Keeping the Peace: Prisoners’ Rights and Employment Programs

ACLRC
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by the

Alberta Civil Liberties Research Centre

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Civil Liberties
Research Centre

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Foreword

The Alberta government and other provincial governments once considered the introduction of Alabama-style chain gangs as a form of employment for prisoners. This action reflects a North American trend towards making the prison experience harsher, with the view that this will discourage criminal behaviour. While there would no doubt be near universal support for the proposition that work experience is appropriate for those who are incarcerated, there is likely to be considerable disagreement over what constitutes “appropriate” work experience.

This report addresses one set of parameters that exist in designing and implementing work programs for prisoners: human rights law, as it is expressed primarily in the Charter of Rights and Freedoms, and international human rights instruments that Canada has ratified. The constitutional law issues will also be considered. Is a province improperly interfering with sentencing by the courts if the province decides to impose harsh new conditions of incarceration? Although the report addresses only one aspect of the lives of those who are imprisoned, the human rights and civil liberties principles that are considered in this report could apply with respect to other conditions of incarceration as well. Thus, this report should be of interest to those who want to understand how the Charter and other human rights law apply to prisoners.

“Keeping the Peace” (see the title) is a condition of probation for adult prisoners and youth in custody. However, good prison practice requires that authorities create the conditions conducive for keeping the peace inside prisons, and to prepare prisoners for a peaceful transition back into society and release from prison.

Linda McKay-Panos
Executive Director, 2014
Executive Summary

The following report examines the condition of work programs for prisoners in Canadian federal and provincial correctional facilities from a human rights perspective. This is expressed primarily through the Canadian Charter of Rights and Freedoms, but also by international human rights instruments that Canada has ratified. It is easy sometimes to forget that prisoners are still people, but the hope that they will be able to reintegrate back into society without committing further crimes requires that correctional facilities provide them with the ability to learn better life skills. One of the main ways of accomplishing this is through employment and work programs.

The first chapter of this report provides a brief overview of the issues facing prisoners with respect to their participation in work programs, including what is considered appropriate work, what kind of remuneration is appropriate, what the limits of provincial and territorial jurisdiction are, and whether the Canadian Charter of Rights and Freedoms (Charter) and other human rights laws are applicable to prisoners. From a historical standpoint, Canadian correctional facilities have not always been a bastion of human rights. Prisoners have been subjected to heavy manual labour, workhouses, corporal punishment, and often suffered from other brutal, dehumanizing punishments if they refused participation. A more contemporary view on the Canadian prison system indicates that Canada is following the global trend away from harsh forms of punishment for prisoners. Instead, there is now more of a focus on rehabilitation.

Underscoring the importance of understanding the way prisoners are treated in the corrections system is the acknowledgment that recidivism can be greatly reduced if prisoners are provided the opportunity to gain relevant and employable skills. The logic in this is quite simple, in that steady employment is one of the easiest ways to reintegrate into a community. This is best highlighted by the knowledge that there is a high degree of correlation between a prisoner’s lack of employment and subsequent criminal behavior. Public opinion plays a significant role in allowing correctional facilities
to maintain this progressive model of rehabilitation, so it is important to understand how the conditions of imprisonment can impact more than just the individual prisoner.

The second chapter focuses on the demographics of Canadian prisoners. As of 2011, there had been a six percent decline in the rate of prisoners in federal custody over the previous ten years. Most federal prisoners serve sentences of two to three years, while the rate of those serving sentences of ten years or more has held stable at five percent. The majority of adult prisoners are held in provincial custody, the rate of which has increased over the years. Most provincial prisoners have been convicted of non-violent offences. This chapter also inquires into the nature of work in Canadian correctional facilities for some specific demographics of prisoners—youth, women, Aboriginals, senior prisoners, those with mental health problems, and others. The issues facing each of these groups are, for the most part, quite similar. Female offenders tend to be younger and are more likely than men to be unemployed at the time of incarceration; Aboriginal offenders, while also typically younger, have greater educational needs and are more likely to reoffend than non-Aboriginals; the average age of the incarcerated population is increasing, as are instances of mental health issues; and the vast majority of prisoners have some kind of substance abuse problem.

Within both the adult and the juvenile systems, Aboriginal persons are disproportionately represented. Both provincial and federal prisoners are employed in institutional or industrial jobs, community work projects, and occasionally for charitable assignments. Examples of institutional jobs include: food preparation, laundry, furniture making, hairdressing, road maintenance, landscaping, and animal husbandry, among others. Work assignments for female prisoners include floral arrangements, child care for children of other prisoners, and training of assistance dogs. Goods and services originating from vocational training programs are often allowed to be donated to charitable organizations. It should be noted that it costs much less to maintain offenders in appropriate community programs than it does to keep each of those offenders in
correctional facilities. However, the costs associated with prison work programs are ideally balanced out by the need for community safety in the long run.

Chapter Three discusses the relevant sections of the Canadian Constitution as well as other applicable, domestic human rights laws. Section 91(27) of the Constitution Act, 1867 (Constitution) provides the federal government with jurisdiction over “The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters”, meaning that they are responsible for the Criminal Code of Canada (Criminal Code) and the Youth Criminal Justice Act, as well as other relevant legislation. Conversely, section 92(6) gives the provincial government jurisdiction over “The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province”. One of the most important pieces of legislation for this analysis is the Charter. Coming into force in 1982, the Charter protects the fundamental freedoms and basic human rights of every person in Canada. The Charter has been used to define the democratic rights of prisoners, and reinforce the notion that all people deserve to be treated with dignity and respect. Specific to the topic of employment, the Charter has been used by correctional employees with respect to issues such as pay equity, occupational safety, and the right to strike; these are also matters of concern for prisoners. Other human rights legislation of importance to this topic includes the Canadian Bill of Rights, the Canadian Human Rights Act, and the Employment Equity Act, which all serve to guarantee equality before the law, prohibit discrimination, ensure opportunities for minority groups (e.g., women and Aboriginals), and protect against cruel and degrading treatment for everyone, including prisoners.

Chapter Four discusses the criminal law of Canada and related federal corrections legislation. The Criminal Code of Canada is applicable to every jurisdiction in Canada, and outlines the basic principles for sentencing. These provisions determine the length of time an offender will be incarcerated, which in turn determines whether the inmate will serve that time in a federal or provincial facility. Where an inmate is housed will determine what employment, education, and vocational training will be available to
them. Section 743.3 of the *Criminal Code* no longer refers to hard labour being a permissible sentence, and the absence of that provision implies that hard labour is no longer appropriate in Canadian correctional facilities. Another important piece of legislation is the * Corrections and Conditional Release Act (CCRA)* (and associated regulations), which affirms the principle that prisoners continue to have the same rights and privileges as everyone else, except those that must be removed as a result of incarceration. This includes not only the opportunity to gain employable skills, but also to engage in work of one’s choice, within certain limitations. The Correctional Service of Canada (CSC) has recognized that both prisoners and corrections staff have a right to a healthy and safe work environment, and the CCRA mandates that all correctional decisions be made in a forthright and fair manner. Arbitrarily placing a prisoner in a boot camp or hard labour work assignment would run counter to the principle of acting fairly. Section 78 of the CCRA and section 104 of the *Corrections and Conditional Release Regulations* are considered the legislative authorities for federal inmate program assignments and payments made to prisoners, although a number of other sections of the CCRA support the CSC’s policy objective to increase prisoners’ participation in employment and education programs. The CCRA also provides mechanisms through which inmates can address their grievances with the system, such as the Office of the Correctional Investigator, although there are indications that prisoners view these processes as purely bureaucratic and not actually a constructive means of conflict resolution.

Chapter Five analyses inmate employment in provincial and territorial correctional facilities, and the pertinent human rights legislation that governs them. In many provincial institutions, inmates are enlisted to participate in work programs aimed at helping the community, such as removing graffiti, cleaning provincial parks, digging out blackberry bushes, and removing roadside waste, and snow removal for seniors. Each province and territory has its own legislation authorizing the establishment of education, vocational, and employment programs in correctional facilities. In Alberta,
these are section 23 of the *Corrections Act*, and section 32 of the *Correctional Institution Regulation*, both of which promote the goals of rehabilitation and reintegration. This chapter also touches on the issue of boot camps as an alternative to prison for young offenders. Boot camps operate in a primarily military style that is supposed to contribute to a lowered rate of recidivism. However, literature on these camps suggests that they are not particularly effective in that regard, in part because they do not teach concrete work skills and the military style of discipline promotes the use of confrontation and aggression when dealing with conflicts. In and of themselves, though, boot camps are not in contravention of Canada’s human rights laws.

Chapter Six examines international human rights law and the expectations for prisoner treatment as outlined in those laws. There are a number of global standards for the treatment of prisoners, and these instruments are binding on Canada. The most prominent of these are the *Charter of the United Nations (UN Charter)* and the *Universal Declaration of Human Rights (Universal Declaration)*, which Canada is bound by as a full member of the United Nations. Canada has also ratified, and thereby bound itself to a number of other instruments, including: the *International Covenant on Economic, Social, and Cultural Rights*; the *International Covenant on Civil and Political Rights*; the *International Bill of Human Rights*; the *International Convention on the Elimination of All Forms of Racial Discrimination*; and the *Convention of the Elimination of All Forms of Discrimination Against Women*. These instruments promote respect for human rights and fundamental freedoms for all people, and, specifically to this topic, confirm that everyone has the right to work (see Article 23 of the *Universal Declaration*). Further, Article 7 of the *International Covenant on Civil and Political Rights* states that “no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment”, which underscores the recognition that even prisoners must be treated with basic dignity and respect. In addition to these binding instruments, there are also persuasive international instruments that influence the decisions Canada makes about its prisoners. Two of the most important ones are the *UN Standard Minimum Rules for
the Treatment of Prisoners (SMRs) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The SMRs attempt to set out what is generally considered good practice for the treatment of prisoners, and it reestablishes the concept that one of the most efficient ways to protect society against crime is to ensure that released prisoners are able to lead a law-abiding life. The Beijing Rules include two sections relevant to the issue of employable skills for young offenders. Rule 26 sets out the objectives for juvenile offender training and treatment, which includes the acquisition of education and vocational skills that meet community standards; and Rule 27 states that the SMRs also apply to juvenile offenders both in correctional facilities and in detention centres, though they should be implemented such that they can meet the unique needs of young people.

Ultimately, it is important to recognize that prisoners have human rights when it comes to the area of employment. By recognizing those rights and allowing inmates to gain employable life skills, we can continue to uphold Correction Service Canada’s goals of rehabilitation and reintegration into the community for as many prisoners as possible, respect the fundamental rights and freedoms of prisoners as citizens of Canada, all the while keeping the community safe from any further harm.
I. Introduction

Wherever we look around the world, it is those who find themselves in the most difficult circumstances who are the test of our tolerance and compassion as democratic societies. Canada is no exception. In that context, those who are concerned with the correctional system have very special responsibilities vis-à-vis the inmate population. Max Yalden, then member of the United Nations Human Rights Committee, former head of the Canadian Human Rights Commission, and Chair of the Correctional Service of Canada’s Working Group on Human Rights. ¹

Being totally dependent upon the state and organs of society for their everyday existence – food and medicine, shelter and utilities, clothing and other basic necessities for maintaining human health – prisoners are universally recognized as a particularly vulnerable population. Notwithstanding this notorious fact, prisoners’ rights are protected by law in Canada, and may only be derogated from in strict compliance with duly established laws, regulations, legal principles and fair procedures. Prisoners retain all their civil rights, except for those either withdrawn or restricted by operation of the due process of the law; for instance, the freedoms of movement and association. The rationale is to protect both the public, as well as other individuals within the penal institutions, from harm. However, from one country to another, and even within different jurisdictions across vast nations like Canada and the United States, there can be significant variations on how prisoners are treated. This research investigates just one aspect of prisoners’ lives, namely prison employment programs; however, it touches tangentially upon other conditions of incarceration bearing on the humane treatment of prisoners according to 21st Century standards.

¹ Max Yalden, “Canada, the CSC and Human Rights” Let’s Talk (Correctional Service Canada) 23 (4) (November 1998) 12 at 12 [Yalden, CSC and Human Rights].
A. Issue Identification

1. The first issue this paper will discuss is what constitutes “appropriate” work experience for prisoners incarcerated in federal penitentiaries and provincial correctional facilities in Canada?

   Furthermore, what are the differences between such notions as hard labour, rigorous imprisonment, and heavy manual labour; or shock incarceration and boot camps; or chain gangs and tandem work groups; or forced labour, involuntary servitude, and compulsory employment; or convict lease systems and inmate public works systems? What are the limits to corrections in a free and democratic society—for instance, the prohibition against cruel and unusual punishment? What constitutes a deliberate indifference to prisoners’ health or safety and a pervasive risk of harm? What are reasonable work requirements for prisoners and by comparison, what constitutes reasonable customs and usages of labour within the surrounding area?

2. Second, what does “appropriate” remuneration for prisoners entail—and do minimum wage guidelines apply in a prison setting? What are bona fide deductions from prisoners’ income? Furthermore, what employee benefits are available to prisoners such as health insurance, workers’ compensation, and income insurance plans?

3. The third issue is whether a province is deemed to be improperly interfering with the judicial system if the provincial legislators decide to impose harsh new conditions of incarceration. What are the limits of provincial and territorial jurisdiction in penal matters pertaining to various forms of treatment and punishment meted out to prisoners under their care and control?

4. Finally, what is the applicability of the Canadian Charter of Rights and Freedoms and other national and international human rights law to prisoners?

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With respect to prison labour, what are the equality rights of Aboriginal prisoners and other minorities, female prisoners, youth in custody, and elderly or disabled persons serving their sentences in Canadian penitentiaries and correctional institutions? What standards for the humane treatment of prisoners are embodied in international human rights legislation and customary law, which apply in the correctional workplace? Of these legal principles and appropriate prison practices, which ones are binding upon federal, provincial and territorial governments within Canada, and which ones are merely persuasive?

B. On a Contemporary Note

Current trends in the field of corrections within Canada have reflected the global movement away from harsher forms of punishment of prisoners towards concern for their rehabilitation and eventual reintegration into society.\(^3\) In the most progressive criminal justice systems, infamous chain gangs and hard labour regimes under extremely difficult conditions have been replaced by work programs geared toward the prisoner’s satisfactory employability upon release from prison. The logic is simple: individuals need to be gainfully employed in order to successfully re-establish themselves in the modern-day world, and former prisoners are no exception. In fact, at the time of incarceration, it has been well established that a high degree of correlation exists between the prisoner’s lack of employment and subsequent criminal behaviour. However, there is a recent swing of the corrections pendulum towards bringing back harsher forms of punishment for prisoners, and some jurisdictions and politicians have called for the return of chain gangs and military-like boot camps for youth in custody and adult prisoners, both male and female alike. Public opinion plays a very important role in this process and legislators are often reacting to the electorates’ calls for more severe forms of

punishment and conditions of imprisonment, including prison labour—without distinguishing between types of prisoners or the unique needs of each individual.⁴

The former head of the Canadian Human Rights Commission acknowledges that prisoners are,

...individuals who put themselves where they are through their own actions, and they must live with the consequences. That is plain common sense. But it is also common sense to recognize that many of them can be rehabilitated: the Correctional Service of Canada’s (CSC) own statistics give ample evidence of that. And the question then becomes whether they are more likely to learn positive social skills in an environment which respects their rights, and provides a reasonable degree of fairness and even compassion, to a degree consistent with their situation in a penal institution [emphasis added].⁵

Furthermore, Canadian prison populations are both growing and greying—with greater numbers of older prisoners and ethnic minorities, mainly Aboriginal peoples and African Canadians, remaining incarcerated, having been denied parole or probation. This inevitably leads to overcrowding in prisons and escalating costs associated with incarcerating even more prisoners within traditional institutional settings. Hence, governments are scouting around for alternatives – some of which are the privatization of prisons,⁶ the establishment of private sector prisoner employment programs, and the revival of such mechanisms as boot camps, otherwise characterized as shock incarceration, military corrective training, regimented rehabilitation, strict discipline, or tough intermediate sanctions.

⁴ Manitoba, Legislative Assembly, Hansard, 20a (19 June 1995) (Ho. Rosemary Vodrey). (This attitude is reflected by the language of the Minister of Justice and Attorney General of Manitoba, who stated: “When police have arrested a person and that person has been found guilty, we do not accept that they are to be coddled by the justice system. When a person chooses to break the law, and make no mistake every crime is an individual choice, that person must be made to realize that there are serious consequences for their acts. We have, therefore, taken significant measures over the past year in order to make our Corrections programming, both for adults and youth, more focused and more likely to change that person’s criminal behaviour”).
⁵ Yalden, “CSC and Human Rights” at 12.
⁶ Kelly Cryderman and David Howell, “Province to look at privatizing corrections institutions: Minister’s review prompted by Ont. ‘superjail’ experiment” Edmonton Journal (24 May 2002), A6 (Cryderman and Howell) (The article states that “In a broad-ranging review of the province’s correctional programs,
As in all things, there is a balancing act which legislators and members of the public must put themselves through. The scales of justice are not only for the judges in our midst. For adult prisoners or youth in custody, there needs to be a balance struck between compulsory work programs and their educational or vocational training needs. The rights of victims of crimes must also be taken into account—their need for compensation and to be protected from the perpetrators of the crimes committed against them. However, not only must society be protected, but also individual prisoners from the excesses of criminal justice systems which may very well fail to protect their human rights and fundamental freedoms.

C. On a Historical Note

In Canada, we have witnessed our share of those excesses in the past, with some of the most serious infractions emanating from one Henry Smith, the first Warden of what was to become Kingston Penitentiary,

> From the start, Warden Smith set about imposing a severe regime designed to reform convicts through reflection, **hard labour and the fear of punishment** [emphasis added].

For over twelve years, he perpetrated severe punishments on inmates— including cat-of-nine-tails lashings for such misdemeanours as laughing. The Brown Commission of 1849 filed its report which,

> ...painted a picture of a harsh, brutal, dehumanizing regime in which corporal punishment was meted out fiercely, repeatedly and indiscriminately, usually at the order of Warden Smith [emphasis added].

In Canada, we have seen heavy manual labour regimes and workhouses. We witnessed corporal punishment such as whippings until 1972, and even capital punishment until 1976, when the death penalty was finally abolished.

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Alberta’s solicitor general has asked a committee of MLAs to study Ontario’s privately run facilities, which include a 1,200-person “super jail” and a young offenders boot camp.

Even now, after another thirty plus years, Canada is not immune from allegations of human rights abuses within its criminal justice system. But in an effort to improve the system, Canadian legislators have put in place machinery to increasingly advance the protection of prisoners’ rights, one such mechanism being an ombudsman for prisons – the Office of the Correctional Investigator in 1973, and the Independent Chairperson system in 1977.11 Principle 12 of the 1977 MacGuigan Report stated:

**Justice for inmates is a personal right** and also an essential condition of their socialization and personal reformation. It implies both respect for the persons and property of others and fairness in treatment. The arbitrariness associated with prison life must be replaced by clear rules, fair disciplinary procedures and the providing of reasons for all decisions affecting inmates [emphasis added].12

In a refreshingly candid statement, the Human Rights Division of the Correctional Service of Canada recently acknowledged that, in spite of,

...our progress and accomplishments in the human rights field...our **criminal justice system is far from perfect**. Canada’s incarceration rate continues to rank among the highest in the industrialized world. Many of our penitentiaries are full beyond capacity. The majority of our prison population is drawn from the ranks of the economically and socially disadvantaged; a disproportionate number of minorities, including Aboriginal persons, are locked up in our prisons. HIV infection rates and

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8 Dandurand, at 28.
10 “Celebrating 50 Years of Human Rights Milestones in Federal Corrections” *Let’s Talk* (Correctional Service Canada) 23:4 (November 1998) 6 (Let’s Talk, “Milestones in Federal Corrections”) (“On July 26, 1976, Canada passed a law abolishing the death penalty. The last execution in our history occurred in December 1962. All death sentences between these 14 years were commuted” at 7).
11 *Let’s Talk*, “Milestones in Federal Corrections” (“The Office of the Correctional Investigator was created in 1973. Its primary function is to investigate the problems of offenders and seek resolution” and “The Independent Chairperson (ICP) system was instituted in federal corrections in response to the MacGuigan Report, a Parliamentary inquiry into the Penitentiary Service of Canada. Prior to the introduction of the ICP system, all disciplinary decisions against offenders were made by wardens and Canadian Penitentiary Service employees”) at 7.
incidence of AIDS among Canadian offenders continues to far exceed prevalence rates in the general population. As for its employees, the Correctional Service of Canada still has a way to go in becoming a more inclusive and representative workplace free of practices that undermine a person’s sense of dignity. Clearly, there is room for improvement [emphasis added].

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II. Some Canadian Statistics

In 2008/2009, the operating costs to provide correctional services in Canada, which includes custodial services, community supervision, headquarters and central services, provincial parole boards and the National Parole Board (NPB), totalled almost $3.9 billion. This amount was 7% more than the previous year when controlling for inflation. Operating costs increased in both the provincial and territorial system (+6%) and the federal system (+8%). Statistics Canada. Juristat.\(^{14}\)

A. Who are the prisoners and where are they incarcerated?

1. Federal and Provincial (Territorial) Custody

In 2010/2011, there were about 13,800 admissions to federal custody, which marks a two percent increase from the previous year, but there was an almost six percent decline in the rate (per 100,000 adult population) over the previous ten years.\(^{15}\) In 2010/2011, there were approximately 38,000 adults in some form of custody in Canada on any given day, and the majority, which is 64% of adults in custody, were under the responsibility of the provinces and territories.\(^{16}\) Typically, adult incarceration rates tend to be highest in the territories and especially in the provinces of Saskatchewan, Manitoba and Alberta.\(^{17}\) In 2010/2011 there were 13,758 prisoners in federal custody, with 2,974 or 22% in the Prairie region, which encompasses Alberta, Saskatchewan and Manitoba. Prisoners in provincial/territorial custody numbered 24,461, with 2,989 in Alberta or 12.2%.\(^{18}\) This means that the total number of prisoners in custody in Canada was 38,219\(^{19}\) – up from the 33,503 held in custody back in 1995.\(^{20}\)

\(^{14}\) Statistics Canada “Adult Correction Services in Canada, 2008/2009” (Fall 2010) 30(3) Juristat at 5.


\(^{16}\) Statistics Canada 10/11 at Table 2.

\(^{17}\) Statistics Canada 10/11 at Table 2.

\(^{18}\) Statistics Canada 10/11 at Table 4.

\(^{19}\) Statistics Canada 10/11 at Table 4.
At the same time, there was a decline in the crime rate: in 2006, the crime rate in Canada reached its lowest point in 25 years.\textsuperscript{21}

In 2010/2011, on any given day, approximately 163,000 people were incarcerated or under supervision in the community, a decline of only one percent from the year before, but a seven percent decrease from 2000/2001.\textsuperscript{22} Furthermore, in 2008/2009, the majority of offenders admitted to federal custody were for sentences of two to three years, and those serving sentences of 10 years or more, including life sentences, remained stable at 5%.\textsuperscript{23} Most provincial prisoners have been convicted of non-violent offences.\textsuperscript{24} The median amount of time served in provincial or territorial custody varies from 61 days in Newfoundland and Labrador to 20 days in New Brunswick and Ontario.\textsuperscript{25}

2. Women in Custody

As for prison demographics, in 2011/12, adult women represented 6.8% of admissions to federal custody,\textsuperscript{26} and 12% of admissions to provincial and territorial sentenced custody in 2008/2009.\textsuperscript{27} Aboriginal women represented 20% of all female admissions to provincial/territorial sentenced custody (in 2008/09), and 29% of federally sentenced women (in 2008/2009).\textsuperscript{28}

\textsuperscript{20} Canada, Statistics Canada, Tables 251-0004 to 251-0006, CANSIM database (The Canadian Centre for Justice Statistics no longer reports the composition of the adult correctional population in terms of ‘average counts,’ and instead, reports the ‘composition of admissions.’ As a result, data from 2004 was used).


\textsuperscript{22} Statistics Canada 10/11 at Table 1.

\textsuperscript{23} CANSIM Adult Correctional Services, admissions to federal programs. Table 251-003. Online: <http://www5.statcan.gc.ca/cansim/a05?lang=eng&id=2510003>.

\textsuperscript{24} Statistics Canada 10/11 at 10.

\textsuperscript{25} Statistics Canada 10/11 at Chart 6.


\textsuperscript{27} Statistics Canada 08/09, at 5.

\textsuperscript{28} Tina Hotton Mahony, “Women and the Criminal Justice System” in Women in Canada: A Gender-based Statistical Report (Ottawa: Minister of Industry, 2011) at Table 12 (page 34) [Mahony].
Recent research indicates that female prisoners tend to be younger (in their 30s) and single, and less likely to re-offend than men. Female youth crimes rates are on average, triple those of adult women. Furthermore, women offenders are “significantly more likely to have treatment needs in the areas of employment/education.” At the time of admission, more women than men offenders lacked an employment history; had been unemployed more than 50% of the time prior to their incarceration; [and] were unemployed at the time of their arrest.

3. Aboriginal Persons in Custody

In 2010/2011, Aboriginal people accounted for 27% of admissions to provincial and territorial sentenced custody, and 20% of admissions to federal custody. In 2010/2011, 41% of females and 25% of males in sentenced custody were Aboriginal, even though Aboriginal people represent three percent of the whole adult population in Canada. The over-involvement of Aboriginal people in the criminal justice system has been an issue for many years.

Aboriginal prisoners are found to be:

...younger than their non-Aboriginal counterparts, had lower levels of education and were less likely to have been employed. ... [In most categories], a larger proportion of Aboriginal person was assessed as having a medium or high level of need compared to non-Aboriginal persons. Research has found that Aboriginal persons are more likely

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29 Mahony at 34 (Table 13).
30 Rebecca Kong and Kathy AuCoin, Statistics Canada, Juristat (2008) 28(1) “Female Offenders in Canada” at 5 [Female Offenders in Canada].
31 Mahony at 19.
32 Female Offenders in Canada at 13.
34 Statistics Canada 10/11 at Chart 7.
35 Statistics Canada 2010/11 at Chart 7.
36 Statistics Canada 2010/11 at Chart 7.
than their non-Aboriginal counterparts to be re-admitted to the correctional system after being released.\textsuperscript{38}

4. Youth in Custody
As for youth in custody, it has been asserted that approximately 79 out of every 10,000 (or .79 out of 1,000) young people between the ages of 12 and 17 in Canada are incarcerated.\textsuperscript{39} The trend of youth incarceration declined for three years in a row (in the period ending 2011).\textsuperscript{40} As with adults, a disproportionate number of youth entering the correctional system are Aboriginal. In 2010/2011, approximately 25% of the youth admissions were Aboriginal persons, yet only about six percent of the youth in the jurisdictions that were counted were Aboriginal.\textsuperscript{41} From 2006 to 2011, the rate of youth charged with offences fluctuated, but generally declined. For example, in 1998, youth charged with violent, property, traffic, drug and other federal and criminal offences numbered 4,775, while in 2011, the total was 3,011.\textsuperscript{42}

5. Age and Custody
In 2010/2011, 56.1% of incarcerated offenders were under the age of 40\textsuperscript{43} while 50% of the Canadian population was under the age of 40. The community federal offender population was older than the incarcerated population given that 33% of offenders in the community were over 50 compared to 21% of the incarcerated offenders in this age group.\textsuperscript{44} Generally, offender age at admission to federal custody is increasing, and 21% of the federal offender population is aged 50 or over.\textsuperscript{45}

According to a one-day snapshot in 1996, individuals serving life sentences tended to be single and older than their non-lifer counterparts:

Over one-half (56%) of lifers had a grade nine education or less compared to 44% of non-lifers. But, 37% of lifers were unemployed at the time of

\textsuperscript{38} Statistics Canada, “Victimization and Offending Among the Aboriginal Population”, at 15.
\textsuperscript{39} Christopher Munch “Youth Correctional Statistics in Canada, 2010/2011” October 11, 2012 Statistics Canada (Juristat) at 4 [Munch].
\textsuperscript{40} Munch at 6.
\textsuperscript{41} Munch at 7.
\textsuperscript{42} Corrections and Conditional Release 2012 at 15.
\textsuperscript{43} Corrections and Conditional Release 2012 at 17.
\textsuperscript{44} Corrections and Conditional Release 2012 at 47.
\textsuperscript{45} Corrections and Conditional Release 2012 at 48.
admission to custody, compared to 43% of non-lifers. Lifers were classified as higher risk to re-offend compared to non-lifers (84% versus 53%) and had higher needs [in most categories] than non-lifers.  

6. Other Demographics (Education, Employment, Substance Abuse, Mental Health)

Research performed in 2005 indicated that 78% of federal prisoners have no high school diploma; 73% have “unstable job histories”; 80% have abused alcohol and/or drugs; 80% are considered impulsive; and proportions of inmates with mental health issues are increasing (12% of men and 21% of women offenders are identified as having mental health problems). Between 1997 and 2009, the proportion of inmates with mental illnesses nearly doubled.

With respect to the employment needs of federal prisoners, Christa Gillis of the Correctional Service of Canada stated,

Employment is a prevalent need among incarcerated Canadian offenders, with approximately 75% of offenders (76% of men, and 74% women) identified with employment needs at the time of entry to a federal institution. Moreover, offenders have indicated that they perceive employment deficits as contributing to their criminal behaviour [emphasis added].

It is important to contextualize the foregoing. As of June 2006, the unemployment rate in Canada for people 15 years and over was 6.1, while for Alberta alone, it was significantly lower at 3.2. For youth between the ages of 15 and 24, the

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48 Kim Mackrael, “Canada’s prisons becoming warehouses for the mentally ill” 06 December 2011 Globe and Mail.
49 Christa A. Gillis, “Reconceptualizing Offender Employment” FORUM on Corrections Research (Correctional Service Canada) 12:2 (May 2000) 32 at 32.
unemployment rate in Canada was 12.4% (2005), while in Alberta, it stood at 5.7% (June 2006). Now that there is a bit of context to our prison population, where are our prisoners located? In Canada, there are basically two kinds of institutions in which prisoners may find themselves – a federal penitentiary for prisoners serving sentences two years and over, or a provincial correctional institution for those serving sentences under two years in duration. Federal prisoners are incarcerated in minimum, medium, multi-level and maximum security penitentiaries based mainly on the seriousness of their offence and the deemed risk they pose to society should they escape. There are a total of 54 federal prisons, with fourteen in the Prairies, namely, Bowden Institute and Annex, Drumheller Institute and Annex, Edmonton Institution, Edmonton Institution for Women, Grande Cache Institution, Grierson Centre, Okimaw Ohci Healing Lodge, Pê Sâkâstêw Centre, Regional Psychiatric Centre, Riverbend Institution, Rockwood Institution, Saskatchewan Penitentiary, Stony Mountain, and Willow Creek Healing Lodge. For the most part, federally-sentenced women serve their sentences in six regional facilities for women, as well as the Okimaw Ohci Healing Lodge in Maple Creek, Saskatchewan. However, women in custody can also be accommodated in male prisons, such as the mixed, maximum and medium-security Saskatchewan Penitentiary.

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53 Criminal Code, RSC 1985, c C-46, sections 743.1 (for adult offenders), 743.4 (for young offenders).
56 Let’s Talk, “Milestones in Federal Corrections” (“The establishment of four regional facilities for federally sentenced women marks a significant change in philosophy for federal corrections in Canada. These new centres are designed to reflect and respond to the needs and realities of federally sentenced women based on the principles of empowerment, meaningful and responsible choices, respect and dignity, supportive environment and shared responsibility. The new facilities began opening in the fall of 1995” at 7) [emphasis added].
Provincial prisoners are incarcerated in a number and variety of facilities. For instance, in Alberta, under the jurisdiction of the Correctional Services Division of the Department of Solicitor General, there are nine adult and four young offender correctional centres. Furthermore, there are two attendance centres for youth and two for adults. There is one work camp for youth, and three satellite minimum-security camps for adults – one being managed by Aboriginal organizations. There is one additional contract with an Aboriginal organization for the operation of an adult centre.  

A review of the province’s corrections programs resulted in the closure of a number of facilities: the Lethbridge Young Offender Centre; the Medicine Hat and Red Deer Remand Centres’ youth units; Medicine Lodge, Tees, Footner Lake, Enviros Base, and Westcastle work camps; as well as Peace River, Fort Saskatchewan and Lethbridge Correctional Centres’ farming operations.

**B. What are the Costs to Canadian Society?**

It costs substantially less to maintain an offender in the community than to keep that individual incarcerated. In 2008/2009, adult correctional service expenditures totalled almost $3.9 billion, marking a 7% increase from the previous year. Operating expenditures increased for both the provincial and territorial system (+6%), and the federal system (+8%). With respect to the costs of incarceration, federal expenditures on adult corrections was $1.69 billion in 2005/2006 ($1.63 billion in 2004/2005), while the provincial/territorial cost in 2004/2005 was $1.31 billion. The federal expenditures represent a 2.1% increase from 2001/2002. In 2006/2007, the federal average daily

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60 Statistics Canada 08/09, at 10.
inmate cost was $255 which is an increase from $222 in 2002/2003.\textsuperscript{62} The average daily cost of keeping an adult in federal custody was $260.10 in 2005/2005, while the provincial average daily inmate cost was lower, at $143.03.\textsuperscript{63} Overall, the average cost for inmates in federal penitentiaries is $88,067.\textsuperscript{64} In 2008/2009, the provinces and territories spent slightly over $1.4 billion to operate prisons, compared to about $299 million to supervise offenders in the community.\textsuperscript{65} In the federal institutions, it is costlier to operate prisons that house offenders that are sentenced to periods of two years or more because they require higher levels of security.

In 2006/2007, the annual average cost of keeping an inmate incarcerated was $93,030 per year, up from $81,206 per year in 2002/2003.\textsuperscript{66} Correctional Service of Canada reported that in 2005/2006, the average annual cost of keeping a male inmate in a penitentiary was $85,757. In 2006/2007, broken down by security level of the institution, the average annual cost of incarcerating a male prisoner was $121,294 for maximum security institutions, $80,545 for medium security institutions, $83,297 for minimum security institutions, and $23,076 for offenders in the community. However, the Correctional Service of Canada indicated that because of their smaller numbers, women are more expensive to incarcerate – in 2006/2007, it cost approximately $166,830 per annum to keep a female prisoner at a women’s facility.\textsuperscript{67}

C. Where do the prisoners work?

Most provincial and federal prisoners are employed in institutional jobs, both indoors and out-of-doors, while a smaller number are employed in prison industries.\textsuperscript{68}

\begin{thebibliography}{9}
\bibitem{62} Public Safety Canada Statistical Overview 2008, at 28.
\bibitem{65} Statistics Canada 08/09, at 10.
\bibitem{66} Public Safety Canada Statistical Overview 2008, at 28.
\bibitem{67} Public Safety Canada Statistical Overview 2008, at 28-29.
\bibitem{68} Alberta, Solicitor General, Correctional Services, \textit{Inmate Work Projects: Community and Institutional}, (Edmonton: Solicitor General, 1979) [Alberta, \textit{Inmate Work Projects}] (In the past, the Government of Alberta delineated institutional work categories such as Administrative Services, Equipment Operation
\end{thebibliography}
Still others have been employed in community work projects which might not otherwise have been undertaken due to a shortage of public funds or where unskilled labour to carry-out the tasks is unavailable.

1. Regular work assignments

Examples of indoor prison work assignments include: food preparation, dishwashing, laundry detail, mess hall work, janitorial services, painting, equipment repair, textile machine operation, furniture making, electrical shop work, sewage treatment, horticultural work, sewing, plumbing, warehouse work, barbering or hairdressing, clerking, prison library work, as well as animal tending and training. Conversely, typical outdoor prison work assignments include: farm labouring, carpentry, road maintenance, landscaping, pesticide work, asbestos handling, sewage treatment, water hauling, recycling centre work, building maintenance and repair, mechanics, wood harvesting and carving, animal husbandry, and the harvesting of sweet grass, sage and wildlife by some Aboriginal prisoners. For a number of these positions, occupational health and safety concerns are paramount, especially when prisoners are handling hazardous materials, dangerous equipment and tools, or working under difficult conditions such as extreme heat and cold, or at heights or depths posing risks to human life or limb. Workplace injuries have been known to happen.

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69 Canada, Correctional Service Canada, Video: Creating Choices, Changing Lives, (September 2000) [CSC, Creating Choices, Changing Lives] (This video illustrates some of the employment programs for federally-sentenced women, which includes the training of dogs for people with disabilities).
70 U.S., Department of Justice, Bureau of Justice Statistics, “Canada” in World Factbook of Criminal Justice Systems (Bureau of Justice Statistics: 1993) at 27 (The authors acknowledged Birkenmayer’s 1993 scholarly work which reported that Aboriginal offenders in the NWT were permitted to hunt caribou in order to feed their families, themselves, as well as the community members).
71 Canada, Correctional Service Canada, Commissioner’s Directive No. 345, Fire Safety (31 December 2008, and Standard Operating Practice No. 880-01, Food Services – Central Feeding (21 February 2000) (Even food services work for inmates has the potential for harm – for instance, the high risk of fires caused by gas, grease, paper and even the spontaneous combustion of oil on clothing improperly stored in poorly ventilated areas, plus the obvious dangers posed by the use of sharp kitchen tools and knives).
72 Roasting v Blood Band, 1999 ABQB 126.
In the past, the Government of Alberta has utilized prison labour in community work assignments, most of which were in the parks and recreation sector – at campsites and historical sites, provincial parks, golf courses, and arenas – carrying out such tasks as tree planting, laying sod, propagating bedding out plants, and landscaping. In the transportation sector, prison labour has been utilized for “rock picking, brushing, fencing, painting and replacing of guardrails along highways, snow removal …and log splitting for highway campsites, ditch clearing.” Forestry, fish and wildlife projects have benefited from the labour of prisoners who carried out “wood-clearing and cutting, construction of picnic tables and toilets for campsites, fire suppression, clearing beaver dam obstructions from creeks to minimize flooding to valuable agricultural land, debris removal and stream cleaning.” More recently, work programs in Alberta have included highway clean-up, snow removal for seniors, painting, and the construction of a wildlife rehabilitation centre. In addition, inmates have performed weed removal and cleaned graffiti from businesses.

As evidenced by the video produced by the Correctional Service of Canada entitled, *Creating Choices, Changing Lives*, the work assignments undertaken by female federal prisoners include training of assistance dogs for children with cerebral palsy – the dog being used as a brace. They also included floral arrangement, art work, sewing, cooking and child care for those women with children under four years of age. However, the Canadian Association of Elizabeth Fry Societies advocates for the cessation of utilizing the labour of female prisoners at Burnaby Correctional Centre for Women to sew male prisoners’ uniforms, in order to ensure that gaining accredited and...
marketable skills from vocational training results in viable employment, and not otherwise.\textsuperscript{77}

2. Charitable work assignments

Throughout Canada, a number of federal institutions currently engage prisoners in work programs that directly benefit local communities. Goods and services originating from vocational training programs, as well as hobby crafts, are allowed to be sold or donated to non-profit organizations and correctional staff.\textsuperscript{78} In Alberta, the maximum-security penitentiary in Edmonton has prisoners manufacturing such items as picnic tables and park benches which are subsequently donated to community charities.\textsuperscript{79} At the combined medium and minimum-security institution in Drumheller, the prisoners produce children’s wooden toys for charitable purposes.\textsuperscript{80} In British Columbia, prisoners at two medium security institutions have been assisting families with low-incomes, disabled persons, and the elderly by repairing and refurbishing items such as bicycles and wheelchairs.\textsuperscript{81} Other charitable work programs in Eastern Canada include prisoners training dogs for people with disabilities or infirmities (Nova Scotia), running a fish hatchery for restocking rivers (New Brunswick), doing carpentry, painting and maintenance activities at a summer camp for underprivileged families (Quebec), and donating excess milk from the institution’s dairy farm to local not-for-profit organizations (Ontario).\textsuperscript{82}

3. Prison industries

Prison industrial jobs through CORCAN, a “production and marketing arm of the Correctional Service of Canada”\textsuperscript{83} instituted just under three decades ago, tend to focus

\textsuperscript{78} Shanda Deziel, “Milking our Inmates” Maclean’s (18 June 2001) (hereinafter Deziel)
\textsuperscript{79} Deziel.
\textsuperscript{80} Deziel.
\textsuperscript{81} Deziel.
\textsuperscript{82} Deziel.
on construction, agriculture, manufacturing, services and textiles. It is a Special Operating Agency of CSC that employs offenders for its workforce, which provides them with working skills necessary to compete in the workforce once released from federal custody.\textsuperscript{84} Established in 1995, the Construction line of business augments the prisoners’ rehabilitation programs to provide additional training and certification while on-the-job. By 1996, the Agribusiness line of business employed prisoners in “the production of agricultural commodities, processing of meat and baked goods, forestry services and environmental services, which include composting and reforestation.”\textsuperscript{85} The Manufacturing line of business finds prisoners producing such goods as “office furniture, storage products, shelving, dormitory furniture as well as a variety of other wood and metal products.”\textsuperscript{86} The Service line of business includes “printing and graphic services, data entry and data base creation services;” while the Textiles line of business employs prisoners in the production of “clothing, upholstery and laundry services.”\textsuperscript{87} Most federal correctional institutions are unable to offer all five of the above business lines and thereby cannot provide the full range of choices for prisoners employed within prison industries; however, construction projects are the most prevalent offering. In Western Canada, CORCAN “finished a massive project to furnish the new “K” Division Headquarters of the RCMP in Edmonton” and “the new municipal offices in Qualicum Beach,” both projects “helping offenders acquire job skills,” according to the CEO.\textsuperscript{88} Recently, CORCAN was awarded with manufacturing contracts from Public Safety and Emergency Preparedness Canada, and the Department of National Defence.\textsuperscript{89} Furthermore, it is possible for prisoners to obtain International Standards Organization (ISO) certification under the auspices of CORCAN prison industries. However, only about

\textsuperscript{85} John Howard Society, “Inmate Industries”, at 1.
\textsuperscript{86} John Howard Society, “Inmate Industries”, at 1.
\textsuperscript{87} John Howard Society, “Inmate Industries”, at 4-5.
\textsuperscript{88} Ann Marie Sahagian, “CORCAN Succeeds with Two Major Projects” \textit{Let’s Talk} (Correctional Service Canada) 24:1 (January 1999) 21 at 21.
15% of federally-sentenced prisoners are “working and learning in CORCAN shops” – and most are men.\textsuperscript{90} CORCAN says that it contributes to safer communities through innovative and effective client-oriented partnerships as well as employment and employability skills training that assist offenders in successful reintegration. \textsuperscript{91}


III. Constitutional and Domestic Human Rights Law

The Constitution establishes the various powers of government and divides them between the federal and provincial governments. The Constitution also establishes limits on the powers of government and establishes Canadians’ fundamental rights and freedoms. The federal government is responsible for enacting and administering criminal law; enacting divorce law; and the appointment of superior court judges. The federal government is also responsible for Indians and lands reserved for Indians. The provincial government is responsible for the administration or management of criminal justice within the province; for the appointment of provincial court judges and justices of the peace; and for property and civil law within the province. Métis people have a unique relationship with the provincial government. Alberta Solicitor General

A. The Canadian Constitution

The constitutional basis for the division of legislative powers with respect to criminal law can be found in section 91(27) of the Constitution Act, 1867 (formerly The British North America Act, 1867). Section 91(27) grants the federal government jurisdiction over “The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.” This means that the Parliament of Canada is responsible for the enactment of and amendments to the

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93 The constitutional scope of section 91(27) includes public order and safety (See Proprietary Articles Trade Assoc. v Canada (AG) [1931] 2 DLR 1 and Reference Re Dairy Industry Act s. 5(a), [1949] SCR 1, where it was found that time struck down a statute which was formerly deemed constitutional), public health (Schneider v R, [1982] 2 SCR 112), economic regulation (R v Goodyear Tire & Rubber Co. of Canada, [1956] SCR 303) and morality (Nova Scotia (Board of Censors) v McNeil, [1978] 2 SCR 662, and R v Westendorp, [1983] 1 SCR 43). Some of the limits of section 91(27) include: interference with civil rights (R v Zelensky, [1978] 2 SCR 940), the colourable use of legislation for a regulatory purposes (Ontario (AG) v Reciprocal Insurers, [1924] 1 DLR 789 (P.C.)), and attaching penal consequences under the guise of criminal legislation to provincially regulated conduct (R v Boggs, [1981] 1 SCR 49); c.f. Magnet, Joseph Eliot, Constitutional Law of Canada: Cases, Notes and Materials, 2nd ed., vol. 1 (Toronto: Carswell Company, 1985) at 629-661 [Magnet].
*Criminal Code*\(^9^4\) and the *Youth Criminal Justice Act*,\(^9^5\) as well other pieces of legislation like the *Criminal Records Act*,\(^9^6\) *Controlled Drugs and Substances Act*\(^9^7\) and the *Identification of Criminals Act*,\(^9^8\) to name but a few. Section 91(28) gives Parliament express power over “The Establishment, Maintenance, and Management of Penitentiaries,” which means that they are responsible for the *Corrections and Conditional Release Act*,\(^9^9\) as well as the *Prisons and Reformatories Act of 1985*.\(^1^0^0\)

Pertinent to Aboriginal prisoners is section 91(24) which grants the Parliament of Canada jurisdiction over “*Indians, and Lands reserved for the Indians,*” the constitutional basis of the provisions in the *Charter of* s 25, s 27 and s 35. Finally, section 94(a) gives the federal government jurisdiction over old age pensions, while section 91(2)(a) gives them power to regulate unemployment insurance – benefits of interest to all workers, including prisoners serving their sentences in the community, or those employed in a prison setting, who would be seeking gainful employment upon release.

On the other hand, provincial jurisdiction regarding criminal matters is dealt with under section 92(6) concerning “The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.” Important for prisoners’ rights is section 92(13), which grants provinces control over “*Property and Civil Rights in the Province,*” although section 94 gives the Parliament of Canada authority to provide uniformity of these particular rights in Ontario, Nova Scotia and New Brunswick. With respect to the administration of justice, s 92(14) grants provinces power over “The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.” Additionally, section 92(15) gives them jurisdiction over “The Imposition of Punishment by Fine, Penalty, or Imprisonment for

\(^{9^4}\) RSA 1985, c C-46.  
\(^{9^5}\) SC 2002, c 1.  
\(^{9^6}\) RSC 1985, c C-47.  
\(^{9^7}\) SC 1996, c 19.  
\(^{9^8}\) RSC, 1985 C I-1.  
\(^{9^9}\) SC 1992, c 20.  
\(^{1^0^0}\) RSC 1985, c P-20.
enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.”

For the most part, provinces have power over local public works within their borders according to s 92(10), as well as the regulation of companies with provincial objects (s 92(11)). Finally, they retain residual powers over local and private matters not enumerated, as set out in s 92(16), sections 92(a) (added by s 50 of the Constitution Act, 1982) and 93(a) (added by virtue of the Constitution Amendment, 1997).

B. Canadian Charter of Rights and Freedoms

Proclaimed into force on April 17, 1982, the Canadian Charter of Rights and Freedoms is one of the most significant developments in the protection of human rights and is recognized internationally as a model document. The Charter, being the “supreme law” of Canada, affirms rights and freedoms that are deemed essential to a free and democratic society. Correctional Service of Canada

1. Guarantees of Fundamental Freedoms and Human Rights

Section 1 of the Charter, (Part I of the Constitution Act, 1982, sections 1 through 34), guarantees fundamental freedoms (subsequently enumerated in section 2 – of conscience and thought; of religion and belief; of opinion and expression; of the press and other media; of peaceful assembly and association) and human rights (more specifically: democratic, mobility, legal, equality, and minority language educational rights, as laid out in sections 3 through 23), “…subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

101 Constitutionally speaking, provinces have the jurisdiction under section 92(15) to suppress conditions conducive to criminal activity (Bedard v Dawson; Canada (AG) v Montreal (City of)), but not to stiffen federal criminal law matters (Johnson v Alberta (AG); Switzman v Elbling). Regarding the administration of justice under s. 92(14), there are a number of cases (Di Iorio v Montreal (City of) Common Jail; Quebec (A.G.) v Canada (A.G.); R v Hauser; R v Aziz; Canada (AG) v CN Transportation Ltd.; Canada (AG) v CP Transport Ltd.; and R v Wetmore); c.f. Magnet, at 662-719.

102 1982, c11.

103 Let’s Talk, “Milestones in Federal Corrections”, at 7.
For the past twenty years, these limits have been progressively set out through case law and administrative policies and practices – many of which regard prisoners.

The section 2 guarantee of freedom of religion has relevance with respect to prison labour. Should a prisoner’s religion dictate that they not work on a particular day, it must be respected by prison authorities. Furthermore, the workplace must allow for certain religious observances on a daily basis – for instance, prayer time for those of the Muslim faith, or smudges for Aboriginal prisoners.104

What does Charter jurisprudence say about prisoners’ rights and responsibilities in general – on admission to prison, while incarcerated, and upon release from custody?

In a trilogy of cases in 1985, (R v Miller,105 Cardinal v Kent Institution Director,106 and Morin v National Special Handling Unit Review Committee107), the Supreme Court of Canada (SCC) confirmed that offenders, while denied their absolute liberty, retain a wide range of rights and freedoms.108 Miller dealt with habeas corpus (the name given to a variety of writs whose object is to bring a party before a court or judge, with the primary function of the writ being to release from unlawful imprisonment)109 and the issue of whether the prisoner is restrained of his/her liberty by due process. The question was whether the actual physical constraint or deprivation of liberty is more restrictive or severe than that which exists generally in an institution. The court held

104 Canada, Correctional Service Canada, Human Rights Division, “Aboriginal Elders in Federal Penitentiaries: 1972” in 50 Years of Human Rights Developments in Federal Corrections (August 1998), online: Correctional Service Canada <http://www.csc-scc.gc.ca/text/pblct/rht-drt/04-eng.shtml>. (With respect to the latter, it has been acknowledged that “(t)he right to access Native spirituality is about more than “religion” – it encompasses learning about one’s culture and healing. With the assistance of Elders, some Aboriginal offenders are able to participate in traditional ceremonies, receive individual counselling and gain a sense of self-identity, self-respect and community. Arguably, access to traditional Native spirituality also holds more prospects for change and growth for some Aboriginal offenders than any other institutional program” [emphasis added].

that a prisoner is not without some rights or residual liberty, and there may be significant degrees of deprivation of liberty within a penal institution. However, a prisoner has the right not to be deprived unlawfully of the relative or residual liberty permitted to the general prison population. This does not mean that it is available to challenge any and all conditions of confinement, including the loss of any privilege enjoyed by the general prison population.

Cardinal confirmed that a denial of procedural fairness can be characterized as an excess of jurisdiction which renders confinement, or continued confinement, unlawful. The court held in *Morin* that confinement in a Special Handling Unit or administrative segregation is a separate form of detention, involving a significant reduction in the residual liberty of a prisoner compared to the general prison population. By using *habeas corpus*, the court stated there is no reason why it should not be available to challenge these forms of detention, which constitute deprivations of liberty that are more restrictive than normal reductions of rights in a penal institution.

Correctional employees have also cited the *Canadian Charter* with respect to such issues as pay equity and occupational safety, as well as collective bargaining and the right to strike – matters of concern to prisoners as well. Ultimately, staff and prisoners share the same work environment.

2. Prisoners’ Democratic Rights and the Charter

Two *Charter* cases help to define the democratic rights of prisoners: *Sauvé v Canada (Chief Electoral Officer)* and *Piche v Solicitor General of Canada*. In *Sauvé*, the Supreme Court of Canada (SCC) examined section 3 of the *Charter* and prisoners’ right to vote. In a split decision, the majority held that section 51(e) of the *Canada Elections Act* infringed the right to vote guaranteed by s 3 of the *Charter of Rights and Freedoms* and that the infringement could not be justified under s 1 of the *Charter*. The court further stated that the right to vote is fundamental to our democracy and the

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110 CSC, “Canadian Charter” in *50 Years of Human Rights Developments*.
111 *Charter*. 
rule of law, and placing any limits on it requires careful examination. In Sauvé, the Crown failed to establish a rational connection between denying the vote to penitentiary inmates and its stated goals of promoting civic responsibility and respect for the rule of law, and enhancing the general purposes of the criminal sanction. The dissenting judgment held that s 51(e) of the old Elections Act (now s 4(c)) has not been amended by Parliament to reflect the decision of Sauvé, however, s 4 (c) has no force was not an infringement of s 15 of the Charter: although it infringed the s 3 Charter right, its encroachment on the s 15 right was capable of being justified under s 1 of the Charter as a reasonable limitation thereupon. Gonthier J for the dissenting minority stated that Parliament had decided to enhance the perceived value of the right to vote by temporarily disenfranchising serious criminal offenders for the duration of their incarceration and thereby strengthening the rule of law.

Piche v Solicitor General of Canada, 1989, dealt with the right of prisoners to participate in decision-making within Canadian prisons. The issue in this case was the lack of prisoner consultation before the institution imposed double bunking on the prison population. The Federal Court of Appeal held that the imposition of double-bunking was a ministerial decision based solely on policy considerations and that no issues of procedural fairness were raised. The appellants argued that there existed a legitimate expectation of prior consultation with prisoners. The Court refuted this by finding, for policy reasons, that there need not be prior consultation with prisoners. The appellants also raised the claim that s 7 of the Charter protected the right to basic privacy and personal dignity – which was violated by having to double bunk. The court rejected this argument and in obiter, stated that even if this section protected that right, there was no evidence that having a single bunk/room was the lowest level of privacy and dignity acceptable.

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113 SC 2000, c-9.
114 (1989), 47 CCC (3d) 495 (Fed CA).
115 Obiter dictum (said in passing) means a statement said as a comment or observation in a court decision and does not form part of the decision.
3. Prisoners’ Legal Rights and the Charter

For penal and criminal matters, the legal rights grouping in the Charter is particularly relevant, namely sections 7 through 14. The Correctional Service of Canada acknowledges that section 7 augments the general duty to act fairly demanded of administrative entities.\(^{116}\) Section 7 of the Charter reads:

> Everyone has the right to life, liberty and security of the person and the right not be deprived thereof except in accordance with the principles of fundamental justice.

Section 12 of the Charter explicitly states that:

> Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

While commenting on Canada’s international obligations to treat prisoners with fairness, decency, respect and dignity, Max Yalden stated that,

> It is for the same reason that they are at the heart of Canadian law, prohibiting, as the Charter of Rights does, ‘cruel and unusual punishment’, and requiring, as does the Corrections and Conditional Release Act, ‘the least restrictive measures consistent with the protection of the public, staff members and offenders’. All of these measures are intended, in a word, to shorten the odds on successful rehabilitation and maintain a culture of respect for equity and human rights [emphasis added].\(^{117}\)

Regarding section 8 of the Charter, and Article 12 of the Universal Declaration of Human Rights, the Weatherall\(^ {118}\) case spells out the right to protection against unreasonable searches – specifically that “...such searches must be conducted in good faith and that their purpose must not be to intimidate, humiliate or harass inmates, or

\(^{117}\) Yalden, “CSC and Human Rights”, at 13.
\(^{118}\) Weatherall v Canada (Attorney General), [1993] 2 SCR 872.
to inflict punishment” (emphasis added). Thus, Canadian jurisprudence reinforces the notion of dignity and respect for all, including persons in custody – and the notion that harassment would not be tolerated in any prison setting, including wilderness, work and boot camps.

4. Prisoners’ Equality Rights and the Charter

Aside from the legal rights mentioned above, the Charter’s equality rights section has a bearing on the issue of prisoners’ rights in general, and on equal access to prison employment programs. Section 15 reads:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Ethnic minorities and other racial groups are notoriously over-represented in North American prisons, as are individuals with lower levels of education and higher levels of mental illness vis-à-vis the general population. The number of female prisoners is substantially lower than their male counterparts. There is a general greying of the prison population, and many older prisoners have physical disabilities or infirmities that affect their ability to perform certain kinds of work. All these factors are relevant to the issue of prisoners’ equal access to employment programs and the equality rights of adults and youth in custody. It is significant that the Charter specifically identifies the value of safeguarding Aboriginal rights, Canada’s multicultural heritage, and gender equality (sections 25, 27 and 28, respectively).

What does Charter jurisprudence say with respect to sociological or numerical minorities and non-discrimination, even within a prison setting? What equality rights

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come into play for the prison population? The Daniels\textsuperscript{120} case underscored the right to equal protection for “...women and Aboriginal persons who, it was argued, do not enjoy conditions of incarceration equivalent to those enjoyed by men and whites.”\textsuperscript{121} Thus, an Aboriginal woman in custody is the most disadvantaged person in Canada’s penal system.

The wording of section 15 suggests that there are potentially further grounds for discrimination other than those specifically enumerated and likely additional people who could be justifiably classified as disadvantaged. Analogous grounds such as sexual orientation have been the subject of at least one case in a prison setting. The Veysey\textsuperscript{122} case called for the right to equal protection for “...same-sex partners who are victims of discrimination in a prison.”\textsuperscript{123} In an employment setting, it is possible that HIV/AIDS discrimination may in future be argued as analogous grounds.\textsuperscript{124}


Under the Justice Act and the purview of the Minister of Justice, the Canadian Charter of Rights and Freedoms Examination Regulations, SOR/85-781 ensures that every Bill of the House of Commons is examined as to its consistency with the Charter (s. 3), as well as every Regulation (s 5). An amendment from 19 December, 1985 (SOR/86-42) revoked section 6 of the Regulations and substitutes the following,

6. Where any of the provisions of any Bill examined by the Minister pursuant to section 3 or any of the provisions of any regulation examined by him pursuant to section 5 are ascertained by the Minister to be inconsistent with the purposes and provisions of the Canadian Charter of Rights and Freedoms, the Minister shall make a report in writing of the inconsistency and shall cause such report to be deposited with the Clerk of the House of Commons in accordance with the Standing Orders of the House of Commons at the earliest convenient opportunity.

\textsuperscript{120} R v Daniels, [1990] 4 CNLR 51.
\textsuperscript{121} Brochet at 21.
\textsuperscript{122} Veysey v Canada (Correctional Service), [1990] 1 FC 321.
\textsuperscript{123} Brochet at 21.
Consequently, the Minister of Justice is responsible for ensuring that penal and criminal statutes, as well as the regulations implementing them, respect the fundamental freedoms and human rights enshrined in the Charter. Importantly, unlike the Bill of Rights, the Charter applies equally to provincial and federal statutes, thereby providing for some consistency across jurisdictions within Canada. Therefore, a provincial statute and its regulations which allow shock incarceration in a boot camp for adults or youth in custody, could be subject to a court challenge by a prisoner serving a sentence of two years less a day – when such harsh treatment against a federal prisoner (who serve a heavier sentence of two years or more) is not permitted. Furthermore, while at the boot camp, the prisoner may not have equal access to employment programs otherwise available to him or her in the institution.

C. Canadian Bill of Rights

The 1960 Canadian Bill of Rights guarantees “equality before the law” as set out in section 1(b). The Bill of Rights, still in force with respect to federal legislation, also contains an express prohibition against “cruel, inhuman or degrading treatment or punishment,” section 2(b). Furthermore, the right to a fair hearing is guaranteed by section 2(e), according to the principles of natural justice and due process of the law.

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125 Let’s Talk, “Milestones in Federal Corrections”, at 7.
126 Canada, Correctional Service Canada, Human Rights Division, “Canadian Bill of Rights: 1960” in 50 Years of Human Rights Developments in Federal Corrections (August 1998), online: Correctional Service Canada <http://www.csc-scc.gc.ca/text/pblct/rht-drt/03-eng.shtml> [CSC, “Canadian Bill of Rights” in 50 Years of Human Rights Developments] (“The landmark case decided under the Bill of Rights was the 1970 decision in R v Drybones, ([1970] SCR 282). In this case, the defendant challenged a provision of a federal statute as being inconsistent with his right to “equality before the law” as guaranteed in Section 1(b). The Supreme Court of Canada held that the Bill of Rights could have the effect of rendering other federal statutes inoperative in the face of an inconsistency. In this case, a provision of the Indian Act provided for harsher penalties for Aboriginal persons intoxicated off a reserve than for non-Aboriginal persons intoxicated in a public place. This provision was clearly found to be discriminatory and rightfully rendered inoperative by the court”).
127 CSC, “Canadian Bill of Rights” in 50 Years of Human Rights Developments] (“A notable articulation of the legal rights of prisoners was expressed in the 1969 case of R v Institutional Head of Beaver Creek Correctional Camp (1969), 1 OR 373-385. In a disciplinary hearing, a federal inmate claimed that he had been denied his right to a fair hearing as guaranteed in Section 2(e) of the Bill of Rights. In rendering judgement, the Ontario Court of Appeal commented that: “an inmate of an institution continues to enjoy
For twenty-five years, it has been settled law that prisoners enjoy their civil liberties, except those removed or curtailed by law. Unlike the Charter, the Bill of Rights does not apply to provincial statutes; however, Alberta has its own Bill of Rights which would apply.

D. Canadian Human Rights Act

After coming into force in 1977, the Canadian Human Rights Act provided for the establishment of the Canadian Human Rights Commission one year later. The Chief Commissioner recently stated,

Today, the Act prohibits discrimination in employment and services on 11 different grounds including race, religion, age, sex and disability. Conviction for an offence for which a pardon has been granted is also a ground for discrimination, although the Commission has received very few complaints based on that ground. The Act applies to federal government departments, Crown corporations and agencies, as well as to businesses under federal jurisdiction such as banks, airlines and railways. In 1997, disability remained the ground for discrimination most often cited, accounting for 29 per cent of all new complaints.

Therefore, it can be argued that federal penitentiaries are captured under this legislation, as well as CORCAN prison industries. It also points out the fact that discrimination has been suffered by ex-convicts in employment matters and in the receipt of services, even though pardoned, when they try to re-establish themselves within the community. The Chief Commissioner went on to say that,

all the civil rights of a person save those that are taken away or interfered with by having been lawfully sentenced to imprisonment.” The court held that the principles of natural justice had to be observed when the civil rights of a prisoner as a person were impaired and that such decisions were reviewable by the courts. Following this judgement, the Correctional Service of Canada amended some of its policies relating to inmate discipline to provide for better procedural due process”.

128 Brochet, (“In the 1980 Solosky case, the Supreme Court of Canada affirmed, for the first time, that imprisoned persons retain all their civil rights other than those which they have been expressly or implicitly deprived of by law. This decision was handed down just days after the famous Martineau vs Matsqui Institution Disciplinary Board, where the Court found that if a penitentiary’s internal procedures or decision-making processes are incompatible with the duty to act fairly, those procedures and processes are subject to judicial review” at 20-21).
The Commission is interested in two issues, which specifically involve the Correctional Service of Canada. First, the Commission is concerned by the situation of female offenders retained in institutions for men, particularly, Aboriginal women offenders who represent a high number of maximum security inmates. Second, the question of how prison authorities deal with the issue of HIV/AIDS is of particular interest to the CHRC because the rates of infection of inmates with HIV are more than 10 times as high as that of the general population.”

The former head of the Canadian Human Rights Commission highlighted some of the weaknesses of the federal corrections system:

On the employees’ side, for example, there are problems with employment equity, troubling instances of harassment; in respect of inmates, the persistent problem of double-bunking or perceived weaknesses in the grievance procedure exist; these and other gaps in what will never be a perfect system require ongoing and vigilant attention at every level of the Service.”

If employment equity and harassment are concerns for prison employees, one can only imagine what the situation is for prisoners, who are in an inferior position to even the lowliest of employees within the correctional hierarchy.

Regarding the now closed federal penitentiary for women in Kingston – referred to as P4W – the Archambault Commission of 1938, another review in 1956, and the MacGuigan Report of 1977, all attested to the,

...appalling conditions of the institution and concluded that P4W should be closed and the offenders returned to their home province....

Moreover, the lack of adequate and appropriate programming at P4W was also described as “outright discrimination” by the Canadian Human Rights Commission in 1981 [emphasis added].

130 Falardeau-Ramsay at 11.
131 Yalden, “CSC and Human Rights” at 13.
Yet, it took another Task Force on Federally Sentenced Women in 1989, a scandal in 1994 over the strip-searching of women inmates by an Emergency Response Team composed solely of men and thereby constituting inhuman and degrading treatment, the Arbour Commission Report, and the passage of almost two more decades before P4W finally closed its doors in 2000.133

E. Employment Equity Act and Other Relevant Legislation

The Canadian Human Rights Commission,

...is also responsible for ensuring that employers under its jurisdiction comply with the Employment Equity Act, which requires federally-regulated organizations and federal departments and agencies to provide employment opportunities for women, Aboriginal people, persons with disabilities and visible minorities. 134

Again, it is argued that this would necessarily apply to CORCAN’s prison industries and any work-related opportunities for federal prisoners serving two years or more.

A spokesperson for CSC’s Offender Reintegration Branch stated,

The achievement of a workforce representative of the Canadian population and the meeting of its obligations under the Employment Equity Act and the Canadian Human Rights Act are among CSC’s objectives. These Acts and CSC’s own Mission Statement and values contain several principles that are particularly relevant to the employment of persons with disabilities. ... CSC does not currently employ a representative workforce.135

This acknowledgment comes despite one principle which calls for the CSC to promote the valuing and respect of differences in the workplace. The situation could easily be rectified if the CSC adopted an affirmative action policy of hiring former prisoners with disabilities to work within the correctional system.

134 Falardeau-Ramsay, at 11.
The CSC missed an important opportunity to be inclusive of prisoners with disabilities in that the National Advisory Committee for Persons with Disabilities (NACPD), created by the Commissioner in 1990, is comprised only of employees and outside organizations representing disabled people. Neither CORCAN’s prison industries nor other prisoner employment programs appear to have been targeted as significant venues to demonstrate the valuing of disabled people, and to ensure that, akin to correctional staff, “…barriers, be they attitudinal, behavioural, procedural or physical, are removed.”136 NACPD’s newsletter, *Access Planning Guide* and videos could easily be shared with prisoners, and could also promote the rights of, and respect for, disabled prisoners with unique employment needs.

The same argument can be made for the CSC’s Women’s Committee which has been in place since 1997. The Committee addressed corrections workplace issues such as anti-harassment, workplace safety, ageing parents, day care options, career planning, and mentoring137 – all topics of interest to female prisoners with employment needs – but at present, only targeted to female corrections staff.

Four other federal statutes impacting the rights and responsibilities of prisoners are the *Access to Information Act*,138 the *Canadian Multiculturalism Act*,139 the *Canada Labour Code*,140 and the *Privacy Act*.141 However, due to research limitations of time and space, they will not be discussed here, other than to say the following: with respect to the latter Act, there are certain obligations and requirements if prisoners’ work placements involve the gathering or processing of information about other prisoners,

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136 Friel, at 25.
138 RSC 1985, c A-1.
139 RSC 1985, c 24.
140 RSC 1985, c L-2.
141 RSC 1985, c P-21.
something which could have serious consequences in a prison setting.\textsuperscript{142} There are also strict research guidelines when conducting enquiries within a correctional institution.\textsuperscript{143}

\textsuperscript{142} See Canada, Correctional Service Canada, Commissioner’s Directive No. 730, \textit{Inmate Program Assignment and Payments}, (20 August 1999), [CSC, CD 730, \textit{Inmate Program Assignment and Payments}] ("Inmates assigned to positions which involve gathering and/or processing of information about other inmates shall be required to acknowledge in writing that they understand fully obligations and requirements consistent with the Privacy Act. The institutional head shall ensure that inmates are given access only to personal information necessary for their job. The Program Board shall ensure that inmates understand that breach of privacy is grounds for removal of the inmate from this position of trust and may attract other legal, administrative and disciplinary consequences” at para. 46).

\textsuperscript{143} Louisa Coates, “Strict Guidelines for Research in the Correctional Setting” \textit{Let’s Talk} (Correctional Service Canada) 23:4 (November 1998) 30 [Coates] (The Commissioner’s Directive on Research “...states that researchers can only gain access to offender files if prior authorization, consistent with the Privacy Act, has been obtained. ...Finally, research projects must also comply with the Privacy Act and respect both the confidentiality of information and the privacy of offenders” at 30).
IV. Criminal Law and Federal Corrections Legislation and Policy

Society fails when it can see no further than the prison gates. Doug McNally, Retired Chief of Police, City of Edmonton, Alberta

The primary sources of statutory law in Canada for criminal and penal matters are the Criminal Code, the Corrections and Conditional Release Act, the Prisons and Reformatories Act, plus the Criminal Records Act, the Transfer of Offenders Act, Letters Patent, and the new Youth Criminal Justice Act. Other relevant statutes include the Canada Evidence Act, the Controlled Drugs and Substances Act, the DNA Identification Act, the Firearms Act, and the Interpretation Act. Only the first two statutes will be examined in this research.


The Criminal Code is applicable in every provincial and territorial jurisdiction throughout Canada. Of greatest significance for the issues examined in this research are the sentencing provisions of the Code. The period of incarceration provided by the sentence determines which penal institution the prisoner will begin to serve his or her time (whether at a federal or provincial institution); hence what employment, education and vocational training will be available to the prisoner at that institution.

144 “Types of Traditional Sentences” in Law in Action Study Guide: Sentencing and the Correctional System, Unit 3 Criminal Law (Pearson) at 281, online: http://dentonhths.wikispaces.com/file/view/Sentencing+Assignment.PDF
145 SC 2004, c 21
146 SC 1998, c 37
147 SC 1995, c 39
1. The Notions of Hard Labour and Unions

Section 743.3 of the Criminal Code stipulates that sentences are served according to regulations, specifically “with the enactments and rules that govern the institution to which the prisoner is sentenced.” This section replaced section 660 of the 1988 Criminal Code which specifically referred to the notion of “hard labour” being served according to the regulations.\(^{149}\) It would appear then, that a sentence of hard labour was permissible under Canadian law as long as it was properly ordered. However, the absence of that provision in the current Criminal Code implies that hard labour is no longer deemed appropriate.

In the area of employment, the Criminal Code makes it an offence to intimidate employees to prevent them from taking up membership in a lawful trade union, or refusing to employ union members (s 425). Whether prisoners employed in Canadian prison industries could form and join trade unions “for the purpose of advancing, in a lawful manner, their interests and organized for their protection in the regulation of wages and conditions of work” is an open question. But if prisons continue to be privatized, this will undoubtedly be an issue for the court’s adjudication.

2. Part XXIII and the Basic Principles of Sentencing

Part XXIII of the Criminal Code deals with Sentencing. The main purpose and basic principles of sentencing are enumerated in section 718:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to have one or more of the following objectives: ...

d) to assist in rehabilitating offenders; e) to provide reparations for harm done to victims or to the community; f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

\(^{149}\) The now obsolete section 660 previously read: (1) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced, and a reference to hard labour in a conviction or sentence shall be deemed to be a reference to the employment of prisoners that is provided for in the enactments or rules. (2) A conviction or sentence that imposes hard labour shall not be quashed or set aside on the ground only that the enactment that creates the offence does not authorize the imposition of hard labour, but shall be amended accordingly. 1953-54, c 51, s 635.
a. Proportionality and Least Restrictive Principles

The underlying proportionality principle set out in section 718.1 is that,

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

The least restrictive principle of sentencing can be found in 718.2(d):

An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances;

and section 718.2(e):

All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

b. Probation Orders, Discharges and Fines

Some of these sanctions include a **conditional and absolute discharge** where it is determined that, among other criteria, a discharge is “in the best interests of the accused and not contrary to the public interest” (section 730), and with any conditions being set out in a **probation order** as per sections 731 to 733.

Section 734 governs the court’s power to impose **fines**, and those offenders found to be in default of payment will be imprisoned for a term which is calculated based on the amount of the unpaid fine plus costs and charges, divided by “eight times the provincial minimum hourly wage, at the time of default” (section 734(5)(a) (i) and (ii)). Proceeds of the fines may go to a provincial treasurer, the Receiver General of Canada, or to a municipality or local authority.

c. Restitution Orders and Victim Surcharges

According to section 737, a **victim surcharge** is mandatory for offenders granted conditional and absolute discharges under section 730 of the **Criminal Code** or under the **Controlled Drugs and Substances Act**. **Restitution to victims** of offences for property damage, loss or destruction, and actual or threatened bodily harm, is covered by section 738. Section 739 deals with restitution to persons acting in good faith and without
notice who acquired the property for valuable consideration or who loaned money on
the security of that property. Restitution orders take precedence over orders of
forfeiture or to pay fines.

d. Fine Option Program and Credit for Work

Section 736 deals with the fine option program whereby an offender, whether
imprisoned or not, can “discharge the fine in whole or in part by earning credits for
work performed during a period not greater than two years in a program established for
that purpose by the lieutenant governor in council.”

B. The Corrections and Conditional Release Act and Regulations

The Corrections and Conditional Release Act (CCRA) was proclaimed into force on
November 1, 1992, and replaced both the Penitentiary Act and the Parole Act. The
CCRA is a progressive and comprehensive code reflecting years of human rights
developments. Correctional Service of Canada

The Corrections and Conditional Release Act empowers the Correctional Service
of Canada to operate federal penitentiaries and to enforce regulations created under
the Act, as well as Commissioner’s Directives, Standard Operating Practices, and Interim
Instructions to govern the way the penal institutions are run. Referring to Article 6 of
The Universal Declaration of Human Rights, former Solicitor General Andy Scott wrote:

The Solicitor General’s own Corrections and Conditional Release Act invokes this internationally-recognized principle, affirming that offenders
retain the rights and privileges of all members of society, except those
that are necessarily removed as a consequence of incarceration.

It has also been expressed by the Human Rights Division at the Correctional Services
Canada that:

150 Let’s Talk, “Milestones in Federal Corrections”, at 7.
151 Andy Scott, “Solicitor General’s Message” Let’s Talk (Correctional Service Canada) 23:4 (November
1998) 2 at 2 [Scott].
The role of the federal correctional system is to carry out sentences through the safe and humane custody and supervision of offenders. It clearly states that no treatment can be given to an inmate unless he or she voluntarily consents to it, and that an inmate has the right to withdraw from treatment at any time.\(^{152}\)

The CCRA incorporates significant legal developments in administrative law, reflects the rights articulated in the *Canadian Charter of Rights and Freedoms* and affirms the Rule of Law. Moreover, the CCRA reflects many of the principles, values and corporate objectives outlined in the *Mission* of the CSC, which was first adopted in 1989 and has since been endorsed by several Solicitors General.\(^{153}\)

### 1. Guiding Principles for the Correctional Service of Canada (CSC)

#### a. CSC’s Mission Statement: Modelling Respect for the Rule of Law

The mission statement of the CSC contains a core value that is relevant for prisoners’ rights and how people in custody are to be treated in Canada. It states that the CSC:

> respect[s] the dignity of individuals, the rights of all members of society, and the potential for human growth and development.\(^{154}\)

The former Commissioner of Corrections stated,

> The significance of applying the rule of law to our work has been pointed out to us time and again. We even added the words “…while respecting the rule of law” to our Mission Statement to remind ourselves of this profound, professional obligation.... We are here to help offenders become law-abiding citizens. We are role models for offenders [emphasis added].\(^{155}\)

One inmate commented,

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\(^{152}\) Coates, at 30 [emphasis added].


There are many documented instances, including the famous Stanford psychology experiments of the 1960s, which clearly demonstrate the potential for abuse of power and control in the correctional setting. Clearly, a complex, frustrating, and tenuous challenge faces staff striving to uphold CSC’s Mission [emphasis added].

A spokesperson for CSC Legal Services stated,

Adoption of the CCRA was probably the turning point regarding protection of inmates’ rights. However, while the Act certainly marked progress, such rules of law are only useful in a context where the primacy of law is accepted, and where respect for the letter and the spirit of the law are fundamental values.... In the Correctional Service of Canada, the universal values and common ideals toward which we are striving are set out in the Mission Statement and in the principles of section 4 of the CCRA, which must guide the Service in carrying out its mandate. It is vital that compliance with these principles and values, and with the primacy of law, become a focal point of our activities [emphasis added].

Thus, the mission statement emphasizes the need to encourage offenders to become law-abiding citizens while with exercising humane control.

b. Sections 4 & 70 of the CCRA: Guiding Principles

Other principles of particular relevance to offenders’ human rights in Section 4 of the CCRA are concerned with the protection of the public, staff members and offenders; that offenders retain the rights and privileges of all members of society, except those that are necessarily removed or restricted as a consequence of the sentence; that correctional decisions should be made in a forthright and fair manner; and that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences.

4. The principles that shall guide the Service in achieving the purpose referred to in section 3 are

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156 Thomas Mann, "Human Rights Within CSC: One Prisoner’s Perspective" Let’s Talk (Correctional Service Canada) 23:4 (November 1998) 14 at 14 [Mann].
157 Brochet, at 21.
(a) that the protection of society be the paramount consideration in the corrections process;

(b) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders;

(c) that the Service enhance its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programs to offenders, victims and the public;

(d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;

(e) that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence;

(f) that the Service facilitate the involvement of members of the public in matters relating to the operations of the Service;

(g) that correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(h) that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and Aboriginal peoples, as well as to the needs of other groups of offenders with special requirements;

(i) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programs designed to promote their rehabilitation and reintegration; and

(j) that staff members be properly selected and trained, and be given

(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and
(iii) opportunities to participate in the development of correctional policies and programs.

1992, c. 20, s. 4; 1995, c. 42, s. 2(F).

The Correctional Service of Canada recognizes that both prisoners and corrections staff have a right to a healthy and safe work environment.

Section 70 of the CCRA also directs that the Service shall take all reasonable steps to ensure that the environment, living and working conditions of penitentiaries are safe, healthful and free of practices that undermine the staff or offenders’ personal sense of dignity [emphasis added].

C. The Duty of Fairness and Case Law

A leading prisoners’ rights case in 1980 spoke to the issue of the duty to act fairly.

Prior to the landmark case of Martineau v Matsqui Institution Disciplinary Board, Canadian courts were reluctant to interfere with the decision of correctional authorities. In its decision, the Supreme Court of Canada reversed this “hands off” approach and for the first time in law articulated that correctional authorities have a duty to act fairly when making decisions concerning the rights of offenders.

As it was stated in Martineau, “the content of the principles of natural justice and fairness in application to the individual cases will vary according to the circumstances of each case.” In the field of corrections, the duty to act fairly applies to all administrative decisions that affect an offender’s liberty, including determinations regarding administrative segregation, involuntary transfers, parole decisions and discipline.

It is argued that an arbitrary decision to restrict a prisoner’s liberty by placing him or her on a chain gang or in a boot camp would run counter to this long-standing legal principle.

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159 CSC, “Corrections and Conditional Release” in 50 Years of Human Rights Developments.
161 CSC, “Martineau” in 50 Years of Human Rights Developments.
This case followed on the heels of another precedent-setting case in 1979: Re Nicholson and Haldiman-Norfolk Regional Board of Commissioners of Police.\(^{162}\) The Supreme Court of Canada ruled that there exists an administrative duty to act fairly and that the Board in question had a duty to inform Nicholson, a probationary police officer, “of the reasons for his dismissal and to provide him with an opportunity to respond.”\(^{163}\)

The Supreme Court of Canada has also made it clear in Cardinal v. Dir. Of Kent Institution, that the duty to act fairly exists whenever the “rights, privileges and interests” of offenders are at stake. Substantially, the duty of fairness has been found to include the right to be given notice of the allegations, an account of the information being considered by the decision-maker, sufficient time and opportunity to respond to the allegations, the right to be heard, the right to a hearing free of bias, and the right to be given reasons for the final decision. Depending upon the nature of rights, privileges and interests at issue, the duty of fairness may also include the right to legal assistance and the right to a full hearing.\(^{164}\)

Duty of fairness applies to all offenders especially when they are involved in programs to assist them in having a safe transition back to society. Providing offenders with an opportunity to express themselves and respond to accusations is an important aspect of dealing with offenders.

2. Prisoners’ Employment in Federal Institutions

The Correctional Service of Canada places great emphasis on inmates’ acquisition of employment skills:

All correctional programs call for group interaction through which offenders learn and practice skills that they will need to draw upon to facilitate reintegration and to adapt to private sector work settings. These important skills are central to the core employability program CSC intended to develop and implement. More specifically, they include problem solving, critical thinking, punctuality, interacting with coworkers,

\(^{162}\) (1979) 1 SCR 311.
\(^{163}\) CSC, “Martineau” in 50 Years of Human Rights Developments.
\(^{164}\) CSC, “Martineau” in 50 Years of Human Rights Developments.
being respectful of other people’s opinions and feelings, and dealing with authority figures [emphasis added]”

a. Federal Prisoner Employment Programs, Pay Schemes and Income

The CCRA and the Corrections and Conditional Release Regulations (CCRR) contain a number of provisions which are pertinent to prisoner employment programming. According to Commissioner’s Directive 730 of 1999-08-20, section 78 of the Act and section 104 of the Regulations are the legislative authorities underpinning federal inmate program assignments and payments made to prisoners. The CCRA states:

78. (1) For the purpose of

(a) encouraging offenders to participate in programs provided by the Service, or

(b) providing financial assistance to offenders to facilitate their reintegration into the community,

the Commissioner may authorize payments to offenders at rates approved by the Treasury Board.

(2) Where an offender receives a payment referred to in subsection (1) or income from a prescribed source, the Service may

(a) make deductions from that payment or income in accordance with regulations made under paragraph 96(z.2) and any Commissioner's Directive; and

(b) require that the offender pay to Her Majesty in right of Canada, in accordance with regulations made pursuant to paragraph 96(z.2.1) and as set out in a Commissioner’s Directive, an amount, not exceeding thirty per cent of the gross payment referred to in subsection (1) or gross income, for reimbursement of the costs of the offender's food and accommodation incurred while the offender was receiving that income or payment, or for reimbursement of the costs of work-related clothing provided to the offender by the Service.

1992, c. 20, s. 78; 1995, c. 42, s. 20.

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The Regulations state:

104. (1) Subject to subsection (3), where an inmate, without reasonable excuse, refuses to participate in a program for which the inmate is paid pursuant to section 78 of the Act or leaves that program, the institutional head or a staff member designated by the institutional head may

(a) suspend the inmate's participation in the program for a specified period of not more than six weeks; or

(b) terminate the inmate's participation in the program.

(2) Where the institutional head or staff member suspends participation in a program under subsection (1), the inmate shall not be paid during the period of the suspension.

(3) Where the institutional head or a staff member designated by the institutional head suspends or terminates participation in a program under subsection (1), the institutional head or staff member may reduce or cancel the period of the suspension or cancel the termination where

(a) taking into account all of the circumstances of the case, it is reasonable to do so; and

(b) the inmate indicates a willingness to resume the program.

SOR/96-108, s. 1.

(4) [Repealed, SOR/96-108, s. 1]

However, a number of other CCRA provisions – namely ss. 3, 5(b), 28(c), 76-78, 80, and CCRR s. 102(1) – support the overarching policy objective, which is to motivate prisoners’ participation in programs such as employment, vocational training, or education as part of their correctional plan.

3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by

(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.
5. There shall continue to be a correctional service in and for Canada, to be known as the Correctional Service of Canada, which shall be responsible for

(b) the provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;

28. Where a person is, or is to be, confined in a penitentiary, the Service shall take all reasonable steps to ensure that the penitentiary in which the person is confined is one that provides the least restrictive environment for that person, taking into account

(c) the availability of appropriate programs and services and the person's willingness to participate in those programs.

76. The Service shall provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community.

Furthermore, Section 44(1) of the Act stipulates that extra duties may be required of an inmate for disciplinary reasons,

44. (1) An inmate who is found guilty of a disciplinary offence is liable, in accordance with the regulations made under paragraphs 96(i) and (j), to one or more of the following:

(e) performance of extra duties;

Section 75 of the CCRA:

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

1992, c. 20, s. 75; 1995, c. 42, s. 19(F).

Section 78 of the CCRA sets out the authorization for payments to inmates based upon their participation in various programs. Net approved earnings are governed by paragraph 78(2)(a) of the Act, and includes income derived from employment in the institution or community, pensions, hobby craft sales, minus any deductions allowed by
Commissioner’s Directives. A “working day” is defined under subsection 99(1) of the Act and applies to the Regulations as well.

The rights of the inmates participating in employment programs are set out in CCRA which includes the treatment, the payments and other freedoms an inmate may and can exercise as part of the program. Therefore, inmates are encouraged to participate in such programs to enhance their employment skills.

(i) The Correctional Plan

The Corrections and Conditional Release Regulations, SOR/92-620 of 29 October, 1992, has several provisions dealing with prison employment and inmate pay. In particular, sections 102 to 104 and 121 through 144 are relevant for this study.

102. (1) The institutional head shall ensure that a correctional plan for an inmate is developed as soon as practicable after the reception of the inmate in the penitentiary, and is maintained, with the inmate to ensure that the inmate receives the most effective programs at the appropriate time in the inmate's sentence to prepare the inmate for reintegration into the community, on release, as a law-abiding citizen.

(2) When considering program selection for, or the transfer or conditional release of, an inmate, the Service shall take into account the inmate's progress towards meeting the objectives set out in the inmate's correctional plan.

Upon entering the penitentiary, a correctional plan is developed and maintained alongside each inmate with the express purpose of preparing the offender to ultimately reintegrate back into society upon eventual release into the community (s. 102(1)). Because the success of an inmate in achieving the goals outlined in the plan is a key factor in later determinations, for example acceptance into programs or the granting of transfers and conditional releases, what work an offender performs is crucial to his/her future (s. 102(2)). The only exemption granted from work is when an inmate has been
medically certified to be physically unfit to carry out the duties otherwise required.\footnote{166}{Corrections and Conditional Release Regulations, S.O.R./92-620, s. 103 [CCRR] ("No person shall require an inmate to perform work that a qualified medical practitioner has certified the inmate is not physically fit to perform").}

The Commissioner’s Directive (CD) 700 on “Correctional Interventions” as well as CD 705 “Intake Assessment Process” and CD 705-6 “Correctional Planning and Criminal Profile” relate to inmate program assignment and payments.

(ii) Education and Vocational Training

What constitutes “work” is not defined in the regulations, but in corrections policy and practice, it includes education and vocational training.\footnote{167}{CSC, “Education and Employment Programs” ("Upon arrival in institutions, approximately 65% of offenders test at a completion level lower than Grade 8, and 82% lower than Grade 10. A research report completed in 1992 and titled “Can Educating Adult Offenders Counteract Recidivism?” concluded that specific intellectual skills gained through Adult Basic Education (ABE) may equip offenders to deal more effectively with daily problems encountered in the community. Moreover, the sense of achievement and confidence that results from successfully completing such a program may encourage offenders to make further positive changes in their lives").}

Commissioner’s Directive 720 on “Education Programs and Services for Offenders” applies. Adult basic education courses are offered at most/all institutions, as well as those courses forming part of the secondary education program. The latter represents about one-quarter of all inmate students who are aiming for a high school diploma.

Inmates in Canada’s federal correctional facilities are well aware that a secondary school diploma has become a prerequisite for securing lasting employment and for entry into a variety of training opportunities. In increasing numbers, they are making personal commitments to this program. Accreditation received upon successful course completion fulfills provincial secondary school diploma requirements.\footnote{168}{CSC, “Education and Employment Programs”}

Another one-quarter of inmate students opt for vocational training courses in areas such as welding and metal trades; electronics; auto mechanics and auto body repair; plumbing; carpentry and cabinet making; upholstery; small engine repair; hairdressing; cooking; and computer programming. At minimum, inmates learn about shop safety, industrial standards, and workplace interpersonal skills. If they choose to
undertake further studies, for instance a post-secondary education, inmates are able to achieve certification in a trade or a profession.\textsuperscript{169}

The Correctional Service of Canada has established the Employment and Employability Program (EEP), which is created to prepare offenders for the job market once they are released in the community. Several studies by the CSC have shown that employment helps offenders reintegrate successfully and safely into the community and also reduces re-offending. The EEP takes into consideration vocational assessment results and incorporates them into the correctional plan, prepared at the time offenders are admitted to the institution. Employment counsellors working in these centres provide guidance to offenders based on their skills profile, the job market and the expectations of employers in the community who are looking for employees with basic personal management and teamwork skills.\textsuperscript{170}

One offender says: “\textit{It’s a huge adjustment, getting out of prison. My parole officer referred me to the CSC employment centre in Toronto. I desperately wanted a job. It took five months and I found a job paying $40,000. Honestly, they did everything they could to help me. I got a lot out of this process. Before, I had dreams. Now, I have plans.}” \textsuperscript{171}

There is also the Offender Management System which is a system that keeps updated information on offenders who have found jobs after their release. The number of offenders who found employment after using the service has increased each year.\textsuperscript{172} Furthermore, offenders who refuse to participate in the programs are placed on waitlists until they are encouraged to attend by a staff member. Also, offenders who have not yet had the opportunity to be part of a program under a supervised release are

\textsuperscript{169} CSC, “Education and Employment Programs”.
\textsuperscript{170} “Building Bridges with Canadian Ethnocultural Communities” \textit{Let’s Talk} (Correctional Service Canada) 30:1 (June 2005) 12-13.
\textsuperscript{171} “Building Bridges with Canadian Ethnocultural Communities” \textit{Let’s Talk} (Correctional Service Canada) 30:1 (June 2005) 13.
scheduled on waitlists for these community programs. “Correctional program facilitators know that their client is the public and the benefits for offenders can be a win-win success story”.

Overall, research shows that community programs are effective in preventing re-offending. According to the Correctional Service of Canada’s January 2009 evaluation report of correctional programs, offenders who participate in the Community Maintenance Program are 40 percent less likely to return to a penitentiary for any kind of crime, and 56 percent less likely to return for a violent crime.

(iii) CORCAN penitentiary industries

Provisions with respect to CORCAN prison industries are governed by sections 105 to 108 of the Corrections and Conditional Release Regulations, 1992. Under section 2 of the Regulations, CORCAN is defined as “the part of the Service that is responsible for penitentiary industry.” The CORCAN Special Operating Agency Charter Document contains cross-references with respect to prisoners’ work programs and remuneration.

105. CORCAN shall ensure that an inmate who participates in CORCAN activities

(a) is fully, regularly and suitably employed in a work environment that strives to achieve private sector standards of productivity and quality so that the inmate will be better able to obtain and hold employment when the inmate returns to the community; and

(b) is provided with programs and services that facilitate the inmate's re-entry into the community.

106. Goods and services that are produced or made available by CORCAN may be transferred, leased, loaned or provided to

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172 “Building Bridges with Canadian Ethnocultural Communities” Let’s Talk (Correctional Service Canada) 30:1 (June 2005) 13.
174 “New Generation of Correctional Programs” Let’s Talk (Correctional Service Canada) 34:2 (March 2010) 9.
(a) any department, branch or agency of the Government of Canada or the government of a province or to any municipality;

(b) any charitable, non-profit, religious or spiritual organization; or

(c) any purchaser in the ordinary course of trade under competitive conditions.

107. (1) CORCAN may enter into an agreement with a private sector enterprise

(a) for the production of goods or the provision of services; or

(b) for the training and employment of offenders by that enterprise.

(2) Where an agreement referred to in subsection (1) permits the enterprise to operate a business in a penitentiary, the Service may

(a) recover from the enterprise any costs incurred by the Service as a result of the use of the penitentiary by the enterprise, including utilities; and

(b) limit, by means of a specific agreement, the liability of Her Majesty in right of Canada with respect to the enterprise's operations in the penitentiary.

108. (1) The Minister shall appoint a committee, to be known as the Advisory Board of CORCAN, consisting of not more than 12 persons chosen from the fields of business, non-profit organizations, labour and government and from the general public, to support the operation of CORCAN by

(a) advising CORCAN on its operating plans, budgets and marketing and sales plans and on its performance;

(b) commenting on major initiatives of CORCAN in developing new products and markets;

(c) assisting the Service in building a positive public image of CORCAN; and

(d) representing CORCAN to labour and business organizations.

(2) Members of the Advisory Board of CORCAN may be remunerated at a rate determined by the Treasury Board and given travel and living expenses incurred by them while absent from their ordinary place of
residence in connection with the work of the Board in accordance with the Treasury Board Travel Directive.

In 1998, the Correctional Service of Canada conducted research into the long-term results of participation in CORCAN’s prison work programs on prisoners’ employability on release, and on the link with recidivism. The study affirmed that over half the prisoners had employment needs immediately upon release into the community, and within six months, about two-thirds reported hardship in securing work – consistent with previous studies on the issue. The research team recommended that because of the high degree of correlation between employment needs and recidivism, additional resources were required to address the issue of prisoners’ employment status and needs. The CSC’s Community Risk/Needs Management Scale was determined to be a useful tool in identifying and assessing prisoners regarding post-release employment and recidivism.²⁷⁵

The Office of the Auditor General of Canada looked at CORCAN operations in 1999 and highlighted perceived financial and managerial shortcomings.²⁷⁶ This report to Parliament was critical of CORCAN’s consistent inability to meet its mandated target of financial sustainability, in spite of receiving revenues in 1998/1999 of $73 million. CORCAN reports that in 2005/2006, it employed over 4,000 prisoners and 350 staff annually, in 36 federal prisons.²⁷⁷

A somewhat controversial CORCAN work program at Fenbrook Medium Security Institution involved using prisoners in its call centers – one within the prison and three outside – to conduct market research for companies.²⁷⁸ The National Association of Market Researchers raised concerns in 2003 about the appropriateness of prisoners being used to collect information, although their calls were continuously monitored and

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they were not allowed to gather personal data. The calls are computer dialled and the prisoner has use of a computer keyboard and screen, as well as a telephone headset.

(iv) Entrepreneurial prisoners

Inmate businesses are governed by sections 112 and 113 of the Corrections and Conditional Release Regulations, as well as Commissioner’s Directive 737 on Inmate Operated Business Enterprises. With the appropriate approvals, an offender may conduct a business within a penitentiary as long it conforms with their correctional plan, and not inimical to the security of the institution nor its operational imperatives. Such approval can be withdrawn for non-conformity with the above-noted conditions; however, appropriate notice must be given, complete with the rationale behind such a decision, in addition to a reasonable amount of time to wind-up their business affairs.

112. (1) No inmate shall operate a business in a penitentiary unless the inmate obtains the approval of the Commissioner or a staff member designated by the Commissioner, in accordance with subsection (2).

(2) The Commissioner or a staff member designated by the Commissioner may grant approval to an inmate to conduct a business, in accordance with the procedures set out in Commissioner’s Directives, where

(a) the security and operational constraints of the penitentiary permit the conduct of the business; and

(b) the business is consistent with the inmate’s correctional plan.

(3) Where the conditions set out in subsection (2) are no longer met, the Commissioner or a staff member designated by the Commissioner may withdraw the approval granted under that subsection.

(4) Where the Commissioner or a staff member designated by the Commissioner withdraws an approval granted under subsection (2), the Commissioner or staff member shall give the inmate

(a) written notice of the withdrawal of approval, including the reasons for the withdrawal; and


179 SOR/ 92-620.
(b) a reasonable opportunity to wind up the business.

113. (1) Where, on reception of an inmate in a penitentiary, the inmate wishes to have a business that the inmate is operating outside the penitentiary operated on the inmate’s behalf or to wind up the business, the Service shall ensure that the inmate is given a reasonable opportunity to make arrangements to have the business operated on the inmate’s behalf or wind up the business.

(2) Where an inmate wishes to wind up a business that the inmate is operating in the penitentiary, the Service shall ensure that the inmate is given a reasonable opportunity to wind up the business.

Section 109 of the Regulations applies to the disposal of hobby craft and vocational training program goods and services, by selling or donating them to specified groups such as charities or religious, spiritual and non-profit organizations. Failing that, goods or services may be sold to correctional staff.

109. Goods that are produced, repaired or maintained or services that are provided by an inmate employed in a penitentiary vocational training program may be

(a) sold or donated to a charitable, non-profit, religious or spiritual organization; or

(b) where no such organization expresses an interest in the goods or services, sold to staff members.

b. Types of Releases Involving Work Assignments or Occupational Training

(i) Work Releases

Work releases are governed by section 18 of the CCRA,

18. (1) In this section, "work release" means a structured program of release of specified duration for work or community service outside the penitentiary, under the supervision of a staff member or other person or organization authorized by the institutional head.
(2) Where an inmate is eligible for unescorted temporary absences under Part II Defence Act or subsection 15(2) of the Crimes Against Humanity and War Crimes Act, and, in the opinion of the institutional head,

(a) the inmate will not, by reoffending, present an undue risk to society during a work release,

(b) it is desirable for the inmate to participate in a structured program of work or community service in the community,

(c) the inmate's behaviour while under sentence does not preclude authorizing the work release, and

(d) a structured plan for the work release has been prepared,

the institutional head may authorize a work release, for such duration as is fixed by the institutional head, subject to the approval of the Commissioner if the duration is to exceed sixty days.

(3) The institutional head may impose, in relation to a work release, any conditions that the institutional head considers reasonable and necessary in order to protect society.

(4) The institutional head may suspend or cancel a work release either before or after its commencement.

(5) The institutional head shall give the inmate written reasons for the authorizing, refusal, suspension or cancellation of a work release.

(6) Where a work release is suspended or cancelled after its commencement, the institutional head may cause a warrant in writing to be issued authorizing the apprehension and recommitment to custody of the inmate.

1992, c. 20, s. 18; 1995, c. 22, s. 13, c. 42, ss. 8, 71(F); 1998, c. 35, s. 109; 2000, c. 24, s. 35.

Under the mantle of work releases, federal inmates have been placed in the community labouring in public parks, buildings and grounds maintenance, fruit-picking operations, farm and forestry work, plus other manual labour for non-profit organizations, or for pay as part of crop-harvesting and forest fire work crews.\(^ {180} \)

\(^ {180} \) Canada, Correctional Service Canada, Work Release Program: How It Is Used and for What Purposes, Research Report No. R-64 by Brian A. Grant & Chris A. Beal (Ottawa: Correctional Service Canada Research Branch, 1998) at 1, 51.
From time to time, inmates may be granted work releases according s. 10(2) of the Regulations, and the Commissioner’s Directive 710-3 on Work Releases. Section 120(3) of the Regulations stipulates that whenever an inmate is on a work release, he/she is entitled to an allowance “to ensure that the offender’s basic material needs are met and to permit the offender to comply with the requirements of the release plan.”\(^{181}\)

(ii) Temporary Absences for Occupational Training Programmes

In February of 1999, the Sub-committee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights chaired by Paul DeVillers, M.P. began a review of the CCRA. The committee released their report in May 2000. In the report, the committee found it was essential to provide offenders the option of obtaining a temporary absence. This experience, they stated, would provide inmates with work experience and the opportunity to participate in educational, occupational, and life-skills programs. They recommended expanding the definition of personal development programs (a ground for granting an absence), to include these options which would allow for offender reintegration into the community.\(^ {182}\)

The Canadian Government responded in October 2000 by streamlining the temporary absence provisions within the Act.\(^ {183}\) The CCRA provisions under Commissioner’s Directive 710-3 which allow for temporary absences to be granted to prisoners were made more flexible, placing more of the authority over the absences in the hands of CSC. The government also expanded the allowable purposes for an approved temporary absence. The stated purposes for these absences now include, among others: to allow for medical treatment for prisoners, to allow offenders to attend

\(^{181}\) Corrections and Conditional Release Regulations, SOR/92-620, s 120(3).
\(^{182}\) Canada, House of Commons, Sub-committee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights, A Work In Progress: The Corrections and Conditional Release Act (Ottawa: Communication Canada, 2000) at para. 4.43 (Chair: Paul DeVillers, M.P.) [Canada, A Work in Progress: The CCRA (Chair: Paul DeVillers)].
to personal and legal matters, to allow offenders to undertake voluntary activities within the community, and to strengthen family ties in an effort to support offenders while in custody. 184

(iii) Parole

Source CCRA:

102. The Board or a provincial parole board may grant parole to an offender if, in its opinion,

(a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and

(b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

1992, c. 20, s. 102; 1995, c. 42, s. 27(F).

c. Aboriginal Prisoners and Employment Programming

Addressing the distinctive needs and interests of Aboriginal offenders has long been of vital importance for the National Parole Board. Aboriginal people are widely over-represented in federal correctional institutions. While they make up about three per cent of Canada’s total population, they account for nearly 15 per cent of the incarcerated population. That proportion is even higher in the Prairie provinces where Aboriginal offenders represent about 40 per cent of the inmate population. Evidence shows that Aboriginal offenders are more likely to serve their sentence within the institution than in the community. Although they are released on day parole at about the same rate as non-Aboriginal offenders, they are much less likely to be released on full parole, and more likely to be released on statutory release. Even if granted full parole, it is usually later in their sentence and they are more likely to be re-incarcerated for a violation of supervision conditions. Vandoremalen

184 Canada, Correctional Service Canada, Commissioner’s Directive No. 710-3, Temporary Absences and Work Releases (18 September 2007), para. 27.
As noted earlier, despite only representing 2.7% of the Canadian adult population (4% of the total) Canadian population, Aboriginal peoples account for 19.6% of the incarcerated population (2006/2007). The level of representation can increase to over 50% in some institutions as well. Additionally, Aboriginal offenders fair poorer in reintegration indicators such as re-offending rates, parole revocations and conditional release. In 2001, the federal government pledged to reduce the overall incarceration rates of Aboriginal peoples to levels consistent with non-Aboriginal peoples in one generation. In order to do so, CSC has developed a National Strategy on Aboriginal Corrections to “ensure the safe and timely reintegration of Aboriginal federal offenders into the community.”

Aboriginal correctional programs are distinct from core correctional programs, given their heavy focus on “Aboriginal healing” which includes direct attention to emotional realm, Aboriginal identity and the inter-generational impacts of the residential school system.

An Aboriginal Offender says: “I’d say it helped me become a better person in a way. Like I said, it makes me think clearly. Before, I would do everything on reaction, on a sudden impulse. Now, I think about it... I think about what I can become, what I can learn, and what I know I can change…”

The basis of this strategy comes from s. 81 and 84 of the CCRA, which provide Aboriginal communities with an opportunity to become involved in the care, custody

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189 189 /“New Generation of Correctional Programs” Let’s Talk (Correctional Service Canada) 34:2 (March 2010) 10.
and release of Aboriginal offenders.\textsuperscript{191} The Act calls for the creation of a National Aboriginal Advisory Committee to advise CSC on the provision of correctional services to Aboriginal offenders. Additionally, “Aboriginal spirituality and Aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders.”\textsuperscript{192} The strategy focuses on Aboriginal programming, employment recruitment, partnerships, and community development. The CSC has initiated several Aboriginal-specific programs and services to meet the goals of the strategy. They include: Aboriginal treatment and healing programs, halfway houses for Aboriginal offenders (currently 23 across Canada) and offender employment and job placement.\textsuperscript{193}

Section 81 of the \textit{Corrections and Conditional Release Act} allows the Minister and/or Commissioner to enter into agreements with Aboriginal communities for the provision of correctional services to Aboriginal offenders. Four types of services can be provided under s. 81: (1) the transfer of Aboriginal offenders to Aboriginal communities under Section 81 Custody Agreements; (2) the transfer of Aboriginal offenders to urban or rural-based facilities (e.g., halfway houses, healing lodges, etc.); (3) parole supervision in Aboriginal communities or urban centres; and (4) the provision and delivery of correctional services within federal institutions or community parole offices.\textsuperscript{194}

Agreements entered into under section 81 are based on a number of principles, including:\textsuperscript{195}

\begin{itemize}
\item The protection of society and safety of the community is paramount.
\item The rights of victims are respected and recognized.
\item The offender accepts responsibility to take the steps required to correct his or her criminal behaviour.
\end{itemize}

\textsuperscript{190} “New Generation of Correctional Programs” \textit{Let’s Talk} (Correctional Service Canada) 34:2 (March 2010) 10.
\textsuperscript{191} \textit{Corrections and Conditional Release Act}, SC 1992, c20, ss 81, 84 [\textit{CCRA}].
\textsuperscript{192} \textit{CCRA}, s. 83.
\textsuperscript{195} CSC, “Enhancing the Role of Aboriginal Communities” [emphasis added].
• The ultimate goal is the safe reintigration of offenders into the community, using the least restrictive measures of control consistent with the protection of society; the safety of the community; and the well-being of the offender.
• Initiatives are respectful of the needs of Aboriginal communities and include respect for cultural, traditional and spiritual practices.
• The members of the Aboriginal community understand and accept the implications and responsibilities involved in these principles.

In March 2005, it was reported that, since 2000, 324 Aboriginal offenders had been transferred to the community under s. 81 agreements.\(^{196}\) CSC has signed several section 81 agreements with Aboriginal groups to allow for this community involvement and re-integration of offenders. Examples of the agreements include five federal beds operating under a Section 81 agreement with the Prince Albert federal/provincial offender facility in Wahpeton and a Section 81 agreement with Native Counselling Services of Alberta for the operation of Stan Daniels Healing Centre.\(^{197}\)

Section 84 of the Corrections and Conditional Release Act encourages the participation of Aboriginal communities in an offender’s release planning process. If the offender agrees, CSC may approach Aboriginal communities early in the offender’s sentence to determine if they are interested in proposing a release plan. Early release planning results in a better co-ordination of efforts and a better chance of successful reintegration. The Service welcomes and encourages communities to become aware of the efforts being taken by the offender while incarcerated. This can provide encouragement to the offender and, at the same time, promote the expectations the community may have of the offender’s behaviour – both while incarcerated and upon eventual release.\(^{198}\)

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\(^{198}\) CSC, “Enhancing the Role of Aboriginal Communities”.
Sections 81 and 84 provide CSC and Aboriginal communities with an opportunity to work towards establishing alternatives to incarceration for Aboriginal offenders. They also provide for a more positively compelling and effective response to the needs of Aboriginal offenders.

The DeVillers sub-committee also commented on the alarming over-representation of Aboriginal persons in Canadian prisons. The sub-committee emphasized that the CSC must recognize the special needs of Aboriginal inmates and ensure that programs are in place that foster their reintegration into the community. One of the recommendations of the sub-committee was the creation of the position of Deputy Commissioner for Aboriginal offenders within the Correctional services hierarchy. The position would be similar to the one in existence for women offenders and would be responsible for planning and developing policies and programs, monitoring and reviewing Correctional Services operations and supervising studies on issues affecting Aboriginal offenders. In fact, this recommendation has been echoed by the Office of the Correctional Investigator (OCI) for several years; in the OCI’s 2006/2007 ministerial recommendations, Correctional Services was urged to reconsider its decision not to appoint a deputy commissioner for Aboriginal offenders. The OCI expressed concern that “the Correctional Service is not meeting its formal consultative legislative requirement” towards Aboriginal communities. In the most recent report on Plans and Priorities (2010-2011), of the CSC, one of the planning highlights for correctional interventions was that CSC continues to develop and implement programs that are culturally-appropriate and designed to address the unique needs of Aboriginal offenders. Furthermore, CSC will also implement programs that are responsive to the

199 Canada, A Work in Progress: The CCRA (Chair: Paul DeVillers), at para. 3.46.
200 Canada, A Work in Progress: The CCRA (Chair: Paul DeVillers), at para. 3.48.
201 Canada, Correctional Investigator Canada, Annual Report of the Correctional Investigator of Canada 2006-2007 (Ottawa: Minister of Public Works and Government Services, 2007) at 21 [OCI, Annual Report of the Correctional Investigator 2006-2007] (Instead, CSC added the Aboriginal portfolio to the duties of the Senior Deputy Commissioner; the OCI no longer considers this arrangement to be a “workable compromise”).
ethno-cultural offender in response to the increasing cultural diversity in the Canadian population.\textsuperscript{203}

Another development in dealing with Aboriginal offenders is the Aboriginal Offender Substance Abuse Program (AOSAP) which is a culturally appropriate program by CSC seeking to reduce the risk of relapse to substance abuse and re-offending among Aboriginal men in federal custody.\textsuperscript{204}

d. Female Prisoners and Employment Programming

\begin{quote}
Why have minimum security women been sent into the community in shackles on various forms of temporary absences? Why do we continue to use classification tools that disproportionately discriminate on the basis of race, class, gender and sexual orientation? [...] “Why are women with mental health problems and maximum security women imprisoned in all-male prisons? Why are so few federally sentenced Aboriginal women placed in the Okimaw Ohci Healing Lodge, a facility designed specifically for them.” [...] “When women get out of prison, they face additional problems, occasioned by the severe lack of community release options for women. Contrary to Canada’s international obligations and agreements, as well as domestic law and correctional policy, many women are forced to go to halfway houses and other resources designed by and for men, while simultaneously trying to make ends meet, regain custody of their children and figure out ways to survive. Indeed, to date, there are no women-only parole resources in the Prairie and Atlantic regions.” [...] “The Service established a Task Force on Segregation and convened a Working Group on Human Rights. Although some of the main crucial recommendations, such as the need for independent oversight of CSC’s use of segregation have not been implemented, and women’s issues have not been examined or addressed, there is now a Human Rights Division within the CSC.\textsuperscript{205}

There are few women under federal sentence in Canada. However, the federal women offender population has undergone an increase from 1981 to 2006. Over that

\textsuperscript{204} Correctional Service Canada, “Development of an Aboriginal Offender Substance Abuse Program” \textit{Forum on Corrections Research} 18:1 (August 2009) 1.
\textsuperscript{205} Kim Pate, “Correcting Corrections for Federally Sentenced Women” \textit{Let’s Talk} (Correctional Service Canada) 23:4 (November 1998) 16 at 16-17 [emphasis added].
period of time, the population of women in federal custody increased from 200 to 401. Typically, the growth of the female offender population has not greatly surpassed the growth of the adult women population. The CSC has developed a comprehensive Women Offender Program in order to effectively manage the women offender population. The program is based on the principles outlined in the 1990 report “Creating Choices: The Report of The Task Force on Federally Sentenced Women.”

In the report, the Task Force outlined five principles that serve as the basis for CSC’s work. The principles are to “echo the voices of federally sentenced women” and emphasize “individual dignity and rights, the potential for human growth and development, community input and participation, and the sharing of ideas, knowledge, values and experiences.” The five principles are:

1. Empowerment – programs to enhance self-esteem and empowerment;
2. Meaningful and Responsible Choices – meaningful options which allow female offenders to make responsible choices;
3. Respect and Dignity – mutuality of respect is needed among prisoners, among staff and between prisoners and staff;
4. Supportive Environment – the quality of an environment can promote physical health, psychological health, and personal development; and

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208 See e.g. CSC, Women Offender Profiles, Research Report No. R-131 (Despite the increase in the raw number of female offenders, the incarceration rate of federal women offenders per 100,000 adult women in the population was 2.2 in 1981, but only 2.8 in 2002, at 6).
211 CSC, “Chapter 10” in Creating Choices.
(5) Shared Responsibility – a foundation of responsibility among a broad range of community members.

In *Creating Choices*, four specific recommendations for the CSC were advanced. The first recommendation was closure of the Prison for Women in Kingston and the creation of five regional facilities for federally incarcerated women. The Task Force advocated the creation of a Healing Lodge in the Prairie region, and the development of women-centred programs, including survivors of abuse and mother-child programming. Lastly, the Task Force suggested the establishment of a community strategy to expand and strengthen residential and non-residential programs and services for women offenders who are conditionally released.212

In response, there are now five regional facilities and a healing lodge in operation, whilst Prison for Women was closed in July 2000.213 The Women Offender Program offers five “mutually reinforcing” types of programs incorporating the *Creating Choices* principles, at each of the regional facilities for women across the country.214 Increasingly, the programming offered by CSC is gender-specific.215

**Correctional Programs** target criminal behaviour. This category includes the Women Offender Substance Abuse Program (WOSAP), which provides a “systemic approach to substance abuse”216 and addresses issues related to substance use that are particular to women. The Reasoning and Rehabilitation Program (Cognitive Skills Training) deals with problem-solving skills, the critical reasoning skills of female offenders, and deficits in the realm of living skills.217

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Mental Health Programs are provided according to the framework set out in the Mental Health Strategy for Women Offenders (2002). The goal of this strategy is to “develop and maintain a coordinated continuum of care that addresses the varied mental health needs of women offenders in order to maximize well-being and to promote effective reintegration.” The Continuum of Care involves elements such as mental health assessments, counselling services, and the provision of intermediate to intensive psychiatric/psychological care options. Support for the mental well-being of women is provided, for example, through services and treatments targeted towards survivors of abuse and trauma. (The proportion of women offenders who have experienced abuse and trauma in their families or in their intimate relationships is high).

Every women’s institution is required to provide Education Programs, and CSC strongly encourages participation until completion of Grade 10. Employment and Employability Programs, (such as the National Employability Skills Program (NESP) for Women), help prepare women for employment upon release and facilitate their integration in the community. These resources are especially important for women offenders since “they have a criminal record and they are members of socially disadvantaged groups in terms of accessing meaningful employment.”

Lastly, a cluster of Social Programs aid offenders in choosing pro-social lifestyles and successfully integrating into society. This category includes: a Peer Support Program, the Leisure Education Program (promoting health and wellness), Recreational Therapy, and the Community Integration Program (which provides valuable information to offenders about to transition back into the community). Incarcerated women who are

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221 CSC, Program Strategy for Women, at 17.
mothers have access to the Parenting Skills Program, and to the Mother-Child Program, which fosters stability and continuity for the child in its relationship with its mother.

There are also two other major CSC initiatives designed to ensure a more equitable and appropriate correctional regime for women in Canada. With approximately 60% of women serving federal sentences on conditional release in the community, the CSC has developed a community reintegration strategy to assist these women in making the often difficult transition from prison to the community. The Community Strategy for Women, in place as of 2002, “serves as a framework for approaches to be taken with respect to women offenders on release in the community in areas such as residential services, programs, mental health needs and others.”

The CSC also initiated the Intensive Intervention Strategy (IIS) in 1999, which established units for the safe and secure accommodation of maximum-security women offenders, and those minimum and medium security women offenders with mental health problems. The Secured Units – a separate model for housing female maximum security offenders, tailored to women – were opened in 2003/2004 at women’s regional facilities across Canada (except at Fraser Valley, where they opened in 2006). Eight-bed Structured Living Environments (SLE) were implemented in 2001 (in 2004 at Fraser Valley) to house lower-security women with mental health concerns: the SLEs feature 24-hour supervision, program areas, and an interdisciplinary team who provide “specialised correctional, rehabilitation, and mental health programming.”

Other programs and services play an essential role in the successful reintegration of women offenders. They include: multi-cultural programs, spirituality programs, recreational programming (like horticulture), vocational education, and various health

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223 CSC, Program Strategy for Women, at 23.  
224 CSC, Ten-Year Status Report on Women, at 41.  

programs and services. The development and implementation of these programs is the responsibility of the individual institutions.

Section 77 of the CCRA states:

77. Without limiting the generality of section 76, the Service shall

(a) provide programs designed particularly to address the needs of female offenders; and

(b) consult regularly about programs for female offenders with

(i) appropriate women's groups, and

(ii) other appropriate persons and groups

with expertise on, and experience in working with, female offenders.

In 2000, the DeVillers sub-committee repeatedly heard during its hearings that programs and services for women offenders were still inadequate, despite an overall improvement in the situation of women offenders since the shift to regional correctional institutions. To supplement its visits to Canadian penitentiaries, the sub-committee relied on the testimony of certain witnesses, including Lisa Addario of the National Associations Active in Criminal Justice, Marie-Andrée Bertrand of the École de criminologie at Université de Montréal, and Kim Pate of the Canadian Association of Elizabeth Fry Societies. Each of these witnesses asserted “that the obvious lack of adequate programs and services for women offenders constitutes prejudice against this offender group.”

The sub-committee did recognize the challenge posed by the small size of the women offender population to the provision of diversified programs. The CCRA Working Group report on women in maximum-security institutions elaborated, stating:

Programming is often impeded by the small numbers, which also militate against effective programming. Small numbers mean most women

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\textsuperscript{228} Canada, \textit{A Work in Progress: The CCRA} (Chair: Paul DeVillers), at para. 3.38.

\textsuperscript{229} Canada, \textit{A Work in Progress: The CCRA} (Chair: Paul DeVillers), at para. 3.39.
receive individualized assistance (e.g. school) and one-to-one counseling which is not ultimately desirable, nor in many instances, effective in helping to reduce risk.\footnote{Canada, A Work in Progress: The CCRA (Chair: Paul DeVillers), at para. 3.40.}

The St. Leonard's Society of Canada cautioned the sub-committee against analysing women's programs in terms of cost-effectiveness:

> The numbers do not allow for economies of scale. However, by using best practices in women's programs, we will lead the way to improvements in corrections for men and we will see the successful integration of women to their communities – measures which benefit us all.\footnote{Canada, A Work in Progress: The CCRA (Chair: Paul DeVillers), at para. 3.41.}

In their analysis, the sub-committee did not consider the small number of women inmates a justification for not providing adequate services geared towards women offenders’ rehabilitation and reintegration into the community.\footnote{Canada, A Work in Progress: The CCRA (Chair: Paul DeVillers), at para. 3.43.} While acknowledging steps taken in response to this problem since the “Creating Choices” report in 1990, such as the creation of the position of Deputy Commissioner for Women, the sub-committee emphasised that more progress must be made, and that “[r]ecognition of the Correctional Service’s difficulties cannot justify abandoning the ongoing search for solutions.”\footnote{Canada, A Work in Progress: The CCRA (Chair: Paul DeVillers), at para. 3.42.} In light of their findings, the sub-committee strongly recommended that CSC and the Deputy Commissioner for Women “develop and implement modern work and training programs both in correctional institutions for women and in the community,” in accordance with section 77 of the CCRA (which stipulates that programs must be crafted to address the particular needs of female offenders).\footnote{Canada, A Work in Progress: The CCRA (Chair: Paul DeVillers), at para. 3.44.}

This need for modern work and training programs is echoed by Juliana West, Agency Coordinator for the Elizabeth Fry Society of Calgary.\footnote{Interview of Juliana West, Agency Coordinator, Elizabeth Fry Society of Calgary [n.d.]..} According to West, only
internal institutional jobs, requiring unskilled labour are available, such as laundry, cleaning and cooking. Offenders typically choose to take on these duties due to boredom because of a lack of gender specific programs; furthermore, women offenders are even being steered away from programs in order for these institutional duties to be completed. West also stated that if there is vocational training, either few women participate, or the training is 15 years out of date.

What is needed, according to West, is gender-specific programming for finding meaningful work. First, women have to be assessed as fit for the work, and it must be determined that they are not being resistant and that their anger is not anti-social. Second, women offenders need to have pre-release planning from day one. Instead of offering office or cash handling jobs which require criminal checks, an apprenticeship in a trade such as construction that does not require the criminal check would be a more suitable job. The women can then earn decent wages above minimum wage and avoid resorting to menial and denigrating work (such as prostitution). Additionally, new immigrant women face complications re-integrating. West says that these complications usually manifest themselves as shop-lifting offences that are poverty or loss related; racism, a lack of understanding, and domestic violence can also serve to complicate the situation for immigrant women. Consequently, there needs to be programs in place in order for these offenders to have access to adequate support systems so that once incarcerated, they can fit into prison culture.

e. Employment Programming for Prisoners with Special Needs

“The number of older offenders [over the age of 50] either in [CSC] institutions or under CSC jurisdiction in the community is growing at a much faster rate than that of younger offenders. Older offenders have different needs from those of younger adults and, as the number of older offenders grows, there will be an increasing need for programs and facilities appropriate to their needs.” Graham Chartier, Correctional Service of Canada

In general, it is difficult to motivate older offenders to participate in programs;\(^{237}\) this is compounded by the fact that “most of the current prison programs and policies were not developed with the older offenders in mind,”\(^ {238}\) but to rehabilitate and meet the needs of younger offenders. Physical disabilities, “intellectual, and emotional deterioration brought on by old age and long confinement”\(^ {239}\) can also impede older offenders from participating in employment or other programs, which are geared towards younger inmates. Many older offenders may view educational and vocational programs as holding little value for them. Furthermore, elderly offenders are less likely to be eligible for parole: they have a more difficult time meeting the appropriate conditions (such as “accommodation, financial or job support, and evidence of program participation.”\(^ {240}\) This challenging situation is made all the more difficult because many community-based agencies lack the resources and capabilities to handle the complex needs of elderly offenders (for example, medical, financial, and alcohol-related issues.)\(^ {241}\) CSC will establish a profile of needs of the older offender population and assess to what extent the current inventory of correctional programs and interventions meet those needs.

For these reasons, it was recommended that custodial staff have “specialized training to fully understand the social and emotional needs of older offenders, including the dynamics of death and dying, [...] and a system for referring older offenders to appropriate experts”\(^ {242}\) at both institutional and community levels. It was anticipated that a series of new relevant programs would be developed to address older offenders'
specific needs, however, progress has been slow, and the Correctional Investigator continued to call for improvements in this area in his 2005/2006 Annual Report.\textsuperscript{244}

The DeVillers sub-committee commented on the importance of addressing the needs of special offenders, namely the young, elderly and those with serious health problems. The sub-committee stated that these specific groups’ needs should also be explicitly recognized in the Act along with those of women and Aboriginal offenders. While they were aware that the practices of CSC and the National Parole Board took these special groups’ needs into account, they suggested that the requisite visibility for these needs would be provided by an unambiguous statement to that effect in the legislation.\textsuperscript{245} The sub-committee suggested that the CCRA be re-worded to reflect the following:

\textbf{The Sub-committee recommends that paragraph 4(h) and subsection 151(3) of the \textit{Corrections and Conditional Release Act} be amended by adding offenders who are young, elderly, or have serious health problems to the list of offender groups considered to have special needs.}\textsuperscript{246}

To help make younger offenders and offenders serving shorter sentences “employment-oriented and job-ready,” correctional staff suggested to a Review Panel in 2007, the use of “staged […] (modular) programs that would start in the institution and follow the offender into the community.”\textsuperscript{247}

\textbf{f. Inmate Pay Schemes and Deductions from Earnings}

Inmate pay is governed by section 104 of the \textit{Corrections and Conditional Release Regulations}, as well as provisions within Commissioner’s Directive 730 on

\begin{footnotesize}
\begin{enumerate}
\item CSC, \textit{Managing Older Offenders}, Research Report No. R-70, at 83.
\item Canada, \textit{A Work in Progress: The CCRA} (Chair: Paul DeVillers), at para. 3.33.
\item Canada, \textit{A Work in Progress: The CCRA} (Chair: Paul DeVillers), at para. 3.34, Recommendation 8.
\end{enumerate}
\end{footnotesize}
“Inmate Program Assignment and Payments”, and CD 860 on “Inmate’s Money”. Receiving maintenance allowance under CD 870 (“Maintenance Allowance for Offenders”) prevents inmates from being covered by CD 730. Also excluded from the provisions of CD 730 are prisoners who are within a penitentiary and whose “remuneration is paid directly by an outside employer,” or those “residing in a Community Correctional Centre or a community-based residential facility or a provincial facility, except if residing in a provincial facility for a limited period of time in order to participate in a specific program and not receiving any pay from that provincial facility, or subject to an agreement under section 81 of the [CCRA].”

According to section 2 of the Regulations, net approved earnings are defined as:

...the inmate’s income per pay period from pensions, institutional work, programs referred to in paragraph 78(1)(a) of the Act, authorized employment in the community and sales of hobby crafts, less any **deductions** made for the purposes of reimbursement pursuant to subsection 104(4) [emphasis added].

Under section 104.1(4) of the Regulations and pursuant to Directives spread thereunder, an inmate may be required to reimburse the government for room and board plus work clothes, up to 25% of the inmate’s gross income.

104.1 (1) The following sources of income are prescribed for the purposes of subsection 78(2) of the Act:

(a) employment in the community while on work release or conditional release;

(b) employment in a penitentiary provided by a third party;

(c) a business operated by the offender;

(d) hobby craft or custom work; and

(e) a pension from a private or government source.

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248 **CCRA**, s. 4.
249 See CSC, CD 860 at para 9.
(2) Deductions may be made pursuant to paragraph 78(2)(a) of the Act for the purpose of reimbursing Her Majesty in right of Canada for

(a) the costs of food and accommodation and the costs of work-related clothing provided to the offender by the Service; and

(b) the administrative costs associated with access to telephone services provided to the offender by the Service [added in 2013].

(3) The Service shall make the deduction referred to in paragraph 78(2)(a) of the Act before depositing the offender's earnings into the Inmate Trust Fund.

(4) The Commissioner is authorized to fix, by Commissioner's Directive, the amount or maximum amount of any deduction made pursuant to paragraph 78(2)(a) of the Act and the amount to be reimbursed, by percentage or otherwise, pursuant to paragraph 78(2)(b) of the Act.

(5) Subject to subsections (7) and 111(3), where an offender fails to pay an amount to Her Majesty in right of Canada pursuant to paragraph 78(2)(b) of the Act, the Service shall withdraw such moneys either at one time or at regular intervals from the offender's Inmate Trust Fund account until the amount owing is paid.

(6) Any amount owing to Her Majesty in right of Canada by an offender pursuant to paragraph 78(2)(b) of the Act is a debt to the Crown that may be collected by the Service in accordance with this section or the Financial Administration Act.

(7) Where the institutional head determines, on the basis of information that is supplied by an offender, that a deduction or payment of an amount that is referred to in this section will unduly interfere with the ability of the offender to meet the objectives of the offender's correctional plan or to meet basic needs or family or parental responsibilities, the institutional head shall reduce or waive the deduction or payment to allow the offender to meet those objectives, needs or responsibilities. SOR/96-108, s. 2; SOR/2013-181 s. 6.
The current pay scale for offenders working while in an institution ranges from $5.25 to $6.90 daily, depending on their performance. Until October 1, 2013, there were three basic levels of incentive pay set out in CD 730 as follows: Level A at $6.90 for excellent performance; Level B at $6.35 for good performance; and Level C at $5.80 for participation in a program assignment. Level D at a daily rate of $5.80 represented the base pay for an inmate who participates in work assignments, but refused other program assignments such as therapeutic interventions, educational or training activities referred to in paragraph 13 of the Directive. There were also two kinds of daily allowances paid. Prisoners who refuse to participate in all assignments offered by the Program Board are given a daily allowance of $1.00, and those who were unemployed through no fault of their own receive a $2.50 allowance per day. Pay may be suspended for offenders who refuse to either work or participate in institutional programs.

Effective October 1, 2013, incentive pay was discontinued. According to the Federal Corrections Investigator, Howard Sapers, the maximum pay of $6.90 per day has not changed since its introduction in 1981. In addition, offenders are now charged 30% on their income to cover food, accommodation, and telephone expenses (to a maximum of $90 per week). Thus, after deductions, typical offenders employed for 40 hours per week earn about 40 cents per hour and this is before their mandatory contribution to the Inmate Welfare Fund, which amounts to about $6.00 per two week pay period to cover, among other things, television and cable costs.

Directive 730 also sets out, in paragraph 21, the procedures for maternity leave. It stipulates that prisoners “who give birth shall be entitled to 15 weeks of paid maternity leave” and “will receive the level of pay she was at prior to the child’s birth.”

250 See CSC, CD 730, Inmate Program Assignment and Payments, at paras. 17-20.
253 Sapers, 2013.
time worked in all program assignments is in excess of the institution's established work week,” which is normally five days. Furthermore, the rate of pay for overtime is “calculated at one-fifth of the inmate’s daily level of pay for each hour actually worked.” Policy with respect to work assignments performed on weekends and statutory holidays is dictated by paragraphs 33 to 37 of CD 730.

Upon admission to prison, an Inmate Trust Fund is established for each offender in accordance with section 111 of the CCRR, and it is ultimately closed upon the release of the offender, as per section 120.

111. (1) The Service shall ensure that all moneys that accompany an inmate when the inmate is admitted into a penitentiary and all moneys that are received on the inmate’s behalf while the inmate is in custody are deposited to the inmate’s credit in a trust fund, which fund shall be known as the Inmate Trust Fund.

(2) The Inmate Trust Fund shall comprise a current account and a savings account in respect of each inmate.

(3) No moneys standing to the credit of an inmate’s savings account in the Inmate Trust Fund shall be paid out of that account if the balance of the account is lower than the amount provided for in Commissioner’s Directives.

(4) No moneys in the Inmate Trust Fund standing to the credit of an inmate shall, except where a family relationship exists, be transferred to the credit of another inmate.

120. (2) Where an inmate is released from penitentiary, the Service shall ensure that the inmate is given all moneys standing to the inmate’s credit in the Inmate Trust Fund.

Furthermore, section 120 (3) of the CCRR states that,

Where an offender is on temporary absence, work release, parole or statutory release, the Service shall ensure that, in accordance with Commissioner’s Directives, the offender is provided with an allowance to

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256 CSC, CD 730, Inmate Program Assignment and Payments, at para. 32.
ensure that the offender's basic material needs are met and to permit the offender to comply with the requirements of the release plan.

g. Occupational Health and Safety Concerns in a Prison Environment

Regardless of one's livelihood, or a criminal sentence of incarceration, access to professional health care, and a sense of confidence in one's environment, is a fundamental right, not a privilege. With the drastic rise of potentially fatal diseases such as HIV, tuberculosis and various strains of hepatitis in prisons, serious human rights concerns must be addressed.²⁵⁷ Prisoner Mann

With work programs such as prison industries, and with special safeguards required in all workplaces, the area of occupational health and safety is relevant to our discussion. Some work-related issues in a prison setting would include: assuring inmates that the kitchen workers and food preparers are not HIV carriers, or ensuring that waste management workers are not exposed to hepatitis, and ensuring that computer repair workers are not exposed to carcinogens. Max Yalden would likely agree with the above quoted prisoner:

In this environment, full weight must also be given to the very special concerns of employees of the Correctional Service of Canada. For it is equally important to recognize the reciprocal and interlocking nature of the rights and duties of inmates and employees if a correctional system is to make a genuine contribution to the security and well-being of all Canadians [emphasis added].²⁵⁸

Disability and death benefits for inmates and their dependants are regulated under sections 121 to 144 of the CCRR. Whenever prisoners participate in an approved work program as part of their correctional plan, including employment-related activities (that are either required, sponsored, permitted or approved by the Correctional Service), as well as additional duties, training courses, and associated transportation,

²⁵⁷ Mann, at 14.
²⁵⁸ Yalden, “CSC and Human Rights”, at 11.
and become disabled or dies, then they or their dependants may be eligible for compensation. Section 122 of the Regulations applies specifically to inmates in institutions or on day parole, and section 123 grants discretion to the Minister of Justice (Solicitor General) or his/her authorized delegate to pay compensation that is necessary for medical care related to disabilities.

Relevant definitions for the interpretation of the death and disability compensation provisions include:

121. For the purposes of this section and sections 122 to 144,

"approved program" means

(a) any work activity sponsored, approved or permitted by the Service or any other activity required by the Service, excluding any recreational or social activity,

(b) any extra duties imposed pursuant to subsection 44(1) of the Act,

(c) any training course that is approved by the Service, and

(d) any transportation that is arranged for or provided by the Service in connection with any activity, duties or course referred to in paragraphs (a) to (c); (programme agréé)

"authorized person" means a person who is authorized by the Minister under section 22 of the Act to pay compensation; (délégué)

"compensation" means compensation paid pursuant to section 22 of the Act; (indemnité)

"disability" means the loss or lessening of the power to will and to do any normal mental or physical act; (invalidité)

"Labour Canada" means the person who is responsible for the Injury Compensation Division of the Occupational Safety and Health Branch of the Department of Labour or a person who is designated by that person; (Travail Canada)

"medical care" means care that is reasonably necessary to diagnose, cure or give relief from a disability and includes
(a) treatment by a qualified medical practitioner or a dentist,
(b) in-patient and out-patient care and maintenance in a hospital or clinic,
(c) therapeutic and work-related training and rehabilitation services,
(d) the provision of drugs, medical and surgical supplies, prosthetic appliances and eyeglasses,
(e) rental of equipment for treating a disability, and
(f) travel and accommodation expenses that relate to paragraphs (a) to (e); (soins médicaux)

"minimum wage" means the hourly minimum wage that is required to be paid to persons 17 years of age or older, as set out in Part III of the Canada Labour Code; (salaire minimum)

"monthly minimum wage" means the minimum wage multiplied by 175; (salaire minimum mensuel)

"occupational disease" includes

(a) a disease resulting from exposure to a substance relating to a particular process, a trade or occupation in an industry, and

(b) a disease peculiar to or characteristic of a particular industrial process, trade or occupation; (maladie professionnelle)

Human Resources and Social Development Canada, under the Labour Program, operates the Federal Workers’ Compensation Service, which provides compensation benefits and services to federal government employees, certain merchant seamen, and federal penitentiary inmates, for work-related accidents and occupational diseases. The department’s “Compensation Program for Federal Penitentiary Inmates” provides compensation when a prisoner is injured in an accident while participating in a CSC-approved program (i.e., work activities or training programs). Benefits include medical care costs plus a disability payment paid out on a monthly basis or as a lump sum, and

are also payable to qualifying dependents or spouses in the case of accident-related death. The amount awarded,

... reflects the degree of disability remaining after [the inmate is] released. Payments are made only after [an inmate is] released from the penitentiary on full parole, on statutory release or on expiration of [their] sentence.\(^{260}\)

### 3. Inmate Grievance Mechanisms

#### a. Office of Correctional Investigator

In 1992, the *Corrections and Conditional Release Act* formalized the role of the *Correctional Investigator* as that of an Ombudsman for federal corrections.\(^{261}\) With respect to the *CCRA*, former Correctional Investigator Ron Stewart stated,

> The rules are geared to attain the stated purposes of security and reintegration while minimizing their effect on the offender’s enjoyment of the rights of every citizen.\(^{262}\)

*Section 27* of the *CCRA* mandates the **procedural fairness requirement**, and it has been acknowledged that, when dealing with prisoners’ rights, “the more important the right involved, the more painstaking the solicitation and consideration of the offender’s point of view.”\(^{263}\) Therefore, it can be argued that the right to meaningful work, which has such a major impact on a prisoner’s ability to reintegrate into society successfully, is extremely important, and that a prisoner should be consulted regarding prison work from the moment he/she is incarcerated.

An example of where the Correctional Investigator made an impact is the 1994 incident at Prison for Women:

> The cell-extraction was described by the Correctional Investigator in his Special Report to Parliament as an excessive use of force and it was without question degrading and dehumanizing for those women

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\(^{262}\) Ron Stewart, “Human Rights, Fairness, and the Correctional Investigator” *Let’s Talk* (Correctional Service Canada) 23:4 (November 1998) 8 at 8 [Stewart].

\(^{263}\) Stewart, at 9.
involved. The government responded to the Report by commissioning an inquiry to investigate these incidents. ²⁶⁴

Part III of the CCRA sets out the obligations of the Office of the Correctional Investigator ("OCI"), whose special function it is "to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner (of Corrections)"²⁶⁵ and his/her delegates. In Ron Stewart’s view, the OCI:

... has the mandate of ‘observing the observance’ of human rights from an independent, knowledgeable, experienced perspective and identifying ad hoc and systemic violations of human rights. The role of this Office, in conjunction with the Correctional Service of Canada, is to promote both the continued evolution of human rights standards and the protection of those rights within a correctional environment [emphasis added].²⁶⁶

Within prisons, offenders are given democratic representation from inmate committees. As a means towards safeguarding their human rights, prisoners also have a legislative right to a grievance and complaint process. However, as one inmate has stated:

Bureaucratically noble in appearance, in practice the effectiveness, confidentiality and objectivity of the process are viewed with widespread cynicism by many prisoners. The Correctional Investigator is also viewed by many as a symbolic bureaucratic placement, rather than a mechanism to protect and promote human rights. Many prisoners feel that simply lodging a complaint can be detrimental and that the only constructive way to achieve conflict resolution is by circumventing the complex grievance system and directly involving the Federal Court of Canada [emphasis added].²⁶⁷

The Correctional Investigator reports to the House of Commons and the Senate through the Solicitor General on an annual basis, as mandated by law. In the Annual Report of the Correctional Investigator for 2006-2007, it was reported there were a total of 146 employment related complaints with prisoners – 54 receiving an internal

²⁶⁴ CSC, “Regional Facilities” in 50 Years of Human Rights Developments.
²⁶⁵ CCRA, s 167(1).
²⁶⁶ Stewart, at 9.
response (a response provided without consulting resources outside the Office of the Correctional Investigator (OCI)) and 92 requiring a more thorough investigation.\textsuperscript{268} Out of a total number of 7,662 cases for the year, another 135 issue-related contacts involved matters of pay, 10 involved worksite health and safety issues, 189 involved access to prison programs, 50 involved quality and content of programs, 374 involved conditions of confinement, 51 involved case preparation and temporary absences, 189 involved conditional releases, while a full 296 involved the grievance procedure itself. Out of a grand total of 7,477 complaints by institution (which excludes 185 complaints from federal offenders), the Prairie Region numbered 1,611 and resulted in 494 interviews with prisoners over 92 days within the eleven institutions visited by the Office of the Correctional Investigator.\textsuperscript{269} For women’s facilities, there were 452 contacts resulting in 206 interviews over 33 days within eight prisons.\textsuperscript{270} Details of these prisoner complaints were not given; however, if not satisfied with the settlements, prisoners have access to the Federal Court.

\textbf{b. Inmate Grievance Committees within Penitentiaries}

Pursuant to \textit{Commissioner’s Directive 081}, CSC has a separate, three-level Offender Complaints and Grievances process in place. In 2004/2005, CSC reported that there were nearly 19,000 complaints and grievances – 80% of which were resolved institutionally – and that these results had been relatively constant for the previous five years.\textsuperscript{271} While this Directive appears to be reasonable on its surface, the process can be highly political, and in an emotionally-charged, closed environment like a prison, can have disastrous results for prisoners serving on the committees.

\textsuperscript{267} Mann, at 15.
Less formal grievance procedures are important to safeguard prisoners’ rights and one mechanism provided for by the legislation is an **inmate committee**. Under section 2 of the **CCRR**, an inmate grievance committee is defined as:

> ...a committee that is established in a penitentiary for the purpose of reviewing inmates’ grievances and making recommendations with respect thereto to the institutional head and that consists of an equal number of inmates and staff members.\(^{272}\)

Theoretically, inmate committees should offer “democratic representation and a credible remedy”\(^ {273} \) to offenders who feel their rights have been infringed. Regrettably,

> ... due to the isolated and vulnerable circumstances that committee members operate under, many prisoners have profound misgivings about how effective inmate committees are in upholding rights.... Many prisoners are reluctant to get involved in prison politics for fear of jeopardizing their parole prospects or otherwise being reprimanded by the authorities. Many working on inmate committees do so with great conviction and personal sacrifice.\(^ {274}\)

**c. Inmate Affairs Division of CSC**

Within the CSC is the **Inmate Affairs Division** which “has a mandate to investigate third-level grievances. The direct result is the assurance of fair redress for offenders.”\(^ {275}\) The position that “reviews all third-level grievances from federal offenders,” calls for someone who is impartial and fair, and “who can say: ‘Commissioner, you’re wrong. I’m changing your decision!’”\(^ {276}\) Past directors of Inmate Affairs have played a role in implementing Madame Justice Arbour’s recommendations regarding Prison for Women, for instance.

> ...Mme Arbour was harshly critical of the grievance system because of the unreasonably long response times, the remoteness of the decision-

\(^{272}\) CCRR, s. 2.
\(^{273}\) Mann, at 14.
\(^{274}\) Mann, at 14-15.
\(^{276}\) Mainwaring, at 22-23.
making and the incomplete investigation that was conducted into the women’s grievances.\textsuperscript{277}

Furthermore, quarterly bulletins and semi-annual data reports of the Inmate Affairs Division highlight issues, trends, best practices and identifies possible problems with respect to prisoners’ grievances and resolutions.

d. Audit Unit of CSC’s Performance Assurance Sector

Another mechanism to control excesses on the part of federal corrections staff, the \textit{Audit Unit of the Performance Assurance Sector} of CSC, has the power to conduct internal audits on certain subjects. Correctional Service’s human rights practices \textit{per se} have not been specifically audited, however, a number of internal audits (on Segregation, Inmate Discipline, the Use of Force, and Accommodating the Needs of Offenders with Disabilities) have...

\ldots contained objectives related to ensuring that offender rights were respected.\ldots Among the rights examined were: the right to access legal counsel; the right of recourse; the right with respect to official language preference; and the \textbf{right to fair and dignified treatment}.\ldots In many cases, direct input from offender representatives was obtained. This latter step provides a degree of assurance that offenders have a measure of input into the audit process.\ldots Board of Investigation members are required to analyze and report on any areas where the Service or any of its members were not in compliance with the law, policy and procedures [emphasis added].\textsuperscript{278}

In an effort to track CSC’s compliance with the law, the Audit Unit has developed human rights performance indicators as a tool to enable senior management to analyze areas such as:

\ldots\textit{[o]ffender classification and inmate placement (to ensure that the least restrictive option is adhered to)}; \textit{[a]nd} \textit{[p]ast parole eligibility dates (to examine whether individuals are being prepared for the earliest possible safe release)} [emphasis added].\textsuperscript{279}

\textsuperscript{277} Mainwaring, at 23.
\textsuperscript{278} Dandurand, at 29.
\textsuperscript{279} Dandurand, at 29.
4. Victims’ Input into Prisoners’ (Employment) Programming

*Victims rights and concerns were also reflected in the Act, allowing for victims to be kept informed of an offender’s prison and parole status; information from victims to be considered at parole reviews; and victims to attend parole hearings at the discretion of NPB rather than of the offender. Correctional Service of Canada*  

The CCRA gives victims the chance to be involved in the federal corrections and conditional release processes. In light of this, CSC invites victims to provide information about the offender and the impact the offender has had on the victim to the Victim Services Program. The National Parole Board and CSC are obligated to use this information to “assist in the evaluation of an offender’s overall risk and programming needs” and “make decisions as to whether an offender should be released on a temporary absence or a work release.”  

If a victim of a sexual assault were to provide information at a parole review alleging that a prisoner’s proposed employment program in the community exposes that person to increased opportunities for re-victimization, then a parole board has a duty to weigh the victim’s concerns. Therefore, it is incumbent upon prison authorities to develop a correctional plan alongside the prisoner which includes an appropriate work program which will not put the victim at potential risk, nor put the prisoner at increased risk of having his/her parole denied.

5. Evaluation of Prisoners’ Work Programs vis-à-vis Rehabilitation and Reintegration

According to Latendresse and Cortoni, there is a nexus between effective prisoner work programs and successful reintegration through enhanced employability. They state:

Research demonstrates that employment programs for offenders are successful in reducing negative offender behaviour during incarceration, reducing post-

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release recidivism, and increasing employment opportunities in the community.\textsuperscript{282}

The DeVillers Sub-Committee, while conducting a five-year review of the CCRA, looked into the CSC’s rehabilitation programs and called for the Auditor General of Canada to conduct an in-depth evaluation of the reintegration process – expressly targeting Aboriginal prisoners and female prisoners released into the community.\textsuperscript{283} The sub committee states:

Since previous Auditor General of Canada audits of the process of reintegration into the community have not addressed issues specific to women or Aboriginal offenders, the Sub-committee recommends that the Auditor General carry out an evaluation of the process of reintegration into the community available to women, as well as an evaluation of the process available to Aboriginal offenders in the federal correctional system.\textsuperscript{284}

Subsequently, in April 2003, the Office of the Auditor General of Canada reported to Parliament on the “Reintegration of Male Offenders” (Chapter 4), and the “Reintegration of Women Offenders” (Chapter 5). With respect to female prisoners, the Auditor General stated that women offenders have little access to meaningful work opportunities and employment programs while incarcerated, which denies them the importance of gaining work skills which are necessary for their reintegration into the community.\textsuperscript{285} Not only should there be access to meaningful work, but employment programs must be adapted specifically for women.

Those opportunities that do exist must also serve to meet identifiable factors that help women re-integrate into the community when released from prison. These

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{282} Mark Latendresse & Franca Cortoni, “The National Employability Skills Program for Offenders: A Preliminary Investigation” \textit{FORUM on Corrections Research} (Correctional Service Canada) 17:1 (June 2005) 41 at 41.
\item \textsuperscript{283} Canada, \textit{A Work in Progress: The CCRA} (Chair: Paul DeVillers), at paras. 3.49, 3.50.
\item \textsuperscript{284} Canada, \textit{A Work in Progress: The CCRA} (Chair: Paul DeVillers), at para. 3.50, Recommendation 10.
\item \textsuperscript{285} Canada, Auditor General, “Chapter 4: CSC – Reintegration of Women Offenders” in \textit{Report of the Auditor General of Canada to the House of Commons} (Ottawa: Ministry of Public Works and Government Services, April 2003) at para. 4.3 [Auditor General, “Reintegrating of Women”].
\end{enumerate}
\end{footnotesize}
factors include: “safe and affordable housing that allows [reunification] with their children, participation in substance abuse treatment and recovery programs, and education and skills that lead to a job at a living wage.” The report identified the initial intake assessment as an essential step in crafting an appropriate set of programs for offenders. This intake involves classifying offenders at the proper security level in order to determine their access to correctional programs such as temporary absences and work releases.

The Auditor General recommended that CSC develop and implement a women’s employment strategy that increased the offering of employment programs and certification programs, and focused on ameliorating women offenders’ marketable skills. Since that time, CSC has debuted an employability skills training program for women, and has drafted a National Employment Strategy specific to women offenders.

To facilitate the reintegration of Aboriginal offenders in the Community, the 2007 CSC Review Panel suggested that CSC redevelop an Aboriginal Employment Strategy and continue expanding its cooperation “with the National Aboriginal Board in pursuing economic measures that help [reintegration …] by creating employment opportunities” in Aboriginal communities.

In 2007/2008, as part of the employment training at work process, CORCAN worked with the Aboriginal Human Resource Council to conduct a pilot project in four of the five regions that focused on Aboriginal needs, lifestyle and culture. The pilot project was a success and discussions with Aboriginal Initiatives and Women Offenders divisions are under way to implement the program with a completion date in 2009.

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286 Auditor General, “Reintegrating of Women”, at para. 4.24.
287 Auditor General, “Reintegrating of Women”, at para. 4.38.
288 Auditor General, “Reintegrating of Women”, at para. 4.39.
289 Auditor General, “Reintegrating of Women”, at paras. 4.87-4.88.
292 “CSC, Hands at Work” at 8.
293 “CSC, Hands at Work” at 8.
Of the close to 9,000 offenders who found work through CORCAN Community Employment Centres between 2001 and 2009, 85% did not return to federal institutions. This marks a success to CORCAN efforts in providing and matching offenders with the training and work experience that reflects their needs when released into the community.

The 2007/2008 annual report for CORCAN marks a record year in employment hours for offenders, in sales revenues and in innovative projects designed to enhance their ability to produce “job-ready” offenders. Also, CORCAN has developed an emerging market in Nunavut valued at about $1 million. CORCAN has been hard at work strengthening partnerships with other government departments and private sector subcontractors. Working with CORCAN teaches offenders a variety of hard and soft skills that will assist them in finding and retaining employment once they leave prison.

Moreover, in Quebec CORCAN employed 22% of the offender population in its shops which represents a 16.8% increase in jobs created in the past year. Also, CORCAN operations employed about 2,000 offenders in 2007/2008 and helped 496 offenders find jobs at the time of their release. CORCAN developed a follow-up system to monitor job placement maintenance in the community.

6. Public Education Strategies for Prisoners’ Employment Programs

According to the DeVillers Sub-Committee, the complexity of the corrections and conditional release system has lead to a prevalence of misinformation and unreliable data, which has occasionally resulted in incorrect conclusions and beliefs. In addition, they advised that the functions performed within the corrections and conditional
release system were often not clearly understood. The mistaken belief that the Parole Board supervises conditionally released offenders when this is actually done by CSC, served to illustrate their contention. A further example was the fact that alternate types of conditional release are often confused with one another, such as community statutory release with parole.\textsuperscript{301} The ultimate result has been a decline in public confidence in the correctional system.

In recognition of this, both the National Parole Board and CSC have taken steps to provide greater public information. The sub-committee concluded that current efforts, such as conducting tours of correctional institutions, participating in conferences and maintaining informative websites were “not timely enough” and “ineffective.”\textsuperscript{302} It was recommended that these efforts be reviewed in order to effectively counter this misinformation. One essential step emphasized by the Sub-committee was the inclusion of other agencies and groups in the corrections process, besides simply the Parole Board and CSC. These agencies would include non-government organizations, citizen advisory committees and former offenders who were successfully reintegrated into society.\textsuperscript{303}
V. Provincial and Territorial Corrections Law and Policy

A. Employment in Provincial Correctional Facilities

In Toronto, prisoners have been enlisted to white-wash graffiti from public places by the Community Response Unit and the provincial Ministry of Correctional Services. Public safety concerns were addressed by having the inmate workers supervised by both municipal police officers and provincial correctional officers, as well as screening out prisoners posing a risk to society. The Prisoner Work Program pilot project first implemented at the Rideau Correctional Centre in 1995 has since been expanded to include at least twenty-three other provincial institutions within Ontario. The community-based work encompasses highway and roadside waste removal, and cemetery and other public property maintenance, including tree pruning and grass cutting.

British-Columbian correctional institutions utilise prisoner work programs as well. Inmates housed at the Maple Ridge, Mission, and Kamloops facilities are given the opportunity to perform duties on and off prison grounds. Inmate crews help clean up provincial parks, complete small construction jobs for non-profit organisations, and help firefighters combat forest fires. In the past, inmates have performed “the back-breaking job of digging out invasive blackberry bushes” and replaced them with native cedar trees, and have helped with sandbagging efforts during floods.

In Manitoba, the Attorney General stated:

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304 Desmond Brown “These guys won’t paint themselves into a corner with this project: Inmates assigned to cover up graffiti as part of work program” National Post (10 August 2000) A17 [hereinafter Brown].

305 Brown.

306 Brown.

307 Brown.


In Adult Corrections we are developing a prison industry strategy and have been successful in increasing work programs. We have increased the number of inmate work crews and have worked with communities to identify work projects that are community based for inmates. In all of our adult institutions inmate privileges have been reduced. TV is now only available in evenings and weekends and visits to institutions have been restricted to those times as well. The prison schedule now resembles work. We have moved from a system of automatically awarding a remission of sentence to one in which remission must be earned by the inmate for participation in industries and positive behaviour. We have also reduced the number of temporary absences that are granted and insist that they be allowed only where they are an integral part of the prisoner’s rehabilitation plan. In all cases community safety must be the paramount concern.  

In 2002, the Government of Alberta conducted a review of its corrections system, including offender rehabilitation and work programs, staff safety, offender security, and the effectiveness of existing sentencing practices. The Review committee concluded that it was “essential that [Alberta’s] adult offender education framework be retained” and that funding levels for the education program not fall below 2002-levels. As per the Committee’s recommendation, farming operations at three Alberta prisons – which employed very few inmates – were closed. The outsourcing of correctional programs to non-governmental organisations was also suggested.

The then Solicitor General for Alberta, Heather Forsyth, also tasked the Review committee with studying Ontario’s privately-run correctional institution. In explaining the rationale, the Solicitor General was reported as saying:

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312 Alberta, Government MLA Review, at 48-49.
KEEPPING THE PEACE: PRISONERS’ RIGHTS AND EMPLOYMENT PROGRAMS

The corrections landscape has changed with the increased use of conditional sentences and the resulting decline in minimum-security offender populations.315 Ontario has a privatization model and it's the only one in Canada. So we feel it's important to look at their model.316

The decision to review the privatised prison model came despite Alberta having the lowest per diem costs for housing offenders.317 Central North Correctional Centre, Ontario’s privately-run prison, was returned to the province in November 2006, after the province’s Correctional Minister acknowledged that staffing, inmate supervision, “prisoner health care, security and rehabilitation were all lacking.”318

Additional scrutiny of Alberta’s justice system was conducted by the Crime Reduction and Safe Communities Task Force in 2007. Among its recommendations was a suggestion to increase the use of work camps, which “provide a combination of life skills, productive work and treatment,” and “offer a unique and useful opportunity to make better use of the time spent [in custody] and help set offenders on a more productive path back to the community.”319 The only such camp currently operating in the province is the Shunda Creek work camp for young offenders.320 Individually, Alberta’s correctional centres do provide inmates with education and employment opportunities,321 which include:

- Splitting firewood which is donated to volunteer organizations for resale (Lethbridge Correctional Centre);

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315 Alberta, Government MLA Review, at 69.
316 Cryderman and Howell.
318 “Private jail said to have saved province $11M” Sault Star (29 April 2006) A4.
320 Alberta. Solicitor General and Public Security. Young Offender Programs online: http://www.solgps.alberta.ca/programs_and_services/correctional_services/young_offenders/Pages/young_offender_programs.aspx#offenderwork
• Manufacturing wooden toys that are donated to non-profit agencies (Fort Saskatchewan Correctional Centre);
• Snow removal for seniors (Peace River Correctional Centre); and
• Refurbishing bicycles (Calgary Correctional Centre).

The Task Force reported that in the past, inmates have “worked on crews maintaining parks, assisting with municipal projects [and] fighting fires.” It recommended that:

...as long as inmates are not a risk to the community or a risk to escape, involving them in productive work that benefits the community is positive not only for the community but for the individual inmates and, therefore, should be encouraged.

B. Provincial Legislation

1. Prison Work

Every province and territory has its own legislation authorizing the establishment of education, vocational, and employment programs for inmates in provincial/territorial correctional facilities, with the aim of fostering rehabilitation and successful reintegration in the community.

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<tr>
<th>Province</th>
<th>Legislation</th>
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<tbody>
<tr>
<td>British Columbia</td>
<td>s 23 Correction Act; s 38 Correction Act Regulation</td>
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<tr>
<td>Alberta</td>
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<td>Nunavut</td>
<td>see: Northwest Territories</td>
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322 Alberta, Safe Communities Task Force, at 55.
323 Alberta, Safe Communities Task Force, at 55.
Some provinces explicitly exclude the application of some legislation to inmates participating in a work program. In British Columbia, the *Correction Act* states that:

**23 (2)** The *Employment Standards Act*, the *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to inmates in respect of or due to their participation in a work program.

In Manitoba, legislation stipulates that an inmate performing work in a custodial facility or as part of a correctional program is not an employee for the purposes of any Act (for example, employment legislation) – except those who are classified as working for the government, pursuant to the *Workers Compensation Act*. Similarly, s 202 of the Act respecting the Quebec correctional system, indicates that a number of provincial laws – including some regarding labour standards and labour relations, do not apply to inmates who work inside or outside a correctional facility.

Legislation also delineates what constitutes permissible use of force and allowable methods of restraint of inmates.

In Alberta, the *Correctional Institution Regulation* specifies that when dealing with inmates,

**7 (2)** Employees are not to use humiliating tactics or harassing techniques with respect to inmates.

**7 (3)** Employees are to deal with inmates in a manner designed to encourage the self respect and personal responsibility of inmates.

### 2. Human Rights Legislation

Provincial/territorial human rights legislation is unequivocal in asserting that human beings have certain inalienable rights, inherent dignity and worth, and that all persons are equal. Canada’s human rights obligations are imbedded in domestic legislations and distributed over many international instruments. All human rights

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324 *Correctional Services Act*, SM 1998, c47, CCSM c C230, s 57.
principles and obligations that Canada has subscribed to since the *Universal Declaration of Human Rights*\textsuperscript{325} was adopted 50 years ago apply equally to the treatment of offenders, staff and others, whether it be in an institutional or a community setting.\textsuperscript{326}

\subsection*{C. Boot Camp Issues}

Boot camp is an alternative for prison for young offenders. It contributes to an easy transition to the community. Boot camps typically admit to their programs non-violent offenders with no prior incarceration record, in other words those who might otherwise have been sentenced to probation or community-based alternatives rather than prison.\textsuperscript{327} The primary treatment tool in boot camps is teaching in military style which is a rehabilitative tool that contributes to the lower re-offending rate.\textsuperscript{328} There are four goals to training offenders in boot camps: first, to create a less expensive alternative to prison; second, to reduce recidivism and promote successful reintegration of the offender into the community; third, to deter crime and promote community relations; and fourth, to improve control and management techniques.\textsuperscript{329}

On the issue of boot camps, the Attorney General of Manitoba stated,

In Youth Corrections we have established two boot camps and a work camp at Milner Ridge. This innovative approach to dealing with young offenders has caught the attention of correction workers across the country. **There are five principles which our government applies to our boot camps. We believe that a spartan environment, regular work routine, limited privileges, consequences for inappropriate behaviour and participation in school and intervention programming will help turn the lives of these young people around** [emphasis added].\textsuperscript{330}

According to the John Howard Society of Alberta, literature on boot camps and wilderness camps suggests that “they do not have lasting effects unless appropriate

\begin{footnotes}
\item[325] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) (hereinafter UDHR)
\item[327] Church Council on Justice and Corrections, *Satisfying Justice* July 1996 at 171 (hereinafter Satisfying Justice)
\item[329] Boot Camps at 2.
\end{footnotes}
follow-up care is available and that they do not produce lower rates of recidivism for graduates.”

Both programs are criticized for their failure to teach concrete work skills or positive attitudes toward work; however, the report lists several factors that make boot and wilderness camps successful and outlines what can be improved. Work camps should avoid military style discipline, as it promotes dealing with conflict with aggression and in a confrontational manner. Camps should offer aftercare programs that provide job search assistance and community support. Young offenders attending work camps should be referred by the corrections authority as opposed to a judge in order to avoid net-widening. Also, work programs need to target high risk offenders who lack job skills, and not just the general offender population. Most importantly, work programs must improve “practical skills, develop interpersonal skills” and prevent work from being “merely punishment.”

They must motivate participants to succeed, and the work “must be socially reinforcing, personally meaningful, and well supervised.”

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332 John Howard Society, “Alternative Custody”.
VI. International Human Rights Law and the Treatment of Prisoners

The importance of international law with respect to prisoners’ rights cannot be understated. Max Yalden, Chair of the CSC Working Group on Human Rights examined:

...CSC’s domestic and international obligations, to compare Canada’s experience with others’, to sketch out a model for evaluating compliance, and to evaluate CSC’s ability to respect human rights and its capacity to communicate its mandate.335

A. Global Standards: Binding Instruments

Canada has ratified many international human rights treaties, and in doing so, has made a commitment to abide by the provisions within each agreement, unless authorities have made a reservation with respect to particular articles. Aside from being a full member of the United Nations and bound by the Charter of the United Nations336 – and by implication, the Universal Declaration of Human Rights337 – Canada has specifically bound itself, by accession, to the International Covenant on Economic, Social and Cultural Rights;338 the International Covenant on Civil and Political Rights;339 and the Optional Protocol to the International Covenant on Civil and Political Rights,340 which, together with the Universal Declaration, form the International Bill of Human Rights. In

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336 United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI (hereinafter UN Charter)
337 UDHR
2005, Canada acceded to the Second Optional Protocol to the *International Covenant on Civil and Political Rights*,\(^{341}\), dealing with the abolition of the death penalty.

Canada has also ratified the *International Convention on the Elimination of All Forms of Racial Discrimination*\(^{342}\); and the *Convention on the Elimination of All Forms of Discrimination against Women*,\(^{343}\) as well as the Optional Protocol to the latter. Canada is a state party to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,\(^{344}\) and the *Convention on the Rights of the Child*,\(^{345}\) along with its two optional protocols dealing with the involvement of children in armed conflict and the sale of children, child prostitution and child pornography.

1. **UN Charter and the International Bill of Human Rights**

The *Charter of the United Nations* (1945), together with the *Universal Declaration of Human Rights* (1948), lays the groundwork from which all other binding and standard-setting human rights instruments receive their legitimacy within the global community. Only a few countries have not seen fit to join the United Nations and agree to the organization’s principles, such as those referred to in the *Charter’s Preamble*: respecting “fundamental human rights,” the “dignity and worth of the human person,” the “equal rights of women and men of all nations,” and the establishment of “conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”\(^{346}\)

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\(^{344}\) UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85 (hereinafter Un General Assembly, CAT)


Article 1(3) of the Charter of the United Nations (UN Charter) calls upon state parties to co-operate in “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” In Article 55, the United Nations undertakes to promote, among other things, “full employment” and the “observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Article 56 states that “All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.” Other articles of significance for international human rights law include Articles 8, 13, 57, 62-63, 73-74, 76 and 88.

The Universal Declaration of Human Rights, (Universal Declaration), was adopted by consensus and proclaimed into force by General Assembly resolution 217A (III) on December 10, 1948. This declaration is very strong evidence of the codification of international customary law with respect to the human rights norms existing by the end of World War II. It is directly linked to the mandate of the General Assembly, as provided in Article 13 of the UN Charter, to advance human rights and fundamental freedoms.

Article 1 of the Universal Declaration establishes that:
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

In furthering the equality principle, Article 2 states that:
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [emphasis added]

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347 Charter of the United Nations, art. 1(3).
348 Charter of the United Nations, art. 55.
349 Charter of the United Nations, art. 56.
350 Article 12 of the Universal Declaration and the right to protection against unreasonable searches was examined in the Weatherall case.
These last three words are crucial, in that the drafters of the *Universal Declaration* recognized that human beings will continually be arriving at new ways to discriminate against one another – for instance, discriminating against those with mental or physical disabilities, those of particular age groups, or even those who find themselves in correctional institutions. Furthermore, **Article 7** reinforces the importance of equality by stating:

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

In commenting on **Article 1**, the Human Rights Division of CSC affirmed:

> The recognition that all persons, regardless of their individual circumstance, “are born free and equal in dignity and rights” is perhaps no more applicable than in the world of corrections. Although half a century has passed since the adoption of the *Universal Declaration*, it continues to be a compelling and relevant source for interpreting human rights rules in the correctional setting. Much of the spirit and letter of the *Declaration* is echoed in the principles and provisions upheld by our own *Canadian Charter of Rights and Freedoms* [emphasis added].

The *Universal Declaration* prohibits slavery and servitude in **Article 4**, while **Article 9** prohibits arbitrary arrest, detention or exile. These two provisions would be invoked if a prisoner pleaded he or she was arbitrarily incarcerated in order to be forced into labour – a situation prohibited by law and addressed by other international labour conventions as well. As regards **Article 5**, the principle:

> ...that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” [...] is now entrenched in the *Charter* and is clearly stated in the *CCRA*.\(^{352}\)

This acknowledgement is significant because Canada considers itself generally bound by the *Universal Declaration*, and specifically bound by Article 5.

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\(^{351}\) Zinger, at 5.

\(^{352}\) Brochet, at 21.
**Article 6** upholds the dignity of each person, regardless of their situation. It reads:

Everyone has the right to recognition everywhere as a person before the law.

According to the former Solicitor General of Canada,

**Article 6** of the *Universal Declaration* reminds us [that] all people, including those who are imprisoned, have the right to full and **equal** recognition and protection before the law. In other words, the exercise of what the *Declaration* refers to as “inalienable” and “fundamental” rights and freedoms, such as the right to life, liberty and security of the person, are subject only to those limitations which are determined by law. [...] Respect for human rights is the bedrock upon which all correctional interventions should be based. As the [*Universal Declaration* makes clear, recognition of the inherent value and dignity of the person is the surest foundation upon which justice, peace and security can be achieved. 353

Even the most wretched murderer has the right to be heard, and **Article 8** states that,

Everyone has the right to an effective remedy by the competent national tribunals or acts violating the fundamental rights granted him by the constitution or by law. 354

The final article with special significance to inmate work programs is **Article 23** which states that:

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

353 Scott, at 2-3.  
354 UDHR, art. 8.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

It is submitted that “everyone” takes the ordinary meaning of “everyone” and includes prisoners.

2. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR) was adopted by the General Assembly resolution 2200A (XXI) on December 16, 1966, and came into force ten years later; Canada acceded to it on May 19, 1976. Article 2(1) commits state parties to take steps

... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Furthermore, Article 2(2) requires state parties to

... guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [emphasis added].

It is submitted that prisoners are an analogous group to the groups listed in the aforementioned article. It is interesting to note that in sub-section (3), only developing countries are allowed to use their discretion with respect to the “extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

Canada is not a developing country by any stretch of the imagination and would thus be required to protect aliens or refugees who may find themselves in Canadian prisons.

Article 7 of the ICESCR speaks to the issue of work whereby state parties affirm that everybody has the right

... to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:
(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

While it would be a challenge to accommodate prisoners and their families in all these provisions, it would not be impossible.

Article 8 addresses the right to form and join trade unions, and sub-section (2) permits state parties to legally restrict armed forces, police, or the administration from exercising this right, but no mention is made of inmates. Article 10(3) refers to youth, therefore prison industries that may potentially employ young offenders need to be mindful of this provision, which provides:

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law [emphasis added].

Finally, Article 13(1) of the ICESCR calls upon state parties to recognize,

...the right of everyone to education [...] agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the United Nations for the maintenance of peace.
Within a prison-setting, this right takes on special importance if inmates are to eventually be released into society as law-abiding citizens “keeping the peace.”

3. International Covenant on Civil and Political Rights

On the 19th of May, 1976, Canada also acceded to the International Covenant on Civil and Political Rights (hereafter ICCPR) and its First Optional Protocol, only two months after it came into force. The ICCPR was adopted by the same General Assembly resolution as the ICESCR. Article 2 mirrors ICESCR Article 2, except that rather than guaranteeing equality rights, state parties undertake “to respect and to ensure” those rights without discrimination. Another key distinction from ICESCR is Article 4(2), which sets out the absolute rights, and hence the rights in these articles cannot be derogated from – 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18.

Article 6 underscores the absolute right to life and the right not to be arbitrarily deprived of it. Of special significance to the issue of inmate work programs is Article 7 which reads in full:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation [emphasis added].

Prisoners have been, and still are, a very vulnerable group; it is thus important to note that paragraphs 1 and 2 of Article 8 (which are non-derogable) prohibit slavery and servitude, respectively. While paragraph 3(a) prohibits forced or compulsory labour, paragraph 3(b) permits,

... in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court [emphasis added].

Paragraph 3(c) states unequivocally that:

For the purpose of this paragraph the term “forced or compulsory labour” shall not include:

356 Non-derogable rights are those that cannot be taken away or compromised.
(i) **Any work or service**, not referred to in subparagraph (b), **normally required** of a person who is under detention in consequence of a lawful order of a court, or of a person during **conditional release** from such detention;

(ii) Any service of a **military** character and, in countries where conscientious objection is recognized, any national service required by law or conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations. [emphasis added]

According to these provisions, if the Government of Canada wanted, it would be permitted to exact **hard labour** from inmates if its domestic law so allowed. However, the use of the word “normally” could distinguish between work/service on a work crew as opposed to a chain gang – which would not likely be deemed ‘the norm’ in contemporary Canadian society. The **issue of boot camps** is troublesome because certain aspects of it fall within the other exceptions to the rule of forced labour – namely the exemptions for enforced military training and public works.

**Article 9** of **ICCPR** is concerned with the right to liberty and security of person, and the right not to be subjected to arbitrary arrest or detention. While inmates have foregone their right to absolute liberty, they can still expect security of their person while in a penal institution. This expectation of security would equally apply to the workplaces of inmates and to those of their keepers, the prison staff.

The rights of those who are detained in some capacity are specifically addressed in **Article 10**, which states that “all persons deprived of their liberty **shall** be treated with humanity and with respect for the inherent dignity of the human person.”

Paragraph 3 stipulates that:

> The penitentiary system shall comprise treatment of prisoners the essential aim of which **shall** be their reformation and social rehabilitation. **Juvenile offenders shall** be segregated from adults and be accorded treatment appropriate to their age and legal status [emphasis added]

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357 UN General Assembly, **ICCPR** art. 10(1).
These provisions indicate, without exception, that every prisoner must be accorded dignity and respect for their humanity, as evidenced by the use of the word “shall.” Furthermore, young offenders must not be incarcerated with adult offenders, a practice which occurs in some Canadian penitentiaries on occasion. Therefore, inmate work programs geared towards rehabilitating prisoners must distinguish between adult and young offenders.

Another non-derogable right is Article 11, which stipulates that no person “shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.” While the provision may assist debtors and those committing civil offences, it does not protect those who have committed a criminal offence and “do time” due to their inability to pay an imposed fine. However, it is strong evidence that being incarcerated for non-payment of financial obligations is abhorred by the international community.

The final three absolute or non-derogable rights are Article 15, prohibiting retroactive criminal sanctions; Article 16, protecting the right of everyone “to recognition everywhere as a person before the law;” and Article 18, guaranteeing freedom of “thought, conscience and religion.” Although each of these rights have significance in the prison setting, only the latter has particular relevance to the issue of inmate work programs – accommodating prisoner’s religious beliefs when scheduling work tasks.

4. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) by resolution 39/46 on December 10th, 1984. This initiative, led by Sweden, gave fuller meaning to Article 5 of the Universal Declaration and Article 7 of the CCPR. Canada ratified CAT on June 24,

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358 UN General Assembly, ICCPR, art. 11.
359 UN General Assembly, ICCPR, art. 16.
360 UN General Assembly, ICCPR, art. 18.
1987 and recognizes the competence of the Committee against Torture to receive and process individual complaints under CAT, Article 22.

While prohibiting torture is the main focus of the CAT, Article 16 speaks to the issue of lesser, yet still serious human rights violations,

(1) Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

(2) The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

The prohibition against torture is an issue on which state parties must educate and inform corrections officials and staff responsible for the custody and treatment of inmates, as per Article 10. Furthermore, Article 11 requires state parties to systematically review their

... interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture [and also cruel and unusual treatment].

Under Article 12, state parties must promptly investigate allegations of breaches of CAT within their jurisdictions, and Article 13 requires them to ensure the alleged victim a “right to complain to, and to have his case promptly and impartially examined by, its competent authorities.” Furthermore, there is a prohibition against retaliation to protect the complainant and any witnesses.

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361 UN General Assembly, CAT art. 13.
Despite the fact that the more serious allegation of “torture” is a peremptory norm\(^{362}\) of general application and hence non-derogable, it “does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”\(^{363}\) Logic dictates that this provision would cover the lesser crimes of cruel, inhuman or degrading treatment as well. The fact that as of September 2010, 147 states have signed onto CAT\(^{364}\) gives credence to the wide acceptance for these prohibitions.

5. Abolition of Forced Labour Convention

The *Abolition of Forced Labour Convention* (ILO No. 105) of 1957 was adopted at the General Conference of the International Labour Organization and entered into force on January 17, 1959. Canada ratified the Convention on July 14, 1959 and the United States, in 1991. **Article 1** sets out five grounds for the prohibition against forced or compulsory labour:

(a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
(b) As a method of mobilising and using labour for purposes of economic development;
(c) As a means of labour discipline;
(d) As a punishment for having participated in strikes;
(e) As a means of racial, social, national or religious *discrimination*.

Therefore, boot camps and chain gangs would not likely be disqualified *per se*, but an argument could be made that the indirect effect of correctional policies such as a return to these out-dated treatment regimes would amount to social discrimination against prisoners as a category of vulnerable people. But for being prisoners, governments could not force individuals to work on chain gangs or in boot camps.

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\(^{362}\) Articles 53 and 64 of the *Vienna Convention of the Law of Treaties* are useful when determining if a norm has achieved the most protected status of *jus cogens* (that is, whether it is a peremptory norm).  

\(^{363}\) UN General Assembly, *CAT*, art. 1(1).  

Canada is a signatory to the Convention concerning Forced or Compulsory Labour (ILO No. 29), which generally came into force in 1932, but was not ratified by Canada until 2012. Adherents to this convention pledged to “suppress” their use of forced (or compulsory) labour as soon as possible. Under this convention, “forced or compulsory labour” does not include:

2.(c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations [emphasis added].


On December 21, 1965, the United Nations’ General Assembly adopted the International Convention on All Forms of Racial Discrimination (hereafter ICERD). The Convention came into force on January 4, 1969 and Canada ratified the treaty on October 14, 1970. In doing so, Canada is bound to uphold the principle of non-discrimination according to race enumerated in Article 1, meaning,

...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment of exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life [emphasis added]

Article 2(1)(c) compels state parties to,

...take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

This would apply to the selection of inmates for work programs, inmate industries, as well as vocational training activities. Article 2(1)(d) goes further and requires state parties to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or
organization.” Affirmative actions measures are allowed pursuant to Article 2(2) until such time as equity has been achieved.

**Article 5** enumerates a lengthy list of rights including economic, social and cultural rights, particularly:

...the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration,

as set out in Article 5(e)(i), the right to form and join trade unions (Article 5(e)(ii)), and the right to education and training (Article 5(e)(v)). There is nothing in the *ICERD* that would preclude these rights from operating in a prison setting and applying to prisoners who belong to Aboriginal, and other racial minority groups, although Article 1(2) exempts distinctions made between citizens and non-citizens. The Committee on the Elimination of Racial Discrimination monitors compliance with the *ICERD*.

**7. Convention on the Elimination of All Forms of Discrimination against Women**

Adopted by the General Assembly resolution 34/180 on December 18, 1979 and coming into force on September 3, 1981, the *Convention on the Elimination of All Forms of Discrimination against Women* (hereafter *CEDAW*) was ratified by Canada on December 10, 1981. Canada signed the optional protocol in 2003.

**Article 1** of *CEDAW* mirrors that of *ICERD*:

‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field [emphasis added].

**Article 2(c)** calls upon state parties to legally protect women’s rights

... on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination [emphasis added].

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Under Article 2(d), parties undertake to “refrain” from discriminating against women and “ensure that public authorities and institutions shall act in conformity with this obligation.” Additionally, state parties are to “take all appropriate measures” to both “eliminate discrimination against women by any person, organization or enterprise” and take steps “including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” This places a positive duty on state parties to remove the barriers to equality for women.

Article 11 targets the employment sphere and includes the right to work as an “inalienable right.” The provision stipulates that the following rights are to be protected, for women and men equally: the right to equal opportunities; the right to free choice of employment (and associated rights); the right to continuous vocational training; the right to equal remuneration, including benefits; the right to social security; and the right to protection of health and safety in the workplace, including the “safeguarding of the function of reproduction.” For the purposes of this provision, it is important that the choices be meaningful and accessible – actual as opposed to illusory. Female inmates in a predominantly male prison should not merely be offered the choice between doing the laundry for the male inmates as opposed to doing nothing: the choice between handling soiled underwear or enduring oppressive boredom is demeaning, and is not a real choice.

8. Convention on the Rights of the Child

Canada ratified the Convention on the Rights of the Child (CRC) on December 13, 1991, along with the first Optional Protocol on the involvement of children in armed conflict in 2000, and the second Optional Protocol on the sale of children, child prostitution and child pornography in 2001. Canada registered a reservation with respect to Article 37(c) of the CRC regarding the prohibition against placing minors – and hence young offenders – in institutions alongside adults who are not members of their

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366 Convention on the Elimination of All Forms of Discrimination against Women, GA Res. 34/18, UN GAOR, 34th Sess., Supp. No. 46, UN Doc. A/34/46 (1980), art. 2(d) [CEDAW].
367 CEDAW, arts. 2(e)-(f).
own families, as happens in some federal penitentiaries. The Canadian position is that, from time to time, it might be both appropriate and feasible to do so.

B. Global Standards: Persuasive Instruments

“Canada is bound by a series of international engagements – accepted by all the democracies with which we like to compare ourselves – that mandate fair and decent treatment of inmates, respectful of human dignity and aimed at eventual rehabilitation. One cannot emphasize too often that these are not pie-in-the-sky dreams. They are, in fact, the only realistic way to promote a sane society; and it is for that reason that they have been so widely accepted in international practice.”

Max Yalden

1. UN Standard Minimum Rules for the Treatment of Prisoners

The Standard Minimum Rules for the Treatment of Prisoners (hereafter SMRs) were adopted by the First UN Congress on the Treatment of Offenders in 1955, and subsequently approved by resolution 663C (XXIV) in 1957 and res. 2076 (LXII) some twenty years later. In the first section on preliminary observations, the SMRs attempt “to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions” based on a “general consensus of contemporary thought and the essential elements of the most adequate systems of today.”

Recognizing that since 1955, there have been many developments in this area of law and policy, through the process of trial and error on the part of nations, the drafters of the SMRs added Article 3, which allows experimentation with prison practices as long as the principles and spirit of the SMRs are respected. Article 5

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368 CEDAW, arts. 11(1)(a)-(f).
369 See CSC, “Canadian Charter” in 50 Years of Human Rights Developments (In the landmark case Reference Re Public Service Employees Relations Act, 1987, Chief Justice Dickson of the Supreme Court of Canada “commented that international instruments should be persuasive sources for interpretation and observed that the ‘Charter conforms to the spirit of the contemporary international human rights movement’) [emphasis added].
370 Yalden, at 12-13.
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reiterates that young offenders should not be incarcerated under normal circumstances, and that at the very least, Part I of the rules generally apply to juvenile correctional institutions.

Part I constitutes rules of general application, with a basic principle decreeing impartiality and prohibiting “discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”372 and necessitating respect for prisoners’ “religious beliefs and moral precepts.”373

Article 11 speaks to the living and working environment of prisoners and compels nations to provide for natural light, fresh air and artificial light adequate to safely read or work by. With respect to discipline and punishment, one fundamental rule mirrors the least restrictive principle:

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for the safe custody and well-ordered community life [emphasis added]

Furthermore, Article 28(1) emphatically states that “[n]o prisoner shall be employed, in the service of the institution, in any disciplinary capacity.”374 Obviously, an inmate work program which required one prisoner to discipline another would be in violation of this rule. The issue of discipline is addressed again in Article 31:

...corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences [emphasis added]

With regard to instruments of restraint, neither chains nor irons can be used as a punishment or as restraints. Handcuffs are permissible to prevent escapes during transfers of prisoners, and strait-jackets can only be used by order of the medical officer on medical grounds or by the head of the institution to prevent harm to the prisoner or

372 SMR, art. 6(1).
373 SMR, art. 6(2).
374 SMR, art. 28(1).
others, as well as damage to property. The principle found in Article 34 that instruments of restraint “must not be applied for any longer time than is strictly necessary” goes to the issue of least impairment of prisoners’ rights and freedoms.

Prisoners’ rights of access to information about their human rights and responsibilities is covered by Article 35, which sets out the requirement that inmates be provided with either written or oral information concerning the... regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

Article 40 ensures a right of access to a prison library, complete with books for educational purposes and recreational reading. This provision is silent on whether or not the library must include materials of a legal nature so as to encourage prisoners to become law-abiding citizens, as well as enhance their legal literacy skills.

Part II of the SMRs deals with rules which apply to specific categories of prisoners, including those under sentence. The guiding principle, found in Article 57, recognizes the already afflictive nature of imprisonment and thus prohibits the prison system from aggravating “the suffering inherent in such a situation” unless “incidental to justifiable segregation or the maintenance of discipline.” Coupled with the prohibition against restraints, the deployment of chain gangs or the practice of having female inmates work in the community in ‘shackles’ would clearly not be condoned.

Article 58 underscores the notion that if the goal of imprisonment is to protect society against crime, the best way to accomplish it is by making sure that the released prisoner “is not only willing but able to lead a law-abiding and self-supporting life.” Therefore, the call to “minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their

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375 SMR, art. 33.
376 SMR, art. 57.
377 SMR, art. 58 [emphasis added].
dignity as human beings” is important to the issue of inmate work programs. Prisoners should have access to quality programs that provide them with appropriate work experience prior to being released into the community, regardless of whether they are in minimum, medium, or maximum security federal penitentiaries or in provincial/territorial correctional institutions for adult or young offenders. As well, the SMRs indicate that supervised releases “should be combined with effective social aid,” recognizing the difficulties that most ex-offenders have in finding adequate employment and housing upon release, especially in view of their criminal records. Furthermore, Article 61 encourages treatment that will encourage prisoners to remain part of their communities, stating that measures

...should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

As for the treatment of prisoners, Articles 65 and 66 reiterate the necessity for programs which will lead to self-supporting lives beyond the prison gates, using education, vocational guidance and training, and employment counselling tailor-made for each inmate. Most important for the purposes of this study are Articles 71 to 77 governing work regimes in prison. It is clear that for sentenced inmates, work cannot be of an “afflictive nature,” but it must be sufficient, useful, permit choices and as much as possible, reflect work to be found outside the prison or “normal occupational life.” Conditional upon receiving approval from a medical officer concerning their physical and mental fitness, all prisoners are required to work. Furthermore, vocational training must be available, and especially for young offenders. Prisoners’ well-being and training

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378 SMR, art. 60(1).
379 SMR, art. 60(2).
380 SMR, art. 71(1).
381 SMR, arts. 71(3), 72(1).
382 SMR, art. 71(5).
needs are to take priority over the need for prisons to make profits from prison industries.\textsuperscript{383}

\textbf{Article 73} advocates a strong preference for the use of prison industries and farms, rather than the use of private contractors. In the case of the latter, inmates must be supervised by prison staff, and unless it is government-related work, “full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.”\textsuperscript{384} The SMRs require the establishment of occupational health and safety guidelines, indemnification for industrial accidents or diseases, and employment guidelines concerning maximum hours worked at par with what is the community standard for “free workmen.”\textsuperscript{385} This includes one day of rest per week, and adequate time available for other treatment or rehabilitative activities.\textsuperscript{386}

As for inmate pay, \textbf{Article 76} calls for a “system of equitable remuneration”, with provision enabling the purchase of “articles for [inmates’] own use” and the right for inmates “to send a part of their earnings to their family.”\textsuperscript{387} A portion of inmates’ earnings are to be deposited into a savings fund in anticipation of their eventual release.

Because education and training go hand in hand, \textbf{Article 77} makes clear that, at least for young offenders and illiterate adults, education is mandatory. This strongly worded section compels prison administrations to give priority to the continuous learning needs of all prisoners and to ensure their education is “integrated with the educational systems of the country so that after their release they may continue their education without difficulty.”\textsuperscript{388}

As for prisoners under arrest or awaiting trial, \textbf{Article 89} stipulates they must at least be offered work, but that they are not required to work. Furthermore, they must

\begin{itemize}
\item \textsuperscript{383} SMR, art. 72(2).
\item \textsuperscript{384} SMR, art. 73(2).
\item \textsuperscript{385} SMR, art. 74.
\item \textsuperscript{386} SMR, art. 75.
\item \textsuperscript{387} SMR, art. 76.
\item \textsuperscript{388} SMR, art. 77(2).
\end{itemize}
be paid for their labour. Civil prisoners incarcerated for non-payment of debts must be treated on par with untried prisoners “with the reservation, however, that they may possibly be required to work.”

Lastly, with respect to persons arrested or detained without charge, “without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights,” they shall not be required to work but can accept an offer to work – much like untried prisoners – “provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.”

According to the Correctional Service of Canada, one of the high watermarks for the federal corrections system was the advent of the United Nations’ Standard Minimum Rules for the Treatment of Prisoners.

The SMRs are the most significant and comprehensive international instrument recognizing the rights of legally incarcerated persons. In subscribing to the SMRs in 1975, Canada committed itself to ensuring full compliance and domestic implementation.

Some twenty years after first being adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders, the Canadian delegation to the Fifth UN Congress “officially endorsed the SMRs, by agreeing to consider embodying them within both federal and provincial legislative frameworks [emphasis added].”

Although not a legally enforceable human rights instrument per se, the SMRs have been used by national and international courts and non-governmental human rights organizations to provide guidance in interpreting binding human rights norms and standards, including the International Covenant and Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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389 SMR, art. 94.
390 SMR, art. 95.
393 CSC, “UN SMRs” in 50 Years of Human Rights Developments.
Among the international rules that Canadian law and policy-makers are compelled to observe are:  

- [... the] prohibition of corporal punishment, solitary confinement and other cruel, unusual, and or degrading treatment;  
- respect for religious and cultural differences;  
- opportunities to engage in meaningful work, programs and activities that have some relevance to life outside prison;  
- opportunities to remain in contact with friends and family; and  
- the right to be reasonably prepared for eventual return to the community.  

[emphasis added]  

Distilled to their core, the Standard Minimum Rules exemplify “three fundamental human rights principles”:

Firstly, a prisoner’s sense of dignity and worth as a human being must be respected and maintained through the entire course of their imprisonment. Secondly the suffering that results from the loss of liberty and freedom by the fact of incarceration is punishment enough. Finally, prisons should not be punishing places; rather, they should help prisoners rehabilitate themselves [emphasis added].  

However, the CSC admits that Canadian correctional practice still falls short, in spite of the growing evidence that the SMRs are becoming international customary law, much like the Universal Declaration has become, through widespread adoption at the world level. With a large number of signatories, the case can be made that the SMRs have almost gained universal acceptance. Unfortunately, questionable practices persist.

...Canada still practices “double-bunking” of inmates in cells designed for one; permits some young offenders to serve their prison sentences in adult institutions; does not use the SMRs in the training of correctional personnel; and, does not distribute the rules to every prisoner upon their reception.
2. UN Basic Principles

The United Nations General Assembly has adopted two resolutions relating to the treatment of detained persons. They both assert that persons in custody shall be treated humanely and “with the respect due to their inherent dignity and value as human beings.”

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (G.A. res. 43/173) (1988) supports, among other things, the non-derogation of prisoners’ human rights, and the prevention of any “cruel, inhuman or degrading treatment or punishment” of detainees.

The Basic Principles for the Treatment of Prisoners (G.A. res. 45/111) (1990) rejects discrimination against prisoners, promotes respect for the fundamental freedoms of inmates (as outlined in the Universal Declaration, ICESCR, and ICCPR), and advocates for the creation of:

... [c]onditions... enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country’s labour market and permit them to contribute to their own financial support and to that of their families.


The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereafter the “Beijing Rules”) was adopted in November 1985 by General Assembly resolution 40/333. Part Five on “Institutional Treatment” contains two sections of some relevance for the topic at hand. Rule 26 sets out the objectives of juvenile offender training and treatment, which includes: the acquisition of education...

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398 Body of Principles], Principles 3,6.

399 Treatment of Prisoners, Principles 2, 5, 8.
and vocational skills and assistance, separation from adult offenders, the fair treatment of young female offenders and a recognition of their special needs, the right of access to young offenders by their parents or guardians, and governmental co-operation to harmonize academic and vocational training with the community standards so as not to put juvenile offenders at a disadvantage upon release.400

Rule 27 states that the SMRs apply to juvenile offenders both in correctional institutions and in detention centres awaiting adjudication. However, the SMRs should be implemented “to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.”401 Respect for their diversity is important.

4. UN Rules for the Protection of Juveniles Deprived of their Liberty

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty was adopted in December 1990 by General Assembly resolution 45/113. The instrument begins with a section on fundamental perspectives that reiterates the idea that the incarceration of young offenders is to be a “last resort,” and even then, according to the Beijing Rules cited earlier. Incarceration should be “for the minimum necessary period,” and “limited to exceptional cases.” Furthermore,

> [t]he length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.402

Therefore, it can be seen that the sentencing judge has an enormous responsibility to ensure that a young offender is properly sentenced.

With respect to the all-important topics of education, vocational training and work, Rule 38 attests to the right of every young offender of compulsory school age to an education mindful of his or her needs and abilities. This includes special attention to “juveniles of foreign origin or with particular cultural or ethnic needs” and special

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401 Beijing Rules, Rule 27.2.
education for “juveniles who are illiterate or have cognitive or learning difficulties.”

Those young offenders who are above compulsory school age and who desire further education are to be allowed and provided access to educational programs and institutional libraries.

A young offender has the “right to receive vocational training in occupations likely to prepare him or her for future employment” and as far as possible, a choice concerning the nature of the work. Rule 44 requires that “all protective national and international standards applicable to child labour and young workers [...] apply to juveniles deprived of their liberty.” This clearly underscores their equality rights and prohibits discrimination against them.

Rules 45 and 46 speak directly to the issues of “appropriate” juvenile work programs and pay schemes, echoing the provisions found in the SMRs:

**45.** Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

**46.** Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

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403 Protection of Juveniles, Rule 38.
405 Protection of Juveniles, Rule 42.
406 Protection of Juveniles, Rule 43.
407 Protection of Juveniles, Rule 44.
These two sections underscore the principle that juvenile labour is not to be trifled with and must be compatible with whatever training the youth have received. There is an implicit recognition that their chances for success in finding adequate employment upon release hinges on them obtaining appropriate training and education while incarcerated, as well as having some financial resources on which to fall back on.

**C. Regional Standards and Jurisprudence**

1. **American Jurisprudence and Standards**

In the United States of America, the **Federal Bureau of Prisons** operates penal institutions which require all federal inmates to work, unless they are unfit for medical or security reasons. About 75% of inmates have institutional jobs such as “food service worker, orderly, plumber, painter, warehouse worker, or groundskeeper” with remuneration rates between 12 cents and 40 cents per hour.\(^{408}\) The other 25% are employed through the Federal Prison Industries factories, where they learn skills associated with “electronics, textiles, services, recycling, fleet management, and vehicle repair” with remuneration rates between 23 cents and $1.15 per hour.\(^{409}\)

The Federal Bureau of Prisons runs an Inmate Financial Responsibility Program to help inmates draft a financial plan to make good their fines, victim restitution payments, and other costs (which for some, include a “cost of incarceration fee”). Inmates with such court-ordered obligations who are employed in a prison industry are compelled to pay 50% of their earnings towards satisfying their financial obligations.\(^ {410}\)

With respect to education, vocational training and on-the-job training, the Federal Bureau of Prisons stresses the acquisition of literacy skills and other work-related skills with a view to employability upon release. It is mandatory for prisoners


without a high school diploma or General Educational Development credential to join the literacy program for a minimum of 240 hours.\footnote{411} The Inmate Transition Branch provides post-release support by helping “inmates prepare release portfolios that include a resume, education and training certificates and transcripts, diplomas, and other significant documents needed for a successful job interview.”\footnote{412} Correctional institutions offer interview skills training to inmates nearing release and “help expose community recruiters to the skills available among inmates.”\footnote{413}

The \textbf{Eighth Amendment} to the American Constitution contains a prohibition against the infliction of cruel and unusual punishment.\footnote{414} The statute has been considered in a number of cases; American case law provides some insight into how this prohibition has been interpreted by American judges.

\textbf{\textit{a.} Occupational health and safety}

Many courts have decided that in the context of work assignments, prison officials are “deliberately indifferent” if they force inmates to undertake physical labour knowing it is either “beyond their strength, […] constitutes a danger to their … health, or […] unduly painful,” in violation of the \textit{Eighth Amendment}.\footnote{415} The complainant prisoner needs to establish that “the conditions challenged were objectively, ‘sufficiently serious,’” and that “the prison official acted with a sufficiently culpable state of mind” so as to constitute “deliberate indifference to inmate health or safety,” having “acted or failed to act despite his knowledge of a substantial risk of serious harm.”\footnote{416}
Some of the cases where the prison authorities were found to be in contravention of the Eighth Amendment include: a physically disabled inmate who was required to do hard manual labour for 90 to 120 hours per week *(Ray v Mabry)*; inmates who were forced to work in raw sewage, thus in the presence of toxic and explosive gases, without protective clothing or proper equipment *(Fruit v Norris)*; an inmate who was required to do heavy manual labour in the summer heat and aggravating a known physical impairment *(Jackson v Cain)*; a prisoner who was forced to remove asbestos insulation from pipes with inadequate protection *(Wallis v Baldwin)*; inmates being forced to run from place to place and dodge moving vehicles and horse-back riders, with one prisoner refusing to work and consequently, losing entitlement to statutory release for good time and facing solitary confinement *(Finney v Arkansas Bd. Of Correction)*; and, a prisoner who was compelled to work with a dangerous table saw *(Warren v Missouri)*.

In contrast, there were considerably more cases where correctional staff were found not to be in contravention of the Eighth Amendment: one prisoner died suddenly from heat exhaustion while working on the job, but his mother was unable to establish the necessary requirement of “deliberate indifference” or knowledge on the part of the prison official *(Mays v Rhodes)*; an inmate was required to remove guards which covered the gears of an ink machine, but absent evidence that the prison officials deliberately placed the prisoner in a dangerous position, it was decided the situation fell short of creating so hazardous a risk as to amount to cruel and unusual punishment *(Bibbs v Armontrout)*. Other situations which did not amount to a violation of the Eighth Amendment include: failure of prison authorities to warn that hospital sewage

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417 *Ray v Mabry*, 556 F.2d 881 (8th Cir. 1977)
418 *Fruit v Norris*, 905 F.2d 1147 (8th Cir. 1990)
419 *Jackson v Cain*, 864 F.2d 1235 (5th Cir. 1989).
420 *Wallis v Baldwin*, 70 F.3d 1074 (9th Cir. 1995).
421 *Finney v Arkansas Board of Correction*, 505 F.2d 194 (8th Cir. 1974).
422 *Warren v Missouri*, 995 F.2d 130 (8th Cir. 1993).
423 *Mays v Rhodes*, 255 F.3d 644 (8th Cir. 2001).
424 *Bibbs v Armontrout*, 943 F.2d 26 (8th Cir. 1991).
could be AIDS contaminated when inmates were involved in clean-up operation, absent proof of knowledge of the contamination or of the danger to human health (Burton v Armontrout\textsuperscript{425}); a correctional officer’s mere negligence in ignoring a prisoner’s complaints of nausea and dizziness in the absence of a known medical condition (Gill v Mooney\textsuperscript{426}); serious injuries caused by an inmate slipping on soiled kitchen floor (Robinson v Cuyler\textsuperscript{427}); and, negligence by the prison work program administrator in not providing sufficient safety equipment, which led to warehouse injuries, in the absence of written grievances. (Stephens v Johnson\textsuperscript{428}).

b. Work placements, reassignments and reclassifications

There are also several cases that deal with legality of work placements, reassignments and reclassifications. In and of itself, being assigned to a work camp does not offend the provision against cruel and unusual punishment (Wilson v Kelley\textsuperscript{429}); and being transferred from one prison assignment to another without consent is not a violation (McLaughlin v Royster\textsuperscript{430}). Being denied a work release does not constitute “torture” (Baumann v Arizona Dept. of Corrections\textsuperscript{431}). An inmate’s right to be free of cruel and unusual punishment is not conditional upon the inmate having requested habeas corpus relief (Black v Ciccone\textsuperscript{432}), and inmates incarcerated for reasons other than their mere inability to pay court costs or fines, and forced to work on prison farms does not offend the Eighth or Thirteenth Amendments (Howerton v Mississippi County, Arkansas\textsuperscript{433}). A prisoner’s job reassignment due to security concerns, in this case an alleged HIV carrier working in food preparation and being moved to the dish room, did not violate the Eighth Amendment because the reassignment was rationally connected

\textsuperscript{425} Burton v Armontrout, 975 F. 2d 543 (8th Cir. 1992).
\textsuperscript{426} Gill v Mooney, 824 F.2d 192, (2d Cir. 1987).
\textsuperscript{428} Stephens v Johnson, 83 F.3d 198 (8th Cir. 1996).
\textsuperscript{431} Baumann v Arizona Dept of Corrections, 754 F.2d 841 (9th Cir. 1985).
\textsuperscript{432} Black v Ciccone, 324 F.Supp. 129 (W.D. Mo. 1970).
\textsuperscript{433} Howerton v Mississippi County, Arkansas, 361 F.Supp. 356 (E.D. Ark. 1973.).
with the legitimate corrections interest of protecting the prisoner from harm by the other prisoners (Fuller v Rich). An inmate’s reassignment from an administrative job to a manual labour position, where he earned three times less salary did not violate the Eighth, so long as hazardous work conditions did not exist (Jackson v O’Leary).

California’s termination of a hobby work program and replacement with a work incentive program with privileges for participating in training and work programs was not a violation (McQuillion v Rushen).

c. Right to work and to be free from enforced idleness

The caselaw discussing the right to work and be free from enforced idleness seems to frame the right as conditional and presents it as a privilege. An inmate has neither a right to work nor a right to educational opportunities (Women Prisoners of District of Columbia Dept. of Corrections v District of Columbia); similarly, idleness attributable to a lack of employment and educational opportunities is not a violation of any prisoner rights (Capps v Atiyeh). A lack of prison work programs – therefore imposing idleness – does not breach the Eighth Amendment (Toussaint v McCarthy).

Lack of meaningful work, plus vocational, recreational and educational opportunities, amounting to widespread and destructive idleness among inmates was not in violation of the Eighth Amendment, where prisoners had reasonably adequate food, clothing, shelter, sanitation, personal safety and medical care (Lovell v Brennan). Where prisoners have opportunities to work at institutional jobs or take part in various other programs, idleness is not cruel and unusual punishment (Shrader v White); a shortage of jobs and programs, and hence idleness for unemployed inmates, purportedly leading

434 Jackson v O’Leary, 56 F.3d 67 (Table) (7th Cir. 1995).
438 Toussaint v McCarthy, 801 F.2d 1080 (9th Cir. 1986).
440 Shrader v White, 761 F.2d 975 (4th Cir. 1985).
to deviant behaviour was not in violation of the Eighth Amendment, due to compelling evidence that the same deviant behaviour existed within the employed inmate population as well (*Byrd v Vitek*).

d. Inmate remuneration and mandatory labour

A number of cases have dealt with prison pay actions. In one case from Pennsylvania, the court was asked to consider whether the inmates’ compensation system constituted cruel and unusual punishment since their wages were considerably lower than both the federal and state minimum wage guidelines. The court decided that because the wage scale neither wantonly inflicted physical pain, nor imposed punishment inconsistent with *societal norms of decency which are continually evolving*, there was no violation. Furthermore, the court found that it could not be said that payment of very low wages rendered the conditions of the inmate’s imprisonment so severe as to make it *grossly disproportionate to the crime* for which he was incarcerated; the Eighth Amendment was not “violated simply because one aspect of life at [...] prison, the very low inmate wage scale, may lessen [the inmate’s] potential for rehabilitation.”

Several other cases ruled on compulsory prisoner actions and their constitutionality: a system of compulsory work in the prison laundry, serving all inmates did not, in and of itself, constitute cruel and unusual punishment (*Fidtler v Rundle*); compelling federal inmates to follow prison rules regarding work is not cruel and unusual punishment, involuntary servitude, or double jeopardy under the Eighth, Fifth and Thirteenth Amendments (*Fallis v United States*); a requirement that inmates work without pay is not considered a violation (*Wendt v Lynaugh*); failure to pay the

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441 *Byrd v Vitek*, 689 F.2d 770 (8th Cir. 1982).

442 *X v Brierley*, 457 F. Supp. 350 (E.D. Pa.) [*X. v Brierley*].

443 *X v Brierley*, at 354 [emphasis added].

444 *Fidtler v Rundle*, 497 F.2d 794 (3d Cir. 1974).


446 *Wendt v Lynaugh*, 841 F.2d 619 (5th Cir. 1988).
minimum wage for prison industry work programs is not cruel and unusual punishment either (Lentz v Anderson\textsuperscript{447} and McMaster v Minnesota\textsuperscript{448}).

e. Discrimination in employment

Several American cases have dealt with claims about discrimination with respect to selection for prison work programs: a black inmate’s exclusion from an electrical maintenance program was not considered “punishment” as per the Eighth Amendment (LaBounty v. Adler\textsuperscript{449}); and barring aliens from participating in work release programs or approved leaves because of an immigration department’s pending detention order was judged not to violate the inmate’s rights under the Eighth, Fourteenth or Fifth Amendments (Rinaldi v U.S.\textsuperscript{450}). A prisoner has a right to be considered for participation in prison work programs without discrimination based on race, colour, national origin or creed, but does not have the actual right to participate (Brown v Sumner\textsuperscript{451}).

f. Reasonable customs and usages

There are two cases that specifically deal with reasonable customs and usages in prisons. In Sampson v King\textsuperscript{452}, the court held that if reasonable customs and usages of the surrounding area are followed, a prison farm is not in breach of the Eighth Amendment. Also, in Jackson v Cain\textsuperscript{453}, the court ruled that: in the absence of establishing that a work practice was different from the usual practice of the local farm community, or clearly contrary to the law, the practice did not, of itself, constitute a violation of the Eighth Amendment.

g. Private employers

American courts have also ruled on the constitutionality of work release programs involving private employers. Courts have stated that, with respect to work release programs benefiting inmates, wage-setting agreements in California between

\textsuperscript{448} McMaster v Minnesota, 30 F.3d 976 (8th Cir. 1994).
\textsuperscript{449} Labounty v Adler, 933 F.2d 121 (2d Cir. 1991).
\textsuperscript{452} Sampson v King, 693 F.2d 566 (5th Cir. 1982).
\textsuperscript{453} Jackson v Cain, 864 F.2d 1235 (5th Cir. 1989).
private employers and prison authorities will not be interfered with (Patterson v Oberhauser\(^{454}\)). Also, the maintenance and operation of prison farms according to an agreement executed in good-faith and setting out information and criteria was not unconstitutional (Howerton v Mississippi County, Arkansas\(^{455}\)).

2. Organization of American States

The Organization of American States (OAS) is a regional organization that brings together 35 states from across the Americas, and since 1990 – includes Canada. The Charter of the OAS affirms member-states’ “commitment to respect fundamental human rights without discrimination.”\(^{456}\) By the time Canada joined the OAS, the American Declaration of the Rights and Duties of Man (American Declaration) had already been adopted and the Inter-American Court of Human Rights had given an advisory opinion to the effect that “the American Declaration was a source of legal obligations for all the member States of the OAS.”\(^{457}\) Consequently, as explained by a Senate Standing Committee reviewing Canada’s involvement in the OAS:

... ratification of the OAS Charter triggered human rights obligations under the American Declaration and [...] it automatically subjected Canada to the jurisdiction of the Inter-American Commission on Human Rights without any requirement for an official acceptance of this jurisdiction.\(^{458}\)

The American Declaration states, among other things:

**Article I.** Every human being has the right to life, liberty, and security of the person;

**Article II.** All persons are equal before the law and have the rights and duties established in the Declaration, without distinction as to race, sex, language, creed or any other factor;


\(^{455}\) Howerton v Mississippi County, Arkansas, 361 F.Supp. 356 (E.D. Ark. 1973.).

\(^{456}\) Canada, Senate, Standing Senate Committee on Human Rights, Enhancing Canada’s Role in the OAS: Canada’s Adherence to the American Convention on Human Rights, (Ottawa, 2003) at 10 (Chair: Hon. Shirley Maheu) [Canada, Role in the OAS].

\(^{457}\) Canada, Role in the OAS, at 13.

\(^{458}\) Canada, Role in the OAS, at 14-15.
Article XIV. Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit;

Article XVII. Every person has the right to be recognized everywhere as a person and having rights and obligations, and to enjoy the basic civil rights;

Article XXV. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. [...] He also has the right to humane treatment during the time he is in custody;

Article XXVI. [...] Every person accused of an offense has the right [...] not to receive cruel, infamous or unusual punishment.

The American Convention on Human Rights (American Convention) contains many provisions which are similar to those included in the UN’s International Covenant on Civil and Political Rights, yet Canada has not ratified it. Canadian government officials have noted a number of concerns in explaining the lack of ratification. The Senate Committee recommended however, that Canada act in accordance with its reputation as a human rights leader, and ratify the American Convention by July 2008, perhaps by reserving out the sections about which it has concerns.

The American Convention includes the following clauses which are relevant to our discussion:

Article 5. Right to Humane Treatment

(1) Every person has the right to have his physical, mental, and moral integrity respected.

(2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

459 Canada, Role in the OAS, at 39-51. The stated reason for not ratifying is with respect to Article 1, which provides that life begins at conception, and thus would go against Canada’s legal stance on abortion.

460 Canada, Role in the OAS, at 59.
(6) Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

**Article 6. Freedom from Slavery**

(2) No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

(3) For the purposes of this article, the following do not constitute forced or compulsory labor:

(a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;

As of October 2014, Canada has not ratified the *American Convention*, for the reasons explained. Thus, the *Inter-American Convention to Prevent and Punish Torture*, which expands on the provisions of Article 5 of the *Convention* has also not been signed.
VII. Conclusion: Prisoners’ Rights and Employment Programs

A. Protecting Society and Prisoner Safeguards: A Balancing Act

The corrections system has a difficult task: to balance the rights and responsibilities of prisoners, with the need to protect society, especially victims, from criminal acts. At the same time, the system must guarantee real choices for both prisoners and victims. Overall, “CSC has a complex and difficult balancing act in the area of human rights, and in the main it has acquitted itself with a high degree of professionalism.”

B. Issue Analysis: Appropriateness of Prison Employment and Pay Schemes

What constitutes “appropriate” work experience for prisoners incarcerated in federal penitentiaries and provincial correctional facilities? What remuneration is deemed appropriate? Is a province improperly interfering with sentencing by the courts if the province decides to impose harsh new conditions of incarceration? How do the Charter of Rights and Freedoms and other human rights law apply to prisoners?

Tentative conclusions to be drawn from our research on these questions

On average, the federal offender population “is more violent and serving shorter sentences, which essentially leaves CSC less time to do more.” Offenders now have greater levels of need, as evidenced by their poor employment histories and their low levels of education and basic job qualifications. At the same time, the CSC Review Panel recently noted that “employment has been eclipsed as a priority over the past decade by programs that address other core needs” (like substance abuse), and that

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461 Yalden, at 13.
the completion rate for all educational programs is currently 31%.”\footnote{Canada, Roadmap: Report of the CSC Review Panel, at 44.} Given that there is a positive correlation between education and “an offender’s successful return to society as a productive, law-abiding citizen,”\footnote{Canada, Roadmap: Report of the CSC Review Panel, at 44.} it would seem that promoting education, as opposed to promoting employment as unskilled labourers, would be a more strategic focus for inmate programming. Formal education and vocational training should be such that it leads either directly or indirectly to employment, “preparing offenders to be ‘skills-ready’ for national and local labour markets.”\footnote{Canada, Roadmap: Report of the CSC Review Panel, at 77.}

Instead of being satisfied with providing opportunities like prison grounds maintenance to inmates, one can imagine an integrated education/employment approach. Inmate work programs could build upon educational foundations laid down in the earlier stages of the sentence; education and training should provide meaningful skill development that helps offenders become more employable upon release. The activities and opportunities available to offenders should encourage inmate independence, accountability and responsibility.

C. Strengthening the Dispute Resolution Processes

Dispute resolution processes show potential; however, informal processes – through inmate committees – and formal processes – through judicial mediation – need to be strengthened to provide whistle-blower safeguards.

There is little cohesion and communication between committees. Unification of inmate committees on a regional or national level would address the problem of disparity of conditions and results in a more uniform exercise of rights and privilege.\footnote{Mann, at 15.}
D. Disadvantaged Prisoners’ Input into Employment Programming

Extra efforts are needed to address the sizeable and distinct needs of disadvantaged offender groups – notably, women and Aboriginal inmates. Commitment to this task will necessitate greater involvement of disadvantaged groups in correctional programming, especially as regards employment.

An Aboriginal offender’s

... participation in Aboriginal programming, as well as their participation in counseling with Elders, in ceremonies and rituals, and in traditional teachings, are all relevant factors in an Aboriginal offender’s successful return to the community.469

Therefore, Aboriginal Business Canada and others are trying to find ways to support Aboriginal offender employment inside and outside prison, involving small business enterprises in the process. Organizations also work closely with “Releasing Circles,” given that the program

...has profound significance for Aboriginal peoples....therefore, symbolizes balance, harmony and unity and is based on the concepts of inclusion, consultation and consensus....Perhaps the greatest feature of a releasing circle is that it provides all participants, including the victims, a forum for finding solutions, which are suggested by and agreed to by all.470

The national Aboriginal strategy for women that is currently in place also calls for the “active involvement of Aboriginal communities in the correctional process” in order to deliver a set of “culturally-specific services and community healing programs to rehabilitate and reintegrate”471 Aboriginal women.

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469 Vandoremalen, at 19.  
470 Vandoremalen, at 19.  
471 CSC, Ten-Year Status Report on Women, at 23.
To increase women offenders’ chances of rehabilitation and reintegration, gender-specific programs are essential. Research has shown that women offenders usually have:

- a higher reintegration potential;
- a high level of motivation to take charge of their lives;
- they are active participants in the correctional planning process; and,
- are receptive to the forms of assistance they are being offered.\(^{472}\)

It is therefore necessary to include the voices of women when planning the CSC’s Program Strategy for Women and developing gender-informed programs.

**E. A Role for Public Education, Enquiry and Debate Regarding Prison Labour**

There is a need for **public education** with respect to prisoners’ rights in order to ensure that Canadian prisons do not regress from the goal of rehabilitation. The promotion of public awareness of the ins and outs of the corrections system will help to dispel the myths of the realities and conditions in Canadian prisons, and will help instil public confidence in the corrections system. It will serve to re-enforce the importance of reintegration and rehabilitation with CSC, will incorporate further accountability within the system, and will increase the public’s willingness and ability to help offenders re-integrate. For both the Keepers (Correctional Staff as society’s agent) and the Kept (inmates in federal penitentiaries and provincial/territorial correctional facilities), everyone must be vigilant of keeping the peace.

Another important aspect of safety is information sharing which plays a huge role in dealing with offenders. Information sharing includes a shared electronic access so that CSC employees can electronically access police reports, judges’ reasons for sentencing and other official documents regarding convictions.\(^ {473}\)

Canada’s Minister of Public Safety stated in the 2010-2011 Report on Plans and Priorities that, “the Government of Canada is committed to ensuring that Canadians are

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safe in their communities. CSC has the fundamental obligation to contribute to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control in its institutions and effective supervision and interventions while they are under conditional release in the community.”

Prisoners are like other Canadians who deserve to be treated in a humane manner and given opportunities to improve and develop their skills to become better citizens. It is very important to balance the safety of the community with assisting offenders to become responsible citizens.

The last words arise from a prisoner...

Prisoners recant their freedom, but this is all. In all other respects, they are to be treated equally with all others in Canada. The protection and promotion of human rights must not just be bureaucratic window dressing. Legislation must work in practice, without negative ramifications. We must always strive for more effective, more humane, more pro-active and more personal prisons. Prisons must not just punish. Human rights in Canada must not be politically compromised. Votes cannot be sold at the expense of jailed, jailer or Canadians: period.

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475 Mann, at 15.
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Chronology of Events

1930  ILO Forced Labour Convention No. 29
1945  Charter of the United Nations
1948  United Nations Universal Declaration of Human Rights
1955  UN Standard Minimum Rules for the Treatment of Prisoners
1956  Fauteux Committee to enquire into the principles and procedures of early release
1959  Canada Parole Act enacted and National Parole Board created
1960  Canadian Bill of Rights
1969  Ouimet Committee on Corporal Punishment
1972  Aboriginal Elders in Canadian Federal Penitentiaries
1972  Abolition of Corporal Punishment in Canada
1973  Office of the Correctional Investigator for Canada
1975  Canada adopts UN Standard Minimum Rules for the Treatment of Prisoners
1977  MacGuigan Report – a Parliamentary Inquiry into the Penitentiary Service of Canada
1977  Abolition of the Death Penalty in Canada
1978  Independent Chairperson for Adjudicating Disciplinary Matters
1979  Women Correctional Officers in Male Institutions
1980  Martineau decision, and the Duty to Act Fairly
1982  Canadian Charter of Rights and Freedoms
1983  Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
1992  New Corrections and Conditional Release Act
1994  Arbour Report – a Commission of inquiry into certain events at P4W
1995  Regional Facilities for Women Offenders
2000  Closure of P4
Useful Human Rights Websites


Canadian Legal Information Institute, http://www.canlii.org/en/index.php

Database of International Labour Standards (International Labour Organization), http://www.ilo.org/ilolex/english/

FindLaw, http://www.findlaw.com


International Committee of the Red Cross, http://www.icrc.org/


Supplementary Reading


Harris, Michael, *Con Game*, 2002, re: seized drugs in prisons and supposed zero-tolerance prisons


Sapers, Howard Correctional Investigator on the state of prisons in Canada and the Rule of Law (Address at the House of Lords 17 April 2013)


United Nations, Division of Human Rights. Human Rights: A Compilation of

United Nations. Office of the UN High Commissioner for Human Rights, CCPR General Comment 20  Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7): 10/03/92.