctional Investigator. It is the latter, the Correctional Investigator, that this paper will examine next.

The office of the Canadian Federal Correctional Investigator was established in 1973 and deals exclusively with the complaints of federal inmates across Canada. The current Correctional Investigator is Ron Stewart, who was appointed to office in 1977. The Investigator's role is to make recommendations based on investigative field work. The role of the correctional investigator is to receive, investigate and report on complaints by inmates, on his own initiative or on request from the Solicitor General of Canada. The Correctional Investigator is, in essence, an Ombudsman for approximately 15,000 federal inmates (Barrados & Chen, 1997, p. 2).

The office of the Correctional Investigator is located in Ottawa, with no branch offices in western Canada. However, the Correctional Investigator makes regular visits to more than 40 federal institutions. These visits are announced to the inmates, and private interviews are arranged for those wishing to speak to the Investigator. In 1996-97, 2,092 interviews were conducted (Correctional Investigator Canada, 1997, p. 19). The Investigator can also carry out unannounced visits to the penitentiaries at any time and has authority to perform an inspection of an institution. The Correctional Investigator also can "recommend changes to applicable law, practices or policies" (Barrados & Chen, 1997, p. 1).

An offender is not required to exhaust all internal avenues before turning to the Correctional Investigator, but it is suggested that the inmate first discuss the problem with correctional staff or pursue the internal grievance process. The Correctional Investigator prefers to be used as a last resort.

Even though the office of the Correctional Investigator receives many complaints and grievances from inmates, the Investigator will attempt to resolve or give assistance to all queries. The most frequent categories of complaints by federal inmates are related to the institution's conditions, such as pay and health care, or to decisions related to transfers, temporary absences and visits.

The following table illustrates the actual numbers of complaints received by the Correctional Investigator's Office:

Category	Received	Resolved
Administrative segregation	370	37
Case preparation	505	71
Discipline	65	19
Employment	121	2
Financial Matter	309	46
Grievance Procedure	173	13
Health Care	494	39
Information	354	30
Mental Health	33	4
Programs	235	16
Request for Information	289	1
Security Classification	110	7
Staff	281	5
Temporary Absence Decision	90	12
Transfer	566	46
Visits	263	32
Outside Terms of Reference	224	2

Source: "Annual Report of the Correctional Investigator, 1996-1997," Government of Canada, 1997, pp. 11, 12, 21, 22.

In 1996-1997, the Correctional Investigator received a total of 6,366 complaints, and resolved 551 of them. Not all of the complaints received by the Correctional Investigator's Office are resolved. In fact, of all the complaints received by the Correctional Investigator's Office in 1996-1997, less than 10% were resolved. The following table illustrates the disposition of complaints in 1996-1997:

Table 2 - Dispositions of Complaints 1996-1997

Advice given	583
Assistance given	957
Information given	1832
Not justified	471
Not within mandate	185
Pending	274
Premature	1282
Resolved	551
Unable to resolve	81
Withdrawn	150
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TOTAL	6366

Source: "Annual Report of the Correctional Investigator, 1996-1997," Government of Canada, 1997, p. 20.

The Ombudsman

The term "ombudsman" originates from Sweden and means "agent," "attorney" or "representative." Because it was not easily translated, the word was accepted into the English language. Alberta has the distinction of having the first official Ombudsman in North America. The very first complaint to come into the Alberta Office of the Ombudsman was from an inmate in an Alberta mental health facility who had been denied a hearing before an unprejudiced medical board, as was his right. Although the inmate had already completed successful treatment at the hospital, he was transferred back and remained there from 1961 until 1967 when the Ombudsman intervened and obtained a formal release hearing. The Office of the Ombudsman consists of the Ombudsman, investigators and administrative staff.

The Office of the Ombudsman for Alberta investigates complaints against departments, boards and agencies of the provincial government, doing so independently of the government. The Ombudsman assists citizens in directing complaints to the appropriate person when the complaint is outside their jurisdiction. The Ombudsman does not have any jurisdiction when it comes to the "actions and decisions of the courts, the Legislature and government lawyers acting as solicitors for the Crown in a proceeding" (Office of the Alberta Ombudsman, 1997, p. 7). Also, the Ombudsman's jurisdiction does not include federal or municipal governments and contract agencies, complaints against boards of hospitals, universities, schools and technical institutes.

A rapport has developed between government department staff and the Ombudsman's investigators because the investigators specialize in particular departments. Although this signals the potential for loss of impartiality, this has not yet occurred. Rather, this rapport has created an attitude of cooperation and ensures that the Ombudsman's investigators have proper access to information.

Information given to investigators is confidential and may not be disclosed to anyone outside the Ombudsman's office or the department from which it came. Even information sent to and from inmates in institutions cannot be seen by anyone but the inmate and the Ombudsman's office. The information is used as evidence to support a complaint or to disqualify it, and is used at the discretion of the Ombudsman. Because the complainant is not made aware of how the information is used, the situation may arouse suspicion and criticism. A complainant may feel that the Ombudsman has not fully responded to his grievance, especially if the person claiming to be aggrieved is not satisfied with the result.

The Ombudsman is used as a last resort for grievance for provincial inmates, after all other avenues have been exhausted. Official complaints to the Ombudsman must be made in writing. When a complaint comes in regarding a certain government department and a decision is made to investigate, the Ombudsman must notify the Deputy Minister, President or Chairman of the appropriate department. After acceptance, it is usually assigned to one of the Investigators. The Investigator will contact all parties involved in the complaint including the complainant, the Deputy Minister of Justice, the Department, the Assistant Deputy Minister for Corrections, the Regional Director and Director of the institution. After this initial contact, the Department has thirty days in which to respond. Almost all inmates are granted a personal interview with the Investigator responsible for their complaint. The investigation will normally take two months to complete, at which time the investigator will write a report on his or her findings to the Ombudsman. When changes are recommended, the Ombudsman must meet with the Deputy Minister of Justice to discuss any changes. From there he may appeal to the Minister of Justice and then, if necessary, to the Lieutenant-Governor in Council. An Ombudsman is able to make recommendations to governmental offices but can never order them to make changes. In most circumstances though, the departmental head heeds the recommendations of the Ombudsman.

The Ombudsman must advise the inmate of the results of the investigation, but quite frequently, certain information is withheld, such as information on security procedures or if discipline against a correctional officer is warranted.

The following table, taken from the 1997 Annual Report of the Alberta Ombudsman, gives a breakdown of the number of complaints received and from which department they originated:

DEPARTMENT	POF	FO	TI	SD	AEI	NAEI
Advanced Education and Career Development	1	16	8	3	0	5
Agriculture, Food & Rural Development	2	1	1	0	0	1
Community Development	1	2	1	1	0	0
Economic Development	0	1	1	0	0	1
Education	1	1	1	0	0	1
Environmental Protection	6	16	8	1	5	2
Family & Social Services	62	201	142	23	28	91
Health	5	15	7	0	3	4
Justice	5	10	6	3	1	2
Correctional Services Division	26	119	82	8	20	54
Maintenance Enforcement Program	5	56	25	0	4	21
Labour	2	12	9	0	1	8
Municipal Affairs	1	4	3	1	0	2
Public Works, Supply & Services	0	3	0	0	0	0
Transportation & Utilities	1	14	5	2	1	2
Treasury	1	5	3	0	1	2
TOTAL	119	476	302	42	64	196

*Abbreviations: POF - Previously Opened Files
 FO - Files Opened in 1997
 TI - Total Investigated
 SD - Subsequently Discontinued
 AEI - Administrative Error Identified
 NAEI - No Administrative Error Identified

Source: 31st Annual Report of the Office of the Alberta Ombudsman, 1997, p.12.

The previous table shows that Correctional Services complaints rank high in terms of number of complaints. Of the 119 Correctional Services complaints received in 1997, and the 26 previously opened files, 124 files were closed in 1997. These figures, however, can be misleading, as many files in relation to Correctional Services are not investigated at all. Some are passed along down another avenue of appeal, and others are pushed forward into the following year. Unfortunately, there is not much that can be done to speed up the process. The average file takes 2 to 3 months to close, but, some files have been open for as long as 25 months. For an inmate, this could mean that they are released before a resolution is reached.

The following are examples of complaints from provincial inmates found in the 29th Annual Report of the Office of the Alberta Ombudsman;

Two inmates were refused access to a toll-free 1-800 number while incarcerated. One inmate was attempting to contact a lawyer who had set up the toll-free access for clients. The second inmate wanted to contact some family members who were hearing impaired and needed to access the 1-800 Relay Service number which is designed to assist people with this type of problem. Investigation determined this denial of the toll-free numbers was unfair. Recommendations were made to and agreed to by the Department to allow access and develop policy not only to these two issues but to all 1-800 number requests.

A federal inmate serving four and a half years was transferred from a federal institution to a provincial correctional centre (the Centre) under the Exchange of Services Agreement. Upon arrival at the Centre, based on a criminal background, the "historic practice" of a 90-day assessment for serious drug offenders was imposed. This meant the inmate would only be able to receive glass visits during that time period. It was argued that this was an internal method of controlling drugs being brought into the Centre and has worked quite effectively for years. A review of the policies and the legislation found no authority for the director to impose a 90-day assessment upon an inmate prior to that inmate having contravened any internal policy and procedure, rule or regulation within the Centre. As a result of this investigation, the Director immediately removed the unwritten policy. All inmates at the Centre now have the same privileges in accordance with policy and procedure guidelines. This change affected 17 other inmates as well. (Office of the Alberta Ombudsman, 29th Annual Report, 1995, p. 20)

DISCUSSION

This paper illustrates the shift historically in the rights and protections given to inmates. Canadian inmates are now protected by the Charter of Rights and Freedoms and have avenues through which

they can address grievances about their treatment or living conditions. The John Howard Society is named after an 18th century prison reformer who was an advocate for better conditions in prisons.

In spite of these rights and protections, however, the fact remains that prisons and jails are brutally harsh places to live. The John Howard Society believes that governments have an obligation to ensure that inmates do have options for addressing issues relating to their treatment or living conditions, and that there is safety in doing so. Canada is seen to be a world leader in progressive corrections, with our rights and grievance measures a key component of this reputation. And yet, we still witness incidents such as those that took place at the Kingston Prison for Women in 1994. These incidents remind us that, while we may have laws and systems to protect inmates, the implementation of them requires constant vigilance, monitoring and challenging. It is all too easy for society at large to be complacent about the treatment of those we have chosen to isolate. It has been said that the true measure of a society is how it treats its most vulnerable citizens. Incarcerated citizens are a group who are vulnerable to abuse who deserve the protection of formal rights and grievance procedures.

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