

Systemic Investigation Update

# UNDER INSPECTION:

The Hiatus in BC Correctional  
Centre Inspections

# INTRODUCTION

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One of the key ways in which the Office of the Ombudsperson can effect change in the fair administration of government programs is by making recommendations. Our recommendations result from investigative findings of unfairness. In other words, when our investigation highlights a problem in fair administration, our recommendations aim to fix that problem. Our recommendations may involve individual remedies or systemic change, and often contain timelines by which we expect an authority to have made the change.

We monitor whether authorities are implementing the recommendations made in our public reports. As part of this monitoring

commitment, we issue periodic updates on specific reports and their recommendations.

We begin monitoring implementation once a report is released publicly. We collect information from the authority about the steps they have taken to implement the recommendation. We expect the authority to provide us with specific, relevant and verifiable information about its implementation steps – a general commitment to take action is not sufficient. We then assess this information to determine whether, in our view, the recommendation is fully implemented.

# UNDER INSPECTION REPORT AND RECOMMENDATIONS

*Under Inspection: The Hiatus in BC Correctional Centre Inspections* was released in June 2016. It was the result of an investigation into whether the Corrections Branch was inspecting correctional centres in a way that complied with its legal obligations under the *Correction Act*. As we explained in that report, there is a broad societal interest in ensuring that the conditions of imprisonment protect inmates' human rights, health and safety. Staff working in corrections also have a clear interest in well-run centres that protect their safety. Regular inspections are an essential oversight mechanism to help provide assurance that correctional centres are operated properly.

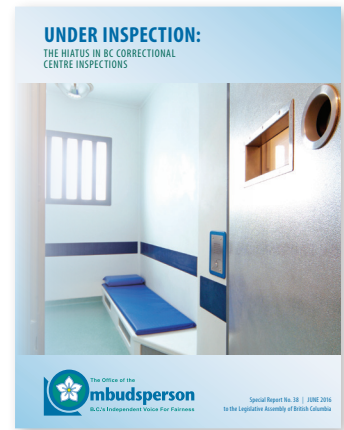
A person is housed in a provincially run correctional centre when he or she has been convicted of an offence and given a sentence of less than two years, remanded in custody pending trial, or detained under the federal *Immigration and Refugee Protection Act*. British Columbia has 10 correctional centres.<sup>1</sup> At any given time, an average of approximately 2,700 individuals are housed in these facilities.

In our 2016 report we found that the Corrections Branch had not complied with

the *Correction Act* when it failed to conduct periodic inspections of B.C.'s correctional centres between 2001 and 2012.

In addition, we found that the inspection framework implemented in 2012 did not comply with the international standards contained in the United Nations' *Nelson Mandela Rules* and that inspectors were provided with inadequate guidance and training. We also found that the inspection teams were insufficiently independent from the centres they were inspecting.

Six of the recommendations were aimed at improving the inspections of correctional centres and one was aimed at ensuring statutory obligations are met when responsibility for those obligations is transferred from one ministry to another or within a ministry.



<sup>1</sup> Our 2016 investigation report refers to nine correctional centres. Okanagan Correctional Centre opened to inmates in January 2017, six months after the release of *Under Inspection*. We have included this centre's relevant policies in our assessment of the implementation of the recommendations made to the Corrections Branch.

# KEY IMPLEMENTED RECOMMENDATIONS

In the two years since the release of *Under Inspection*, the affected ministries and the Corrections Branch have fully implemented six of the seven recommendations. These recommendations are:

- **The ministries of Justice and Attorney General and Public Safety and Solicitor General develop written policies that outline the process they will follow when responsibility for meeting legislative requirements is transferred from one part of the ministry to another part or to another ministry.**

**These policies should require that each ministry:**

- (a) identify the positions that will be responsible for the transition process;**
- (b) identify timelines and resources necessary to complete the transfer;**
- (c) establish interim measures necessary to ensure legislative requirements are met during the transition; and**
- (d) report publicly on progress in completing the transition (Recommendation 1).**

The Ministry of Public Safety and Solicitor General and the Ministry of Justice and Attorney General (now the Ministry of Attorney General) have established such written policies to ensure effective program change when services are moved between or within the two ministries.

- **The Corrections Branch develop a written statement of purpose and guiding principles for conducting inspections of correctional centres, giving priority to inmates' human rights, health and safety (Recommendation 2).**

The Corrections Branch has implemented this recommendation by adding the following statement of purpose for inspections to its Adult Custody Policy:

*The purpose of inspections is to ensure the Adult Custody Division provides safe, secure and humane treatment of inmates, assesses and reports on compliance with policy and legislation, and ensures appropriate standards for staff safety are followed.*

The Corrections Branch has also established in policy five guiding principles for inspections:

- Inspections must be continuously managed, reviewed and updated
- Inspections focus on elements of service that contribute to the achievement of the strategic objective of the Adult Custody Division
- Inspections are focused, transparent and timely
- Inspectors complete the requisite training prior to conducting an inspection
- Inspections promote consistent application of policy across correctional centres

- **The Corrections Branch review and revise the inspection checklists to:**
  - (a) provide guidance to inspectors on what materials to review to answer each question in the checklist; and**
  - (b) ensure that compliance with legislative requirements and matters related to inmates' human rights, health and safety is the primary focus of the inspection process (Recommendation 3).**

The Corrections Branch has reviewed and revised its inspection checklists to include questions about separate confinement, use of force and cross-gender staffing. It has committed to reviewing each inspection checklist on an ongoing basis to ensure the contents of the checklists are current and relevant. The Corrections Branch has also committed to updating the checklists to reflect any future legislative or policy changes, including the implementation of the *Mandela Rules*. We will reassess the inspection checklists when Recommendation 7 is implemented.

■ **The Corrections Branch develop and implement training materials and requirements for individuals who conduct inspections at correctional centres (Recommendation 4).**

The Corrections Branch has developed a training course for individuals who conduct inspections that was available for enrolment through the Justice Institute of British Columbia in April 2017. The Corrections Branch updated its Adult Custody Policy in August 2018 to include as a guiding principle for inspections that “inspectors complete the requisite training prior to conducting an inspection.” Nine of the correctional centres’ inspection policies confirm that individuals conducting inspections are required to have first completed this training.

■ **The Corrections Branch, by October 1, 2016, ensure that all correctional centres have put written procedures in place to accommodate inspections that are consistent with the *Correction Act*, the *Correction Act Regulation* and the *Adult Custody Policy* (Recommendation 5).**

In July 2018, all of the ten correctional centres updated their written procedures regarding the conduct of inspections. Each of these procedures now provides that an inspection report is to be provided to the provincial director, not the warden, and sets out a process for the centres to follow in responding to the report and implementing any resulting recommendations. While there are differences between the procedures, they are generally consistent in their approach to inspections.

■ **The Corrections Branch, by October 1, 2016, include on all correctional centre inspection teams at least one member who is independent of the branch. Implementation of this recommendation serves as an interim step while the Ministry of Public Safety and Solicitor General takes measures to comply with Recommendation 7 (Recommendation 6).**

Members of the Investigation and Standards Office (ISO) – part of the Ministry of Attorney General – take part in all inspections. The participation of ISO members in conducting inspections fully implements this recommendation. However, we emphasize that this is only an interim measure while the Corrections Branch implements an inspection framework that complies with the *Nelson Mandela Rules*. We expect that as part of the implementation of Recommendation 7, the Corrections Branch will ensure fully independent external inspections.

The Corrections Branch has taken significant steps to establish an improved framework for inspections. We look forward to seeing the remaining recommendation implemented.

# MANDELA RULES 83-85

- **The Ministry of Public Safety and Solicitor General, by March 31, 2018, revise the inspection framework to bring it into full compliance with Rules 83–85 of the *Nelson Mandela Rules* (Recommendation 7).**

The ministry committed to implement three sections of the *Mandela Rules* by March 2018. We have assessed this work as not yet completed by the ministry and work is ongoing.

## The Nelson Mandela Rules

The *Nelson Mandela Rules* were adopted by the United Nations General Assembly on December 17, 2015. These rules establish new minimum standards of best practice for correctional facilities. Rules 83-85 of the Mandela Rules are relevant to inspections.

### Rule 83

1. There shall be a twofold system for regular inspections of prisons and penal services:
  - (a) Internal or administrative inspections conducted by the central prison administration;
  - (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.
2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.

### Rule 84

1. Inspectors shall have the authority:
  - (a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;
  - (b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;
  - (c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;
  - (d) To make recommendations to the prison administration and other competent authorities.
2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass health-care professionals. Due regard shall be given to balanced gender representation.

### Rule 85

1. Every inspection shall be followed by a written report to be submitted to the competent authority. Due consideration shall be given to making the reports of external inspections publicly available, excluding any personal data on prisoners unless they have given their explicit consent.
2. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.

# FURTHER MONITORING

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The Office of the Ombudsperson will continue to monitor the one outstanding recommendation. The Corrections Branch continues to work on revisions to the inspection framework to bring it into full compliance with the *Nelson Mandela Rules* (Recommendation 7)<sup>2</sup>. The Corrections Branch did not meet the March 31, 2018 timeline for implementing this recommendation.

We do acknowledge that in the interim, as described earlier, the Branch has reviewed and revised its inspection checklists (Recommendation 3). We look forward to further work so that the Corrections Branch

is able to demonstrate that its inspections framework fully complies with the *Nelson Mandela Rules*, which establish more stringent inspection standards and fully independent inspections. In turn, inmates, staff and the public at large will be able to be more confident that correctional institutions are being operated properly.

Further details about our investigation and recommendations can be found on our website at <http://www.bcombudsperson.ca/documents/under-inspection-hiatus-bc-correctional-centre-inspections>.

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<sup>2</sup> Guidance in implementing the Mandela Rules can be found in the recent publication, *Guidance Document on the Nelson Mandela Rules*, prepared by the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights in conjunction with Penal Reform International. <<https://www.osce.org/odihr/389912>>

# RECOMMENDATION SUMMARY

<p><b>R1</b></p>	<p>The ministries of Justice and Public Safety and Solicitor General develop written policies that outline the process they will follow when responsibility for meeting legislative requirements is transferred from one part of the ministry to another part or to another ministry.</p> <p>These policies should require that each ministry:</p> <ul style="list-style-type: none"> <li>(a) identify the positions that will be responsible for the transition process;</li> <li>(b) identify timelines and resources necessary to complete the transfer;</li> <li>(c) establish interim measures necessary to ensure legislative requirements are met during the transition; and</li> <li>(d) report publicly on progress in completing the transition.</li> </ul>	<p><b>fully implemented</b></p>
<p><b>R2</b></p>	<p>The Corrections Branch develop a written statement of purpose and guiding principles for conducting inspections of correctional centres, giving priority to inmates’ human rights, health and safety.</p>	<p><b>fully implemented</b></p>
<p><b>R3</b></p>	<p>The Corrections Branch review and revise the inspection checklists to:</p> <ul style="list-style-type: none"> <li>(a) provide guidance to inspectors on what materials to review to answer each question in the checklist; and</li> <li>(b) ensure that compliance with legislative requirements and matters related to inmates’ human rights, health and safety is the primary focus of the inspection process.</li> </ul>	<p><b>fully implemented</b></p>
<p><b>R4</b></p>	<p>The Corrections Branch develop and implement training materials and requirements for individuals who conduct inspections at correctional centres.</p>	<p><b>fully implemented</b></p>
<p><b>R5</b></p>	<p>The Corrections Branch, by October 1, 2016, ensure that all correctional centres have put written procedures in place to accommodate inspections that are consistent with the <i>Correction Act</i>, the <i>Correction Act Regulation</i> and the <i>Adult Custody Policy</i>.</p>	<p><b>fully implemented</b></p>
<p><b>R6</b></p>	<p>The Corrections Branch, by October 1, 2016, include on all correctional centre inspection teams at least one member who is independent of the branch. Implementation of this recommendation serves as an interim step while the Ministry of Public Safety and Solicitor General takes measures to comply with Recommendation 7.</p>	<p><b>fully implemented</b></p>
<p><b>R7</b></p>	<p>The Ministry of Public Safety and Solicitor General, by March 31, 2018, revise the inspection framework to bring it into full compliance with Rules 83–85 of the <i>Nelson Mandela Rules</i>.</p>	<p><b>ongoing</b></p>