

UNDER INSPECTION:

THE HIATUS IN BC CORRECTIONAL CENTRE INSPECTIONS



The Office of the

mbudsperson

B.C.'s Independent Voice For Fairness

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FROM THE OMBUDSPERSON

Liberty is one of our most treasured values. The right to be free to come and go as one pleases is a hallmark of Canadian life. But it is not an absolute right. Individuals can be deprived of liberty provided the decision to do so is made in accordance with the principles of fundamental justice. Imprisonment represents Canadian society's most severe sanction for the violation of our shared fundamental tenets embodied in the criminal law.

Together with the state's ability to imprison come constitutional, statutory and other duties on how that must be carried out. Society retains an interest in ensuring that correctional facilities are operated according to law and in a manner that achieves their objectives. Those purposes include public, inmate and staff safety and also the correction of criminal conduct.

This ongoing societal interest in ensuring that the conditions of imprisonment are appropriate has led to various types of oversight of what goes on behind the walls. Countries around the world have developed a range of mechanisms to ensure that this major exercise of state power is implemented in an appropriate manner.

The oversight of conditions in British Columbia correctional facilities occurs in various ways. Courts, the Investigations and Standards Office, the Coroner and the Ombudsperson all play formal roles, each in a distinct manner. Domestic and international civil society groups also contribute to public awareness. Notably, there is no single instrument of oversight. Rather, the strength of oversight arises from the various eyes and ears that together provide assurance to society that correctional institutions are being operated properly.

One vitally important method of oversight is through periodic inspection of correctional facilities. Such inspections took place for many years until the inspection responsibility was transferred from the Attorney General to the Solicitor General. However, the transition was not properly completed. A program of periodic inspections in BC correctional facilities was not fully implemented for many years: there was a significant gap from 2001 to 2012.

During our investigation of this program transition, the international standards for the treatment of inmates were updated and last year the United Nations adopted a new version including more stringent inspection standards. Those standards mandate regular external inspections conducted by a body independent of the correctional system. We incorporated those new standards into our analysis and ultimately into our recommendations.

I am encouraged by the response of government to this report. All of our recommendations have been accepted by the two ministries involved. I am especially pleased that the Ministry of Public Safety and Solicitor General has committed to implement the new more stringent inspection standards endorsed by the United Nations.

Our office will, of course, monitor implementation of the recommendations made in this report.



Jay Chalke
Ombudsperson
Province of British Columbia

FROM THE OMBUDSPERSON



A person is housed in a provincially run correctional centre when he or she has been convicted of an offence and given a sentence of less than two years, remanded in custody pending trial, or detained under the federal *Immigration and Refugee Protection Act*.¹

British Columbia has nine correctional centres: three medium security centres, four regional centres and two pretrial centres.² At any given time, an average total of approximately 2,400 individuals are housed in these facilities.

The Office of the Ombudsperson receives and investigates complaints from inmates in these provincial correctional centres. Our office's staff visit the centres to tour the facilities and meet with staff and inmates. Through our visits, we became aware that centres were not being inspected on a periodic basis. This raised questions at that time about whether the Ministry of Public Safety and Solicitor General had an adequate program of inspection of correctional centres as required by section 27(1) of the *Correction Act*, which states, "The minister must provide for the inspection of each correctional centre on a periodic basis that the minister considers appropriate in the circumstances."³

The Ombudsperson therefore decided to initiate an investigation to examine whether the Ministry of Public Safety and Solicitor General was inspecting correctional centres in British Columbia in accordance with section 27(1) of the *Correction Act*.

Responsibility for Correctional Centres in British Columbia

The Ministry of Public Safety and Solicitor General is responsible for administering the *Correction Act* and *Correction Act Regulation*; a mandate that includes providing oversight of correctional centres. To facilitate this oversight, the Adult Custody Division of the Corrections Branch of the ministry developed the Adult Custody Policy.

Each of the nine correctional centres has its own set of standard operating procedures that govern its operations. The person in charge of each centre is the warden, who reports to the provincial director of the Adult Custody Division. The warden is responsible for ensuring correctional centre procedures are in compliance with the *Correction Act* and *Regulation* and are consistent with the Adult Custody Policy as well as other applicable legislation and policy.

¹ *Correction Act*, S.B.C. 2004, c. 46, s. 1. The Act defines *inmate* as "a person who is sentenced to imprisonment, lawfully detained or confined for treatment, at a correctional centre, and includes a prisoner." The term *inmate* as it is used in this report thus refers to all three categories of individuals housed in provincial correctional centres: individuals serving a provincial sentence, individuals on remand and individuals detained under federal immigration legislation.

² A 10th correctional centre, Okanagan Correctional Centre, is currently under construction and expected to be operational in late 2016.

³ *Correction Act*, S.B.C. 2004, c. 46, s. 27(1).



The Ministry of Public Safety and Solicitor General is responsible for administering the Correction Act and Correction Act Regulation, a mandate that includes providing oversight of correctional centres.

Periodic inspections can encourage a correctional centre to proactively address deficiencies by reviewing policies and procedures to assess their adequacy and whether they are being applied consistently and fairly.

The Importance of Inspections

Inspections of correctional centres are a form of monitoring, involving an in-depth, in-person review of the operations. Through inspections, the Ministry of Public Safety and Solicitor General can ensure that correctional centres in British Columbia, each with its own administration, are being run safely, effectively and in keeping with legislation and policy.

A 1994 inquiry into corrections in British Columbia emphasized the need for consistency within and between centres, saying:

... it is important that [correctional] policies be applied in a consistent manner throughout the system. If there are to be exceptions to policy, they should be clearly delineated so that the rationale behind each decision can be readily ascertained.... [Any] discretion should be exercised with restraint in order to avoid allegations of favouritism or discrimination.⁴

By observing operations in a regular and systematic way, inspectors can play an important role in ensuring that correctional centres are:

- meeting standards of care and safety for inmates
- operating in a way that is consistent with both international human rights obligations and domestic legal requirements
- adequately protecting staff

Inspections should be conducted by a team of experts who have knowledge of the legal framework within which the centres operate, and who are independent from the centre they are inspecting. Periodic inspections can encourage a correctional centre to proactively address deficiencies by reviewing policies and procedures to assess their adequacy and whether they are being applied consistently and fairly. Recommendations arising from inspections can also draw attention to concerns about how a centre is operating and provide a means of addressing those concerns.

Inspections, and the actions they prompt, are important for ensuring that inmates' human rights and health are protected and for reducing safety risks faced by both inmates and staff working at the centres.

Inspection Compliance with International Standards

Canada's human rights obligations are set out in international instruments and domestic legislation. Although compliance with the international instruments is not enforceable in Canadian courts, Canada has ratified various United Nations covenants and conventions and has endorsed or indicated support for the principles in other instruments.

Irrespective of the varying extent to which these instruments are enforceable as a matter of domestic law, Canada, as an advanced democracy with the capacity and a reputation for respecting and upholding human rights, ought to implement what are internationally considered to be minimum standards.

⁴ Prowse Commission of Inquiry, *Report on the Transfer of Daniel Michael Perrault to the New Haven Correctional Centre*, July 1994. The British Columbia government commissioned this inquiry in response to the Corrections Branch decision in 1991 to transfer a young offender to an open custody centre. Following the transfer, the offender escaped and committed a violent offence.

The Standard Minimum Rules for the Treatment of Prisoners, 1955

For more than a half a century, the United Nations has held congresses on crime prevention, criminal justice and the treatment of offenders. The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (First Congress) occurred in 1955. Over 50 governments, including Canada's federal government, took part in the First Congress where the Standard Minimum Rules for the Treatment of Prisoners (SMR) were adopted. The SMR covered the general management of institutions. To this day, the SMR (renamed the *Nelson Mandela Rules* in December 2015; discussed below) remain the standards against which many organizations evaluate the treatment of prisoners.

Standard 55 of the 1955 SMR dealt with prison inspections:

There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

Canada endorsed the SMR at the Fifth Congress in 1975 and committed to ensuring full compliance and domestic implementation. The Canadian delegation reported that "Cabinet agreed that the Delegation should indicate to the Congress that Canada has adopted the Rules and will refer these for implementation to the Committee of Federal/Provincial Ministers and Deputy Ministers of Corrections."⁵

Reports by Canadian delegations attending later congresses indicate continued federal and provincial involvement and support of domestic implementation of the SMR. The Canadian delegation to the Sixth Congress recommended "annual reporting to the UN on SMR implementation" and "serious consideration of incorporation of UN instruments such as SMR and Code of Conduct in legislation."

Canada's delegation to the Seventh Congress reported that, for Canada, "the endorsement of the SMR was an important step in the humanization and development of our varied correctional systems." The delegation also identified a number of actions Canada could take, including to:

... maintain correctional practices and facilities above the standards called for in the SMR for the Treatment of Prisoners, and continue work towards the improvement of physical facilities, inmate services and programs, the provision of special services to inmates, recruitment and training of personnel, the design and implementation of grievance and complaint procedures, and respect for inmate rights.

The International Covenant on Civil and Political Rights, 1976

Canada, in acceding to the Covenant on Civil and Political Rights on May 19, 1976, is required to report to the United Nations on measures taken to put the covenant into effect. On April 9, 2013, Canada submitted its sixth report to the United Nations Human Rights Committee. The report, covering the period of January 2005 to December 2009, was prepared by the federal, provincial and territorial governments.

⁵ Report of the Canadian Delegation to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva: 1975).

On July 23, 2015, the Human Rights Committee released its concluding observations on Canada's sixth report. The Committee, commenting on prison conditions in Canada, expressed concern over:

- (a) the high level of overcrowding in some detention facilities in the State party;
- (b) the many cases of administrative or disciplinary segregation, sometimes for long periods of time, including of detainees with mental illness;
- (c) reports of insufficient medical support to detainees with serious mental illness;
- (d) reports of suicides in detention, in particular among indigenous inmates; and
- (e) lack of information on the impact of the Mental Health Strategy within the Correctional Service of Canada (art. 10).⁶

The Body of Principles, 1988

In 1988, the United Nations General Assembly introduced resolution 43/173: a Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). The UN urged all member states to adopt the Body of Principles and to ensure that "every effort be made so that the Body of Principles becomes generally known and respected."⁷

The Body of Principles applies to the protection of every person who is under any form of detention or imprisonment. Of relevance to this investigation by our office is principle 29(1), which states:

In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.⁸

Canada endorsed the Body of Principles and accepted the obligations – through Correctional Services Canada – that flow from them. Principle 29 is embodied under sections 158–167 of the federal *Corrections and Conditional Release Act* with respect to the appointment of the federal correctional investigator.⁹

Convention against Torture (1987) and the Optional Protocol (2002)

Canada was a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in 1985 and ratified the Convention in 1987.

⁶ United Nations, "Concluding Observations on the Sixth Periodic Report of Canada," adopted by the Human Rights Committee at its 114th session (29 June–24 July 2015).

⁷ United Nations General Assembly, Resolution 43/173, "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment," introduced December 1988 <<http://www.un.org/documents/ga/res/43/a43r173.htm>>.

⁸ United Nations Office on Drugs and Crime; Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, part one, chapter 1, "Treatment of Prisoners" (2006), 38 <http://www.unodc.org/pdf/compendium/compendium_2006_part_01_01.pdf>.

⁹ Correctional Services Canada, Working Group on Human Rights, "Human Rights and Corrections: A Strategic Model," annex E, "Canada's Obligations under the CCRA" (December 1997) <<http://www.csc-scc.gc.ca/text/pblct/rights/human/im4630-36-eng.shtml>>.

The Optional Protocol to the Convention against Torture, which Canada has not yet signed, was adopted by the UN in December 2002 under resolution 57/199. Article 1 of the Optional Protocol states:

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.¹⁰

Canada, in its Sixth Report on the Convention against Torture, submitted to the UN on October 4, 2010, discussed the process it would follow before making a final decision on whether to sign the Optional Protocol:

Canada is presently considering whether to become a party to the Optional Protocol. Canada takes its human rights obligations very seriously and will become a party to an international human rights treaty only after a thorough review is undertaken by the federal, provincial and territorial governments to ensure that domestic laws and policies meet the obligations of the treaty. Once this analysis is completed, Canada will be in a position to make a final decision on whether to become a party to the Optional Protocol.¹¹

In June 2012, the UN Committee against Torture issued its concluding observations on Canada's report, noting that although Canada has a federal structure, it "is a single State under international law and has the obligation to implement the Convention in full at the domestic level."¹²

The Nelson Mandela Rules, 2015

On December 17, 2015, after a four-year review, the United Nations General Assembly adopted changes to the SMR, renaming them the *Nelson Mandela Rules* (Mandela Rules).

The newly expanded inspection standards were informed by discussion of the SMR in preparation for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (Twelfth Congress) held in April 2010. A workshop on best practices in the treatment of prisoners observed that, under international law, prisons should be visited regularly by qualified and experienced persons who do not work for the prison authorities. Models of good practice were cited, including an independent prison inspectorate (Western Australia), local independent monitoring boards (England and Wales), and the office of inspecting judges (South Africa).

The Mandela Rules reflect what are currently accepted by UN member states as good principles and practice in the treatment of prisoners and in prison management.¹³ The Mandela Rules provide stronger guidance in a number of areas, including inspections (see next page).

The Mandela Rules reflect what are currently accepted by UN member states as good principles and practice in the treatment of prisoners and in prison management.

¹⁰ United Nations, Resolution 57/199, Article 1, "Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," adopted 18 December 2002.

¹¹ Government of Canada, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Sixth Report of Canada* (4 October 2010) <http://www.pch.gc.ca/DAMAssetPub/DAM-drtPrs-humRts/STAGING/texte-text/sixth_report_1363980276610_eng.pdf?WT.contentAuthority=3.1>.

¹² United Nations, Committee against Torture, "Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Concluding Observations of the Committee against Torture," 25 June 2012, CAT /C/CAN/CO/6.

¹³ United Nations, Standard Minimum Rules for the Treatment of Prisoners, adopted by the General Assembly on 17 December 2015, paragraphs 83–85 <http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf>.

The Nelson Mandela Rules Applicable to Inspections

Internal and external inspections

Rule 83

1. There shall be a twofold system for regular inspections of prisons and penal services:
 - (a) Internal or administrative inspections conducted by the central prison administration;
 - (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.
2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.

Rule 84

1. Inspectors shall have the authority:
 - (a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;
 - (b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;
 - (c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;
 - (d) To make recommendations to the prison administration and other competent authorities.
2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass health-care professionals. Due regard shall be given to balanced gender representation.

Rule 85

1. Every inspection shall be followed by a written report to be submitted to the competent authority. Due consideration shall be given to making the reports of external inspections publicly available, excluding any personal data on prisoners unless they have given their explicit consent.
2. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.¹⁴

¹⁴ United Nations, "Standard Minimum Rules for the Treatment of Prisoners," adopted by the General Assembly on 17 December 2015
<<http://www.ohchr.org/Documents/ProfessionalInterest/NelsonMandelaRules.pdf>>.

Inspection Requirements in British Columbia

Prior to 1970, wardens were responsible for the inspection of jails in British Columbia. In 1970, the first *Corrections Act* established the Corrections Service and, from then until 1994,¹⁵ the provincial director of Adult Corrections (or his or her equivalent) was required by law to establish a program of inspections of correctional centres.¹⁶

In 1994, the *Correction Act* was amended to create the Investigations, Inspections and Standards Office (IISO) within the Ministry of Attorney General.¹⁷ When describing the legislation that created the IISO, the Attorney General emphasized the IISO's independence and the need to ensure that "investigations of any incidents of concern to the public, corrections staff or offenders are conducted independently in the future, and are seen to be conducted independently."¹⁸

The IISO's responsibilities specifically included conducting inspections of correctional centres. The director of the IISO was required by law to "establish and maintain a program of periodic inspection of all correctional centres."¹⁹

In 2003, the provincial Legislature proposed amendments to the *Correction Act*, transferring responsibility for routine inspections from the IISO to the Corrections Branch of the Ministry of Public Safety and Solicitor General.²⁰ The Attorney General stated that this change would allow "a more efficient and effective management of correctional centres."²¹

The legislation, which came into force on May 29, 2003, and is still in effect today, states, "The minister must provide for the inspection of each correctional centre on a periodic basis that the minister considers appropriate in the circumstances."²²

To facilitate the inspection process, a person conducting an inspection may "at any time" enter a correctional centre and access any part of that centre.²³ The inspector may also examine "any thing or record, except a medical record of an inmate, in the correctional centre."²⁴ It is an offence to obstruct, impede or prevent someone from conducting an inspection.²⁵

The current *Correction Act* also gives the minister discretion to determine when inspections occur, but those inspections must be on a "periodic basis" that the minister considers appropriate.

¹⁵ The *Corrections Act* was in effect from 1970 to 1979. During the 1979 consolidation, the title was revised to the *Correction Act*.

¹⁶ The title of the person responsible for oversight of correctional centres has changed over the years. For clarity, we have referred in this report to the provincial director of Adult Custody Division, as this is the current title.

¹⁷ This office was renamed the Investigations and Standards Office (ISO) when the *Correction Act* was amended in 2003. We have referred to it as the IISO in this report because that was its name when it was responsible for conducting inspections of correctional centres.

¹⁸ Hon. Colin Gabelmann, British Columbia Legislative Assembly, Hansard, 27 April 1994, 10325 <<https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/3rd-session/h0427pm>>.

¹⁹ *Correction Act*, R.S.B.C. 1996, c. 74, s. 34(1)(b).

²⁰ Section 27(1) of the *Correction Act* states that the "minister" must provide for periodic inspections. In practice, responsibility for inspections has been delegated to the Corrections Branch.

²¹ Hon. Geoff Plant, British Columbia Legislative Assembly, Hansard, 27 May 2003, 6997 <<http://www.leg.bc.ca/hansard/37th4th/h30527p.htm>>.

²² *Correction Act*, S.B.C. 2004, c. 46, s. 27(1).

²³ *Correction Act*, S.B.C. 2004, c. 46, s. 27(2).

²⁴ *Correction Act*, S.B.C. 2004, c. 46, s. 27(3).

²⁵ *Correction Act*, S.B.C. 2004, c. 46, s. 29.

It is a fundamental principle of administrative fairness that discretion contained in legislation be exercised reasonably.

It is a fundamental principle of administrative fairness that discretion contained in legislation be exercised reasonably.²⁶ The importance of inspections in protecting inmates' health, safety and human rights, and in protecting staff and the public, means that the discretion in section 27(1) of the *Correction Act* can only be exercised fairly and appropriately when regular and comprehensive inspections are carried out in all correctional centres in the province.²⁷

The statutory responsibility for establishing a program of inspections rests with the minister.

- From 2003 to 2012 and as of December 2015, that minister was the Minister of Public Safety and Solicitor General.
- From 2012 to December 2015 (a period of overlap between the ministries of Attorney General and Solicitor General), that minister was the Minister of Justice.

It seems that from 2003 to the present, implementation of this legal responsibility has always defaulted to the Corrections Branch.



²⁶ See Office of the Ombudsperson, *Code of Administrative Justice 2003*, Public Report No. 42, British Columbia Legislative Assembly, March 2003. This report states, on page 5: "where an authority is exercising a discretionary power the merits of its decision may be reviewed on the basis that it has made the wrong choice of a governing law, right, rule, or policy."

²⁷ The current *Adult Custody Policy* states: "the provincial director is responsible for establishing a regular inspection schedule." Corrections Branch, *Adult Custody Policy*, s. 8.6.2(2), revised April 2012.

In this investigation, we looked at whether the Ministry of Public Safety and Solicitor General had, from 2003 to 2012, complied with the requirement to conduct inspections. We investigated the reasons why inspections did not occur. We also investigated the adequacy of the Corrections Branch's current framework for conducting inspections.

We obtained all of the Corrections Branch's written materials concerning inspections, including internal correspondence, minutes of meetings, policies, procedures and inspection documents. We interviewed Corrections Branch staff responsible for inspections and we obtained information about reviews, surveys, exercises and inspections completed by the branch since 2003. As well, we obtained records and information from individual correctional centres where irregular inspections had occurred.

We also spoke with current and former staff of the IISO and obtained records from the IISO which, until 2003, was responsible for conducting periodic inspections of British Columbia correctional centres.

Our investigation included a review of past and existing legislation, including the *Correction Act* and *Correction Act Regulation*. We also reviewed federal legislation, international instruments, research into correctional centre inspections, and inspection models and standards.

The End of Inspections

From 1994 to 2003, the Investigation, Inspections and Standards Office (IISO) under the Ministry of Attorney General was responsible for conducting inspections of correctional facilities under the *Correction Act*. That Act established the structure, oversight role and, most importantly, the independence of the IISO. Housed in a different ministry from the Corrections Branch, it was well placed to provide independent oversight of correctional facilities.

When the Legislature amended the *Correction Act* in May 2003, responsibility for inspections was transferred from the IISO to the Corrections Branch. The IISO's last inspection of a correctional facility – North Fraser Pretrial Centre – had occurred in September 2001 and its report on that inspection was completed on January 21, 2002. IISO staff told us that they were asked (they did not recall by whom) to end their inspections of correctional centres in anticipation of changes to the legislation. Consistent with these instructions, the IISO ended its inspections 20 months before the *Correction Act* amendments took effect.

Although responsibility for inspecting correctional facilities transferred to the Corrections Branch on May 29, 2003, the branch did not immediately begin inspections. It conducted its first inspection of a correctional facility on April 2, 2012, at the Alouette Correctional Centre for Women – more than 10 years after the IISO ended its inspections.

We discuss below our investigation into why the Corrections Branch did not ensure ongoing inspections of correctional centres were conducted during this period.



Although responsibility for inspecting correctional facilities transferred to the Corrections Branch on May 29, 2003, the branch did not immediately begin inspections.

Lack of Transition Planning

When the changes to the *Correction Act* came into force on May 29, 2003, no written direction was given to the Corrections Branch to begin conducting inspections. In response to our request for any documentation from 2003 from the Solicitor General, about transferring responsibility for the inspection of adult correctional facilities from the IISO to the Corrections Branch, branch staff were unable to produce a single letter, email or directive pertaining to the transition.

Despite this lack of documentation, Corrections Branch staff should have known that they had been assigned the statutory responsibility for carrying out these inspections. The Attorney General announced the changes to the *Correction Act* in the Legislature when they took effect. Yet, the branch took no action on developing or implementing an inspection model until 18 months later, in November 2004.

When we asked the Corrections Branch staff why no action was taken, we were told that other priorities took precedence in 2003/2004. The primary reason given was that the operational budget of the Adult Custody Division of the branch had been reduced by 33 per cent in 2002. This resulted in the closure of 10 correctional centres and a corresponding one-third reduction in staffing at the Adult Custody Division. We were also told that the priority of the Corrections Branch was to find solutions to address the widespread disruption in the branch caused by these actions.

Analysis

Our investigation found that the Corrections Branch was not adequately prepared to take on the responsibility for conducting inspections of correctional centres when the *Correction Act* changes came into force. The two ministries did not develop a transition plan. Thus, the Corrections Branch did not receive direction on assuming responsibility for inspections, nor did it initiate a process to do that. The IISO ceased inspections while they still had the statutory responsibility to conduct inspections and did not take steps to ensure that another agency would continue to carry out this important oversight role.

Legislation often imposes requirements on the public agency responsible for administering a program. Meeting these requirements demonstrates that an agency is accountable to the public. Our office stated this in our 2014 report *Time Matters: An Investigation into the BC Employment and Assistance Reconsideration Process*:

Legislative requirements are not mere guidelines. They set out legal rights and obligations that define the relationship between individuals and the state. Individuals are entitled to expect the state to comply with its responsibilities.²⁸

When a program or responsibility is moved from one part of an agency to another or from one ministry to another, there is a significant risk of the agency failing to comply with legislative requirements. Inadequate planning for such a transition is, unfortunately, not an isolated phenomenon.

In previous investigation reports, the Office of the Ombudsperson has highlighted the problems that can arise from a lack of effective transition planning. In *Time Matters*, we found that the Ministry of Social Development and Social Innovation had centralized reconsideration decision-making in one branch without adequately planning for that change, which contributed to delays in decision-making and in the

Legislation often imposes requirements on the public agency responsible for administering a program. Meeting these requirements demonstrates that an agency is accountable to the public.

²⁸ Office of the Ombudsperson, *Time Matters: An Investigation into the BC Employment and Assistance Reconsideration Process*, Special Report No. 35, British Columbia Legislative Assembly, January 2014.

ministry's inability to meet its statutory requirements.²⁹ Similarly, in Special Report No. 30, *Victims of Crime, Victims of Change: Transition and Discretion in Crime Victim Assistance Legislation in British Columbia*, our office highlighted the importance of careful planning to avoid unfairness to recipients of benefits when legislation changes.³⁰

Transition planning allows organizations to effectively take on new or changed responsibilities, particularly when those responsibilities are a result of legislative change. In the case of the Corrections Branch, the Ministry of Public Safety and Solicitor General was already familiar with, and had a role in administering, the *Correction Act*. Even if the branch itself did not have the resources to develop a transition plan, the ministry should have provided leadership to ensure that legislative requirements continued to be met.

We would expect, in such circumstances, a transition plan to include at a minimum a clearly written process that identifies:

- specific positions at all levels of the organization who are responsible for the transition process
- timelines for completion
- resources necessary to complete the transition
- interim measures to ensure legislative or other requirements are met during the transition
- public reporting on progress in completing the transition

When the Legislature transferred responsibility for inspections from the IISO (in the Ministry of Attorney General) to the Corrections Branch (in the Ministry of Public Safety and Solicitor General) neither ministry provided direction for the transition of responsibility. As a result, the IISO prematurely ceased inspecting in 2001 and the Corrections Branch was not prepared to take on the responsibility for inspecting correctional centres in 2003.

Periodic Inspections Were Not a Priority

Although it has had responsibility for inspecting correctional centres since 2003, the Corrections Branch did not conduct its first scheduled formal inspection of a correctional centre until April 2, 2012. The lack of transition planning explains why the branch was initially not prepared to take on its new responsibility, but that alone does not explain why it took so long to implement the new inspection program. As part of our investigation, we questioned Corrections Branch staff about any inspections that had been undertaken. They provided records of reviews, surveys, exercises and inspections they conducted for the period 2003–2012 (see next page).

While we recognize that these activities provided the minister with valuable insight and, in some instances, resulted in recommendations not dissimilar to those an inspection might generate, we are not satisfied that such issue-specific and irregular activities met the statutory obligation to inspect set out in s. 27(1) of the *Correction Act*.

²⁹ Office of the Ombudsperson, *Time Matters: An Investigation into the BC Employment and Assistance Reconsideration Process*, Special Report No. 35, British Columbia Legislative Assembly, January 2014.

³⁰ Office of the Ombudsperson, *Victims of Crime, Victims of Change: Transition and Discretion in Crime Victim Assistance Legislation in British Columbia*, Special Report No. 30, British Columbia Legislative Assembly, May 2007.

Reviews, Surveys and Similar Activities Carried Out by the Corrections Branch between 2003 and 2012

We reviewed the following records of activities conducted by the Corrections Branch between 2003 and 2012:

- 51 critical incident reviews (conducted in response to inmate deaths, assaults by inmates on other inmates or staff, disturbances, incidents of self-harm, escapes, cell fires and a hostage taking), undertaken between October 4, 2003, and April 16, 2011
- 38 crisis management exercises developed for the Corrections Branch by the Justice Institute in 2006 for staff training and development purposes – The Corrections Branch considered these exercises to be targeted risk-management-based inspections.
- 4 inmate call control system inspections conducted in 2007 – Corrections Branch told us that these inspections were to ensure consistency with legislation and provincial policy. They took place during implementation of a new phone system after concerns were expressed about a potential compromise of security.
- contingency plan reviews conducted in 2004 as “part of the Corrections Branch, Adult Custody 2004/05 Performance Measures” – These reviews found that some centres needed to update their tactical equipment, hire additional team members and provide tactical training to the teams. Each centre was consulted in 2004 to determine its needs and ensure that adequate staff, equipment and training were provided.
- review of methadone administration in all centres following an inmate death
- client satisfaction surveys conducted by an agency external to the Corrections Branch to gather baseline information for the branch’s Advancing Offender Programs project
- joint review of videoconferencing equipment by the Corrections Branch and the Court Services Branch in 2005 – This review was prompted by an incident in which an inmate was released in error following video court.
- review of health service needs, undertaken as part of the health care services contract renewal
- reviews of gender staffing, undertaken as a result of a human rights complaint

We also reviewed the following reports of inspections initiated at individual centres:

- an undated report about a security review conducted in 2005 of two work programs at Vancouver Island Regional Correctional Centre
- 3 standard operating procedure reviews and 3 reports from Kamloops Regional Correctional Centre – The three operating procedure reviews were undated and titled “Identification Count,” “Routine Frisk Searches” and “Review of USO Activities.” The reports were:
 - *Inmate Effects Photographs Review and Recommendations*, April 6, 2009
 - *Methadone Delivery Program Review and Recommendations*, April 23, 2010
 - *Meal Cart Supervision/Meal Distribution*, July 23, 2010
- an operational review conducted at North Fraser Pretrial to investigate the assault of a staff member on November 10, 2010
- a report on a medication issue at Surrey Pretrial Services Centre dated March 27, 2011

Analysis

All of the above activities carried out by the Corrections Branch were undertaken in reaction to a critical incident, an external trigger or a need to comply with policy – not to meet the requirements of the inspection policy. To fulfill the purpose of a periodic inspection, inspections should be conducted at regular intervals and should proactively identify and address issues that could prevent future incidents.

The terms of reference and minutes of the meetings of the Custody Directors Management Committee (CDMC) make no reference to these activities as being inspections as required under s. 27(1) of the Act. (The CDMC is made up of the provincial and deputy provincial directors of the Corrections Branch and the warden from each correctional centre. The committee meets regularly to discuss and address operational issues, develop consistent approaches to common issues and recommend policies and strategies to meet service plan targets.) Furthermore, the activities noted were underway while the topic of inspections appeared sporadically on the agenda for discussion at the CDMC. Now that periodic inspections are occurring, issue-specific and irregular reviews also continue as needed.

We asked Corrections Branch staff why they did not simply adopt the inspections model previously used by the IISO. We were told that the branch believed the IISO inspection process was “not helpful” for correctional centres because it did not sufficiently inform future planning needs. Corrections Branch staff also told us that wardens often rejected recommendations made in the IISO inspection reports.

Thus, because the Corrections Branch believed so strongly that change was needed, staff took no steps to use the IISO model while they developed a new inspection process.

Developing an Inspection Framework: 2004–2007

In November 2004, the provincial director assigned the district director of Vancouver Jail nine “special projects” related to corrections, including inspections.³¹ In the letter outlining the district director’s new responsibilities, the provincial director noted that the Corrections Branch had been required to “facilitate inspections of correctional centres.” The provincial director also asked the district director to “develop a process for the inspection of correctional centres,” giving consideration to the following principles:

- inspections must be continuously managed, reviewed and updated
- inspections should focus on elements of service that actually contribute materially to the achievement of strategic objectives
- inspections should be focused, transparent and timely
- inspections should promote consistency across centres
- inspectors should play a leadership role in ensuring appropriate communication, appropriate and timely review, and quality assurance

The provincial director then asked the district director to “take these issues forward as soon as possible” so that they could be implemented “in a timely manner.”

To fulfill the purpose of a periodic inspection, inspections should be conducted at regular intervals and should proactively identify and address issues that could prevent future incidents.

³¹ Brent Merchant, provincial director of the Adult Custody Division, letter re: Inspection of Correction Centres Contingency Planning Review – Terms of Reference, to Pete Coulson, then the district director, Vancouver Jail, 16 June 2004.

In April 2005, the Corrections Branch issued a policy on inspections, which established that:

- the provincial director of Adult Custody, or his or her designate, was responsible for correctional centre inspections
- inspections could relate to all or part of a correctional centre's operation and could involve one or more correctional centre
- correctional centres would be told in advance the dates of the planned inspection and its subject matter, and inspectors would be granted access to relevant persons, areas and documents at the correctional centre

Analysis

While the 2005 policy anticipated that the Corrections Branch would conduct regular inspections, such inspections did not happen. Instead, branch staff continued to work on developing a more detailed inspection model.

In May 2006, the provincial director instructed a warden to “develop policy ... regarding the Inspection process” and to provide updates on this work to the CDMC. Four months later, the provincial director reassigned work on policy development to a new warden and two additional staff members. The latter told us that they worked “off the side of their desks” to produce a draft inspection model early in 2007.

The CDMC minutes of May 30, May 31 and June 1, 2007, indicate that an overview of the new provincial inspections process was presented to the CDMC and inspections were to be scheduled and conducted on a regular basis. To test the new process, a sample inspection using it was conducted at Fraser Regional Correctional Centre (FRCC) on October 24, 25 and 26, 2007. The inspection report submitted to the warden of FRCC recommended changes to a number of areas in the centre. The inspection team also noted that the process itself could be amended to an easier format.

The CDMC minutes of September 17 to 19, 2008, reference the sample inspection having taken place at FRCC and indicate that a schedule for future inspections at other centres would be planned. Although there are a couple of references to the inspection process in CDMC minutes in 2009 and 2010, implementation of the 2007 draft inspection process did not happen.

Redeveloping an Inspection Framework: 2010–2012

Minutes of a CDMC meeting in October 2010 record that committee members considered the 2007 inspection model to be “cumbersome,” and they suggested that the model be redeveloped. The Corrections Branch therefore gave another warden responsibility for doing this and, in January 2011, a deputy warden was added to work on the new model full-time.

Under the terms of reference, the new process for inspection of correctional centres was to address frequency, scope, format, items to be inspected, composition of inspection teams and the use of contractors. The Corrections Branch also instructed the assigned warden and deputy warden to develop a policy and a three-year strategic plan regarding the inspection process.

In May 2011, the draft process was submitted to the CDMC for feedback. The proposed model divided inspections into six components, each of which was to be reviewed in a separate inspection: operations, programs, sentence management, business and finance, staff management, and crisis management. An inspection was to focus on one of these components and, within that, specific areas of focus. For

Under the terms of reference, the new process for inspection of correctional centres was to address frequency, scope, format, items to be inspected, composition of inspection teams and the use of contractors.

example, an inspector looking at programs would complete a checklist containing questions about food services, inmate fasting, visits, legal library, inmate work programs, religious services, inmate televisions and health care.

In June 2011, the Corrections Branch conducted a test inspection using the operations component of the draft model at Kamloops Regional Correctional Centre. The inspectors reviewed the centre's standard operating procedures to determine whether they complied with the provincial Adult Custody Policy, the *Correction Act* and the *Correction Act Regulation*. The inspectors also looked at how the centre applied its procedures, the Adult Custody Policy, and the *Act* and the *Regulation*. The inspection made nine recommendations to management of the centre, all of which were implemented.

This was the first inspection done by the Corrections Branch since the sample inspection of FRCC in 2007, four years previously.

In July 2011, the Corrections Branch conducted a further test inspection, this time using the programs component of the draft model at Vancouver Island Regional Correctional Centre. The inspection team reviewed 79 program areas and made 25 recommendations to the centre's management.

The branch finalized and approved the new inspection framework documents following these two test inspections and with some additional feedback from the CDMC. The branch combined the six components into three pairs of components: operations (including crisis management) and human resources; programs and sentence management; and business and finance. The model was then adopted and regular inspections began in April 2012.

Today, under the new framework, inspections occur at each correctional centre annually on a three-year cycle. This means that a correctional centre can expect to have one inspection on each component at some point within a three-year period.

Analysis

The Corrections Branch has been responsible for conducting inspections of correctional centres in British Columbia since May 2003. However, it did not start developing a new inspections framework until November 2004 – 18 months later. It then took more than seven years to sign off on a new process for conducting inspections.

The first regular inspection using the process occurred in April 2012. This means that for over 10 years – from September 2001 to April 2012 – the ministry had no consistent process with which to monitor how well centres were complying with their legislative, regulatory and other requirements.

The amount of time it took for the Corrections Branch to develop a new model indicates to us that it did not place a high priority on ensuring ongoing compliance with its statutory requirement to conduct inspections. Even if the IISO model was inadequate from the branch's perspective, it at least provided a framework for assessing how well correctional centres were operating. Given the importance of inspections to the effective oversight of correctional centres, we would have expected the branch to establish interim measures or maintain previous practices until the new inspection framework was approved and implemented. Taking interim measures is particularly important when, as in this case, inspections are part of the branch's legislative obligations. A desire for change does not excuse any government authority from the obligation to meet legislative requirements.

Today, under the new framework, inspections occur at each correctional centre annually on a three-year cycle.

OUR INVESTIGATION

A desire for change does not excuse any government authority from the obligation to meet legislative requirements.

We concluded that the Ministry of Public Safety and Solicitor General unreasonably delayed developing and implementing a new process for inspecting correctional centres, and did not take any interim measures to meet its legislated obligations while it developed a new process. As a result, the minister did not meet the legislative obligation to inspect correctional centres between May 29, 2003, and April 2, 2012.



THE NEW INSPECTION FRAMEWORK

After concluding our investigation of the Corrections Branch's compliance with its obligation to inspect correctional centres, we investigated the branch's current inspection process to determine whether the framework for inspections is allowing inspectors to conduct adequate inspections and carry out their oversight roles effectively. We focused on:

- the purpose of inspections
- inspection checklists
- inspector training
- inspector independence
- correctional centre policies and procedures

Purpose of Inspections

As discussed earlier in this report, inspections are essential to the effective oversight of correctional centres. Including a clear statement of the purpose of inspections in policy is important because that purpose provides guidance to the individuals responsible for implementing a program of inspections, and to inspectors themselves. It also provides a basis on which to evaluate whether a program of inspections is operating fairly and reasonably.

Put simply, a statement of purpose articulates the regulatory context in which inspections operate and helps to ensure that inspections are meaningful and effective. For example, training materials for inspectors employed by the United States Department of Justice state that:

... inspections are conducted because there is a government interest in providing for both the safe confinement of inmates and the protection of the public and staff. Inspections are intended to assess compliance or noncompliance with standards. Once that is done ... subsequent inspections can demonstrate a jail's movement toward full compliance or its continuation of compliance.³²

Analysis

When introducing the *Correction Act* in the Legislature in 2004, the Minister of Public Safety and Solicitor General stated that the purpose of the new legislation was to:

... support and strengthen current public safety policy, accountability and security [and] provide protection of the rights and freedoms of individuals through the oversight, control and accountability of officials authorized to discharge their powers and duties in accordance with regulation.³³

In fact, however, the *Act* itself does not set out the purpose of inspections. That was left to policy-makers in the Corrections Branch. In developing the new inspection model during 2010 to 2012, the branch considered some basic principles for inspections: that they should be focused, transparent and timely; that they should promote consistency across centres; and that inspectors should have a role in quality



A statement of purpose articulates the regulatory context in which inspections operate and helps to ensure that inspections are meaningful and effective.

³² Thomas A. Rosazza, *Jail Inspection Basics: An Introductory Self-Study Course for Jail Inspectors*, 2nd Edition. U.S. Department of Justice, National Institute of Corrections, March 2007, 45. <<https://s3.amazonaws.com/static.nicic.gov/Library/022124.pdf>>.

³³ Hon. Rich Coleman, British Columbia Legislative Assembly, Hansard, 12 May 2004, 11065 <<http://www.leg.bc.ca/hansard/37th5th/h40512p.htm>>.

In the absence of a clearly articulated purpose, inspections can end up focusing on matters that are not directly related to ensuring the health, safety and protection of the human rights of inmates in correctional centres.

assurance.³⁴ Similarly, in draft documents produced in 2011, the branch stated that inspections should:

- contribute to the safety of inmates, staff and visitors
- ensure compliance with policy and legislation

Nevertheless, none of the Corrections Branch's final documents related to the new model contain a statement of purpose for inspections. This is a significant oversight that undermines the effectiveness of the inspections framework.

Inspection Checklists

Under the existing inspection framework (the one approved in 2012, as described earlier in this report), inspectors use a checklist to complete their inspections. There is a separate checklist for each component area, which means that inspectors use the checklist specific to the subject matter to be reviewed in a particular inspection. Each checklist is made up of a number of "inspection points":

- 116 for Human Resources inspections
- 104 for Operations inspections
- 86 for Sentence Management inspections
- 61 for Programs inspections
- 55 for Business and Finance inspections³⁵

The inspection points indicate whether or not a correctional centre is in compliance with the *Correction Act* and *Correction Act Regulation*, other legislation and regulations, the Adult Custody Policy, and other policies or procedures, including occupational health and safety requirements, public health requirements and the provincial fire code.

In the absence of a clearly articulated purpose, inspections can end up focusing on matters that are not directly related to ensuring the health, safety and protection of the human rights of inmates in correctional centres. The following examples illustrate health, safety and human rights matters that the current inspection components do not adequately cover or do not cover at all:

- One of the inspection components contains all the inspection points relating to separate confinement of an inmate – an area where correctional centres are subject to strict rules.³⁶ If a correctional centre does not follow the separate confinement rules and, for example, confines someone for an unjustified amount of time, this not only violates an inmate's rights but can seriously affect his or her health and safety.³⁷

Including these inspection points in only one of the checklists means that correctional centres are subject to inspections on separate confinement and inmate segregation only once in a three-year cycle. This is the same frequency as an inspection that looks at financial matters internal to the centre, such as petty cash reconciliation.

³⁴ Brent Merchant, provincial director of the Adult Custody Division, letter re: Special Projects, to Pete Coulson, then the district director, Vancouver Jail, 17 November 2004.

³⁵ Pete Coulson, then provincial director of the Adult Custody Division, in email correspondence with the Office of the Ombudsperson, 9 August 2012.

³⁶ *Correction Act Regulation*, B.C. Reg. 58/2005, s. 17 and 18.

³⁷ The federal Correctional Investigator has stated that "long periods of physical isolation in segregation can ... lead one to the conclusion that life is no longer worth living." Office of the Correctional Investigator of Canada, *A Three-Year Review of Federal Inmate Suicides (2011–2014)*, Final Report, 10 September 2014, 6 <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20140910-eng.aspx>>.

- Wardens are required to maintain a record of use of force incidents. Inmates injured and requiring medical treatment resulting from a use of force incident are to be photographed. Thirteen inspection points ask questions about tactical teams, training, deployment, equipment inventory and access to equipment. Only one of those points asks whether the equipment registry identifies the date, time and purpose for which tactical equipment was deployed. No inspection point relates directly to the use of force by staff on an inmate (as allowed by s. 12 of the *Correction Act* and s. 9 of the *Correction Act Regulation*).
- Although there are inspection points for most inmate privileges, there are no points for the issuance of clothing, mattress and bedding, access to reading material, or access to toilet articles (as required by s. 2(1)(c,d,j) of the *Correction Act Regulation*).
- There are no inspection points relating to the inmate complaint process (in keeping with s. 4 of the *Correction Act Regulation*).
- There are inspection points regarding the seizure, storage and destruction or disposal of contraband obtained during a strip search, but no points relating to the conduct and documentation of strip searches (in keeping with s. 13(4) and (5) of the *Correction Act*, s. 11 of the *Correction Act Regulation*, and s. 1.15 of the Adult Custody Policy).
- There are no inspection points regarding disciplinary hearings (in keeping with ss. 25–29 of the *Correction Act Regulation*).

The inspection points require a yes or no answer. The only guidance that the Corrections Branch provides to inspectors on how to complete the checklist is contained on an information sheet for inspectors. It states: “When completing a checklist, a ‘No’ response requires a comprehensive explanatory comment. A ‘Yes’ response that needs to be qualified must include an explanatory comment.”

Some of the inspection points include directions to inspectors on what information they need to review in order to answer (for example, “check five files” or “ask three records staff to clarify their process”). In general, however, the checklists do not provide inspectors with specific guidance on the information they should use to complete the checklist. For example, each inmate is supposed to be routinely assessed by a nurse on intake, but the checklist does not indicate whether an inspector should review records, speak with intake staff, do both or do something else altogether. For many questions, the checklists also do not articulate the standard that must be met for the inspector to give a “yes” answer.

This lack of clear direction on how to complete the checklists raises concerns about consistency in assessing compliance.

Analysis

Our review of the inspection reports completed using the new inspection checklists found – not surprisingly given the lack of direction to inspectors – inconsistencies in how inspectors completed the checklists. For example: inspectors sometimes did not answer the question that was being asked; they reviewed actual practice procedures instead of the correctional centre’s standard operating procedures (or vice versa); or they did not provide enough detail to make clear what information led to their conclusion.

This lack of clear direction on how to complete the checklists raises concerns about consistency in assessing compliance.

A training program is an opportunity to educate inspectors on the principles central to the inspection process, and to promote a consistent understanding of the Corrections Branch's approach to inspections.

Inspector Training

A total of 34 inspectors conducted their first inspection of a correctional centre in 2012 and 2013.

We found that the gaps we identified in the inspection framework are compounded by a lack of training provided to inspectors. A training program is an opportunity to educate inspectors on the principles central to the inspection process, and to promote a consistent understanding of the Corrections Branch's approach to inspections. None of the documents we reviewed in our investigation set out a training process or training materials for inspectors.

Other jurisdictions have developed training materials for correctional centre inspectors. For example, the United States Department of Justice has a self-study course for jail inspectors that focuses on inspection standards, how inspections work, the purpose of an inspection, documentation, and data collection.³⁸

Inspector Independence

When the IISO was responsible for inspecting correctional centres, the inspectors were independent by virtue of the IISO's legislated independence from the Corrections Branch. The IISO was part of the Ministry of Attorney General; Corrections Branch was part of the Ministry of Public Safety and Solicitor General.

In 1994, the minister discussed the independence of the IISO in relation to inspections, stating that taking "inspections and standards investigations out of the corrections branch altogether ... is designed to establish in the minds of the public, in a very real way, a clear separation from the corrections branch."³⁹

Ensuring inspectors are independent and impartial is also a key part of Canada's international commitments under the Mandela Rules. The 2015 revisions to those rules require that internal inspections be conducted by the central prison administration and external inspections be conducted by a body independent of the prison administration. The new rules also set out the authority to be given to inspectors and the composition of external inspection teams.

In this respect, the inspections framework developed by the Corrections Branch is therefore a backwards step when compared with the scheme in place from 1994 to 2003. The final Adult Custody Policy calls for inspections to be carried out by at least two managers, one who does not normally work at the centre (but who may work at a different centre) and one who works at the centre being inspected.⁴⁰ In practice, this means that the inspection teams are, in general, made up solely of individuals who work in the provincial correctional system on a regular basis.

Thus, the Corrections Branch inspections framework does not require or expect inspectors to be independent. Clearly, this is inconsistent with international standards, now codified in the 2015 revision to the Mandela Rules.

³⁸ Thomas A. Rosazza, *Jail Inspection Basics: An Introductory Self-Study Course for Jail Inspectors*, 2nd Edition, U.S. Department of Justice, National Institute of Corrections, March 2007 <<https://s3.amazonaws.com/static.nicic.gov/Library/022124.pdf>>.

³⁹ Hon. Colin Gabelmann, British Columbia Legislative Assembly, Hansard, 6 July 1994, 12813–12814 <<http://www.leg.bc.ca/hansard/35th3rd/h0706pm.htm>>.

⁴⁰ B.C. Corrections Branch, *Adult Custody Policy*, s. 8.6.4(2), revised April 2012.

Correctional Centre Procedures

Since April 2012, the Corrections Branch's policy on inspection of correctional centres has required the centres to "develop procedures for accommodating the inspection process."⁴¹ Such procedures were not only to help staff at the centres recognize that inspections are mandated by the *Correction Act*, but also to provide for more efficient and effective inspections because staff would clearly understand the purpose of the inspections and how best to support them.

In April 2014, we asked each of the nine correctional centres to provide us with a copy of its procedures for accommodating inspections:

- Only the Nanaimo Correctional Centre had a procedure in place at the time of our request.
- Six centres created a procedure in response to our request: Alouette Correctional Centre for Women, Ford Mountain Correctional Centre, Fraser Regional Correctional Centre, North Fraser Pretrial Centre, Prince George Regional Correctional Centre, and Surrey Pretrial Services Centre.
- Kamloops Regional Correctional Centre, provided us with an undated list of bullet points; not a formal standard operating procedure document.
- Vancouver Island Regional Correctional Centre, responded to the request by saying that they believed the provincial policy was adequate and a centre-specific procedure was not necessary.

Analysis

The procedures provided to us by some of the centres were not consistent with the provincial Adult Custody Policy. That policy authorizes the director of the Adult Custody Division to determine the terms of reference for the inspection and the inspection team.

The Adult Custody Policy also sets out the conduct of the inspection, including the process to be followed at the conclusion of the inspection. As part of that process, a detailed report of the inspection – summarizing the findings and including recommendations – must be provided to the provincial director within 30 business days of the start of the inspection (as required by s. 8.6.5 of the policy).

To facilitate that, the director provides inspectors with an information sheet detailing the steps to be followed during the inspection. Inspectors are instructed:

Upon the conclusion of the inspection, the inspection lead conducts an informal briefing with the warden and responsible managers to outline preliminary findings and recommendations. A copy of the report or any other written material is not provided [at that time].

With respect to completing the report, inspectors are told:

The inspection lead is responsible for completing the inspection report with attached inspection checklist and submitting it directly and only to the provincial director within the time frame stipulated in the terms of reference. The provincial director is responsible for providing the report and checklist to the warden of the correctional centre.

Procedures established at the Alouette and Nanaimo centres list the steps necessary to prepare for the inspection, as well as the steps necessary to respond to the inspection report and any recommendations that flow from it. The procedures

⁴¹ B.C. Corrections Branch, *Adult Custody Policy*, s. 8.6.4(7), revised April 2012.

created by the other centres replicate or paraphrase parts of the Adult Custody Policy on inspections, but all have sections that are not consistent with the policy or the provincial director's direction to the lead inspector to submit the inspection report and checklist only to the director.

North Fraser Pretrial Centre's procedures add to the inspection team "a person with a particular expertise in the area of the centre being inspected." Procedures drafted by Ford Mountain, Fraser Regional, Prince George Regional and Surrey Pretrial, as well as the undated list of Kamloops Regional, all change the reporting process by requiring that a "detailed report of the inspection summarizing the findings and recommendations [be] forwarded to the [centre's] warden and the provincial director ... within 30 days of the commencement of the inspection."

The correctional centres do not appear to have authority to restrict the scope of the inspection, to assign inspectors to the inspection team, or to develop procedures that are not consistent with the *Adult Custody Policy*.

An example of how procedures can accommodate the inspection process is illustrated in a 2013 inspection report of Nanaimo Correctional Centre. The inspection team concluded its report with praise for the centre's preparation for the inspection and suggested that the Nanaimo process be shared with all centres "so as to achieve similar results at their workplace."⁴² Again, Nanaimo was the only correctional centre that had an adequate procedure in place prior to our request.

The Corrections Branch should ensure that each correctional centre has an up-to-date, written procedure for accommodating the inspection process. The procedure should be consistent with the *Adult Custody Policy* and shared with, and accessible to, staff who might participate in an inspection process.



CONCLUSION

The Corrections Branch performs an important role in monitoring and overseeing correctional facilities and ensuring they are compliant with all legislative and policy requirements, including international standards for protecting human rights, health and safety.

The branch took more than eight years to develop a framework to guide inspections – a delay that we believe occurred largely because meeting legislative obligations during a transfer of responsibility was not considered to be a priority.

Although an inspection framework has been implemented by the Corrections Branch, our investigation identified deficiencies with the framework that need to be addressed for inspections to meet the province’s obligations and comply with internationally accepted standards.



CONCLUSION





FINDINGS AND RECOMMENDATIONS

Findings

Law and International Standards

- F1** The Ministry of Attorney General was not in full compliance with section 27(1) of the *Correction Act* when, in 2001, it discontinued periodic inspections of British Columbia's correctional centres 20 months before the new legislation came into effect on May 29, 2003.
- F2** The Ministry of Public Safety and Solicitor General was not in full compliance with section 27(1) of the *Correction Act* when it did not conduct periodic inspections of each of British Columbia's correctional centres between the time the new legislation came into force (on May 29, 2003) and the time the first inspection took place under the Corrections Branch inspection framework (in April 2012).
- F3** The Corrections Branch inspection framework does not comply with the newly adopted United Nations' *Nelson Mandela Rules* (formerly called the Standard Minimum Rules for the Treatment of Prisoners).

Unreasonable Delay

- F4** The Ministry of the Attorney General and the Ministry of Public Safety and Solicitor General did not adequately plan the transfer of responsibility for inspections from the Inspections, Investigations and Standards Office to the Corrections Branch, which resulted in an unreasonably long hiatus between inspections.

Unreasonable Procedure

- F5** The Corrections Branch did not include in its inspections framework any statement of purpose or guiding principles for inspections.
- F6** The Corrections Branch inspection checklists do not provide adequate guidance to inspectors on completing the checklists accurately and consistently, and do not adequately prioritize matters relating to inmates' human rights, health and safety.
- F7** The Corrections Branch has not created a training process or procedures for individuals who conduct inspections of correctional centres.
- F8** The Corrections Branch has not ensured that all correctional centres have adequate procedures in place to accommodate inspections.

Unfair Procedure

- F9** The Corrections Branch inspection teams do not include any members outside the branch and therefore the teams do not have members who are without interest in the outcome of the inspection.

Recommendations

- R1** The ministries of Justice and Public Safety and Solicitor General develop written policies that outline the process they will follow when responsibility for meeting legislative requirements is transferred from one part of the ministry to another part or to another ministry.
- These policies should require that each ministry:
- (a) identify the positions that will be responsible for the transition process;
 - (b) identify timelines and resources necessary to complete the transfer;
 - (c) establish interim measures necessary to ensure legislative requirements are met during the transition; and
 - (d) report publicly on progress in completing the transition.
- R2** The Corrections Branch develop a written statement of purpose and guiding principles for conducting inspections of correctional centres, giving priority to inmates' human rights, health and safety.
- R3** The Corrections Branch review and revise the inspection checklists to:
- (a) provide guidance to inspectors on what materials to review to answer each question in the checklist; and
 - (b) ensure that compliance with legislative requirements and matters related to inmates' human rights, health and safety is the primary focus of the inspection process.
- R4** The Corrections Branch develop and implement training materials and requirements for individuals who conduct inspections at correctional centres.
- R5** The Corrections Branch, by October 1, 2016, ensure that all correctional centres have put written procedures in place to accommodate inspections that are consistent with the *Correction Act*, the *Correction Act Regulation* and the *Adult Custody Policy*.
- R6** The Corrections Branch, by October 1, 2016, include on all correctional centre inspection teams at least one member who is independent of the branch. Implementation of this recommendation serves as an interim step while the Ministry of Public Safety and Solicitor General takes measures to comply with recommendation 7.
- R7** The Ministry of Public Safety and Solicitor General, by March 31, 2018, revise the inspection framework to bring it into full compliance with Rules 83–85 of the *Nelson Mandela Rules*.





May 11, 2016

Mr. Jay Chalke
Ombudsperson
Office of the Ombudsperson
PO Box 9039 Stn Prov Govt
Victoria BC V8W 9A5

Dear Mr. Chalke:

Thank you for your letter dated April 29, 2016 and the attached draft report *Under Inspection: The Stopping, Hiatus and Restarting of BC Correctional Centre Inspections*.

I appreciate the opportunity to review your findings and recommendations regarding inspections of BC's correctional centres.

As a recognized leader in the field of Corrections, we continually look for ways to improve our policies and procedures, with the goal of staff and inmate safety first and foremost. It is important to note that BC Corrections has moved toward a more structured and scheduled inspection process over the past four years. All provincial correctional centres are subject to annual inspections of designated areas. A scheduled rotation ensures that after three years, all designated areas at each centre are inspected. In 2015, inspections by BC Corrections were conducted resulting in a total of 136 recommendations, which are 93 percent implemented.

That said, we are committed to enhancing this inspection process and appreciate your guidance on how the process can be improved. The ministry has carefully considered your recommendations and accepts all the recommendations contained in your report.

BC Corrections has an action plan in place to implement the recommendations within the timelines outlined. I am confident that this plan will ensure the inspection of BC's correctional centres is robust and meets our goals that our facilities are being operated safely, effectively and in keeping with legislation and policy.

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**Ministry of Public Safety
and Solicitor General**

Office of the
Deputy Solicitor General

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Mr. Jay Chalke
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Thank you again for your carefully considered report and I look forward to keeping you up-to-date regarding the status of implementing the recommendations to enhance our inspection process.

Sincerely,

A handwritten signature in cursive script that reads "Lori Wanamaker".

Lori Wanamaker, FCPA, FCA
Deputy Solicitor General

pc: Mr. Brent Merchant



May 25, 2016

Mr. Jay Chalke
Ombudsperson
Province of British Columbia
PO Box 9039 Stn Prov Govt
Victoria, British Columbia
V8W 9A5

Dear Mr. Chalke:

Thank you for your letter of May 13, 2016 providing me with the final draft report "Under Inspection: The Stopping, Hiatus and Restarting of BC Correctional Center Inspections".

I accept your finding that the Ministry of Attorney General was not in full compliance with section 27(1) of the *Correction Act* when, in 2001, it discontinued periodic inspections of British Columbia's correctional centres 20 months before the new legislation came into effect on May 29, 2003.

I confirm, similar to the Deputy Minister of Public Safety and Solicitor General, that I accept your recommendation that the ministries of Justice and Public Safety and Solicitor General develop written policies that outline the process they will follow when responsibility for meeting legislative requirements is transferred from one part of the ministry to another part or to another ministry.

I appreciate the opportunity to review the final draft report.

Sincerely,

Richard J.M. Fyfe, Q.C.
Deputy Attorney General and
Deputy Minister, Justice

Ministry of Justice

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Thank You

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