

**Good Intentions, Disappointing Results:
A Progress Report on Federal Aboriginal Corrections**

Office of the Correctional Investigator

Michelle M. Mann*
B.A., LL.B.
Ottawa, ON
michelle@michellemann.ca

*Bio attached as Appendix A.

Acronyms List

Aboriginal Community Development Officer: ACDO

Aboriginal Liaison Officer: ALO

Aboriginal Offender Substance Abuse program: AOSAP

Commissioners Directive: CD

Correctional Service Canada: CSC

CSC Executive Committee: EXCOM

Corrections and Conditional Release Act: CCRA

Custody Rating Scale: CRS

Fetal Alcohol Spectrum Disorder: FASD

National Aboriginal Advisory Committee: NAAC

Office of the Correctional Investigator: OCI

Reintegration Potential Reassessment Scale: RPRS

Report on Plans and Priorities: RPP

Security Reclassification Scale: SRS

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Executive Summary

A young and rapidly growing Aboriginal population presents important challenges and opportunities for Canada. Should they not be taken up however, the impacts will be felt throughout the youth and criminal justice system, including corrections.

With the Aboriginal population much younger than the overall Canadian population and experiencing a higher growth rate, the problem of Aboriginal over-representation in corrections continues to worsen rather than improve. Compared to non-Aboriginal offenders, the gap in positive results for Aboriginal offenders across the spectrum of correctional processes remains significant throughout sentence.

The offending circumstances of Aboriginal offenders are often related to substance abuse, inter-generational abuse and residential schools, low levels of education, employment and income, substandard housing and health care, among other factors. Aboriginal offenders tend to be younger; to be more likely to have served previous youth and/or adult sentences; to be incarcerated more often for a violent offence; to have higher risk ratings; to have higher need ratings, to be more inclined to have gang affiliations, and to have more health problems, including Fetal Alcohol Spectrum Disorder (FASD) and mental health issues.

These issues go well beyond the capacity of Correctional Services Canada (CSC) alone to address. However, CSC has a unique opportunity to provide tailored programs and interventions to address the different needs and profiles of Aboriginal offenders and to work closely with Aboriginal communities for effective reintegration. This is consistent with CSC's mandate, policies and legal obligations and promotes government priorities of safe and secure communities and accountability to Canadians.

While addressing these challenges, CSC must also prepare for an anticipated growth in the federal Aboriginal offender population and potential shifts in their geographic distribution. Projected growth rates in Aboriginal populations suggest continuing over-representation in correctional populations.

In that regard, it is crucial to consider the role and efficacy of CSC in providing corrections to Aboriginal offenders. Ongoing gaps in outcomes between Aboriginal and non-Aboriginal offenders raise serious questions pertaining to whether the good intentions underlying CSC strategies and policies in Aboriginal corrections are translating to results.

Accordingly, the Office of the Correctional Investigator (OCI) undertook a comprehensive review of CSC's progress in meeting its strategic plans and obligations pertaining to the Aboriginal offending population in certain key areas. The 2006 Strategic Plan for Aboriginal Corrections alone included close to 200 actionable items, with the great majority having completion dates of March 2007 or earlier. Many of these promising and ambitious undertakings have yet to be fully implemented and accordingly have not reversed the disconcerting trends pertaining to Aboriginal offenders.

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While the Service has implemented a number of very positive initiatives and programs for Aboriginal offenders over the past decade, they are often localized and not rolled out on a consistent national basis and have therefore had limited impact on narrowing the gap in correctional outcomes between Aboriginal and other offenders.

This report documents some significant findings on areas where CSC can be encouraged to move forward in implementing and operationalizing its Aboriginal corrections agenda. These include access to programs for Aboriginal offenders; ongoing security and classification issues for Aboriginal offenders; parole; data collection and evaluation; human resources; the development of a Northern Corrections Framework; and implementation/expansion of healing lodges.

Subsequent to this review, the OCI concludes that previous good intentions reflected in CSC policies and strategies have been inadequately operationalized, leading to disappointing results, at least partially due to a lack of data tracking, clearly enumerated deliverables and accompanying accountabilities.

The OCI remains deeply concerned about the ongoing performance gaps between Aboriginal and non-Aboriginal corrections, and the failure of CSC to deliver on many of its commitments to date. The Office welcomes the future implementation of the Aboriginal Corrections Accountability Framework and hopes it lives up to its promise of accountability in Aboriginal corrections. The OCI endorses the approach of setting tangible targets with clear timelines, performance indicators, strengthening accountability and clarifying responsibilities, enhanced monitoring and public reporting on progress with respect to implementing the Strategic Plan, 2006.

While supportive of this initiative, the OCI also feels compelled to ring the alarm. Aboriginal corrections is at a crossroads in Canada, with a need for urgent action on the part of CSC absent which the situation may devolve into crisis. Previous attempts to reduce the gap in outcomes between Aboriginal and non-Aboriginal offenders have largely failed. Given the young and growing Aboriginal population, a CSC failure to be forward thinking and expeditiously mobilize good intentions in Aboriginal corrections will reverberate throughout the youth and criminal justice system, Aboriginal communities and Canadian society for years to come.

I. Introduction

A young and rapidly growing Aboriginal¹ population presents important challenges and opportunities for Canada. Should they not be taken up however, the impacts will be felt throughout the youth and criminal justice system, including corrections.

The Aboriginal population is growing, quickly representing a greater percentage of the Canadian populace; increasing by 20.1% from 2001 to 2006. The Aboriginal population is also much younger than the overall Canadian population. In 2006, the median age of the total Aboriginal population was 27 years, which was 13 years lower than the median age of non-Aboriginals.²

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Statistics Canada predicts that the Aboriginal population aged 0 to 14 years will grow from 6% of all children in Canada in 2001 to over 7.4% in 2017. Similarly, by 2017 the population of Aboriginal young adults (aged 20 to 29 years) will have increased from 4.1% to 5.3%.³

With the Aboriginal population much younger than the overall Canadian population and experiencing a higher growth rate, the problem of Aboriginal over-representation in corrections continues to worsen rather than improve. Aboriginal over-representation has grown in recent years: between 1998 and 2008, the federal Aboriginal population increased by 19.7%. Moreover, the number of federally incarcerated Aboriginal women increased by a staggering 131% over this period.⁴

In 2007 -2008, 17.3% of the total federal offender population was Aboriginal compared to being 4% of the Canadian adult population. They represented 19.6% of those incarcerated and 13.6% of those on conditional release (parole). For women, this over-representation is even more dramatic—33.1% of women in federal penitentiaries were Aboriginal.⁵

Of those offenders admitted to federal jurisdiction in 2007-08, 49.4% of Aboriginal offenders were under the age of 30, compared to 38.6% of non-Aboriginal offenders. The median age of Aboriginal offenders at admission is 30, compared to a median age of 33 for non-Aboriginal offenders.⁶ Of particular relevance is the projection that the 20-29 age group (the group with the greatest potential for criminal activity) will increase by over 40%. This is more than four times the projected growth rate of 9% for non-Aboriginal people.⁷

Compared to non-Aboriginal offenders, the gap in positive results for Aboriginal offenders across the spectrum of correctional outcomes remains significant throughout sentence. They serve a greater proportion of their sentences in institutions at higher security classifications and have higher rates of re-incarceration during periods of conditional release.

However, no snapshot of Aboriginal offenders is complete only by reason of data. The offending circumstances of Aboriginal offenders are often related to substance abuse, inter-generational abuse and residential schools, low levels of education, employment and income, substandard housing and health care, among other factors. A holistic approach is needed when working with Aboriginal offenders as the issues are inter-related; equally “success” and “progress” in dealing with Aboriginal offenders may also require a more holistic understanding.

The Aboriginal offender population differs markedly from non-Aboriginal offenders in a number of ways. They tend to be younger; to be more likely to have served previous youth and/or adult sentences; to be incarcerated more often for a violent offence; to have higher risk ratings; to have higher need ratings, (particularly in the areas of substance abuse and employment); to be more inclined to have gang affiliations, and to have more health problems, including FASD and mental health issues.

These issues go well beyond the capacity of CSC alone to address. However, CSC has a unique opportunity to provide tailored programs and interventions to address the different needs and profiles of Aboriginal offenders and to work closely with Aboriginal communities for effective

reintegration. This is consistent with CSC's mandate and legal obligations and promotes the government priority of safe and secure communities.

While addressing these challenges, CSC must also prepare for an anticipated growth in the federal Aboriginal offender population and potential shifts in their geographic distribution. Projected growth rates in Aboriginal populations, particularly in the 20-29 age groups, suggest continuing over-representation in correctional populations for the five-year CSC planning period from 2009/10 to 2014/15. Statistics Canada population projections to 2017 suggest that the disproportionate representation of Aboriginal peoples among newly sentenced offenders will continue to grow in federal and provincial/territorial correctional systems, particularly in the West and in the North. There are further increases in incarceration of Aboriginal peoples expected related to recent amendments to the *Criminal Code* regarding weapons, gang affiliated offences, dangerous offender designations, impaired driving and mandatory minimum sentencing.

In that regard, it is crucial to consider the role and efficacy of CSC in providing corrections to Aboriginal offenders. Accordingly, the OCI undertook a comprehensive review of CSC's progress in meeting its strategic plans and obligations pertaining to the Aboriginal offending population in certain key areas. This report provides a CSC progress update and a current review of the state of CSC Aboriginal issues; providing the foundation for moving CSC's agenda forward.

II. CSC Commitments & Obligations

This review commences with a canvas of key CSC national headquarters action plans and commitments pertaining to Aboriginal offenders.

1. Corrections and Conditional Release Act (CCRA)

As set out in detail in Appendix B, sections 79-84 of the *CCRA* deal with the specifics of CSC's obligations in Aboriginal corrections. In summary:

- Section 80 provides that CSC **shall** provide Aboriginal specific programs;
- Section 81 provides that CSC may enter into an agreement with an Aboriginal community for the provision of correctional services to Aboriginal offenders;
- Section 82 states that CSC **shall** establish a National Aboriginal Advisory Committee which shall provide advice to the Service on the provision of correctional services to Aboriginal offenders; and
- Section 84 states that where an inmate who is applying for parole has expressed an interest in being released to an Aboriginal community, CSC **shall** give the Aboriginal community notice of the parole application and an opportunity to propose a plan for the inmate's release.

2. Commissioners Directive 702- Aboriginal Corrections

Commissioners Directive 702 (CD 702) was completely rewritten in 2008. It is a policy directive issued by the Commissioner of Corrections pursuant to the authority contained in the *CCRA*. Among others, CD 702 imparts the following priorities:

- Culturally appropriate interventions that address the specific needs of Aboriginal offenders will be available at all levels within the Continuum of Care;
- All CSC staff will consider an Aboriginal offender's social history when making decisions in accordance with *Gladue* principles;
- In accordance with section 82 of the *CCRA*, a National Aboriginal Advisory Committee will be established to provide advice on the provision of corrections to Aboriginal offenders;
- The Regional Deputy Commissioner will ensure Aboriginal communities are engaged in the reintegration process for Aboriginal offenders returning to those communities pursuant to section 84 of the *CCRA*, where the offender has consented;
- CSC will provide Aboriginal correctional programs to meet the identified needs of Aboriginal offenders;
- Maximum security institutions may implement an Aboriginal-specific intervention strategy to focus on the preparation of individuals to move to a Pathways unit⁸ (Pre-Pathways intervention);
- Minimum security institutions may implement an Aboriginal-specific intervention strategy to focus on individuals who have moved from a Pathways unit/range (Post-Pathways intervention); and
- All offender management or program activity reports, research reports or data collection methods containing statistical summaries must include the Aboriginal proportion of totals at every level for both men and women offenders.

3. CSC Strategic Plan for Aboriginal Corrections 2006-2011

The Strategic Plan outlines the initiatives that CSC will undertake over the five year period to improve outcomes for Aboriginal offenders. It indicates that performance agreements for all executives in CSC will include accountabilities for contribution to the Aboriginal corrections agenda. Each year will build on the previous year with measurable results to show at the end of the five year plan. Three key objectives are identified:

1) *Continuum of Care*

The Strategic Plan articulates a vision for Aboriginal corrections that stresses the continuum of care model (the Continuum). Introduced in 2003, the model has spiritual and cultural interventions provided by Elders and national correctional programs based on their teachings at its core. The Strategic Plan mandates CSC to fully develop and implement the Continuum by among other things:

- Enhancing the delivery of Aboriginal correctional programs throughout the continuum of care;
- Expanding Pathways healing units to all regions in both men's and women's institutions;

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- Completing the implementation of the Healing Lodge Action Plan;
- Developing a strategy to address the needs of Northern offenders, including the Inuit;
- Development and implementation of culturally sensitive classification and assessment tools for women; and
- Development and implementation of culturally sensitive programs for Aboriginal women.

The federal Treasury Board approved \$3.7 million annually in ongoing funding to: expand Pathways healing units to the Atlantic, Ontario and Pacific Regions and to one women offender facility, and to continue the work of existing Aboriginal Community Development Officers (ACDOs) to actively engage Aboriginal communities in release planning for Aboriginal offenders. CSC must provide Treasury Board with an evaluation by June 30, 2009, of how these initiatives contribute to broader CSC reintegration results. The Strategic Plan also makes reference to utilizing Section 84 of *CCRA*.

2) Horizontal Collaboration

This component focuses on enhancing CSC collaboration within CSC and the Department of Public Safety, with other levels of government, and with Aboriginal organizations and stakeholders in order to contribute to Aboriginal community development and help Aboriginal offenders in their healing. This includes an emphasis on internal collaboration: ensuring that the planning, reporting and accountability mechanisms at all levels of CSC integrate the Aboriginal dimension.

3) Systemic Barriers

This section emphasizes addressing systemic barriers internally and increasing CSC cultural competence to address those barriers including:

- Monitoring and identifying systemic correctional barriers to Aboriginal offenders;
- Enhanced recruitment, development and retention of Aboriginal employees at all levels; and
- Developing cultural competence throughout CSC to facilitate culturally-relevant operations.

4) Results Commitment

Public safety results for Aboriginal offenders will be measured in relation to CSC's overall public safety results by the gap in results between Aboriginal and non-Aboriginal offenders for violent and non-violent re-offending. CSC intends to measure the effectiveness of Aboriginal-specific interventions in improving outcomes for Aboriginal offenders in comparison with Aboriginal offenders who do not participate.

4. Strategic Plan for Aboriginal Human Resource Management 2008-09 to 2010-2011

CSC's national recruitment strategy results at least in part, from the conclusion that within the Continuum the delivery of programs and services has been found to be more effective when provided by Aboriginal personnel. CSC's original National Aboriginal Recruitment Strategy

was adopted in December, 2000 and is now incorporated into the Strategic Plan for Aboriginal Human Resource Management. Monitoring of its implementation will be documented in the Departmental Report on Plans and Priorities, the Departmental Performance Report, and the Management Framework; it will be formalized and reported to the National Human Resource Management Committee on an agreed upon cycle.

5. Transformation Agenda and CSC Review Panel Report

In 2007 the Government of Canada released the Corrections Review Panel (the Panel) report *A Roadmap to Strengthening Public Safety* (the Review Panel Report), outlining recommendations for the government in revisiting CSC priorities and strategies. CSC has received funding for and is in the process of implementing a Transformation Agenda to implement various recommendations. The report contains 109 recommendations focusing on five key areas; those considered here are of particular relevance to Aboriginal offenders:

- That employment be CSC's first priority in supporting Aboriginal offenders' return to their communities;
- That CSC make resources available to respond to the specific needs of Aboriginal offender populations, such as further investment in specifically tailored correctional programming;
- That CSC ensure it can measure the results of these programs effectively;
- That CSC review its approach to mental health assessments of Aboriginals at intake and ensure effective screening techniques are in place;
- That CSC review whether the number of ACDOs should be increased;
- That Pathways units be expanded in CSC penitentiaries;
- That CSC review its funding structure for the operational requirements of healing lodges;
- That CSC continue to collaborate with the territories in addressing the unique needs of offenders, particularly Inuit, returning to northern communities;
- That particular attention be given to the impacts of FASD, particularly for Aboriginal offenders;
- A full review of the capacity of CCRA section 81/84 agreements with Aboriginal communities; and
- That CSC review its current human resource strategies, focusing on ensuring appropriate representation of Aboriginal People, including spiritual advisors, Aboriginal Liaison Officers (ALOs) and staff in women's penitentiaries.

6. Draft Strategy for Aboriginal Corrections Accountability Framework March 2009

At the time of writing, the discussion paper for the draft strategy was in circulation. The intent, once the strategy is formalized, is to operationalize and update the Strategic Plan for Aboriginal Corrections, 2006, discussed above. According to CSC, it will identify successes and gaps existing within the Continuum; establish concrete actions with projected results and expected outcomes; and establish the level of accountability associated with each region and sector head in regards to deliverables.

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The proposed five year Accountability Framework is intended to be directly related to annual, incremental and measurable results. The Strategy will operate on the following principles among others:

- Complies with all legal and policy frameworks which deal with the treatment of Aboriginal offenders. (Section 4 and sections 78-84 of the *CCRA*, the Supreme Court decision on *Gladue*, CD 702 and throughout CDs and policies);
- Emphasize that ownership and accountability of results relative to Aboriginal corrections are the business of all sector heads and Assistant Deputy Commissioner Institutional Operations;
- Signals to senior managers and executives (i.e. Wardens and District Directors) that they must commit and provide leadership to implement the Framework;
- The Strategy outlines direction, vision, action plan and that it is results-based in order to ensure accountability and improved baseline results for Aboriginal offenders;
- The Strategy outlines that the recruitment of qualified and culturally competent staff at all levels of the organization is fundamental to achieving the goals outlined;
- Ensures the adoption of an aggressive Aboriginal recruitment program that increases staff representation;
- Establishes partnerships and inclusiveness of various Aboriginal communities and stakeholders;
- Supports the involvement of Elders/Spiritual Advisors and Aboriginal community leaders in playing an integral role in the Continuum of Care for Aboriginal corrections;
- Outlines that a strong internal organizational structure is required to guide, coordinate, implement, monitor and report on progress against the Strategic Accountability Framework; and
- Performance agreements will be linked to this Strategy.

Upon completion of consultation, an Accountability Framework will be developed including expected results, benchmarks, and measurement criteria. The Strategy for Aboriginal Corrections Accountability Framework has one expected result – the achievement of significant results. Three enumerated areas of importance are: culturally appropriate and effective interventions for Aboriginal offenders; closing the gap in life chances for Aboriginal offenders; and addressing systemic barriers and increasing CSC cultural competence.

The draft strategy proposes intermediate results over the next five years including:

- An increase in security reclassification of Aboriginal offenders to a lower level;
- An increase in transfers of Aboriginal offenders from higher security to healing lodges;
- An increase in section 84 releases;
- An increase in positive parole decisions for Aboriginal offenders;
- A decrease in statutory releases for Aboriginal offenders;
- A reduction in Aboriginal offender involvement in violent community incidents;
- An enhanced support structure for Aboriginal offenders in the community;
- Improved baseline results in all categories; and
- Increased employment for released Aboriginal offenders.

These target results will be developed in collaboration with the stakeholders and will be incremental over each of the next five years with long term targets extending to ten years. Progress will be demonstrated in an incremental approach with yearly targets developed in consultation with the all stakeholders. The goal is improvement in the timeliness and the quality of community release planning. There will be ongoing evaluation of the plan on a yearly basis.

7. Special Projects

1) Northern Correctional Framework

In December 2004, CSC completed a discussion paper, *Developing and Managing a Northern Correctional Framework*. CSC commenced the development of a Northern Correctional Framework in order to better understand Inuit culture and to develop more effective strategies for reintegrating Inuit offenders back into their communities. This includes differences in offence characteristics, needs, home environment and cultural characteristics which point to a need for different methods of intervention for Inuit offenders and staff knowledge of Inuit culture needing to be addressed (15% of staff interviewed had received training on Inuit issues). A further discussion paper was issued in January 2006 but to date no substantive action has been initiated.

2) Aboriginal Offender – Security Reclassification Scale

CSC undertook a needs analysis study to determine whether its re-classification scale⁹ needed to be revised for Aboriginal men. A report was initially scheduled for release December 2007, then for internal research branch approval by the end of December 2007. In March 2008, the report was said to be going through extensive editing and subsequent approval processes while CSC stated that it will implement new assessment tools by fiscal 2009/10.

III. Progress Update

This section of the report assesses CSC progress in moving forward with its Aboriginal corrections agenda in several key areas. The 2006 Strategic Plan for Aboriginal Corrections included close to 200 actionable items, with the great majority having completion dates of March 2007 or earlier. Many of these promising and ambitious undertakings have yet to be fully implemented and accordingly have not reversed the disconcerting trends pertaining to Aboriginal offenders. CSC's own statistics confirm that the situation of Aboriginal offenders is deteriorating in many areas that CSC could positively influence. In many key areas pertaining to Aboriginal offenders the gaps in correctional outcomes have actually grown.

1. Fiscal

At the outset, it is important to note that financial capacity to carry out CSC's legislative mandate and commitments impacts progress made in outcomes for Aboriginal offenders. The OCI has noted the serious challenges CSC faces in delivering on its mandate and sustaining its contribution to public safety, due in part to the changing offender profile and escalating costs. As indicated in CSC's 2006/07 *Report on Plans and Priorities (RPP)*, 90% of the Service's

expenditures are for non-discretionary costs, such as salaries (including overtime), utilities, food, medical services and maintenance of its aging facilities.

This impacts CSC's ability to carry out and enhance its legislative and policy mandate, particularly with respect to programs for offender re-integration. The OCI has called for CSC to receive new, permanent funding to fully discharge its public safety mandate and to offset the predictable results that budget stringency has facilitated.

In its March 2007 federal budget, the Government of Canada recognized the critical nature of the situation. It allocated new money to temporarily alleviate CSC's financial pressures. Currently, CSC spends \$37 million per year overall on all its core corrections programs (including women and Aboriginals). Core programs are those targeted to lowering recidivism and facilitating safe offender reintegration into society, such as those dealing with anger management, substance abuse and family issues, for example. This includes training and costs for staff, quality control, program management and inmate pay clerks. This spending level represents less than 2% of CSC's annual budget and hasn't changed in recent years despite an increase in ear marked funds for programs.

It is noteworthy that CSC has received approval to make reinvestments of \$48.81 million as part of implementing the Transformation Agenda. These reinvestments will be used, among other more general goals, to expand the number of Aboriginal specific treatment programs to meet the needs of the larger number of incarcerated Aboriginal offenders. In response to the Review Panel recommendations, the Service is developing an Aboriginal Integrated Correctional Program Model (ICPM) that is designed to achieve a balance between correctional and healing interventions. The ICPM has yet to be piloted. As such, it is unclear exactly how, where and to what extent new fiscal resources will be directed towards Aboriginal offenders.

2. Access to Programs

Is CSC living up to the statutory obligation contained in section 80 of the *CCRA* and its numerous policy commitments over the years to provide programs designed particularly to address the needs of Aboriginal offenders?

Short-term data for offenders who have participated in Aboriginal-specific interventions suggest that the risk of re-offending can be reduced further through culturally appropriate programs and services within the Continuum.¹⁰ However, culturally appropriate programs and services are not yet universally available to Aboriginal offenders within institutions and in communities. Many of the national Aboriginal correctional programs are still being piloted or have only recently been implemented.

There remains limited access to programs in the community, especially for women and Aboriginal offenders. There are delays in the evaluation and national implementation of Aboriginal programming. A chronic shortage of Aboriginal-specific core programming in maximum-security institutions means that Aboriginal offenders cannot carry out their correctional plans and transfer to lower-security institutions where Aboriginal programs are

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available. There is shortage of program officers and facilitators to deliver Aboriginal specific programming and a lack of anti gang programming in institutions.

The Service has implemented a number of very positive initiatives and programs for Aboriginal offenders over the past decade including section 81 healing lodges; core Aboriginal programs, including Circles of Change, In Search of Your Warrior and Aboriginal Offender Substance Abuse Programming (AOSAP); and site-specific initiatives, such as Pathways units – medium security institutional living environments that address the cultural and spiritual needs of Aboriginal offenders. The Service has also facilitated traditional, spiritual and ceremonial practices including sweat lodge and longhouse teachings, and facilitated the availability of Elders for guidance.

These initiatives are often localized and not rolled out on a consistent national basis and have therefore had limited impact on narrowing the gap in correctional outcomes between Aboriginal and other offenders. There remains a lack of available program space for delivery of programs which has contributed to postponements and delay in Aboriginal program delivery within CSC. Aboriginal programs and initiatives such as In Search of Your Warrior and Pathways units need established and dedicated space. Despite certain similarities, the profiles of male and female First Nations, Métis and Inuit offenders are generally different. Each group has unique background, offence and need characteristics which require different modes of intervention in the delivery of correctional programs and services.

According to CSC, as of March 2009, national implementation of an Aboriginal Basic Healing Program had commenced as well as expansion of the AOSAP. CSC's March 2009 status update to the OCI indicated that presently, 5 sites were delivering the Basic Healing Program across the country. Training efforts in February and March 2009 saw the training of 15 additional program facilitators and Elders. Eleven sites were delivering AOSAP across the country. Training efforts in October and November 2008 saw the training of 15 additional program facilitators and Elders. Other AOSAP pilots were in various stages of wrap up (Stony Mountain and Kwikwexwelhp). The AOSAP manual will undergo final changes and is scheduled for national implementation by summer 2009.

While progress has been made with both AOSAP and the Basic Healing Program, the development of a strategy for management and intervention with Aboriginal gang members, though evidently an issue in corrections for years, has been slow to evolve. According to CSC, a national gang management strategy was presented to and approved by CSC Executive Committee (EXCOM) in February 2009 which addresses Aboriginal gang membership. CSC is to prepare and submit to EXCOM a comprehensive CSC National Gang Management Strategy "White Paper" by the end of April 2009.

Equally, the expansion of Pathways units is according to CSC, contingent on a primary report submission to Treasury Board in June 2009. The report will provide current statistics and rationale pertaining to the funding and success of Pathways units over the past five years. Currently there is a bed capacity of 201 for 7 facilities across Canada. There are additional Pathways units that do not receive formal funding.

With respect to Pathways expansion to minimum and maximum security institutions, CSC responded that these institutions continue to have the option to dedicate existing resources to Pathways. As of March 2009, there were reported to be 12 beds for Pre-Pathways interventions across the country and 58 Post-Pathways beds.

With respect to programming for Aboriginal women, particularly in the Atlantic, Ontario and Quebec regions, CSC indicated that as of March 2009, the Atlantic region is in the process of hiring an Elder; the Quebec Region sent an Elder and Liaison Officer to the Aboriginal Women's Program training early in 2009; and the Ontario Region hired an Elder in 2008 but there is still a need to identify and train a program facilitator. Given the documented shortage of programming for Aboriginal women, particularly in these regions for years, the hiring and training process appears to be lagging without adequate rationale.

Overall, there remains a shortage of links to the Aboriginal community for offenders when they are released from institutions to help them settle and re-engage as mandated by the Continuum of Care. There remains a critical shortage of Elders providing guidance in institutions as discussed further under the heading "human resources".

While CSC identifies the issues in Aboriginal corrections quite succinctly and has made some positive inroads through specific programming and initiatives such as AOSAP, Basic Healing and Pathways, there is little to hold CSC to account in the delivery of programming. Neither the Strategic Plan nor CD 702, for example, provide for specific results and performance. Neither concretely indicates how CSC will ensure Aboriginal offenders have timely and ready access to programs and services, regardless of classification and region. In general, CSC policies are weak on program performance indicators, reporting and accountabilities. There is little specificity pertaining to core program delivery and as noted above, Pathways remains limited to medium-security institutions and discretionary for maximum and minimum security institutions, potentially leading to inconsistency across the country.

3. Security and Classification

The inappropriateness of security classification tools for women and Aboriginal offenders has been identified as a serious corrections issue for over a decade. Over the years, the OCI has indicated concern about the over classification of Aboriginal offenders, and the use of the CSC's actuarial risk assessment tools¹¹, including reintegration potential scales.

Indeed CSC observed in its 2008-2009 *RPP* that:

- Inmates of First Nations, Métis and Inuit heritage are classified at a higher security level, resulting in their placement in minimum security institutions at only half the rate of non-Aboriginal offenders;
- Placement in a maximum-security institution and segregation limit increased interventions that are available in lower security;
- Aboriginal offenders are more likely to be gang affiliated;
- The concordance rate of offenders scoring a minimum security level rating on the Custody Rating Scale and actually receiving a minimum security level penitentiary placement was

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significantly less for Aboriginal offenders than for non-Aboriginal offenders (56% vs. 69% respectively); and

- Offenders that are mentally ill and/or are suffering from FASD may be disruptive and volatile to the detriment of both offenders and staff. This population is also at an increased risk of being victimized by other offenders. Due to complicating factors, these offenders are also the least likely or able to fully engage in their correctional plans and prescribed programs.

Over Classification & Segregation

A greater proportion of Aboriginal offenders scored as maximum or medium security level on the initial intake classification Custody Rating Scale (CRS) than non-Aboriginal offenders (average of 80% for Aboriginal offenders and 66% for non-Aboriginal offenders). This situation has remained constant from 2001-2002 to 2006- 2007.¹² It is even worse for Aboriginal women, who at the end of September 2007 made up 45% of maximum security federally sentenced women, 44% of medium and only 18% of minimum.¹³

Federal Inmate Security Levels for Aboriginals and Non-Aboriginals

| Security Level | Aboriginal | | Non-Aboriginal | | Total |
|-----------------------|-------------------|----------|-----------------------|----------|--------------|
| | # | % | # | % | |
| Maximum | 431 | 16.65% | 1,997 | 18.92% | 2,428 |
| Medium | 1,528 | 59.02% | 6,045 | 57.27% | 7,573 |
| Minimum | 275 | 10.62% | 1,706 | 16.16% | 1,981 |
| Multi-Level | 355 | 13.71% | 807 | 7.65% | 1,162 |

Source: CSC Corporate Reporting System, as of May 24, 2009

The proportion of overrides of the CRS, whether to a lower or higher security level, is slightly smaller for Aboriginal offenders than for non-Aboriginal offenders. From 2001-2002 to 2006-2007, an average of 17% of the CRS results were overridden for Aboriginal offenders compared to 20% for non-Aboriginal offenders. This despite the fact that CSC policy actually specifies that over-rides to lesser security should be considered for Aboriginal offenders when there is access to program issues.¹⁴

CRS overrides to a higher security level were higher for Aboriginal offenders than for non-Aboriginal offenders (5 year average 51% and 46% respectively). The rate for offenders scoring at minimum security level on the CRS and offenders receiving an actual minimum security level is significantly smaller for Aboriginal offenders than for non-Aboriginal offenders. Nonetheless, Aboriginal offenders achieve comparable success rates to non-Aboriginal offenders at minimum security, but have less opportunity to get to there.¹⁵

Over classification of Aboriginal offenders in maximum security where there is a chronic shortage of Aboriginal-specific core programming means that Aboriginal offenders cannot carry out their correctional plans and transfer to lower-security institutions where Aboriginal programs are available. It also means they often serve sentences further away from their home family and

community whose involvement can be pivotal to their rehabilitation and community re-integration.

Aboriginal offenders are also placed in segregation more often, with little to no access to programming impacting their ability to transfer to lower security institutions.¹⁶ Gangs are a significant factor in administrative segregation admissions in the Prairie region, where Aboriginal gangs predominate. Accordingly, the OCI has called for more effort to be spent on developing effective Aboriginal gang interventions.

Over classification and segregation and the accompanying lack of access to Aboriginal programming means that Aboriginal offenders are disproportionately impacted in their inability to obtain conditional release (parole) as they may not have been able to carry out their correctional plan and may not be perceived as significantly rehabilitated. The combination of over-classification and lack of Aboriginal programming illustrates how systemic barriers can hinder timely and effective offender reintegration. This begins to explain why the reintegration of Aboriginal offenders is lagging significantly behind the reintegration of other offenders.

Accordingly, the OCI has previously recommended that CSC:

- Implement a security classification process that addresses the over-classification of Aboriginal offenders;
- Increase timely access to programs and services that will significantly reduce time spent in medium and maximum security institutions;
- Significantly increase the number of Aboriginal offenders housed at minimum security institutions; and
- Significantly increase the number of Aboriginal offenders appearing before the National Parole Board at their earliest eligibility dates.¹⁷

Reintegration Potential Reassessment Scale

While higher custody rating scales for Aboriginal offenders are in part related to the higher number of Aboriginal offenders incarcerated for violent offences, this alone does not explain the gap between Aboriginal and non- Aboriginal offenders.

Aboriginal offenders may be detained longer and serve less time in the community related to the appropriateness of applying risk assessment measures such as the Reintegration Potential Reassessment Scale (RPRS). This scale is used to facilitate offenders' reintegration and guide intervention accordingly. However, the RPRS has not undergone any validation in the Aboriginal context and has been questioned as to whether it propagates cultural bias within the corrections system.¹⁸

There are significant differences in the profiles of federally sentenced Aboriginal and non-Aboriginal offenders. These differences suggests that Aboriginals, compared to non-Aboriginals, are less frequently scored as low-risk on the RPRS at 13.2% compared to 33.2% and more often scored as high-risk at 41.6% compared to 22.6%. Co-related to being scored as higher risk to re-offend, Aboriginal offenders are also less frequently scored as low-need on the RPRS at 14.1% compared to 30.8% and more often scored as high-need at 41.1% compared to 26.0%.¹⁹

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Larger proportions of Aboriginal offenders are assessed as having low potential for reintegration. Over two-thirds (69%) of incarcerated Aboriginal offenders are rated as having low reintegration potential at the time of intake, compared to 36% of non-Aboriginal offenders.²⁰

CSC has committed over the past years to revisit reclassification scales for male Aboriginal offenders. However, only in March 2009, the OCI received two draft CSC research reports on Aboriginal security reclassification:

- *Assessing Security Reclassification with Male Aboriginal and Non-Aboriginal Offenders;* and
- *Security Reclassification of Aboriginal Males in Federal Custody: Results of a Needs Assessment.*

Despite frequent and repeated calls for the Service to implement a security classification process that ends the over-classification of Aboriginal offenders, CSC advises that “These reports indicated that the SRS is effective in classifying Aboriginal offenders to the appropriate security level, that there is no bias resulting in over-classification of Aboriginal offenders, and that there is no need to create an Aboriginal specific assessment instrument.” The point, more generally, is that Aboriginal offenders are disproportionately assessed as high need and high risk on most criteria due, in large part, to a social history of disadvantage and discrimination. As per Commissioner’s Directive 705-7 (Security Classification and Penitentiary Placement), “staff will be sensitive to the spirit and intent of the Gladue (decision) and will take into consideration the following factors”:

- a. history of dislocation such as residential school experience or family history of residential school experience;
- b. unemployment due to a lack of opportunity or options;
- c. lack or irrelevance of education;
- d. history of substance abuse;
- e. history of systemic and direct discrimination;
- f. history of previous experience involving restorative/community based sanctions;
- g. history of participation in Aboriginal traditional teachings, ceremonies and activities;
- h. history of living on or off reserves.

The issue, which is explored in more detail later in this report, is whether CSC adequately and appropriately considers *Gladue* principles when making classification decisions.

Other Assessment Tools

With respect to the 2006 Strategic Plan commitment to the development and implementation of culturally sensitive classification and assessment tools for women, in April 2009 CSC advised that:

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- The revised version of the dynamic factor identification and analysis will be piloted this fiscal year. It includes interview prompts and help text that are gender and culturally sensitive.
- Initial security classification tool: pilot testing is underway at four sites (Vancouver, Toronto, Edmonton and Montréal) and the contract was extended to September 2011. The contractor explicitly included consideration and consultation on issues specific to Aboriginal women. The pilot and field test samples will include appropriate representation (30%) of Aboriginal women.

In March 2009, CSC advised that the report on the Inuit specific risk prediction scale will be completed by March 31, 2009 and would be made available to the OCI. At the time of writing at the end of April 2009, it had not yet been received.

Also in March 2009, CSC advised that the FASD assessment scale research is proceeding. Resource limitations have delayed the completion of the scale to 2012 and the original estimate for the completion date was overly optimistic.

The CSC Review Panel emphasized the importance of paying particular attention to the impacts of FASD, particularly for Aboriginal offenders. Indeed, FASD has clearly been acknowledged as a significant mental health factor disproportionately affecting Aboriginal offenders for at least a decade. Without adequate FASD assessment scales in place and interconnected to security classification and reclassification scales, the appropriateness of these scales for Aboriginal offenders remains in serious question.

CSC had indicated that Aboriginal gangs were to be addressed by CSC security staff developing a strategy for management and intervention with Aboriginal gang members by March 2007. As noted in the program section, this has not been tabled as of yet and the national gang management strategy under development is not Aboriginal specific.

Gladue

CSC has committed to incorporating *Gladue* considerations into Aboriginal corrections. CD 702 provides that all CSC staff will consider an Aboriginal offender's social history when making decisions in accordance with the *Gladue* principles and the pending Draft Strategy for Aboriginal Corrections Accountability Framework provides that the Strategy will comply with the Supreme Court of Canada decision on *Gladue*.

Gladue considerations arise from subsection 718.2(e) of the *Criminal Code* which provides that in addition to the general principles of sentencing:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(e) all available sanctions or options other than imprisonment that are reasonable in the circumstances should be considered for all offenders, **with particular attention to the circumstances of Aboriginal offenders.** (Emphasis added)

This section of the *Criminal Code* was introduced in 1995, arising from concerns about the overuse of incarceration as a means of addressing crime, particularly as it applied to Aboriginal peoples. Parliament recognized that the overrepresentation of Aboriginal offenders in prisons was systemic, race related, and that the mainstream justice system was contributing to the problem. Since the enactment of 718.2(e) in 1996, courts across Canada have been mandated to exercise restraint in imprisonment for all offenders, but particularly for Aboriginal people.

In the seminal case of *R. v. Gladue* the Supreme Court of Canada concluded that the provision is designed to ameliorate the serious problem of overrepresentation of Aboriginal people in prisons. Moreover, Aboriginal offenders are as a result of unique systemic and background factors, more adversely affected by incarceration and less likely to be rehabilitated by it, because imprisonment is often culturally inappropriate and facilitates further discrimination towards them in the justice system.

Subsequent case law has indicated that *Gladue* principles are engaged whenever a decision-maker is dealing with the liberty of an Aboriginal person at any stage of the justice system and is not only limited to the sentencing process.²¹

Indeed, the *Assessing Security Classification Report* on the SRS duly notes that “staff attend to the *Gladue* decision” when completing security classification decisions for Aboriginal offenders, taking into account unique systemic and background factors in Aboriginal offenders’ lives. However, the details of how *Gladue* principles are applied and the training provided in these complex principles to staff is not evident. Meanwhile, as mentioned earlier, absent adequate protocols for a determination of FASD, how exactly are *Gladue* principles being applied?

While CSC documents and policies make reference to *Gladue* principles, it is unclear how such considerations will be integrated whenever the liberty of an offender is at stake within the corrections system. This would include classification and reclassification to security levels, segregation decisions and parole, to name a few. As discussed in greater detail in the human resources section, how CSC intends to have staff incorporate *Gladue* considerations where the liberty of an Aboriginal offender is at stake remains unclear despite promising policy statements.

4. Parole

In addition to their disproportionate representation within the criminal justice system, Aboriginal offenders are less likely to be granted parole and likely to serve more of their sentence before receiving parole. Currently, most federal offenders are eligible for full parole after serving one-third of their sentence, or seven years, whichever is less, at the discretion of the Parole Board. In contrast, statutory release automatically entitles most offenders who have not been granted parole to serve the final one-third of their sentence in the community.

Proportionally, more Aboriginal offenders are first released into the community on statutory release or at warrant/sentence expiry than are non-Aboriginal offenders. Over the last five years, an average of 55% of Aboriginal offenders had their first release at statutory release compared to 45% for non-Aboriginal offenders. Since 2003, an average of 6% of Aboriginal offenders were first released at warrant expiry, compared to 3% for non- Aboriginal offenders.²²

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The proportion of Aboriginal offenders under community supervision (30%) is significantly smaller than the proportion of non-Aboriginal offenders (40%) serving their sentences on conditional release in the community.²³ Aboriginal offenders under supervision in the community are more likely to be on a more restrictive form of release – either day parole or statutory release, rather than full parole.

The proportion of full parole applications resulting in National Parole Board reviews is lower for Aboriginal offenders. The percentage of full parole waived due to incomplete programs continues to increase at a higher rate for Aboriginal offenders than for non-Aboriginal offenders (33.4% from 2002/03 to 41% 2006/07 for Aboriginal offenders and 26.6% to 31.4% for the same period for non-Aboriginal offenders).²⁴ The percentage of denied recommendations to grant full parole continued to increase for Aboriginal offenders while decreasing for non-Aboriginal offenders (24.3% compared to 5.2%).²⁵ The gap in outcomes has significantly increased. (13.1% in 2005/06 to 19.1% in 2006/07).²⁶ Aboriginal offenders are over-represented among those referred for detention rather than parole and their parole is more likely to be revoked for breach of conditions.

The greater likelihood of statutory release for Aboriginal offenders equals more time spent incarcerated and less time in the community under supervision for programming/intervention than for non-Aboriginal offenders. While CSC does not direct the National Parole Board, the Service does have control over many of the factors that contribute to delayed parole for Aboriginal offenders.

The nature of the underlying offence is one factor in later parole rates for Aboriginal offenders, given their proportionately higher representation in the commission of violent crime. Yet, it is unlikely that this alone accounts for the disproportionate rates. Systemic discrimination, culturally laden notions of accountability, over-classification, over-segregation, and a lack of availability of Aboriginal specific programs while incarcerated may all play a role in the granting of parole to Aboriginal offenders.

The situation of Aboriginal women in terms of security classification, access to programs and timely conditional release is even more problematic. The OCI has noted a significant increase in the number of women offenders returning to the community on statutory release rather than on day or full parole as well as a corresponding increase in the number of waivers and postponements of National Parole Board hearings by women offenders. Both of these trends are most evident among Aboriginal women.

Additionally, CSC's Transformation Agenda and the recommendations contained in the Review Panel Report could potentially have a greater impact on Aboriginal offenders should the recommendation to eliminate statutory release and replace it with earned parole be implemented. However it is unclear whether the government intends to move forward with this recommendation.

The limited use of legislative provisions designed to enhance Aboriginal reintegration is yet another factor impacting Aboriginal offender parole within the mandate of CSC. The Strategic Plan and CD 702 make reference to section 84 of the *CCRA* which legislates community notification and engagement when an Aboriginal offender wants to be released to an Aboriginal

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community. The underlying intent of section 84 is to facilitate the involvement of the Aboriginal community in the parole process for an Aboriginal offender.

The language of CD 702 – “The Regional Deputy Commissioner will ensure Aboriginal communities are engaged in the reintegration process for Aboriginal offenders returning to those communities pursuant to section 84 of the *CCRA*, where the offender has consented” provides strong direction. In addition, the Review Panel Report also recommended that, within one year, CSC build capacity for and increase use of section 84 and section 81 agreements with Aboriginal communities. The draft Strategic Accountability Framework provides for implementation that complies with the legal framework, including section 84 of the *CCRA*.

A section 84 Conditional Release Planning Kit has been produced and widely distributed throughout CSC, including to women offender institutions and to communities to provide a comprehensive guide on this release option.

However, section 84 has been law in Canada since 1992. Current statistics on the use of section 84 are to be included with the CSC report to Treasury Board at the end of June 2009 as will the rationale addressing the overall effectiveness of section 84. Numbers for successfully completed release plans developed and presented to the National Parole Board utilizing Section 84 legislation, involving the Aboriginal community, whether or not the Board granted release, fluctuate over the past three years. According to CSC, in fiscal year 05-06, 226 release plans were completed compared to a drop to 51 in 06-07 and 161 in 07-08.

It remains unclear why there has been such variability in these in these numbers over the past three years. This does indicate ongoing inconsistency in the use of section 84, and raises questions pertaining to the efficacy of CSC’s implementation of legislation that has now been in effect for 17 years.

Section 84 agreements are facilitated by ACDOs, positions staffed across the country to create links, for both men and women offenders, with Aboriginal communities, to raise Aboriginal community interest in participating in the correctional process, and to initiate section 84 release planning. ACDOs are discussed further in the Human Resources Section, but with a current total of 12 ACDOs across Canada, CSC may need to revisit the resources required to increase the utilization of section 84 processes for the parole of Aboriginal offenders.

Addressing the gaps in Aboriginal versus non-Aboriginal parole would require that CSC address myriad factors including whether there are adequate culturally appropriate Aboriginal corrections programs particularly for high need Aboriginal offenders; revisiting risk classification for cultural adaptation and enhanced access to and use of section 84 of the *CCRA*, involving Aboriginal communities in an offender’s release plan.

5. Data Collection & Evaluation

The OCI has been requesting that CSC provide regular tracking and monitoring statistics on Aboriginal offenders for years. While at times the Service has committed to improving its data collection, this commitment has eroded. Quarterly reports have become annual reports and there are delays in the evaluation of Aboriginal specific programming. For example, in response to the OCI's 2004-05 Annual Report, the Honourable Anne McLellan, then Minister of Public Safety and Emergency Preparedness Canada, directed the Commissioner to conduct, by June 1, 2005, a Service-wide review of its policies to ensure they are "culturally sensitive and do not present barriers to the safe and timely reintegration of Aboriginal offenders." As far as the Office understands it, four years later such a review has not yet been committed to or completed.

The Service committed years ago to produce, on a quarterly basis, thorough and analytic reports on Aboriginal offenders including statistical information. However, CSC ceased production of quarterly reports, instead producing an annual *Aboriginal Offenders Correctional Milestones* report for the OCI. While it provides current useful data on Aboriginal offenders and observations regarding the gap in correctional results between Aboriginal and non-Aboriginal offenders, it is short on analysis. The observations included in *Milestones* form the basis for measuring progress on achieving results commitments and key objectives contained in CSC's *Strategic Plan*. However, the *Milestones* report is prepared specifically for the OCI and is not published or made publicly available, raising questions pertaining to CSC's accountability to Canadians.

Does CSC have the necessary data collection programs in place to monitor and evaluate progress?

Given current Aboriginal population dynamics indicating a burgeoning youthful population now more than ever is the time for CSC to be a learning organization, developing strong processes for providing continuous feedback to senior managers, minimizing mistakes and sharing and implementing best practices. However, the development of best practices requires data tracking and evaluation processes.

The Service has made several commitments pertaining to ongoing data collection. CSC indicated in its Strategic Plan that it would develop and implement an integrated monitoring system for assessing the impact of policy changes on Aboriginal offenders by March 2007. This date has now been shifted. CSC now produces only basic annual reports on Aboriginal offenders. There has been a decided lack of monitoring of outcomes and progress arising from the Strategic Plan. There is a continued absence of statistical evidence of either progress or improvement in the Services' mandate of managing Aboriginal offenders.

One major hurdle is CSC's ability to access data that will provide it with real and measurable results for Aboriginal offenders. CSC has previously committed to developing the framework by which data will be collected. According to CSC, in March 2009, the Aboriginal Initiatives Directorate had finalized the framework for data collection. Once approved, the data collection framework will be turned over to the Offender Management System for implementation.

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CSC is currently in the early stages of developing its own annual statistical report. The report will include information on the total offender population, including Aboriginal and women offenders. The initiative under development has the ability to compare Aboriginal offenders to other Aboriginal offenders. It will look at those Aboriginal offenders who received Aboriginal programming versus those Aboriginal offenders who did not, and compare their outcomes. As of March 2009, the Correctional Program and Re-integration branch at CSC provides a quarterly report update for the Aboriginal correctional programs implementation plan to the Senior Deputy Commissioner which highlights the status and progress of Aboriginal program development.

As of March 2009, CSC reports that evaluation has been ongoing since early fall 2008. Data addressing the results component related to Pathways and ACDOs have been monitored since the opening of Pathway units and the ACDO preparation of section 84 cases. The evaluation due to Treasury Board by June 30, 2009 of how Pathways and other initiatives contribute to broader CSC reintegration results is reportedly on track and underway for completion and submission by end of June 2009.

While CSC currently appears to be making some progress in its efforts towards data tracking and evaluation pertaining to Aboriginal offenders, the OCI has been pushing for this greater accountability from CSC for years. That the Strategic Plan has been in effect for three years and only now an accompanying Draft Strategy for Accountability Framework is being developed is indicative of how CSC has been faring in reporting, evaluation and accompanying accountabilities for results in Aboriginal corrections.

As noted by CSC's own CD 702, all offender management or program activity reports, research reports or data collection methods containing statistical summaries must include the Aboriginal proportion of totals at every level for both men and women offenders.

Aboriginal offender performance measurement and detailed public reporting on correctional outcomes and progress on key indicators should be included as an important expectation and component of CSC Aboriginal corrections policies which over the years have generally been weak in this regard. This would facilitate not only greater CSC accountability to Aboriginal communities but to all Canadians.

6. Human Resources

The Commissioner of CSC has overall accountability for achievement of public safety results. Since 2005, the Senior Deputy Commissioner has direct responsibility for the advancement of Aboriginal corrections within CSC, and is responsible for the effective implementation of CSC's Strategic Plan.

The OCI has over the years repeatedly recommended that CSC appoint a Deputy Commissioner specifically responsible for Aboriginal corrections to ensure that the Service incorporates Aboriginal concerns into all of its operational and policy decisions at the senior level. The OCI remains concerned that Aboriginal specific issues are not receiving adequate emphasis. Four years since the Senior Deputy Commissioner assumed responsibility the gap in outcomes between Aboriginal and other offenders continues to grow.

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A National Aboriginal Advisory Committee (NAAC), chaired by the Commissioner, is supposed to provide expert advice on all aspects of Aboriginal corrections pursuant to section 82 of the *CCRA*. However, for reasons unknown, the NAAC was disbanded and had not met since June 2004. In response to an OCI recommendation in its 2006-07 Annual Report a new NAAC convened in September 2008. At time of writing, the NAAC has met twice more. This despite the mandatory language in section 82 of the *CCRA*. No public rationale was offered for the committee having been moribund for four years.

Staffing

CSC has repeatedly committed to enhanced recruitment, development and retention of Aboriginal employees at all levels, paying specific attention to institutions with significant Aboriginal offender populations. In most occupational groups Aboriginal employees are distributed across the various levels. When looking at the highest levels within certain occupational groups, such as administrative services (which includes for example, assistant deputy warden), the Service is at or above the overall representation rate, while in other groups such as correctional officers, parole officers and program administrators the Service is below targeted levels.

Overall CSC staffing ratios fall short of the Aboriginal-non Aboriginal offender ratio. There are chronic shortages in the Aboriginal and correctional program delivery officers and clinical psychologists positions required to deliver core programming. The OCI has paid particular attention to the percentage of Aboriginal front-line staff at Stony Mountain and Saskatchewan Penitentiary – the two largest predominantly Aboriginal offender facilities within CSC. To that end, 136 of 458 (29.7%) employees at Saskatchewan Penitentiary have self-identified as being of Aboriginal origin. In the four front line groups the representation rate averages out to 36.7%. 74 of 396 (18.7%) employees at Stony Mountain Institution have self-identified as being of Aboriginal origin. In the four front line groups the representation rate averages out to 25.3%.²⁷

Importantly, some institutions report they do not have the services of an Elder and/or ALO for extended periods of time. Spiritual advisor ratios are now set at 1:150 except for the healing lodges where the ratio is 1:15. According to CSC, the burnout of Elders/spiritual advisors is becoming increasingly prevalent at all sites. This is caused by lack of recruitment, retention and operational requirements which mean that spiritual advisors are being utilized in capacities beyond their contract obligations and their own abilities.²⁸

CSC is currently in the process of implementing the Strategic Plan for Aboriginal Human Resource Management 2008-09 to 2010-2011. As part of its three-year Plan, CSC committed to developing initiatives to increase Aboriginal representation at all levels that reflect the offender population. Major components of the plan during its first year included the development of a package outlining the steps required to hire more Aboriginal staff (Fall 2008); an Aboriginal Management Development Program (Winter 2008); an Aboriginal Employment Program aimed at recruiting Aboriginals beyond market availability (Spring 2009); a Federal Student Work Experience Program for Aboriginal students (Winter 2008); and the development of a comprehensive communications strategy (Spring 2009). A national action plan for recruiting

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Aboriginal employees was finalized and presented to the National Human Resources Management Committee (February 2009) and a national Aboriginal recruitment meeting was held (February 2009).

A new team was launched in 2008 within the recruitment branch in the human resources management sector dedicated to Aboriginal recruitment. The dedicated resources are responsible for implementing recruitment related activities as per CSC's Strategic Plan for Aboriginal Human Resource Management. Also, a new manager of Aboriginal recruitment position was created at headquarters in February 2008. The Pacific and Prairie regions have received funding for dedicated Aboriginal recruitment staff while the national headquarters team will serve Ontario Québec, Atlantic and headquarters. A total of five Aboriginal recruitment positions have been created to provide support in the regions.

CSC recently launched a Leadership Development Program for employees at the executive level. CSC conducted an employment equity self-identification survey of its workforce in February 2009. The Self-identification data will allow the department to identify areas where changes in policies, practices, and systems are likely to be most effective and eliminate barriers. CSC is finalizing a new department Employment Equity Action Plan for the period 2009-2012. In the spring of 2009, CSC plans to be able to provide bi-monthly reports on employment equity data.

As of March 2009 CSC reports that implementation of the Strategic Plan for Aboriginal Human Resource Management is on track. CSC advised that activities for the next fiscal year will focus on the examination of potential employment and selection barriers for Aboriginal peoples. Progress in the initiative is to be tracked by monthly reports from regional Aboriginal recruitment officers to the Aboriginal Recruitment Manager. Also, regular updates are requested on the activities of the Strategic Plan for Aboriginal Human Resource Management. CSC advises that regular conference calls with regional Aboriginal recruitment representatives have been established to monitor progress and address issues.

While CSC clearly has been active in undertaking valuable activities to further the Strategy, one year in it remains unclear whether it has produced any results. It is unclear how exactly success pursuant to the Strategy will be tracked and defined.

CSC also ran a pilot project at Pe Sakastew Healing Centre of an alternative to the Public Service Commission GCT2 personal suitability test with which several Aboriginal staff prospects were encountering difficulty. The pilot project altered the statement of merit criteria for correctional officer recruitment at healing lodges and initiated an aboriginal knowledge competency test. The pilot has since been terminated as it did not meet the standards of CSC. CSC is still working towards developing a set of questions and standards with which to evaluate Aboriginal candidates. CSC has also developed new statements of merit criteria for entry level correctional officers. CSC has undertaken a review of correctional officer and primary worker (front line staff in women's facilities) recruitment processes which will include an evaluation of the assessment tools being used.

The hiring of Aboriginal staff to implement the initiatives as part of the Continuum – Aboriginal correctional program officers, ACDOs and ALOs – has also proven problematic for CSC.

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ALOs provide leadership, teaching, cultural awareness, counselling and general services to Aboriginal offenders. They also provide a mechanism for advancing the cultural and spiritual needs of Aboriginal offenders through the sensitization of case management and the correctional program processes. ALOs participate as active members of the case management team and are a link to the Aboriginal community. Across Canada there are 52 ALOs funded full-time. CSC will be working with Aboriginal recruitment to develop strategies relating to the ongoing recruitment of ALO's.

ACDOs provide leadership, teaching and awareness of the CSC processes to Aboriginal communities. ACDOs assist in the reintegration of Aboriginal offenders to Aboriginal communities. The ACDO does this by acting as a bridge between CSC and the Aboriginal communities/organizations and facilitating the section 84 process. As of April 2009, CSC advises that there are a total of 12 ACDOs funded across Canada. The future of ACDOs is contingent upon the primary report submission to Treasury Board at the end of June 2009. The report will provide current results based statistics and rationale addressing the overall effectiveness of ACDOs funding in the last five years.

While the employment of ALOs and ACDOs might be considered a best practice and CD 702 notes the important role of ACDOs, it is descriptive rather than directive; there is no statement concerning their hiring, recruitment, or necessary numbers. In particular, with respect to increasing the utilization of section 84 processes for the parole of Aboriginal offenders no needs analysis for additional ACDOs or clear targets for their hiring are evident.

Training

CSC human resources that meet the needs of Aboriginal offenders and the Aboriginal community are not only about hiring; training staff is equally important. There has been a noted shortage of program facilitators and program officers with the skill sets required to deliver Aboriginal-specific programming.

In a report on the death of a federal Aboriginal inmate released in May 2008, *Report on the Circumstances Surrounding the Death of a Federal Inmate*, the OCI pointed to systemic discrimination when it comes to Aboriginal inmates. The OCI accordingly recommended that CSC immediately deliver a Diversity Awareness/Sensitivity Program to all CSC employees across Canada.

As of April 2009, CSC indicates that diversity awareness and cultural sensitivity training is being delivered to all CSC employees throughout Canada, through either the Correctional Training Program 2008 or the New Employee Orientation Program. The Correctional Training Program, 2008 contains four online learning modules that explore issues in the workplace including diversity, ethical conduct, anti harassment and reporting wrongdoing. The New Employee Orientation Program offers diversity awareness and cultural sensitivity training to all non-security employees through an in-class module on working in cultural diversity.

It is unclear whether short term online or in-class modules that do not appear to be Aboriginal specific will be adequate for CSC staff to live up to CSC's own commitments with respect to Aboriginal offenders. The Strategic Plan of 2006 called for CSC to develop cultural competence throughout the Service to facilitate culturally-relevant operations.

CD 702 refers to staff in Pathways units having a level of cultural competence relative to their role in the re-integration of Aboriginal offenders taken into account for hiring, yet there is no mention of training. CSC indicated in April 2009 that there is presently Aboriginal perceptions training for CSC employees to provide a general awareness of Aboriginal history and culture. There have been seven sessions delivered at national headquarters and each region has delivered this training to all parole officers, including those in Pathways units.

As noted earlier, numerous CSC policies provide for adherence to *Gladue* principles. CD 702 states that staff will consider an Aboriginal offender's "social history" when making decisions in accordance with *Gladue* principles and the draft Strategy for Aboriginal Corrections Accountability Framework also provides for adherence to *Gladue* principles. As of April 2009, CSC indicated that regions are offering sporadic training across Canada raising awareness of the *Gladue* decision. In addition, all policy changes are guided through the Aboriginal Initiatives Directorate for inclusion of the *Gladue* decision where applicable. CSC indicated that the revised Commissioners Directive 702 includes clarity on the *Gladue* decision for staff.

However, a close look at both CD 702 and the draft Accountability Framework do not indicate how CSC staff are supposed to consider *Gladue* principles when making decisions involving Aboriginal offenders. How are these good intentions to be operationalized? *Gladue* considerations come into play in risk assessment, security placement and re-classification among others, and operate much like mitigating rather than aggravating factors, which is not apparent from the performance gaps in these areas.

Finally, with respect to human resources, the Strategic Plan for Aboriginal Corrections states that performance agreements for all CSC executives "will include accountabilities for contribution to the Aboriginal corrections agenda, to ensure integration throughout the organization". To date, these accountabilities do not appear to have been implemented in substance, nor are they being evaluated. As of March 2009, CSC advised that the draft Aboriginal Strategic Accountability Framework once finalized will include specific areas within performance agreements. The Aboriginal Strategic Accountability Framework will be completed by the end of March 2009, for implementation and inclusion of relevant commitments within performance agreements for the April 1, 2009 fiscal year.

7. Northern Corrections Framework

The OCI has previously noted CSC's lack of progress in improving the treatment of offender populations in the North. A CSC discussion paper, *Developing and Managing a Northern Correctional Framework* (December 2004) revealed that complex issues are only beginning to be understood and that little concrete progress has been made. A further discussion paper was issued in January 2006 but to date no substantive action has been initiated.

The development of a Northern Corrections Framework requires that CSC better understand Inuit culture in order to develop more effective strategies for reintegrating Inuit offenders back into their communities. This includes addressing differences in offence characteristics, needs, home environment and cultural characteristics pointing to a need for different methods of intervention for Inuit offenders and staff knowledge of Inuit culture.

CSC advises that as of March 2009, the Service is participating in an exercise to refine the existing Framework. One meeting has occurred with the territorial heads of corrections in Whitehorse, Yukon and an additional meeting occurred on March 3, 2009 to obtain their input into the Northern Corrections Framework. Furthermore, CSC entered into an agreement with a national Inuit organization (Pauktutit) to structure and create an Inuit cultural sensitivity training manual. CSC also retained the services of a researcher to capture the full statistical picture of Inuit offenders and related needs.

Three years after the Strategic Plan of 2006 called for CSC to develop a strategy to address the needs of Northern offenders, including the Inuit, consultation meetings are ongoing and research is underway, raising questions as to whether adequate resources have been allocated to this initiative.

8. Section 81 Healing Lodges

Healing lodges offer services and programs that reflect Aboriginal culture in a space that incorporates Aboriginal peoples' traditions and beliefs. In the healing lodge, the needs of Aboriginal offenders serving federal sentences are addressed through Aboriginal teachings and ceremonies, contact with Elders and children, and interaction with nature. A holistic philosophy governs the approach, whereby individualized programming is delivered within a context of community interaction, with a focus on preparing for release. In the healing lodges, an emphasis is placed on spiritual leadership and on the value of the life experience of staff members, who act as role models.

As indicated in the Strategic Plan, 2006, data for 2003-04 and 2004-05 reflected that healing lodges provide safer work environments for staff and inmates and a greater proportion of Aboriginal offenders who had been released from healing lodges are successfully completing their supervision periods.

Given promising outcomes, the OCI has recommended that CSC should build capacity for and increase use of section 81 agreements with Aboriginal communities.

The transition of CSC-operated facilities to Aboriginal communities and the development of new proposals for CCRA section 81 agreements is dependent on a community's capacity to assume responsibility. A variety of funding mechanisms through Indian and Northern Affairs Canada, the Department of Justice and the National Crime Prevention Centre are in place to assist communities in developing that capacity. Currently, the transition of four CSC operated facilities to Aboriginal communities is under discussion.

Across Canada, four section 81 healing lodges have a total of 111 beds: the Stan Daniels Healing Centre; Prince Albert Grand Council Spiritual Healing Lodge; O-Chi-Chak-Ko-Sipi Healing Lodge and Waseskun Healing Lodge. As of April 2009, CSC indicates there is no problem with waiting lists for beds in healing lodges: Stan Daniels Healing Centre currently has 50 of 73 beds filled; Prince Albert Grand Council Spiritual Healing Lodge has 6 beds filled with a capacity of 5; O-Chi-Chak-Ko-Sipi Healing Lodge has 17 of 18 beds filled; and Waseskun Healing Lodge has 11 of 15 beds filled. In 2006-2007 Stan Daniels Healing Centre had an occupancy rate of 83% ; Prince Albert Grand Council Spiritual Healing Lodge had an occupancy rate of 92.7%; O-Chi-Chak-Ko-Sipi Healing Lodge of 77.7% and Waseskun Healing Lodge of 78.4%.

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There are no section 81 healing lodge facilities for women offenders, though the CSC-operated Okimaw Ohci Healing Lodge has been accommodating women since 1995.

It is unclear why the healing lodges are not filled to capacity and whether there might be a need for expanded healing lodge facilities. The statistics no doubt reflect the barriers that block timely movement from higher to lower classification levels.

The CSC healing lodge audit of 2008 recommended:

- More direction is required for the establishment and CSC's management of section 81 healing lodges;
- Direction is needed with respect to the extent to which CSC personnel should be monitoring the progress of offenders at section 81 healing lodges;
- Better documentation and follow up on current monitoring mechanisms included in agreements is required by the regions for enhanced accountability;
- More training for CSC personnel involved with offenders being transferred to healing lodges, a national training standard;
- Healing plans and social histories need to be incorporated in an Aboriginal offender's correctional plan. Input from elders and/or an ALO; and
- Offenders returned to CSC custody from a healing lodge to be provided with all information related to the decision and provided with an opportunity to address. Need well defined criteria and procedures for the return of offenders to CSC custody. Should provide more direction on the process of returning a resident to CSC custody and ensure the principles of the *Duty to Act Fairly* (CD 700) are respected.

Sixteen years after the law allowed for them, the healing lodge audit concluded that there is no CSC policy framework in place to support the establishment of section 81 healing lodges with no direction provided in CSC policies or procedures. For example, the criteria used to assess the sustainability of a request to enter into section 81 agreements have not been clearly defined, and there is no requirement for regions to report to national headquarters on agreements nor has CSC defined the type of performance information that should be available for effective monitoring and reporting. The audit concludes that regional monitoring mechanisms included in section 81 agreements are not always followed and documented.

There is also inconsistency in the delivery of programs and services in healing lodges across the country (both CSC run and section 81). There appear to be no performance measures or expectations placed on managers to deliver these programs on a consistent basis. Healing lodge commitments such as those contained in CD 702 are generally descriptive with no clear commitment to utilization. In April of 2009, CSC advised that subsequent to the audit, a Healing Lodge Action Plan was developed; CSC is currently waiting for progress reports on the Action Plan.

IV. Synopsis

CSC has a unique opportunity to provide programs and interventions to address the different needs and profiles of Aboriginal offenders and to work closely with Aboriginal communities for effective reintegration. In fact, not only does CSC have the opportunity, it also has a mandate, arising from the *CCRA*, its own policies and *Gladue* principles. This is also consistent with the governmental priority of safe and secure communities and accountability to Canadians.

However, ongoing gaps in outcomes between Aboriginal and non-Aboriginal offenders raise serious questions pertaining to whether the good intentions underlying CSC strategies and policies in Aboriginal corrections are translating to results. Are these good intentions being effectively operationalized?

What follows are some key findings on areas where CSC can be encouraged to move forward in implementing and operationalizing its Aboriginal corrections agenda.

1. *Programs*

- a) While CSC has made inroads through Aboriginal specific programming there is little to hold CSC to account in the delivery of programming, no provisions for specific results and performance. Strategies and policies do not concretely indicate how CSC will ensure Aboriginal offenders have timely and ready access to programs and services, regardless of classification and region.
- b) There are delays in the evaluation and national implementation of Aboriginal programming. Programs have therefore had limited impact on narrowing the gap in correctional outcomes between Aboriginal and other offenders.
- c) Pathways units remain limited to medium-security institutions and discretionary for maximum and minimum security institutions, potentially leading to inconsistency across the country.
- d) There remains a shortage of links to the Aboriginal community for offenders when they are released from institutions to help them settle and re-engage as mandated by the Continuum.
- e) There remains a shortage of Elders providing guidance in institutions.
- f) There is shortage of program officers and facilitators to deliver Aboriginal specific programming.
- g) Given the documented shortage of programming for Aboriginal women, particularly in certain regions for years, the hiring and training process appears to be lagging without adequate rationale.

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- h) The development of a strategy for management and intervention with Aboriginal gang members, though an issue in corrections for years, has been slow to evolve.

2. *Security and Classification*

- a) Questions pertaining to the cultural appropriateness of the CRS, the SRS and the over-classification of Aboriginal offenders persist despite two recent CSC reports on the SRS that experienced significant delay.
- b) While FASD has clearly been acknowledged as a significant mental health factor disproportionately affecting Aboriginal offenders for at least a decade, the FASD assessment protocol has yet to be completed and implemented. Without adequate FASD assessment scales in place and interconnected to security classification and reclassification scales, the appropriateness of these scales for Aboriginal offenders remains in question.
- c) The details of how *Gladue* principles are applied throughout corrections decisions that involve the liberty of Aboriginal offenders is not apparent. This includes classification, reclassification and segregation decisions
- d) Gangs are a significant factor in Aboriginal administrative segregation admissions. Nonetheless, CSC's development of an Aboriginal gang intervention strategy is ongoing and the national gang management strategy under development is not Aboriginal specific.

3. *Parole*

- a) The limited use of legislative provisions designed to enhance Aboriginal reintegration is marked, despite their having been in place for 17 years. Numbers for successfully completed release plans utilizing section 84 of the *CCRA* and involving the Aboriginal community fluctuate. It remains unclear why or what optimal usage of section 84 would look like. There is ongoing inconsistency in the use of section 84, raising questions pertaining to the efficacy of CSC's implementation of this section of the *CCRA*.
- b) There are currently 12 ACDOs across Canada, and no hard targets with respect to necessary numbers. With respect to increasing the utilization of section 84 processes for the parole of Aboriginal offenders, CSC may need to revisit the ACDO resources required.
- c) A shortage of and inconsistent access to, Aboriginal specific programs continues to contribute to delayed parole for Aboriginal offenders.
- d) As noted above, questions pertaining to the cultural appropriateness of the CRS and the SRS and the over classification of Aboriginal offenders remain, including their impacts on the parole eligibility of Aboriginal offenders.

4. *Data and Evaluation*

- a) While at times CSC has committed to improving its data collection, this commitment has eroded over the years. There is a continued absence of statistical evidence of either progress or improvement in the Services' mandate of managing Aboriginal offenders.
- b) The *Milestones* report is prepared specifically for the OCI and is not published or made publicly available, raising questions pertaining to CSC's accountability to Canadians.
- c) There has been a lack of monitoring of outcomes and progress arising from the Strategic Plan 2006. That the Strategic Plan has been in effect for three years and only now an accompanying Draft Strategy for Accountability Framework is being developed is indicative of how CSC has been faring in reporting, evaluation and accompanying accountabilities for results in Aboriginal corrections.
- d) Given current Aboriginal population demographics, now more than ever is the time for CSC to be a learning organization, developing data tracking and evaluation processes for providing continuous feedback to senior managers on what works in Aboriginal corrections.

5. *Human Resources*

- a) There are chronic shortages in the Aboriginal correctional program delivery officers and clinical psychologists positions required to deliver core programming.
- b) Importantly, some institutions do not have the services of an Elder and/or ALO for extended periods of time.
- c) While CSC is undertaking valuable activities to further the Aboriginal Human Resource Strategy, it is unclear whether it has produced the desired results. It is also unclear how success will be defined, whether there any hard targets or deliverables and what provisions are in place for monitoring the implementation of the Strategy at the highest levels.
- d) CSC is working with Aboriginal recruitment to develop strategies relating to the ongoing recruitment of ALOs, but there are no clear statements about their necessary numbers.
- e) With respect to increasing the utilization of section 84 processes for the parole of Aboriginal offenders, it is unclear whether there is a need for additional ACDOs or whether there are hard targets for their hiring.
- f) There has been a noted shortage of program facilitators and program officers with the skill sets required to deliver Aboriginal-specific programming. It is unclear whether short term online or in class modules that do not appear to be Aboriginal specific will be adequate for CSC staff to live up to CSC's own cultural awareness commitments with respect to Aboriginal offenders.

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- g) CSC is required to adhere to *Gladue* principles. However, CSC policies do not indicate how CSC staff are supposed to consider *Gladue* principles when making decisions involving Aboriginal offenders. How are these good intentions to be operationalized? What training is provided in these complex principles to decision making staff?
- h) The Strategic Plan for Aboriginal Corrections states that performance agreements for all CSC executives “will include accountabilities for contribution to the Aboriginal corrections agenda”. To date, these accountabilities do not appear to have been implemented in substance, nor is it clear if and how they are being evaluated.

6. *Northern Corrections Framework*

- a) Three years after the Strategic Plan of 2006 called for CSC to develop a strategy to address the needs of Northern offenders, including the Inuit, consultation meetings are ongoing and research is underway, raising questions as to whether adequate resources have been allocated to this initiative.

7. *Healing Lodges*

- a) Section 81 of the *CCRA* came into effect in 1992; some 17 years later, there are only four independent Aboriginal healing lodges in Canada. There are no section 81 healing lodge facilities for women offenders.
- b) Existing section 81 healing lodges are not filled to capacity. It is unclear whether there might be a need for expanded healing lodge facilities.
- c) The healing lodge audit concluded that after 16 years, there is no CSC policy framework in place to support the establishment of section 81 healing lodges with no direction provided in CSC policies or procedures. The audit concludes that regional monitoring mechanisms included in section 81 agreements are not always followed and documented.
- d) There is inconsistency in the delivery of programs and services in healing lodges across the country (both CSC run and section 81). There appear to be no performance measures or expectations placed on managers to deliver these programs on a consistent basis. CSC healing lodge commitments are generally descriptive with no clear commitment to utilization.

V. Conclusion

The OCI concern about the ongoing performance gaps between Aboriginal and non-Aboriginal corrections has turned into alarm as the CSC has failed to deliver on many of its commitments to date.

Previous good intentions reflected in CSC policies and strategies have been inadequately operationalized, at least partially due to a lack of data tracking, clearly enumerated deliverables and accompanying accountabilities, leading to disappointing results.

Once the Aboriginal Corrections Accountability Framework is formalized it is intended to establish concrete actions with projected results and expected outcomes subject to evaluation and establish levels of accountability in regards to deliverables in implementing the Strategic Plan, 2006. Future implementation of the Framework should be expected to further CSC's meeting of its goals in Aboriginal corrections.

Therefore, the OCI endorses the approach of setting-up tangible targets with timelines, relevant performance indicators, strengthening accountability and clarifying roles and responsibilities, enhanced monitoring, and public reporting on progress. Only time will tell if the Draft Strategy for Aboriginal Corrections Accountability Framework will live up to its promise of accountability and results in Aboriginal corrections.

However, while supporting this initiative, the OCI also feels compelled to ring the alarm. The anticipated growth in the federal Aboriginal offender population and potential shifts in their geographic distribution is in the pipeline, suggesting continuing over-representation in correctional populations for the five-year CSC planning period from 2009/10 to 2014/15.

At this juncture, given the young and growing Aboriginal population, a CSC failure to expeditiously mobilize good intentions in Aboriginal corrections will reverberate throughout the youth and criminal justice system, Aboriginal communities and Canadian society for years to come.

APPENDIX A – Bio

Michelle M. Mann

Michelle M. Mann holds a B.A. in history from the University of Guelph (1991) and an LL.B. from the University of Ottawa (1994). She was called to the Ontario Bar in 1996.

Michelle commenced her legal career in civil litigation later moving on to practice Aboriginal law with both the federal Department of Justice and the Indian Claims Commission of Canada. After numerous years of practicing Aboriginal law and a working sojourn in South Africa on gender and land rights, in 2002 Michelle decided to focus on a career as a consultant and writer.

Since then, she has been dedicated to legal and policy matters, with an emphasis on Aboriginal issues. Michelle has authored numerous published reports, articles, columns and book chapters in this area. More information and samples of her publications are available on her website www.michellemann.ca.

APPENDIX B - Corrections and Conditional Release Act

80. Without limiting the generality of section 76, the Service shall provide programs designed particularly to address the needs of aboriginal offenders

Agreements

81. (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

Scope of agreement

(2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.

Placement of offender

(3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community.

Advisory Committees

82. (1) The Service shall establish a National Aboriginal Advisory Committee, and may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders.

Committees to consult

(2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with aboriginal communities and other appropriate persons with knowledge of aboriginal matters.

Spiritual Leaders and Elders

83. (1) For greater certainty, aboriginal spirituality and aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders.

Idem

(2) The Service shall take all reasonable steps to make available to aboriginal inmates the services of an aboriginal spiritual leader or elder after consultation with

- a) the National Aboriginal Advisory Committee mentioned in section 82; and
- b) the appropriate regional and local aboriginal advisory committees, if such committees have been established pursuant to that section.

Parole Plans

84. Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community

- a) adequate notice of the inmate's parole application; and

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b) an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.

Plans with respect to Long Term Supervision

84.1 Where an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an aboriginal community, the Service shall, if the offender consents, give the aboriginal community

- a) adequate notice of the order; and
- b) an opportunity to propose a plan for the offender's release on supervision, and integration, into the aboriginal community.

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¹ Includes First Nations (status and non-status), Inuit and Metis.

² Statistics Canada. *Aboriginal Peoples in Canada in 2006: Inuit, Metis and First Nations, 2006 Census*. Ottawa, Statistics Canada, 2008

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⁴ Public Safety Canada. *Corrections and Conditional Release Statistical Overview 2008*. Ottawa: Minister of Public Works and Government Services Canada, 2008.

⁵ Public Safety Canada. *Corrections and Conditional Release Statistical Overview 2008*.

⁶ Public Safety Canada. *Corrections and Conditional Release Statistical Overview 2008*.

⁷ CSC. *2007-2008 Report on Plans and Priorities*. Ottawa: Treasury Board of Canada Secretariat, 2007.

⁸ A Pathways Unit is a unique medium security institutional living environment that addresses the cultural and spiritual needs of First Nations, Métis and Inuit offenders.

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⁹ An offender's initial security classification is not static but responds to the progress made during incarceration; the security classification is reviewed at regular intervals throughout sentence. Where offenders have demonstrated progress and risk is deemed manageable, the security classification can be reduced.

¹⁰ CSC. *2007-2008 Report on Plans and Priorities*.

¹¹ Actuarial risk assessment tools are scales that measure risk related to recidivism, institutional adjustment or escape.

¹² OCI. *Aboriginal Issues, Semi-Annual Report April 2007-October 2007*. Ottawa: OCI, 2007. (unpublished).

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²⁰ Shelley Treveshan, John-Patrick Moore, and Christopher J. Rastin. *Forum on Corrections Research A profile of Aboriginal offenders in federal facilities and serving time in the community*. Ottawa: Correctional Service of Canada, undated.

²¹ For example, *R. v. Sim* (2005), 78 O.R. (3d) 183 (ON C.A.).

²² CSC. *Aboriginal Offenders Correctional Milestones*. Ottawa: CSC, 2008 (unpublished).

²³ Public Safety Canada. *Corrections and Conditional Release Statistical Overview 2008*.

²⁴ OCI. *Aboriginal Issues, Semi-Annual Report April 2007-October 2007*.

²⁵ OCI. *Aboriginal Issues, Semi-Annual Report April 2007-October 2007*.

²⁶ OCI. *Aboriginal Issues, Semi-Annual Report April 2007-October 2007*.

²⁷ OCI. *Aboriginal Issues, Semi-Annual Report April 2007-October 2007*.

²⁸ CSC. *2008-2009 Report on Plans and Priorities*. Ottawa: Treasury Board of Canada Secretariat, 2008.