# STONEWALLED

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This exposé is a critique of the internal controls and regulations used by Correctional Service Canada in its various institutions, particularly Collins Bay Penitentiary. A brief history outlining the inception of Inmate Disciplinary Courts, followed by some of the rules which are supposed to direct the conduct of that Court and the federal prisoners over whom it has jurisdiction, should orient the reader to the court's function and the topic of this paper. I will examine the level and nature of charges laid, the number of convictions brought down, and the punitive sanctions applied to those prisoners charged or convicted of internal offenses.

The author is currently serving the thirteenth year of a life sentence and has been incarcerated for the past seven years at Collins Bay Penitentiary. I have never been convicted of an offence in the Inmate Disciplinary Court; however, I have been a legal reference researcher in the prison library (assisting for four and one half years in the preparations for over one hundred internal charges), a witness before the Inmate Disciplinary Court for accused contemporaries, and a defendant with two charges laid against me. I cannot say that anything in this paragraph is reminiscent of pleasantry; nevertheless it certainly has been educational.

What follows are not malicious rambling of rebellious prisoners. These are the expressed concerns of sincere people living in Canadian prisons. Accepting the fact that

we are prisoners does not alter our desire to live and interact in a society which reflects social mores of equality and justice based on a humanitarian model.

The first Inmate Disciplinary court appeared in November of 1977 as the successor to Warden's Court. The Wardens' Courts were the subjects of extensive criticism, because they lacked impartiality (Rubba 1986); they were commonly and pejoratively referred to as kangaroo courts by prisoners. These courts were seldom chaired by actual wardens — more frequently by senior correctional staff from the administrative level.

The *Parliamentary Sub-committee Report on the Penitentiary System in Canada* (1977) and a *Working Paper of the Steering Committee "Inmates' Rights"* set minimum rules for internal discipline. The latter led to the creation of the Inmate Disciplinary Courts. Administrative authority for disciplinary control within federal institutions is currently derived from the legislated *Penitentiary Service Regulations* (Conroy 1986: 932-932.4), initially published in 1980 and amended several times to date. The primary areas of authority for the court are spelled out in sections (38), (38.1), and (39) and are reprinted here in part since they pertain to the subject of this article.

**Penitentiary Service Regulations**
**Inmate Discipline**

**38.** (3) Subject to subsection (6), the punishments referred to in subsection (7), (8) and (9) may be imposed by order after a hearing has been conducted in the presence of the accused.

(4) An inmate who is present at his hearing is entitled

(a) to be informed of the nature of any consultations that takes place in his absence during the deliberations on the impositions of a punishment;

(b) to make submissions before the imposition of a punishment.

(8) An inmate who is found guilty of a disciplinary offence that is determined to be an intermediary misconduct is liable to one or more of the following punishments:

(a) a warning or reprimand;

(b) the loss of privileges;

(c) a fine of not more than $50 to be recovered in accordance with subsection (12);

(d) reimbursement of Her Majesty, in the manner established by the directives, up to a maximum of $500 for the amount of damages caused wilfully or negligently to:

(i) any property of Her Majesty, or

(ii) the property of another person where Her Majesty has reimbursed such person for the amount of the damages, and

(e) subject to subsection (10), dissociation from other inmates for a period not to exceed thirty consecutive days.

(9) An inmate who is found guilty of a disciplinary offence that is determined by the directives to be a flagrant or serious misconduct is liable to one or more of the following punishments:

(a) a warning or reprimand;

(b) the loss of privileges;

(c) a fine of not more than $50 to be recovered in accordance with subsection (12);

(d) reimbursement of Her Majesty, in the manner established by the directives, up to a maximum of $500 for the amount of damages caused wilfully or negligently to:

(i) any property of Her Majesty, or

(ii) the property of another person where Her Majesty has reimbursed such person for the amount of the damages, and

(e) subject to subsection (10), dissociation from other inmates for a period not to exceed thirty consecutive days; and

(f) forfeiture of one or both of the following remissions, namely,

(i) statuary remission, and

(ii) earned remission acquired after July 1, 1978....

**Disciplinary Court**

**38.1** (3) Where a hearing is conducted by a person appointed by the Minister under subsection (1), the institutional head shall designate one or two officers of the Service with major responsibilities within the institution, who had no direct involvement in the in-

cident giving rise to the hearing, to assist that person during the hearing....

(4) The officers designated pursuant to subsection (3) shall....

(a) Provide any details or documents requested by the person appointed by the Minister under subsection (1), and

(b) during the deliberations on the imposition of a punishment, advise the person appointed by the Minister when requested to do so on the most appropriate punishment having regard to administrative constraints and the involvement of the inmate in various institutional programs....

**Disciplinary Offenses**

**39.** (1) Every inmate is guilty of a disciplinary offense who....

(a) disobeys or fails to obey a lawful order of a penitentiary officer;

(b) assaults or threatens to assault another person;

(c) refuses to work or fails to work to the best of his ability,

(d) leaves his work without permission of a penitentiary officer,

(e) wilfully or negligently damages any property of Her Majesty or the property of another person....

(f) wilfully wastes food,

(g) behaves towards any other person, by his actions, language or writing, in an indecent, disrespectful, threatening or defamatory manner...,

(h) wilfully disobeys or fails to obey any regulation or rule governing the conduct of inmates,

(i) has contraband in his possession;

(i,1) consumes, absorbs, swallows, smokes, inhales, injects or otherwise uses an intoxicant.....

(j) deals in contraband with any other person.

(k) does any act that is calculated to prejudice the discipline or good order of the institution.

(l) does any act with intent to escape or to assist another inmate to escape.

(i,1) is in any area prohibited to inmates,....

(m) gives or offers a bribe or reward to any person for any purpose.

(n) contravenes any rule, regulation or directive made under the Act.

(o) attempts to do anything mentioned in paragraphs (a) to (n) (*ibid.*).

All staff and employees of Correctional Service Canada, including outside contract personnel, are required to charge all prisoners with, and report in writing, infractions of section (39). Provisions for other actions by the witnessing officer(s) are available under the direction of *Divisional Instruction Series 600* (Government of Canada 1987) but are seldom used, to the knowledge of this writer.[1] These *Instructions* include ordering the offender to desist from an offending action, warning or counselling the offender, or temporarily dissociating the prisoners in her/his cell. Once an officer has submitted a written report of the infraction, an officer appointed by the warden then determines the severity of the charge, according to outlines contained in *Divisional Instructions of the Commissioner's Directives.* (This section lacks specificity and is open to the arbitrary interpretation and judgement of a third party who was not a witness to the alleged offence.) The appointed officer then designates the charge as minor, intermediary, or serious. Prisoners are supposed to be notified in writing within twenty-four hours of "the court date" or "the laying of the charge(s)." A hearing for charges that are classified as intermediary or major is supposed to commence within seven days of that notice. These hearings are conducted in the Inmate Disciplinary Court by an independent chairperson, usually a local practicing lawyer appointed and paid by the Solicitor General's office. Minor charges are heard by a senior correctional officer or staff person.

The charge-laying officer presents facts to the independent chairperson for prosecution and can call witnesses to support the evidence. Prisoners may testify on their own behalf, present defence evidence if the independent chair-

1. These *Instructions* derive their authority from the *Penitentiary Service Regulation*, "D.I." as they are commonly called, which contain some forty-five subsections all of which deal with the procedures to be followed from the time the infraction occurs to final disposition of charges. It is unknown to this author if there is any case law concerning the legal force and effect in law that these D.I. may or may not hold.

person allows it, and call defence witnesses (again with the chairperson's permission). All questioning is supposed to be directed through the chairperson, who also decides whether the prisoner will be allowed to be represented by counsel — that is, another prisoner acting as her/his assistant or as a translator. If a prisoner cannot understand the charge against her/him, the chairperson is supposed to explain it to her/him. Explaining to a prisoner the meaning of a charge under subsection (39) may appear to eliminate any confusion arising during the actual hearing, and it may to some extent produce that end; however, in practice there is a great deal to be said on this particular issue, particularly as it relates to the problem of illiteracy, an issue I discuss further on.

How does the label kangaroo court relate to a system with so many rules and regulations? Prisoners claim it is too easy to be convicted and punished for internal offenses, while some staff say the independent chairperson is lenient with regard to convictions. On the surface this may present an image of the independent chairperson as somewhere in the middle of a continuum, but this is not necessarily true. Prior to the inception of Inmate Disciplinary Courts, Collins Bay's segregation area ("the Hole") contained four cells that were not double bunked except on very rare occasions during the late 1960s and early 1970s. Since the inception of the Inmate Disciplinary Court, "the Hole" has had fifteen cells, all but three of which are double bunked seventy to eighty per cent of the time. These double occupancies are for prisoners awaiting disposition of internal charges and for those prisoners already sentenced to the punitive sanction of dissociation for any of the infractions listed in "Disciplinary Offences".[2]

Imagine the dilemma that prisoners experience when vague and arbitrary rules are left open to the personal interpretation and enforcement of hundreds of prison staff.

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2. This information is based on the author's first hand observations made during bi-weekly rounds in the segregation area over the course of four and a half years delivering reading material and legal reference law books to prisoners.

Does it happen? The Federal Court of Appeals has ruled, in their wisdom, that not only are some charges lacking in particularity but they are notoriously vague and difficult to defend against.[3]

Correctional Service Canada tells prisoners that the rules of conduct are lawful and enforceable; that we are entitled to fair and impartial hearings by an independent chairperson trained in law; and that our constitutional, human, and prisoner rights are protected.[4] In reality there is a constant violation of these rights since the rules of the prison have no force and effect in law. For example, referring to the Commissioner's Directives, the Federal Court Trial Division in *Weatheral v. the Attorney-General of Canada et al. and two other proceedings* ([1987], 59 C.R. (3d) 247 (F.C.T.D.)) ruled, "Commissioner's directives do not have the binding force of law..." (Government of Canada 1988: Annotation to Section 8[10]); nonetheless, prisoners still get punished for breaking them. While initially the Inmate Disciplinary Court was to have truly independent chairpersons, this has never been the case.[5] Some presiding chairpersons get so personally involved they will sentence prisoners in excess of the allowed punishments.[6] Rules and

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3. For example, see the case of *Howard and the Presiding Officer of Inmate Disciplinary Court of Stony Mountain Institution* ([1985], 19 C.C.C. (3d) 195 (F.C.A.)) where the court ruled that the charges were "[n]otoriously vague" and difficult to defend against (Conroy 1986: 944-46).

4. See *Inmate Rights and Responsibilities* (Government of Canada 1985: vii).

5. The independent chairperson is not recognized as independent from the Correctional Service Canada by prisoners and some courts. In *Re Russell et al. and Radley Chairman Collins Bay Penitentiary Disciplinary Court* ([1985], 11 C.C.C. (3d) 289 (F.C.T.D.)), for example, the Court ruled that although the independent chairperson is not fully independent from Correctional Services Canada, he is about as close to independent as could reasonably be expected in a prison setting.

6. In some cases the sentences of the chairperson exceed their proscribed lawful limit. In *Blaquirere et al. v. The Director of Matsqui Institution et al.* ([1984], 6 C.C.C. (3d) 293 (F.C.T.D.)) the court said that "a prisoner convicted of a disciplinary offence is entitled to make submissions as to sentence and punishment and a failure to afford such a right violates the duty to act fairly." The court went on to say that "a recommendation by the chairperson that a further thirty days already punitive disassociation in addition to thirty days already imposed was beyond the jurisdictional powers given to the chairperson in legislation."

regulations are not always conveyed to prisoners at their request. In one incident I had occasion to question the source of authority for an officer's "lawful order". I was told the index number of a Standing Order (800-2-07). When I asked to be permitted to read this Order prior to complying with it, I was told by the guard, "No, it is a classified security document not available to inmates." On 7 December 1985 after paying five dollars to the Federal Access to Information and Privacy Coordinator, I received the Standing Order, seven pages long with fifteen blacked-out areas (containing no more than sixty words in total) exempt under the Access to Information Act. The point being that I actually had to pay cash before I could find out what some of the rules were that govern prisoners' conduct. Five dollars is more than a full day's wages for most prisoners.

Other prisoners are not as fortunate in their misdealing with Corrections and the Inmate Disciplinary Court. Nor are these injustices unique to Collins Bay Institution. They are just as likely to occur in all federal prisons. Usually prisoners lack available funds to pursue further legal action for rights violations or to obtain counsel at hearings. In many cases prison officials refuse inmates access to their funds to pay legal fees, especially when the money will be used towards litigation involving Correctional Service Canada.[7] Will lawyers represent prisoners if they know they will have to wait before they can be paid for their services?

The proceedings of the Inmate Disciplinary Court can be and are unfair and unjust. For example, in the case of *Magrath v. The Queen* ([1977], 38 C.C.C. (2d) 67 (F.C.T.D.)) a prisoner successfully obtained a declaration from the trial division that disciplinary proceedings taken against him were null and void due to a failure on the part of the au-

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7. In *Henry v. Commissioner of Penitentiaries* ([April 2, 1987], 1 W.C.B. (2d) 480 (F.C.T.D.)) the court ruled that section (32) of the *Penitentiary Service Regulations* violated section (7) of the Canadian Charter of Rights by preventing inmates from making withdrawals from their saving accounts to pay the expenses of legal litigations (Government of Canada 1988: Annotations to Section 7).

thorities to act fairly. An order expunging or erasing the convictions from his record was issued. However, decisions like this one do not compensate prisoners for punitive sanctions they have already endured such as lost employment, lost visits, mental anguish, legal fees, or the deterioration of family relationships.

Furthermore, the officers attending hearings give their opinions of a prisoner's ability to defend her/himself against charges and whether a defence lawyer should be allowed to defend the prisoner. Duty counsels have recently been allowed to attend court at Collins Bay Institution; however, more often than not it is very difficult to arrange an appointment or receive legal aid to cover the costs of legal services. Some chairpersons simply refuse to abide with Federal Court rulings when they are presented with case law. In a recent incident (26 October 1988) before an independent chairperson at Collins Bay Institution, a prisoner requested that counsel be permitted to defend him and he made several motions for dismissal with case law in hand. The chairperson continually interrupted the prisoner and refused to follow decisions made by the federal courts. The prisoner was denied his right to counsel on the grounds that he was able to defend himself and understood the charge. His motions for dismissal were not entertained because of "the serious nature of the charge and administrative concerns." The prisoner then cited the chairperson's violations of the Charter of Rights and asked the chairperson to rule himself biased. The chairperson refused and remanded the prisoner for three weeks, affording the prisoner time to seek professional legal advice. This proved to be fruitful. By having counsel present at his trial, he was able to obtain a verdict of not guilty when Corrections Canada failed to prove its case in front of a different chairperson. This incident is not unique. In a large number of cases heard by the Court, the right to counsel is denied. Some have more serious ramifications than others on the lives of prisoners as one can see by reading these abstracts from three cases which concerned the Charter of Rights.

The first is drawn from *Re Russell et al. v. Radley, Chairman Collins Bay Penitentiary Disciplinary Court* ([1984], 11 C.C.C. (3d) 289 (F.C.T.D.)). In this decision the court held:

> [Section 11(b) of the Charter of Rights] guarantees prison inmates charged with disciplinary offenses the right to have those offenses tried within a reasonable time. A reasonable time, in regard to the trial of disciplinary offenses will be of very short duration in most cases because everyone who is essential to the proceedings, except the president of the disciplinary court, comes daily to work or is actually imprisoned "within the walls" of the institution (Government of Canada 1988: Annotations to Section 11(b) [3]).

The second comes from *Howard and Presiding Officer of Inmate Disciplinary Court of Stony Mountain Institution* ([1985], 19 C.C.C. (3d) 195 (F.C.A.)).

> In this case, the appellant faced ... charges under s.39 of the *Penitentiary Service Regulation....* Although the proceedings are essentially administrative and not judicial or quasi-judicial, the whole of the inmates 267 days of earned remission were in jeopardy. Earned remission, once forfeited, cannot be restored, making forfeiture a final and irrevocable deprivation of the right to liberty, conditional or qualified as earned remission may be. In addition, the charges here lacked particularity and one of the five charges, namely being guilty of an act calculated to prejudice discipline or good order of the institution, is notoriously vague and difficult to defend against. In all the circumstances, a refusal of the appellant's request for counsel would be a refusal of the opportunity to adequately present h i s defence. Accordingly, he had the right to counsel, and the presiding officer had no discretion to refuse his request (*ibid.* : Annotations to Section 7).

The third is taken from *Tremblay and the Presiding Officer of Disciplinary Tribunal of Laval Institution et al.* ([May 22, 1987], 3 F.C. 73 (T.D.)).

> In this case...it was held that the inmate's rights as guaranteed by...[section 7 of the Charter] were infringed because of the decision of the presiding officer of the disciplinary tribunal hearing a charge of possession

> of contraband contrary to the *Penitentiary Service Regulations*,....Three factors in particular made it necessary that the inmate have access to counsel. The first was the seriousness of the charge.... Although the charge was classified as "intermediary" rather than a "major" offence this does not reduce its seriousness. As far as penalty, while it is true that the presiding officer could not sentence the inmate to loss of his right to statutory or earned remission...nevertheless the theoretical consequences must also be taken into consideration and the inmate risked not being granted days of remission...because of the charges laid against him. Secondly, there were several legal issues which a person with legal training would have wanted to raise. Finally, the inmate may have had difficulty presenting his own case in view of the points of law and the fact that he is not a lawyer, and as a result of his imprisonment has rather limited resources for communication and obtaining information (*ibid.*)

Some staff attending the hearings provide information about particular prison conditions to the independent chairperson and recommend what they would prefer to have done about a case, with respect to the type or length of sentence which would best accommodate the situation. Prisoners consider this arbitrary, a result of improper investigations, and indicative of the inclination of staff to take the word of other staff over and above that of any prisoner. In the majority of cases heard, prisoners are asked (i.e. told) to leave the courtroom (at the request of the chairperson), while staff advise the chairperson about the position of the administration. Prisoners are seldom made aware of the substance of the discussions that take place in their absence from the hearing room. This blatantly violates the *Penitentiary Service Regulation* section cited in section (38.1) subsection (4)(a)).

The whole concept is a farce — from arbitrary charges through sentences that are illegal and severe. Over and above the sentencing of the independent chairperson, additional sanctions are always added by the prison administration. These may include a six month prohibition from attending family and sports socials where the prisoner would usually be allowed to invite family and friends, from

attending internal group socials with or without a guest, and from participating in the Private Family Visiting Program. A prisoner can be found guilty of an offence under the Criminal Code in provincial courts on the street and recharged within an institution and found guilty and sentenced again for the same event(s) for which s/he has already received punitive sanctions. Prisoners regard this as double jeopardy.[8]

Few inmates stand a chance of avoiding "the Hole" when charged with an offence or while waiting to be charged. Most prisoners charged with intermediary or serious misconduct(s) are transferred to the segregation area pending a segregation review board hearing, prior to the hearing on her/his charge(s). It may take a few days or even weeks to schedule or have the actual review which determines whether the prisoner should be released into the prison population while awaiting disposition of incurred charge(s). In a recent policy change (September 1988) Correctional Service Canada's National Headquarters stated that prisoners charged internally with drug or alcohol offenses shall be confined within the segregation unit until final disposition of internal charges have been completed. This "new policy" will no doubt add to the backlog of cases awaiting a hearing and to the amount of time prisoners will actually spend segregated from the prison population. With the inclusion of this new policy the segregation cells are not only fully occupied but also double bunked. One Collins Bay officer is quoted by a prisoner as telling him that "the Hole" is never full. We can put two, three, five, or fifteen prisoners in a cell at a time if we want."[9]

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8. The British Columbia Supreme Court disagrees. In *R v. Mingo et al.* ([(1982], 2 C.C.C. (3d) 23 (B.C.S.C.)) the court ruled that "internal disciplinary proceedings taken by the prison authorities under the *Penitentiary Service Regulations*...are not offenses within the meaning of...[the "double jeopardy" clause of the Charter]. Accordingly there is no breach of the right guaranteed in this paragraph in circumstances where a prison inmate is both disciplined by penitentiary officials through loss of remission and segregation and also charged under the Criminal Code and tried in the ordinary courts" (Government of Canada 1988: Annotations to Section 11(h)).

It has become apparent that the priority of the chairperson's Court (perhaps encouraged by the officer advisors) is to deal first with charges of those prisoners who are not in segregation, thus increasing the segregation time for prisoners awaiting trial and dissociation from the prison population.

The independent chairperson has access to a charged prisoner's record and file prior to conviction. Information of previous institutional convictions can bias the chairperson. In a street court the judge and jury are not allowed this information unless the person charged is personally taking the stand to testify on her/his own behalf.

Illiteracy creates another bias. In July 1987, the Solicitor General of Canada announced in a nationwide media release that forty per cent of all federal prisoners in Canada are functionally illiterate (i.e. having an education below the public school level of grade eight). I question to what extent these people are able to defend themselves in any court of law. I question their ability to properly instruct counsel as to their defence, when they are fortunate enough to have counsel. I am not claiming that illiterate prisoners do not know right from wrong; however, much of the confusion of prisoners who are and have been in conflict with the law can be explained by the oversights of taking that person's educational level for granted. New prisoners are supposed to be given a copy of the twenty-seven page *Inmates Rights and Responsibilities* handbook, which nowhere contains the rules and regulations so far listed in this paper. They are also supposed to have the prison rules and regulations fully explained to them. Consider the sheer magnitude of information contained on thousands of pages in the numerous volumes of *Commissioner's Directives, Divisional Instructions, Standing Orders, Penitentiary Service Regulations, The Penitentiary Act, The Parole Act,* and *Policy and Procedure Manuals for Prison and Parole Administration.* These

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9. This statement may just reflect a particular staff's attitude, nevertheless it was said in front of more than a dozen witnesses housed in segregation on 9 October 1988.

volumes are written by professionals trained in various fields. I have never heard of a single prison administrator who was able to digest all of them in their entirety, let alone take the time to read one volume to a prisoner. What good is it to tell prisoners where they can find information if they do not possess the skill to read and comprehend these materials. Even when they have fair to excellent reading skills, the prevailing sense of injustice prompts prisoners to simply not bother keeping up to date with ever changing directives, rules, or regulations which they know to be not fairly applied and enforced.

Inmate's witnesses are often discouraged from testifying because of repercussions from some staff (usually harassment in the form of excessive searches, the implied threat of charges, or excessively slow responses to simple requests). Inmates sometimes discourage their contemporaries from testifying because of an unwritten and vague inmate code, which has numerous interpretations depending on the prisoner or group of prisoners' particular interests at the time. The independent chairperson practices a form of intimidation by repeated cautions to inmate witnesses about the ramifications of perjury during their testimony. Prisoners find this unsettling and claim it interferes with their ability to present their evidence in a dispassionate manner. The chairperson does not mention perjury charges while staff testify, even when they are obviously falsifying evidence. The independent chairperson also has the final say as to how many witnesses can be called on behalf of a prisoner, or whether they will be called at all. The chairperson often cites restraints that allegedly cover prisoner and staff transfers, the availability of transfers, and expenses. Witnesses do not always receive movement passes from guards, although they were issued. (Inmates cannot move freely throughout institutions without properly authorized movement passes stating their destination.)

Actions which are not criminal according to the Canadian Criminal Code are treated and punished as offenses in prisons. Prisoners can have their sentences increased for being improperly dressed, wasting food, acting

disrespectfully to others, having an empty cardboard box under the bed, being suspected of a suspicious activity (i.e. an officer may think that an inmate posses a threat to the good order of the institution for simply being present when an altercation takes place about which the prisoner may have no knowledge).

The practice of laying multiple charges when one charge would cover the situation, or of implying a major offence was committed when the infraction was of a lesser degree, is used by staff to get at least one or more convictions and make matters appear more serious than they necessarily are. This tactic appears to parallel normal police practices on the street.

Lengthy remands are excessive and a common practice which violates the Charter of Rights guarantee to a trial within a reasonable period of time; Correctional Service's directives state that a prisoner's hearing should commence within seven days of the offence.[10] However, prisoners commonly experience hearing remands in excess of eight days without their knowledge, without their personal attendance, or without their consent as required by the Federal Court Act.[11]

The question remaining is "What can and is being done to correct these problems?"

Very little progress is presently taking place to the knowledge of this writer. Federal Court rulings appear to have little effect. Some chairpersons refuse to enforce them. Others are either indifferent or do not apply the rulings unless an accused specifically brings them to the chairperson's attention or has a lawyer handle his case, in which event the tables are turned and a no-nonsense ethic comes

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10. In the *Inmate Rights and Responsibilities* issued by the Correctional Services it states that a "hearing should commence within seven working days of the date you were charged..." (Government of Canada 1985: 8).

11. A loss of jurisdiction to hear a charge will occur if an accused is remanded over eight consecutive days without her/his consent under Procedural Rules of the Federal Court Act. If this occurs while the accused is not present, the charge must be relayed in a higher court of jurisdiction or stayed. A higher court does not exist in Canadian prisons. Also see *Re Russell et al.* cited earlier.

into effect.

The Correctional Service's response to the Charter of Rights decisions on "prison law" and related court rulings presents another serious issue. When prisoners win a major decision disallowing certain administrative or legislated practices, Correctional Service Canada responds with an issue-skirting plan as in the case of the right to counsel for loss of remission charges. To avoid the presence of lawyers representing prisoners in the Inmate Disciplinary Court, the division of "intermediary offenses" was created. Prisoners cannot lose earned remission for conviction of an intermediary offence, but they cannot earn remission (fifteen days) for the month during which they are alleged to have committed an intermediary offence. The case of *Howard and the Presiding Officer Inmate Disciplinary Court of Stony Mountain Institution* prompted Correctional Service Canada to start a third division of charges and offenses that had not existed prior to this ruling. Correctional Service Canada's reasoning on this case is that when the issue of loss of remission is not at stake, prisoners can be denied their right to lawyers in the Inmate Disciplinary Court.[12]

Not all Correctional Service Canada staff are in favour of the present policies, nor do most carry on their duties in a manner that is unacceptable to other staff and prisoners. However, they are silenced on a great many issues because of their oath and the Public Service Act secrecy clause. Prison staff can be fined, temporarily suspended from duty, or dismissed for publicly criticizing the policies of Correctional Service Canada, as occurred in the case of Mr. Barry Dennison. This former Collins Bay Correction's Officer not only was critical of Correction's policy but also publicly suggested policy changes, some of which are to be implemented soon at Collins Bay Institu-

12. This is very similar to the Parole Board's gating of prisoners: where prisoners were being released and then arrested immediately at the prison gate, their remission being taken away by the Parole Board in response to the "arrest." Gating was successfully challenged in the Federal Court, but the glory was short lived. The Parliament passed Bill C-67 which allows for the detention of prisoners by the National Parole Board until sentence expiration, regardless of the amount of remission the prisoner had to her/his credit.

tion, according to current prison administrators.

On 9 June 1987 a program was implemented that has had serious ramifications on prisoners and their families. Prior to this date a person convicted by the independent chairperson was only subject to the sanctions handed down by the chairperson with the following exceptions: prisoners sentenced to segregation time and actually serving a portion of the sentence in "the Hole" would then be prohibited from participating in the Private Family Visiting Program for a period of six months from date of conviction; also they would be prohibited from attending social functions with invited guests from their approved visitors lists. If the sentence was other than actual "Hole" time (e.g. a warning or suspended sentence), the inmate would not be subjected to any further administrative sanctions. At any given time the actual number of prisoners prohibited from attending socials and participating in the Family Visiting Program usually ranged between eight and fourteen persons.

After June 9th the administration at Collins Bay Institution effected a program to obtain some desired behavioral changes with inmates convicted of internal offenses under section (39) of the *Penitentiary Service Regulations.* This program currently affects as many as eighty to one hundred prisoners at any given time. These inmates are, on conviction of an offence within section (39), prohibited from attending any visiting socials and from participating in the Family Visiting Program for a period of six months from the date of conviction. This is not labelled as a punishment by the prison administration. They claim that it is a failure to earn privileges for six months on the part of the prisoner. Prisoners on the other hand, see this as a severe punishment that affects them and their loved ones.[13]

Does this program work to achieve a reduction in

13. The *Penitentiary Service Regulations* sections 7(b), 8(b), and 9(b) clearly state that a loss of privileges is a punishment. Another disgusting form of attack on the human dignity of prisoners and their families by Corrections Canada – with their carrot on a stick routine – is aimed at psychologically debasing those prisoners that somehow manage to maintain family relationships in spite of the Services' family hostage plan. See Yves Bourque's view on this (Bourque 1988: 33).

convictions and obtain the desirable behaviour from the small percentage of prisoners responsible for infractions?

A comparison of the number of convictions from 9 June 1986 through 31 December 1986 with the same period of the previous year reveals no significant difference in the total number of convictions but a significant increase in the number of individuals convicted. In 1986, there were 256 convictions for offenses committed by 118 individuals; in 1987, 241 convictions by 154 individuals. There were seventeen fewer convictions under the new program; however, thirty-six additional prisoners were convicted and punished for the lesser number of offenses.[14]

In effect this program does not function as a deterrent and does no more than cause additional undue hardships, deterioration, and breakdowns in the relations of prisoners and their families already enduring difficult situations. According to Irvin Waller, in *Men Released From Prison* (1974), statistics show that those persons least likely to become recidivists are in fact those same persons that had strong family and community support during incarceration and upon release. Given these findings on the overwhelming importance of the family, common law relationships, and loved ones, the curtailment of family visiting programs and social activities can only act to increase the effect of social alienation in prisons. It is this writer's opinion that programs designed to assist a prisoner in a productive and legal life style after release are those programs that enhance family and social relations while the prisoner is incarcerated. Yet these very same programs are used to coerce and hold a prisoner's loved ones and friends hostage by prison administrations with their carrot on a stick mentality.

Cases from the Inmate Disciplinary Court, Collins Bay Institution, provide the following information. In the twenty

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14. A closer examination of this information would provide some insight as to the number of charges laid between June 1986 and June 1988, their disposition, the sentences imposed, the time between offence and hearing, and the extent of additional punishments put into effect by prison officials over and above the sentence of the independent chairperson.

month period between 31 April 1986 to 31 December 1987, a total of 688 convictions were registered against 306 individual inmates, out of a possible 2027 prisoners.[15] All of the convictions for the period included are then the responsibility of fifteen per cent of the prison population. A more accurate figure would be in the range of ten to thirteen per cent since some charges occurring at lower security level institutions are dealt with at Collins Bay upon transfer to Collins Bay of the charged inmate. It appears that a minimal number of the static prison population are responsible for offenses; yet the total population feels the extended ramifications of Corrections exercising their authority. The statistics also show that the length of time between the offence and the completion of the hearing is forty-four days. Only twenty-eight of the 688 convictions were dealt with within the time frame guaranteed by the Canadian Charter of Rights for a trial to begin within a reasonable amount of time.

The Inmate Disciplinary Court statistics speak for themselves when reviewed in their totality. This writer is hard pressed to understand the logic of anyone who claims that this process is fair, just, or otherwise representative of Canadian jurisprudence, ethics, or standards. It would be ludicrous to suggest that the present system was designed to fulfill a prophecy of recidivism within Corrections Canada. However, it does; this built-in fault is probably the result of implementing programs that lack proper research and structure.

The various Provincial Legal Aid Plans are hesitant to supply funding certificates for internal charges citing other priorities as more demanding. Although Queen's Law Project will represent some prisoners, they too, in the majority of cases, give their "standard" response: "We lack the appropriate funding for the necessary litigation."

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15. The 2027 figure is not exact. It represents only those informally recorded as having been in or passing through Collins Bay Institution. However, the actual number of prisoners having passed through Collins Bay would be about five per cent higher. Because we are working with confidential records, the formula is slightly at error.

Police will investigate allegations against Correctional Service Canada staff if a prisoner is fortunate enough to be allowed contact with them. However, the local Crown refuses to lay informations and to prosecute some cases even after the Crown and police have agreed that the law had been violated by a prison staff member. His reply in one case was, "We will find someone to handle the case and prosecution if the prisoner is willing and able to pay court and litigation costs".[16]

A considerable number of area lawyers refuse to take on cases against the Correctional Service Canada citing conflict of interest since the greater part of their income is derived from Correctional Service Canada or its employees. (The Service is one of the largest employers in the Kingston, Ontario area.)

Many prisoners are willing to talk in confidence about these issues when expressed anonymity is assured. Several inmates requested their names not be revealed because of pending parole and transfer applications, and because of apprehensions about administrative action being taken against them. It is felt by this writer that these expressed concerns, real or imagined, are nevertheless facts of prison life and part of the suppressive nature of Correctional Service Canada. Certainly these concerns denote a lack of justice and an increase in duress for prisoners.

This writer is of the opinion that the Inmate Disciplinary Court at Collins Bay Institution deserves the title of kangaroo court and is itself a problem in this prison society. Even from only a small number of available cases, serious flaws present themselves with regard to the charges heard and the manner in which they are handled in the Inmate Disciplinary Courts. That is, the independent chairpersons, although they must legally accept decisions from the respected courts of our land, do not apply the rulings to similar cases equally, if at all. This may be the result of mitigating circumstances in some instances, however, it is usually, in my opinion, a response to pressure from offi-

16. A Kingston police detective in conversation with the author (September 1983).

cials and staff who need to appear in control of the prison. This may very well contribute to (i) the attitudes of disrespect for the Inmate Disciplinary Court and the independent chairperson; (ii) the disregard for prison rules and regulations; (iii) the large number of convictions under *Penitentiary Service Regulations* 39; and (iv) the disrespect and disregard for the law by prisoners once released from prison.

Prisoners simply cannot afford the monetary expense for legal litigations against Corrections Canada, and the weight of the evil behind Correction's "legal" guns deters many others. Correctional Service Canada is or at least appears to be content with the present situation; they promote and utilize it. An overly simplified solution would be to deal only with offenses that are legislated in the Criminal Code in a proper court of law. Other types of behaviour considered adverse, unacceptable, or abnormal could be dealt with through social, psychological, psychiatric, or case management counseling. Any new system would have to be designed to overcome the arbitrary decisions and sanctions of the present system. Accountability to the public and the courts should be implemented to arrest any perceived or actual inequalities.

An ideal realistic solution should entail the implementation of safeguards to insure that: first, the constitutional rights of inmates are upheld; second, due process of law is applied equally to all inmates; third, the independent chairperson and Corrections Service Canada are required to act fairly when applying the law to prisoners; fourth, prisoners should have immediate access to swift appeals by an outside authority with the power to amend injustices that occur inside Canada's prisons; and fifth, Corrections Canada should not have the authority to silence Correctional staff on humanitarian issues originating within prison confines.

## References


Bourque Y. (1988) "Prison Abolition." *Journal of Prisoners on Prison,* 1, 23-38.

Conroy, J.W. (1986) *Canadian Prison Law Volume 1.* Butterworths.

Government of Canada (1985) *Inmates' Rights and Responsibilities.* Queen's Printer.

Government of Canada (1987) *Correctional Service Canada (Annotated 1987) Commissioners Directives. Series 600; Divisional Instructions Series 600.* Queen's Printers.

Government of Canada (1988) *The Canadian Charter of Rights Annotated, Volumes 1 and 2.* Canadian Law Book Inc.

Rubba, R.M. (1986) "Correctional Law In Canada." In *Practice and Procedure Before the Disciplinary Court: Queen's Law Project.* Correctional Service of Canada Regional Headquarters.

Waller, I. (1974) *Men Released From Prison.* University of Toronto Press.