

**CCRA 5 YEAR REVIEW**

**INFORMATION ABOUT OFFENDERS**

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Ce rapport est disponible en français



This report is part of a series of 24 research/evaluation reports (listed below) that were prepared as background to the Consolidated Report of the Working Group studying the provisions and operations of the Corrections and Conditional Release Act and related Consultation Paper.

The Working Group is composed of representatives from the following agencies:

Correctional Service Canada  
National Parole Board  
Correctional Investigator  
Justice  
Department of the Solicitor General

Research/Evaluation Reports:

Information about Offenders  
Security Classification of Inmates  
Judicial Determination  
The Temporary Absence Program: A Descriptive Analysis  
Personal Development Temporary Absences  
Work Release Program: How it is used and for what purposes  
Day Parole: effects of the CCRA (1992)  
Case Management: Preparation for Release and Day Parole Outcome  
Accelerated Parole Review  
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Women Offenders



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# **CCRA REVIEW**

## ***INFORMATION ABOUT OFFENDERS***

### ***INTRODUCTION***

Section 23 of the CCRA requires that the Correctional Service of Canada (CSC) take all reasonable steps to obtain certain relevant information on all offenders, within a practicable period of time. This includes: relevant information about the offence and about the offender's personal history, including young offender history; any reasons and recommendations relating to the sentencing or committal that are given or made by any court that convicts, sentences or hears an appeal; and any other information relevant to administering the sentence or committal, including existing information from the victim, the victim impact statement; and the transcript of any comments made by the sentencing judge regarding parole eligibility.

Within s. 101 of the *CCRA*, a number of principles have been enacted to guide the National Parole Board (NPB), of which 101 (b) is pertinent to this project; that is, the Board must take into consideration all available information that is relevant to its decision-making.

In 1992, Section 201 of Bill C-36 amended the Criminal Code of Canada to include a new paragraph: s. 731.1. (in 1996 the passage of Bill C-41 brought about an amendment to the Criminal Code such that this section was renumbered as 743.2.) This section requires that the court that sentences or commits a person to penitentiary shall forward to the CSC its reasons and recommendations relating to the sentence or committal, any relevant reports that were submitted to the court, and any other information relevant to administering the sentence or committal.

### ***BACKGROUND***

For many years CSC has attempted to collect all available relevant information on persons sentenced to a penitentiary (and on those offenders in provincial institutions over whom the Board has authority) that could have an impact on risk assessment. This was achieved by using both formal and informal agreements with police agencies and provincial attorneys general. The *CCRA* requirement, and the simultaneous amendment to the Criminal Code, gave the collection of offender information the force of law and introduced two new requirements: first, that the courts are required to provide CSC with the information, and, second, that information concerning young offenders must be collected. The Provinces must comply with the request for such information.

## Issues

The review undertook to assess:

- a) whether effective formal agreements, and supporting internal policies, are in place in all regions with provincial Attorneys General and between CSC and NPB, to ensure that the required information is being provided on a timely basis;
- b) whether these mechanisms have been expanded to ensure young offender information is obtained;
- c) the nature of the costs being assessed against CSC, and the mechanisms to guide the process.

## ASSESSMENT

### Agreements with the Provinces

The requirement to provide information on newly sentenced federal offenders is met through a variety of agreements. Nine provinces have signed a formal Sharing of Information agreement with CSC. These agreements specify the type of information required and the costs to be charged to CSC. Through these agreements the courts automatically forward the information, in most cases, to the receiving facility. This includes the pre-sentence report, judge's comments, crown recommendations, medical, psychiatric, and psychological reports used in the trial, and any victim impact statements. In some provinces the formal agreement authorizes the information to be provided by private court reporter agencies which invoice CSC for the costs. Only five agreements include the police report in the documentation to be forwarded to CSC.

### Ontario

Two information sharing agreements with the Province of Ontario were signed on February 28, 1997. The agreement with Ontario's Ministry of the Attorney General provides for the forwarding of court information within 15 days of sentence and outlines administrative procedures. The Ministry of the Attorney General has issued instructions identifying the information that should be provided to CSC, but Courts continue to exercise discretion in determining what information is relevant to CSC. This requirement may result in incomplete information being received. There is a need to clarify with the province its legal obligations in this regard.



The agreement with the Ministry of the Solicitor General and Correctional Services bridges differences in the privacy legislation of our jurisdictions and promotes the flow of offender information between CSC and the Ministry's Correctional Services Division, the Ontario Board of Parole and the Ontario Provincial Police. Implementation of this agreement through negotiation of protocols with each party is under way. The Ministry of Community and Social Services has expressed its intention to become a party to the agreement, to make Young Offender information more readily available.

A Memorandum of Understanding with the Ontario Provincial Police and local agreements with other police forces promote the sharing of police reports and summaries of information provided by police to Crown Attorneys.

Ontario's community CSC offices initiate the information retrieval process upon notification of a new federal sentence. In the greater Toronto area, court, police and Crown Attorney information is gathered by four individual contractors on behalf of CSC. An Information Retrieval Unit has been established at Millhaven Assessment Unit to coordinate information collection for the Ontario region's new admissions.

### **Saskatchewan**

Saskatchewan is the only province not to have signed a formal agreement as yet. However, certain procedures have been agreed to which have partially met CSC's requirements; for example, there is a contract between CSC and a private court reporting firm for the provision of trial transcripts. The information received includes any judicial or crown comments, and the medical, psychiatric, and psychological reports. Not included are the pre-sentence report, victim impact statement, or police report. These, and the Post Sentence Community Assessment, must be requested by CSC of the particular agency or CSC office. The region advises that the province has now expressed interest in the establishment of such an agreement.

### **British Columbia**

In British Columbia two mechanisms are in effect:

- a) Vancouver Project: Basic information, Warrant of Committal, indictment, Client History Card, etc. are automatically sent from the pre-trial facility to the Regional Reception and Assessment Centre (RRAC). This information often arrives before the offender is transferred from the province.
- b) Front End Information Collection Project: A Memorandum Of Understanding between CSC and the Court Services Branch of the province was established through which:
  - CSC provides three Fax machines to provincial staff on the lower mainland and Vancouver Island;

- Specified documents on each offender sentenced to federal time are automatically faxed to RRAC by several court registries (even though they may not have enough traffic to warrant a separate fax machine from CSC). Concerns with this procedure include the lack of timely receipt of information in some cases.
- Other jurisdictions in the province may chose to fax or mail the documents at their own discretion.

**Status of Information Collection**

The need for further information by the NPB on the criminal history of the offender was identified in the 1994 Report of the Auditor General (A.G.). In its 1996 report on Reintegration of Offenders, the A.G. notes the difficulties faced by CSC in obtaining such documents as police reports, Crown briefs, and Judges’ Comments, on a timely basis. The report also notes the high incidence of missing information as a contributing factor in many of the sensational incidents investigated by CSC and the NPB.

To assess the timeliness of receipt of information from the courts, it was determined that a survey of a sample of new arrivals would be conducted. The survey was based upon approximately 20% (229 cases) of the new admissions to CSC from the courts in each region for the period of January 1 to March 31, 1996. The findings identified various reports which were problematic in their timeliness, as well as some process inconsistencies which required review. Consequently, and in response to various concerns identified within the report of the Reintegration Task Force, the Director General, Reintegration, has initiated a National Intake Assessment Unit Review. This review is to focus on all aspects of information collection, including the quality and timeliness of the reports received. In addition, a process has been established to monitor on a bi-monthly basis the timeliness of reports received into the Offender Management System.

The most recent data available refers to four key reports listed below. The completeness of information received follows four full months from the month of admission:

Post Sentence Community Assessment	86 %
Judge’s Comments	84%
FPS	51%
Police Reports	94%

CSC anticipates further improvement to these figures as progress is made in negotiations and arrangements with the respective agencies.

## Young Offender Information

Most of the Information Collection Agreements provide for sharing of Young Offender Information which was used in the court proceedings of the offender for the federal sentence. However, most are silent on the provision of previous records which were not used by the court. The fact that Young Offender information was not introduced at the trial is not necessarily an indication that it does not exist. However, as such information is not automatically forthcoming from the courts, nor from the agencies, the onus has been left to CSC to pursue the existence and retrieval of such information. At most locations CSC staff do not seek this information unless there is an indication elsewhere (e.g. on Client Record, or FPS), that it does exist. This situation was described in the 1994 report of the Auditor General.

In a separate review of the responses received from the original survey, the availability of information on Young Offender records was assessed. We identified 80 offenders for whom there was no indication of a Young Offender history. A search of the CPIC information available on each of these offenders on OMS was conducted. Of the 71 cases for which there was an FPS record, 20 of them (28%) were found to have a previous Y.O. record (see Appendix A).

This rate of unidentified Y.O. records within the limited sample suggests that there may be a much larger number of admissions each year who have such a history, of which CSC is not aware. The likelihood of some of these records containing violence would be of significance to the risk assessment of these individuals.

There is currently no uniform, consistent method, anywhere in Canada, of discovering whether an offender has a juvenile history. In British Columbia the Client History provided by Provincial Corrections will identify a juvenile record west of Ontario, and sometimes the FPS sheet will indicate a record in central or eastern Canada.

It should be noted that the modifications to the Young Offenders Act which were introduced with the passage of Bill C-37 in December 1995 were intended to make it easier to access juvenile records. However, it is one thing to ascertain that a person *has* a juvenile record, and quite another to obtain *details* of the crime(s). This involves a request to the appropriate police detachment(s) and juvenile authorities with whom the offender was involved at the time of the juvenile incident(s), and older records may be subject to provincial archiving provisions. In B.C., to gain access to a sealed record involves an application to a judge. Naturally, before embarking on this much work, Parole Officers make an assessment as to whether the type and severity of the juvenile record warrant it. In a recent case in BC, CSC recently sought an administrative Court Order to reverse the automatic 5-year sealing of young offender information dating back to 1984. This has been time consuming and expensive. This issue is currently being pursued with Court Services Branch with the hope of establishing a speedier process.

The Case Management Policy Interpretation Bulletin dated 1996-04-25 clarifies CSC's authority to obtain young offender records. It addresses the changes introduced to the Young Offenders Act in December, 1995 which would facilitate access to those records, including the creation of an RCMP special records repository. However, it would appear that many CSC staff responsible for information retrieval are not familiar with the process for seeking these records. Part of the problem relates to the availability of records held in other provinces.

The Director, Information and Identification Services for the RCMP, has issued "To All Contributors", on 1996-05-20, the highlights of the changes to the Young Offenders Act as proclaimed on 95-12-01. This document outlines the changes established at the Central Repository for its management of Young Offender records, and how the notice of existence of such records will appear on a CPIC query. It is unclear as to whether this information should be sought in addition to the FPS, as these two data bases, although similar, may not contain identical information, especially with regard to young offender information.

CSC (Pacific) has developed a protocol agreement with the Corrections Branch of the Ministry of the Attorney General governing access to CORNET, the automated provincial file system. This arrangement is expected to expedite access to youth as well as adult provincial records of federal offenders.

In Quebec, the province cannot release any Young Offender information unless that young offender has agreed in writing to its release pursuant to their privacy legislation.

The collection of information by the Correctional Service of Canada is therefore a complex task, compounded by the fact that the CSC must rely on secondary agencies to provide relevant and timely information. This complexity is most apparent with regard to the provision of young offender information. Notwithstanding that C-37 included amendments to the Young Offenders Act in 1995, thereby strengthening the requirement of secondary agencies to provide young offender information, problems in the collection of such information continue to exist. Therefore, the Department of Justice has agreed to consider, in their ongoing review of the YOA, the means to further strengthen the Act with regard to information sharing. In the interim, both the NPB and the CSC continue to work in partnership to examine both process and content issues in an attempt to resolve some of the current issues that militate against the CSC obtaining timely and relevant young offender information. As an example, the CSC is currently in the process of revisiting the information sharing protocols that exist currently, with the intent to strengthen them. Also, CSC is attempting to develop sharing protocols with other jurisdictions.

**Women Offenders at Burnaby Correctional Centre for Women:**

Front end information is collected by case workers at Burnaby Correctional Centre for Women (BCCW) in accordance with their own standards, and with paragraph 5 of the MOU between CSC and the Province of B.C. NPB have indicated in the past that they are very happy with the quality of information and casework presented to them on women offenders at BCCW. Nevertheless, the MOU has not been altered or amended since the inception of the *CCRA*. Discussions between the province, NPB, and CSC are currently underway to expedite the sharing of information between jurisdictions.

**Cost Of Information**

Prior to the enactment of the *CCRA* a series of consultations was held with the provinces. During these discussions a commitment was made that CSC would pay the incremental costs incurred by the provinces for the provision of the information required by the Act. This commitment represents one of the guiding principles in the negotiation of the Sharing of Information agreements with the provincial Attorneys General.

The costs to provide information are identified in most of the Agreements; normally they are contained in a separate fee schedule established by the province, reflecting provincial regulations related to court fees (e.g. Court Rules Act of British Columbia). Photocopy costs range from \$0.50 to \$1.00 per page, and typed transcripts from \$2.50 to \$4.00 per page. Computer access to Quebec's court record system costs \$0.79 per transaction. Courier costs are assessed as well.

The following table presents the expenditures by region which have been allocated to Information Sharing Agreements.

	1992-93	1993-94	1994-95	1995-96	1996-97
	\$	\$	\$	\$	\$
ATLANTIC	0	9,104	13,033	16,325	14,271
QUEBEC	218,767	184,669	135,909	137,170	173,711
ONTARIO	254,620	261,856	288,060	196,036	229,042
PRAIRIES	526	27,150	34,883	71,015	114,681
PACIFIC	40,193	51,181	17,474	16,199	20,587
<b>TOTAL</b>	<b>514,907</b>	<b>533,961</b>	<b>489,359</b>	<b>436,746</b>	<b>552,292</b>

*Source: P-14 , STATEMENT 19009, Line Object 04804, Information Sharing Agreements, Code Votes 2 and 8.*

The figures above do not include salary costs of staff whose main duties include the retrieval of information from the courts and agencies. There are also equipment costs, such as fax machines and scanners, which are not included above. As the quantity of information increases with the more proactive efforts by the provinces, the costs as contained in the fee schedules, some of which are based upon specific regulations passed by the provinces, are expected to increase.

### **Sharing of Information with NPB**

Section 101(b) of the Act requires that the Board take into consideration all available information that is relevant to its decision-making. The availability of all court and agency based information obtained by CSC is therefore particularly critical to the Board's decision making.

The processes for sharing information with the Board have been in place in the regions for years. Nevertheless, from time to time some gaps have appeared, as identified in the various investigations and reviews conducted jointly with the Board, and in the Board's own case audits. A recent update mirrors previous findings contained in the Auditor General's Report (1994), that relevant and available information is not being collected by CSC or provided to the Board in some cases. A copy of that report is available from the NPB.

#### **Agreements with NPB:**

The Statement of Understanding between NPB and CSC, June 1994, provides the framework within which mutually acceptable process and procedure may be established. Parallel agreements have been established between the Regions and their respective Boards.

A key factor is the provision of timely and complete information on offenders for use in the decision making process. Therefore, a detailed agreement related to Monitoring of Case Preparation and Decision Making at Hearings was established. This document, dated June 30, 1996, was communicated to the Board's Regional Directors and to the Assistant Deputy Commissioners for implementation. Various reasons for delay in review are identified on the form provided, and must be reported; one of these involves the provision of information to the Board by CSC. The requirement for data collection and reporting is in the process of being implemented.

The NPB has taken action to ensure that Board members do not take a decision in the absence of crucial or critical information in order to safeguard against the possibility that a release decision would be taken in the absence of such information. Also, the Board continues to conduct audits to ensure that it receives relevant and timely information, and that the Board members are not making decisions in the absence of relevant information necessary to the decision.

### **Integrated Justice Information System (IJIS)**

The importance of information sharing among the various stakeholders within the criminal justice system is receiving increased attention. The Integrated Justice Information Systems (IJIS) Steering Committee and Working Group have now been established, currently with representation from the Solicitor General Secretariat, CSC, NPB, RCMP, Department of Justice, and Treasury Board Secretariat. A Statement of Mandate and Principles for the Steering Committee has been approved, based upon principles already approved by the federal / provincial / territorial ministers responsible for the administration of justice. The working group will now focus on the development of a Strategic Action Plan, in which the priorities will include:

- a focus on the improvement of information sharing among all partners in the criminal justice system;
- review of the networks of the Ministry partners to determine what cost efficiencies may be realized from a common network;
- identifying opportunities to share information in current systems and defining standards that would need to be established to ensure sharing of information in future systems.

The IJIS working group is in the process of identifying strategic pilot projects that will focus on facilitating the sharing of information with a variety of partners in the criminal justice system. The pilot projects will help to identify any technical, legislative and policy changes that will be required to manage, share and protect offender information in accordance with current Privacy, Access, Security and Information management legislation and policies.

### **Summary of Findings**

- 1) CSC continues to implement and monitor the information sharing agreements and the responsiveness of the agencies in providing the required reports.
- 2) There is a need to challenge the requirement imposed by Ontario courts for judicial approval of all information released to CSC. They insist that the court (i.e. judge) continue to decide what is “relevant information” that will be shared with CSC. A legal opinion on this matter supports an approach to better educate the judges in Ontario, rather than to pursue an amendment to section 743.2 of the Criminal Code.

- 3) There is a need to clarify:
- a) the means by which the existence of a Young Offender record can be determined, including the use of both FPS and CPIC data bases;
  - b) the means to obtain the details of the offences, including any related reports or assessments of the offender;
  - c) whether records and reports requested under the YOA should be included in CSC's Case Document Checklist on OMS;
  - d) the extent to which the intake assessment staff must seek Young Offender information in the other provinces.



## APPENDIX A

### CCRA 5-YEAR REVIEW INFORMATION FROM THE COURTS: YOUNG OFFENDER RECORDS ON CPIC / FPS

One of the projects conducted to support the CCRA Review assessed the receipt by CSC of information about offenders from the courts upon sentencing. Preliminary findings suggest that there are gaps in the process to identify those offenders who have a previous Young Offender (Y.O.) history.

Any Y.O records which have been available to the adult court associated with the current federal sentence are generally made available to CSC. However, there appear to be instances where the offender's prior Y.O. record was not known by the court. This may be particularly true where the Y.O. information was recorded by a municipal police force and not necessarily forwarded to the RCMP for inclusion in CPIC or FPS records. In addition, the charge may have been recorded in a province other than that in which the current adult conviction has been registered.

The existence of a prior Y.O. record may become known to CSC staff by several means:

- 1) it may be mentioned in the court documents, e.g. pre-sentence report;
- 2) it may be self reported by the offender in interview;
- 3) it may be recorded on the FPS or CPIC report on file.

The following review was designed to determine:

A - the extent to which the presence of a **known** Y.O record is confirmed on FPS/CPIC;

B - the extent to which FPS/CPIC reflects the presence of a Y.O record **not** previously known by CSC staff (as reported in the CCRA survey on information received from the courts).

#### Findings

	YOA Sample Total	GROUP ONE				GROUP TWO			
		Known Y. O. Record				Unknown Y. O. Record			
	Total	# on FPS	Not on FPS	FPS not on OMS	Total	Y.O record found	No Y.O. record found	FPS not on OMS	
Atlantic	9	2	1	1	0	7	0	7	0
Quebec	23	0	n/a	n/a	n/a	23	2	19	2
Ontario	22	2	0	0	2	20	10	7	3
Prairies	28	8	6	2	0	20	5	14	1
Pacific	19	9	5	0	4	10	3	4	3
<b>TOTAL</b>	<b>101</b>	<b>21</b>	<b>12</b>	<b>3</b>	<b>6</b>	<b>80</b>	<b>20</b>	<b>51</b>	<b>9</b>

### **Analysis of Results:**

A sample of 101 cases were checked on OMS as to whether there was an indication of a Young Offender record on the FPS or CPIC:

#### **GROUP I - Known Y.O. Records**

The first group consisted of 21 offenders with a Y.O. record **known** to CSC staff. Within this group,

- there were 12 cases in which the Y.O. record (also) appeared on the FPS.
- 3 of these records did **not** appear on the FPS.
- in 6 cases the distinction could not be made as there was no FPS found on OMS.

Therefore, of the cases in which there **was** an FPS, 20% of the cases (3 of 15) had **not** been entered onto that system. As the responsibility to submit such Young Offender information to the RCMP rests with the investigating police force, this finding suggests that the FPS /CPIC record **cannot** be relied upon entirely as confirmation that such a record exists.

#### **Group II - Unknown Y.O. Record**

The second group consisted of 80 offenders who were **not** identified by CSC staff as having a Y.O. record. Of this group,

- 20 cases were identified on OMS as **having** a Y.O. record;
- 51 cases revealed no Y.O. record;
- in 9 cases the distinction could not be made as there was no FPS found on OMS.

Therefore, of the 71 offenders for whom there was an FPS on OMS, a Young Offender record **was found** in **28%** (20 of 71). This finding indicates that many CSC staff are **not** utilizing the FPS / CPIC information available on OMS (Sentence Management screen) to determine the existence of a Y.O. record.

The FPS / CPIC record indicates in some cases that a charge was processed through Youth Court. In other cases the reader is required to compare the date of the charge with the date of birth to determine the age of the offender at the time of the charge. Any details of the offence would have to be requested through the investigating police department or youth agency indicated. These sources may be in provinces other than the one in which the current conviction has occurred. It was noted that a number of the charges involved violence.