

**Report of the Office of the Correctional Investigator (Canada)
on the Baffin Correctional Centre and the
Legal and Policy Framework of Nunavut Corrections**

Report commissioned by Nunavut Corrections

April 23, 2013

Background

In September 2012, during the course of a systemic investigation of federal Aboriginal Corrections, Mr. Howard Sapers, Correctional Investigator of Canada, and Dr. Ivan Zinger, Executive Director and General Counsel, visited Nunavut. The Office of the Correctional Investigator (OCI) was concerned that there were no section 81 agreements in the North for the care and custody of federal Aboriginal offenders by Aboriginal communities, and very few section 84 agreements for the supervision of federal Aboriginal offenders by Aboriginal communities. The OCI was also cognizant that the Correctional Service of Canada (CSC) and Nunavut Corrections have a Memorandum of Understanding (MOU) which permits federal offenders to be temporarily housed in Baffin Correctional Centre (BCC). During their visit, Mr. Sapers and Dr. Zinger toured BCC and Rankin Inlet Healing Centre.

On October 24, 2012, NU Corrections formally requested the assistance of the Office. In January 2013, the two organizations signed a Memorandum of Understanding (MOU) for the OCI to provide NU Corrections:

1. Assistance in conducting a review of Baffin Correctional Centre (BCC), located in Iqaluit and operated by NU Corrections;
2. Strategic advice on the legal and policy framework of NU Corrections; and,
3. A report highlighting OCI conclusions.

As part of the MOU, the OCI agreed to conduct a review of BCC's infrastructure and functionality through a human rights lens that would complement existing BCC assessments and evaluations. In addition, the OCI agreed to provide strategic advice to NU Corrections on its legal and policy framework.

The work agreed to be undertaken by the OCI was limited to a documentation review, a three-day visit of BCC and the drafting of this brief report. The site visit took place March 12-14, 2013, and was conducted by Mr. Jean-Frédéric Boulais, Manager of Investigations. The review of the legislative

and policy framework was conducted by Dr. Ivan Zinger, Executive Director and General Counsel. Both Mr. Boulais and Dr. Zinger are lawyers and have extensive human rights expertise, including having been formally trained in 2007 as prison inspectors as part of a joint initiative between the UN Office of the High Commissioner on Human Rights, the Association on the Prevention of Torture and Oxford University.

I. VISIT OF BAFFIN CORRECTIONAL CENTRE

The OCI Investigator met with approximately 30 inmates during his visit, including 10 inmates who requested individual and confidential interviews. The Investigator met with correctional officers, managers, institutional health care staff, and program, classification, and admissions and discharge officers. During the visit, the OCI also observed interactions between staff and offenders, including staff responses to two separate security incidents that took place on March 12, 2013.

Annex A of this report provides a sample of photos taken during the visit.

General Overview

BCC was constructed in 1986. The architecture of this facility is unique and unconventional for a prison. The building is square and its interior is shaped as a “U” with the cafeteria in the middle of the institution, housing units for inmates on one side, and program and service areas on the opposite side. The main entrance of the institution gives direct access to the administrative offices and to the control post.

To monitor inmates, correctional officers in the control post must rely solely on video cameras placed throughout the institution. Correctional officers communicate through radios with the control post. One officer is assigned to the admission and discharge sector, which houses two cells.

The kitchen is small and adjacent to the cafeteria. Two or three inmates work in the kitchen and prepare most meals with the assistance of institutional staff.

i. Housing Units

BBC was initially designed to accommodate 41 minimum-security inmates. In 1996, BCC underwent renovations and the bed capacity was increased to 68.

BCC has been overcrowded for years. At the time of the OCI visit, 106 inmates were housed at BCC. The institution has four separate living units, described below.

The “Dorm” Unit

The dorm unit has 7 cells housing 6 inmates each. Each dorm cell has three bunk-beds and a small window. The linoleum flooring in the dorms covers a cement floor, but is either extensively damaged or has been removed entirely. The walls are made of drywall and plywood. The cells have no toilets or running water. The dorm unit has a common room with one television, a few chairs and a fixed table with 4 attached benches.

The Behavioural Unit

The Behavioral Unit has two single accommodation cells, each housing up to 3 inmates, and two double cells that house up to four inmates each. The flooring has been removed completely, exposing the cement floor. Most of the original drywall has been covered with plywood. In order to place three inmates in a cell, a single mattress rests on the concrete floor beside a bunk bed.

The “Katak” Unit

The “Katak” unit houses inmates who are in protective custody or are considered to have mental health needs. There are three cells which house six inmates each. Three bunk beds are in each cell, but mattresses are added to

accommodate additional inmates when needed. The cells are equipped with a small sink, a shower and a toilet. The flooring has been partially removed. This sector does not have a designated common room.

The Gymnasium

During the visit, 15 inmates were housed in the gymnasium. The gymnasium was built more recently and is generally clean and modern. There is no running water in the gymnasium and inmates must share the toilets and showers of the dorm sector. During the OCI visit, 42 inmates from the dorm unit and 15 inmates from the gymnasium shared two showers enclosures (two additional showers enclosures were out of order), two toilets and three urinals.

Most inmates in the gymnasium were provided pre-fabricated plastic beds, which are typically supplied by governmental agencies in major emergency situations, such as floods or wild fires. There is one wall-mounted television set and no tables or chairs in the gymnasium.

ii. Programs, Services and Special Areas

Admission, discharge and segregation area

Two small cells are adjacent to the admission and discharge office. The cells are used for admissions and as segregation cells. A common shower is available in this unit. It was reported that occasionally the two cells have been used to house general population inmates due to overcrowding pressures.

Nursing station

The nursing station is extremely small. It is used as an office, an examination room and a storage office.

Programs and education area

The program and education room is located at the opposite end of the facility. Overall, the program and education room is poorly designed to meet the needs of the inmate population.

Administration

Just outside of the secure area, a central hall gives access to 5 offices. Due to the lack of available space, classification officers often have to meet offenders in their offices. These offices are not constructed as interview rooms and present no security features.

Cafeteria

The cafeteria consists of a large room with tables and benches. Due to limited available space, the cafeteria is used as a common or recreation area. BCC staff and inmates take their turn to eat in the cafeteria. Three phones for inmate use are located in the cafeteria. This set-up offers little privacy or confidentiality.

iii. Conditions of Confinement and Infrastructure Limitations

As indicated in a letter to NU Corrections dated December 4, 2012, the OCI reviewed documentation provided by NU Corrections, including a number of previous assessments and evaluations of BCC. The OCI concluded that the existing reviews provided a sound evidentiary basis to justify the closure of BCC and the construction of a new facility or facilities. Nevertheless, the OCI agreed to conduct a review of BCC's infrastructure and functionality through a human rights lens to complement existing assessments and evaluations.

BBC is almost 30 years old and has not been used for what it was originally designed for. The facility has been grossly overcrowded for many years, and it is now well past its life expectancy. The current state of disrepair and crowding are nothing short of appalling, and negatively impacts on both inmates and staff.

Cells are overcrowded beyond acceptable standards of safe and humane custody. The overcrowding and inadequate infrastructure has resulted in many problems, including:

1. Cells are occupied by two, three and four times the occupancy rate originally intended when BCC was constructed. Using the gymnasium as a dormitory is also problematic. Many inmates have raised significant concerns about their personal safety, and many expressed fear of being physically or sexually assaulted, especially at night or when direct supervision is limited. This situation is inconsistent with the original design parameters of BCC. Crowding of inmates – some with violent pasts, mental health issues, cognitive deficits, and substance abuse histories – is inconsistent with good correctional practice and violates international human rights standards.
2. Cells cannot be cleaned with disinfectant as no alternative accommodation measures exist for this procedure to occur. As a result, mold is extensive throughout the living units and rank in smell.
3. The available showers and toilets cannot keep up with the current number of inmates, and cannot be cleaned sufficiently due to the high usage. Furthermore, the situation is aggravated because the shower and toilet areas are poorly ventilated, resulting in permanent smell, rot, rust and mold.
4. All inmates interviewed and many staff complained about the air quality. The air vents throughout the facility were particularly filthy, and many were heavily obstructed by dust. The smell of mold is omnipresent in many cells and parts of the facility. The OCI was unable to ascertain when the air ducts were last cleaned or the air quality tested.
5. The walls of BCC were originally built with drywall. The use of drywall in BCC cells and ranges is more consistent with minimum-security institutions. The drywall has been damaged throughout the facility and the damaged areas have been replaced, or covered, with plywood.

Because of repeated flooding incidents, there is extensive damage to the bottom of walls – paint is peeling, plaster showing or the drywall has been removed entirely and not replaced. Mold and fungus can flourish in porous materials like drywall or plywood. These materials are therefore not used in modern institutions managing higher security inmates. Damaged drywall, holes in walls and the extensive use of plywood are inconsistent with sound management of public assets and may have a negative impact on the integrity of the building in case of fire.

6. Many inmates and some staff complained about the lack of heat in the facility. Most of inmates complained about the temperature of cells in the winter, especially during windy days or blizzards. They complained that cold air makes its way through the poor window seals. Moreover, due to the lack of bed space, some inmates sleep on mattresses directly on the cold cement floor.
7. Some cells and the gymnasium have no toilets or running water. During night time, when inmates are locked-up in their cells or in the gymnasium (from 23h00 to 07h00), inmates must knock on their cell doors to ask officers for permission to use the bathroom. This is highly disruptive to other inmates.
8. Inmates were unanimous about BCC clothing policy. They are required to wear clothing issued by BCC, which is redistributed among inmates after each wash. Inmates are not permitted to maintain a second or third change of clothes. The few washing machines at BCC do not appear to be of industrial quality. Inmates complained that the clothing is dirty and smells even after being washed, and they disapprove of the practice of having to share (often permanently stained) clothing, including socks and underwear. These are legitimate hygiene concerns that have been addressed by most modern correctional authorities by providing new articles of clothing (at least under garments) and individualized laundry service.

The above list of deficiencies is extensive and primarily stems from years of overcrowding in a grossly inadequate infrastructure.

II. KEY FINDINGS AND CONCERNS

i. Separation of Inmates on Remand and Convicted Prisoners

Due to chronic overcrowding, BCC does not separately house inmates who are awaiting trial (presumed innocent) from (convicted) inmates serving a custodial sentence. 70% of the inmates at BCC are on remand status, while the remaining 30% are convicted prisoners. The current infrastructure of BCC makes it impossible to separate the two groups, contrary to human rights standards.

ii. Static and Dynamic Security

Good correctional practice relies on both static and dynamic security to ensure a safe and secure environment for both inmates and staff. Static security (e.g., locked doors, control posts, barb wire, motion detectors) relies on the physical structure, while dynamic security relies on staff interactions with inmates (e.g., direct supervision and dialogue, pro-social interactions, gathering of security intelligence information). BCC's current infrastructure paired with overcrowding undermines the ability of correctional staff to rely on both static and dynamic security to ensure safety and security.

The physical plan is highly compartmentalized and not conducive to direct observation. The control post does not allow direct visuals of key sectors of BCC and correctional staff are overly reliant on surveillance cameras. BCC does not have ion scanners, metal detector archways or drug detection dogs. Because of limited space, the administrative areas are often used to interview inmates, and correctional staff raised safety concerns about this practice.

Crowding and poor physical infrastructure pose considerable security risk that cannot be overcome by dynamic security. With so many inmates, the

narrow hallways and multiple rooms prevent appropriate supervision of inmates and limit positive interactions between staff and inmates.

iii. **Drugs and Contraband**

Correctional officers have limited ability to prevent drugs and contraband from entering BCC. Without the availability of technology and limited search and seizure capacity, correctional officers are overwhelmed and appear ineffective at addressing the drugs and contraband issue at BCC.

The drug and contraband trade appears to impact on rehabilitative services and programs. Some inmates are reluctant to participate in programs available outside BCC, such as carving and cultural programs. Due to BCC's limited effectiveness at preventing drugs and contraband from entering the facility, there is pressure on inmates who temporarily leave BCC to return with drugs or contraband. Inmates who do not bring back drugs or contraband can be subject to threats and assaults. The result is that fewer and fewer offenders participate in programs outside BCC.

Visits are also problematic. Even where there are reasonable grounds to believe that an inmate may be involved in the drug trade, BCC does not have the infrastructure for closed visits. Moreover, there appears to be constant pressure on visiting family members to bring in drugs and contraband as the risk of detection is considered low.

Recently, holes in the exterior walls of BCC were found. These holes were made by inmates and used to bring drugs into BCC. This raises concern about the security perimeter of BCC and its adequacy as a correctional facility.

III. REVIEW OF LEGISLATIVE AND POLICY FRAMEWORK

The OCI conducted a paper review of BCC's current legislative and policy framework. The *NU Corrections Act* (the *Act*), *Correctional Service Regulations* (the *Regs*), *Corrections Division Directives* and *BCC Directives and Standing Orders* were reviewed.

i. Legal Framework

The *Act* and the *Regs* have remained practically unchanged for about 25 years. Both are now deficient in many key areas. Ironically, the policy framework of the *NU Corrections* (updated in 2010) is far more reflective of today's correctional philosophy and legal obligations than the *Act* and *Regs*. The main deficiencies of the *Acts* and *Regs* include:

1. Overall, the legislation does not convey a strong manifestation of *Charter* rights and administrative law principles.
2. The legislation does not provide a list of key correctional principles to guide decision-making, including less restrictive measures, retention of rights except those removed as consequence of sentence, and anti-discriminatory application.
3. The legislation is silent on Inuit principles of justice, language, cultural and spiritual rights, and ceremonial and dietary requirements. The legislation is devoid of any references to Inuit culture. No attempt is made to ensure that the correctional system and decision-making are responsive to the unique needs of Inuit People.
4. References to key procedural safeguards are insufficiently detailed (e.g., use of force), non-existent (e.g., search and seizure) or inadequate (e.g., disciplinary or administrative segregation).
5. Some decisions that affect fundamental rights appear to be left entirely to the discretion of decision-makers (e.g. appeal of a decision of the

Disciplinary Board, segregation of “unmanageable inmates,” transfers to penitentiaries, parole granted if “suitable,” denial of access to reading material if “controversial or objectionable in nature.”)

6. There are several references to practices that may be inconsistent with the *Charter* or evidence-based correctional policy:
 - use of a strait-jacket for up to 24 hours;
 - use of chemical restraint (without consent);
 - no correspondence or visits while in segregation;
 - medical surgery where Warden can be responsible for granting consent;
 - prohibition to grow a beard or long sideburns; and,
 - prohibition to have long hair inconsistent with health and safety.
7. There are no statutory provisions to ensure access to a fair and expeditious complaint and grievance system, without fear of negative consequences.
8. There is a limited statutory involvement of community resources for decision-making or advisory purposes. This can hinder the ability of NU Corrections to be open, transparent and accountable in carrying out its mandate, as well as responsive to the needs of its inmate population. Outside resources can provide enhanced credibility in key correctional operations and decision-making, including internal investigations, segregation placements, complaints and grievances, and discipline.
9. Some provisions are unclear. For example, the English version of the *Regs* refers to a “medical officer” while the French translation refers to “médecin.” It is doubtful that a physician would be required to do everything described in the *Regs*. The policy refers to a nurse, health care personnel and medical staff.
10. The law makes reference to the outdated concept of “good order and discipline of the Correctional Centre” – a vague, discretionary catch-all

provision that has exceptional latitude for correctional authorities to justify just about any correctional decision.

Overall, the legal framework is outdated and requires to be modernized to reflect today's correctional reality and best practices.

Policy Framework

As stated above, the policy framework for NU Corrections and BCC better reflects modern correctional practices than its enabling legislation. The policy framework is far more consistent with the *Charter* and common law, and makes many references to human rights and the duty to act fairly. This situation is unusual and is not ideal as policy should flow directly from enabling legislation. Correctional staff should be familiar with the law and rely on a strong legal framework in their daily duties. This is especially important in a closed correctional context where most decisions by correctional staff affect privileges, legal rights and *Charter* rights and freedoms.

The policy of NU Corrections was updated in 2010. Overall, the policy framework is comprehensive and succinct. However, the framework could be improved by addressing some of the following areas of concern:

1. For the most part, the policy framework is silent on the unique needs and situation of Inuit people. The policy does not provide specific requirements or guidance for decision-making that would take into account the unique needs and historical situation of incarcerated Inuit People. The only Inuit-specific policy provisions are for programming (Carving Program and Land Program). There are no specific provisions for decision-making or for meeting religious and cultural needs. Moreover, very little addresses issues such as access to Elders, language, cultural needs, and ceremonial and dietary requirements. Finally, no principles of Inuit justice are elaborated.
2. The policy states that inmates at high-risk of committing suicide should be automatically placed in administrative segregation. This practice is not

- consistent with evidence-based suicide prevention practices. Suicidal inmates should be placed in observation cells and not isolated. Interactions and support should be constant.
3. The policy framework should stipulate that physical and mental health should always be considered in every important correctional decision (e.g., classification, transfers, segregation, discipline).
 4. To strengthen its grievance system, NU Corrections should consider adding access to an external mechanism to resolve complaints. This could be done by policy, or ideally through legislative reforms.
 5. The internal grievance policy should indicate that once the grievance system has been exhausted, the inmate has the option of filing for judicial review within the specified timeframe.
 6. The policy on the authority of disciplinary board is of concern. The internal board can impose up to 15 days in segregation with loss of privileges and loss of earned remission. The impact of such penalties should require additional procedural safeguards, inclusive of independent adjudication.
 7. The policy on administrative segregation is superior to the legal provisions. It does refer to using segregation as a last resort when no other reasonable alternatives exist. Nevertheless, adding an external oversight element in decision-making would enhance accountability and transparency.
 8. The nurse should be required to visit the segregation area every day.
 9. The policy stipulates that “remand offenders must be held separately from sentenced offenders unless they have signed a waiver.” This practice is not unique to NU Corrections, but is highly problematic as it suggests that correctional authorities can contract out of their domestic and international human rights obligations. Furthermore, incarcerating those

- who are presumed innocent (remand) alongside those who have been sentenced (convicted) is poor correctional practice.
10. The law and policy concerning use of force is inconsistent and confusing. A variety of wording is used, including “last resort,” “only justified when staff or offenders are threatened with violence or damage to property,” “only to the minimum degree required to control the situation,” “when life is in jeopardy,” “not exceed that which is reasonably required to accomplish the desired result,” “use force unnecessarily,” and “use more force than reasonably necessary.” More consistent language and clear legal criteria are required in this key area of corrections. Moreover, a situational use of force model should be part of the policy.
 11. The reference to the use of chemical restraint, restraint chair and body wrap is highly controversial and problematic in a correctional facility.
 12. The count and rounds policy should refer to the requirement for ensuring “live, breathing inmates.”
 13. The search and seizure section is weak. The section should clearly highlight requirements for burden of proof (e.g., reasonable grounds to suspect or believe), consent, reporting, to be conducted by whom, and required authorization (e.g., Warden) for each type of search. Generally, the more intrusive the search, the more procedural safeguards that are required. For example, the policy regarding body cavity searches requires only “grounds to suspect” and authorization by the Manager. Given the level of intrusiveness, the burden of proof should be “reasonable grounds to believe” and this should be authorized only by the Warden.
 14. The policy should allow for more access to outside community resources and impose obligations to provide Inuit-specific and tailored programming, inclusive of readily accessible substance abuse counselling and violence prevention.

15. Consideration should be given to add an external element to internal investigations.
16. Standing Orders for BCC and Directives often overlap and some information in Standing Orders is so important that it should be transferred into Directives. Given the size of NU Corrections, consideration should be given to merge Standing Orders with Directives. Standing Orders could remain, but would be limited to few institution-specific rules.

CONCLUSION

This report is consistent with numerous previous internal and external reports on BCC. The report confirms that BCC is past its best before date, and needs to be closed and replaced by a new facility or facilities. BCC physical infrastructure is not safe for either staff or inmates, and hinders the ability of NU Corrections to fulfil its legal mandate of humane custody and rehabilitation.

The review of law and policy also suggests that NU Corrections is not operating within a rigorous and modern legal and policy framework. The most significant deficiency of this framework is its apparent lack of specificity and responsiveness to its unique Inuit inmate population. This raises serious concern, but also offers significant opportunities. As NU Corrections moves towards investing significant funds to renew its infrastructure, modernising the NU *Corrections Act* and *Regs* will provide benefits and opportunities, including:

1. Involving the NU legislature in shaping NU Corrections and underlying principles, objectives and philosophy.
2. Engaging communities and its stakeholders via a broad consultation and public debate, which will ensure that the new *Act* is consistent with NU culture, traditions, values and objectives.

3. Enhance the role of the NU communities in the delivery of humane custody, rehabilitation and public safety.
4. Provide clearer direction and guidance to correctional staff and managers.
5. Optimize the coordination and collaboration of other government departments, agencies and organizations involved in NU Corrections.

A new legal and policy framework will renew NU Corrections as it roll outs its new infrastructure. This renewal will enhance openness, transparency, accountability and overall public safety performance, and solidify NU Corrections into the era of human rights.

ANNEX A



Exterior view of the Baffin Correctional Centre



Recreational yard



Gymnasium (used as dormitory)



Cell of the Behavioral Unit



Window in a cell of the Behavioral Unit



Vent in a cell of the Behavioral Unit



View of another cell in the Behavioral Unit



Another view of the previous cell



Bottom of the wall in the hallway next to the Behavioral Unit



Partial view of the shower of the only shower of the Behavioral Unit



Common room of the Dorm Unit, housing 42 inmates



Showers of the Dorm Unit, also used by inmates housed in the Gymnasium



Partial view of the one of the showers of the Dorm Unit



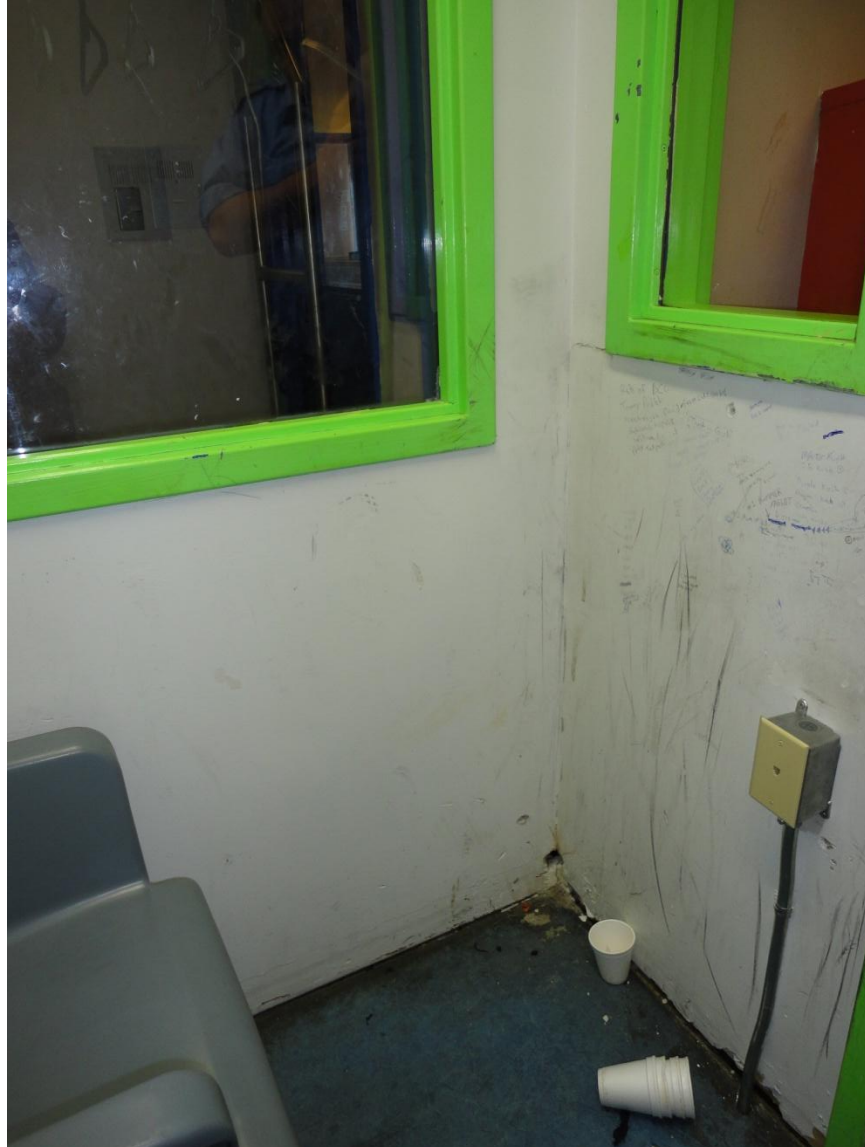
One of the toilets of the Dorm Unit



Detail view of the toilet of the Dorm Unit



Window in the common room of the Dorm Unit



Secured Interview room