

CCRA 5 YEAR REVIEW

OFFENDER GRIEVANCE SYSTEM

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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
Statutory Release and Detention Provisions
Community Supervision Provisions
Provisions Relating to Victims
Observers at National Parole Board Hearings
The National Parole Board Registry of Decisions
CSC Human Resources
Administrative Segregation
Search, Seizure and Inmate Discipline
Offender Grievance System
Urinalysis Testing Program
Inmate's Input in Decision-making
Information to Offenders
Aboriginal Offenders
Health Services
Women Offenders

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CCRA REVIEW

OFFENDER GRIEVANCE SYSTEM

CORRECTIONS AND CONDITIONAL RELEASE ACT REFERENCES:

Sections 90 and 91

These sections require that :

- there be fair and expeditious procedures for resolving offenders' complaints on matters within the jurisdiction of the Commissioner; and
- that offenders have complete access to these procedures without negative consequences.

CORRECTIONS AND CONDITIONAL RELEASE REGULATIONS REFERENCES:

Sections 74 - 82

These sections provide the conditions under which CSC must deliver and manage its offender redress system

PERCEIVED INTENT OF THE ACT AND REGULATIONS

The requirements in the Act and Regulations with respect to the provision of an equitable dispute resolution mechanism are not new for CSC. A complaint and grievance system with clearly defined response deadlines and provisions for access to external appeal have been contained in internal directives and policy for many years. The sections in the CCRA and CRRR gives the force of law to what the Service previously provided through policy. To summarize, the intent of the legislation is to ensure that the core elements of **fairness, timeliness and effectiveness** are given the required focus in the inmate redress system.

PROJECT METHODOLOGY AND DATA COLLECTION

It has only been in the last year where complaint and grievance data have been reliably recorded and entered into automated computer systems. As a result, with some small exceptions, it is intended that the effectiveness of the grievance system be demonstrated based on data for calendar year 1996. To provide some perspective, the following national data is provided.

COMPLAINTS AND GRIEVANCES SUBMITTED IN 1996

	Complaints Institutional	*1st Level Institutional	*2nd Level (Regional)	*3rd Level (NHQ)	TOTAL
Atlantic	1,753	261	174	85	2,273
Quebec	5,827	1,216	801	337	8,181
Ontario	4,557	723	599	231	6,110
Prairies	2,442	511	330	197	3,480
Pacific	2,447	434	305	140	3,326
National	17,026	3,145	2,209	990	23,370
Aboriginal	1,310	217	159	72	1758
Women	345	38	22	4	409

* Note: More than 95% of these grievances are also included in the statistics presented for Complaints in the first column above.

RESULTS / DESCRIPTION

Issue

Can the grievance procedure be considered fair?

One indicator which may provide some insight into offenders' perceptions of the fairness of the grievance system is to assess the level of formal complaints submitted concerning the grievance system itself. In 1996, offenders submitted a total of 413 complaints concerning the grievance process. This represents only 1.8% of the total 23,370 complaints and grievances submitted by offenders in 1996. Furthermore, 28% of the 413 complaints and grievances which were submitted were assessed as having merit and as a result were upheld or upheld in part.

Data obtained from the Annual Reports of the Correctional Investigator appear to demonstrate similar findings. It indicates that issues surrounding the grievance system represented a relatively small percentage of the total complaints received by their office. In 1994-95, for example, 197 (2.9%) of the total 6799 complaints received concerned the grievance procedure. Similarly, data from the 1995-96 Annual Report of the Correctional Investigator notes that 280 (4.1%) of the total 6,794 complaints received were related to the grievance procedure.

Overall national grievance data is also clear in demonstrating the fact that CSC desires to deal with individual complaints in a fair manner and to recognize valid complaints when they present themselves. This is highlighted by the fact that 4,423 or 19% of all complaints and grievances on all subjects submitted by offenders in 1996 were considered to be valid: they were upheld or upheld in part.

A formal system of prioritizing grievances has been implemented at NHQ and is included in a new grievance policy which was approved in November 1997 which requires prioritization at all levels of the grievance system. In order to increase the fairness of the system, it was determined that grievances which raised issues which could have greater potential impact on liberty and rights, will be investigated and responded to on a priority basis. In addition, in order to effectively deal with the specialized area of health care, a procedure has been put into place where complaints and grievances relating to treatment and diagnosis decisions are referred to the institutional Chief, Health Services for prioritization and professional input as required.

Issue

Is the grievance system timely in responding to offender complaints?

Subsequent to the enactment of the CCRA, the Arbour Commission focused a number of recommendations on the offender grievance system. It was noted that CSC was not following its own policy with respect to providing offenders written responses to their complaints within the timeframes prescribed by policy. To ensure improvements in this area, CSC did two things. First, a serious commitment was made on the part of CSC to effectively manage this area of its mandate. Second, an examination was undertaken to determine realistic timeframes which would ensure effective investigations while at the same time providing offenders with timely responses. Whereas the existing policy requires that offenders receive written responses within 10 working days, an internal review of the system has led CSC to change its policy in November 1997 so that 15 and 25 working days be provided to respond to priority and non-priority grievances respectively. Even before the policy changes, significant improvements can be demonstrated with respect to improved response times. In January 1996 it took an average of 41 working days to investigate and respond to a grievance at National Headquarters. By March 1997, this response time had been significantly reduced by more than one half, or within 17 days. At the same time, at National Headquarters, it took an average of 16 working days to respond to “priority” grievances in April 1996. By March 1997, this had been significantly reduced so that “priority” grievances were being responded to in 9 days.

National grievance data also confirms that offenders are receiving timely responses to their complaints and grievances at the institutional and regional levels. For example, offenders received responses to their complaints and institutional grievances in an average of 11.6 and 12.0 working days respectively for the month of December 1996. Responses to regional grievances were received by offenders in an average of 17.0 days in December 1996.

Issue

Is the grievance process demonstrating effectiveness by successfully resolving complaints and grievances at the lowest possible level?

As is evident from the above data, the numbers of complaints and grievances submitted by offenders see a dramatic reduction as they move through the system to higher levels. For example, only 18.5% of the original 17,026 complaints are submitted to the institutional head for consideration. This percentage is reduced further to 13% and 5.8% respectively as grievances are submitted to the regional and national offices for resolution.

What is equally interesting is the fact that a much greater percentage of grievances are being resolved in the favor of offenders at the lower levels of the grievance procedure. Of the original 17,026 complaints submitted in 1996, 21% were upheld, or upheld in part in favor of the offenders' complaints.

An assessment of the effectiveness of a grievance procedure should not be limited to how it responds to an individual complaint or grievance. Cumulative grievance data should serve as a proactive management tool which can point to unusual trends or patterns and ultimately provide the impetus for a close examination of issues. In the last year, with the use of Offender Management System data, CSC has been able to produce grievance trend analysis which provides a management tool to conduct comparative analysis by individual institutions (including the Women Offenders Institutions), by region and nationally. By doing so managers will have the ability to, for example, examine such things as the response time required to respond to grievances against other operational sites. They will be able to identify the types of grievances which are being submitted and consequently, regional and national managers will be able to identify and investigate the reasons for disproportional numbers of grievances being submitted by one institution or region. It is through the availability of this type of information that CSC will be able to identify and take action to reinforce/amend or develop policies where it has been determined that action is required. Not only can policy issues be identified nationally, but through comparative analysis, discrepancies can be identified between institutions to allow for effective analysis and resolution where required.

While the majority of the Arbour Commission's recommendations have been implemented for the purpose of improving the effectiveness of the grievance system, CSC determined that the recommendation that the Commissioner review and sign some if not all grievances was not tenable. If it was determined that the Commissioner would not review and sign all third level grievances, it was recommended by the Arbour Commission that they be submitted to a source outside CSC for disposition and that the decisions be binding on the Service. Again, CSC did not accept this recommendation. With the understandable constraints on the Commissioner's agenda, CSC determined that the collection and reporting of grievance data as described above would meet the objective, i.e., that the Commissioner be aware of the nature and magnitude of offender identified issues.

The Arbour Commission also recommended that grievance procedures be amended so that complaints are forwarded directly to the Deputy Commissioner for Women (DCW) from the institutional level thus omitting the regional (2nd level) review, and that the DCW personally respond to all grievances directed to the third level. CSC did not agree with these recommendations. First, the Service has determined that as the organizational structure has retained the reporting relationship between the wardens of the womens' facilities and the Regional Deputy Commissioners, the grievance procedure should reflect this structure and, therefore, all grievances should be responded to at the regional level before proceeding to the third level. As a result of the data collection which has been put into place, it was determined that there was no need for the DCW to personally respond to all third level grievances. Through the receipt and review of grievance data, patterns and trends are readily available to the DCW and appropriate investigation can proceed where it is considered necessary. In addition, all third level grievance responses which are prepared at the third level are reviewed by the DCW before they are signed by the Assistant Commissioner, Corporate Development.

Summary

Has the intent of the act been met - is the grievance procedure fair, timely and effective?

The placement of the grievance procedure into legislation, in addition to the focus placed upon it by the findings of the Arbour Commission, has resulted in a significant degree of management attention both in terms of improving the existing system, but also in adding to its abilities.

- When it is determined that 4,423 or 19% of all complaints and grievances on all subjects submitted by offenders in 1996 were upheld or upheld in part, it is evident that CSC considers grievances in a serious light and utilizes the system to contribute to the fair treatment of offenders.
- When we consider that CSC receives in excess of 23,000 formal written complaints and grievances each year which require investigation and response, and offenders received responses on average between 11.6 and 17 working days in December 1996, it is fair to conclude that CSC provides a timely response to offender complaints and grievances.

- When it is calculated that only 5.8% of the original 17,026 complaints are submitted to the final level of the grievance procedure for investigation, it is evident that complaints and grievances are being effectively dealt with at the lowest level possible directly between the offenders and the correctional workers themselves.

DISCUSSION OF ISSUES

Offenders who submit multiple grievances

The Act currently highlights that “every offender shall have **complete access** to the offender grievance procedure....” (Section 91) and that it will serve to fairly and expeditiously resolve offenders’ grievances (Section 90).

Grievance data indicates that the vast majority of complaints and grievances are submitted by a relatively small proportion of the inmate population, i.e., 5% of the inmate population accounted for 16,191 or 69% of all complaints and grievances for calendar year 1996. In addition, for example, 15 inmates submitted over 100 grievances each, one inmate submitted 334, and 66 inmates submitted more than 50 each. Due to the requirement, by law, that all offenders must have complete access to the grievance procedure, CSC is largely bound to treat the complaints submitted by “multiple grievors” in the same manner as those submitted by offenders who submit very few complaints and who may have very well made legitimate efforts to resolve their problems before considering the use of the formal grievance system.

In order to ensure that all offenders are given equal access to the grievance system in such a manner that promotes effective and fair investigations and responses, CSC has recently amended its policy so that inmates who submit inordinate numbers of grievances do not affect the access and timely response to grievances submitted by the rest of the inmate population. Generally this will mean that, within the parameters of a specific set of criteria, responses to multiple grievors may be delayed while at the same time they will continue to be allowed to submit as many grievances as they desire thus ensuring continued “complete access to the grievance system” as required by the CCRA. Policy and guidelines have also been further developed to more fully utilize the provision in the Regulations which allows CSC to reject grievances that are considered to be frivolous, vexatious or not made in good faith. Without these changes, the system would have continued to be abused to the extent that multiple grievors on occasion cause inordinate backlogs to the detriment of expedient resolution of other grievances. This approach has required internal policy amendments to ensure that appropriate procedures are implemented to determine when and under what circumstances grievances can be limited. Safeguards will be required to ensure “reasonable” access is maintained.

Outside Review Boards

Following the receipt of the institutional head's decision on a grievance, Section 79 of the Regulations states that an offender may request that the institutional head refer the grievance to an "outside review board", and that the institutional head **shall** refer the grievance to the outside review board. The intent is to allow for an objective body, operating outside of the institution, to review the grievance and to make a recommendation to the institutional head concerning the merits of the grievance.

Although there have been only a handful of situations where an offender has requested that a grievance be examined by an Outside Review Board, the fact that the CCRA requires that all requests by offenders for such reviews be granted provides a serious potential avenue of abuse. When it is considered that such a small percentage of offenders submit the vast majority of grievances, if the situation were to occur where these inmates requested investigations by outside review boards, the value to be gained against the significant costs of convening these review boards would be difficult to rationalize.

CSC's current internal grievance system provides for four separate formal reviews. In addition, offenders have open access to the independent Office of the Correctional Investigator if they are not satisfied with the remedies provided by CSC. In addition, there are various other legal avenues of redress available to offenders including the Federal Court. In view of these many avenues of formal redress, as well as CSC's current emphasis on informal conflict resolution, it has been recommended that there should be a discretionary limit on the use of outside review boards. The position has been put forth that Section 79 of the Regulations should be amended to read "...and the institutional head **may** refer the grievance to an outside review board", rather than "...shall refer the grievance to an outside review board." At this point, given the lack of evidence to suggest that this review mechanism has been misused in any way, no changes to the legislation are recommended and monitoring will continue.

The Grievance System and Aboriginal Offenders

While aboriginal offenders make up approximately 15 % of federal inmates according to the Executive Information System, they submitted only 7.5% of the total complaints and grievances in 1995-96. Although a number of theories may be advanced to explain this under utilization of the grievance system by aboriginal offenders, it is an area which deserves further examination. The use of grievance personnel who have received a certain level of cultural sensitivity training, for example, may prove to make the grievance procedure more accessible for aboriginals than is currently the case.

CONCLUSION

It is felt that the intent of the CCRA and CRRs is being maintained by CSC policy. Improvements in the last year have served to more completely ensure that the principles set out in the Act, and highlighted in the findings of the Arbour Report, are maintained throughout the grievance procedure. As has been demonstrated above, the data supports the conclusion that offenders are being provided with a grievance procedure which is fair, timely and effective, although some further study concerning aboriginal offenders' use of the system is merited.