

THE JUSTICE OF POWER: AN EXAMINATION OF CORRECTIONAL
DECISION-MAKING AND INMATE MISCONDUCT

by

David Welland Williams

B.A., University of Winnipeg, Manitoba, 1979

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS (CRIMINOLOGY)

in the Department

of

Criminology

© David Welland Williams 1985

SIMON FRASER UNIVERSITY

June, 1985

All rights reserved. This work may not be reproduced in whole or in part, by photocopy or other means, without permission of the author.

APPROVAL

Name: David Welland Williams

Degree: MASTER OF ARTS (CRIMINOLOGY)

Title of thesis: THE JUSTICE OF POWER: AN EXAMINATION OF
CORRECTIONAL DECISION-MAKING AND INMATE
MISCONDUCT

Examining Committee:

Douglas F. Cousineau
Chairperson,
Associate Professor, Criminology

~~John W. Ekstedt~~
~~Senior Supervisor~~
~~Associate Professor, Criminology~~

Raymond Corrado
~~Associate Professor, Criminology~~

Robert Menzies
Instructor, Criminology

Margaret Jackson, Examiner
Assistant Professor, Criminology

Date Approved: June 27, 1985

PARTIAL COPYRIGHT LICENSE

I hereby grant to Simon Fraser University the right to lend my thesis, project or extended essay (the title of which is shown below) to users of the Simon Fraser University Library, and to make partial or single copies only for such users or in response to a request from the library of any other university, or other educational institution, on its own behalf or for one of its users. I further agree that permission for multiple copying of this work for scholarly purposes may be granted by me or the Dean of Graduate Studies. It is understood that copying or publication of this work for financial gain shall not be allowed without my written permission.

Title of Thesis/~~Project~~/~~Extended~~ Essay/

The Justice of Power: An Examination of Correctional
Decision-Making and Inmate Misconduct

Author:

(signature)

David Welland Williams

(name)

Aug 7/85

(date)

ABSTRACT

Decision-making within the Canadian criminal justice system has been the focus of numerous studies. However, correctional officials have, for the most part, escaped the scrutiny of criminal justice observers, much more than their counterparts in police administration and the courts. Consequently, correctional decision-making has not been adequately understood and society's lack of interest in "prison matters" has consolidated any misconceptions arising from this lack of understanding.

Partially as a result of this indifference a private criminal law structure has developed within the prison system which is characterized by a vast amount of individual discretion. This thesis examines this structure through a study of the disciplinary decision-making process applied to inmate misconduct at Vancouver Island Regional Correctional Centre (V.I.R.C.C.), a secure custody provincial institution in British Columbia. Additionally, the manner in which certain staff groups i.e. correctional line officers, direct their behaviour and deal with the discretionary power accorded them within the institution is documented.

A review of the subject of correctional discipline in a legal and historical context is provided in order to fully understand the dynamics of disciplinary decision-making as one aspect of criminal justice decision-making.

This thesis suggests that the power to direct the disciplinary process rests with the correctional line officer,

even though these persons have little control over the structure of disciplinary decision-making approved within the institution. Through the examination of data, the differences among and between the different levels of authority within the institution indicate that the manner in which inmates are disciplined for particular infractions has very little to do with the type of infraction and much more to do with the particular officer involved or the situation from which the infraction arose. While acknowledging the necessity for the discretionary power of correctional officials, this study suggests that, despite the rhetoric accompanying standardized training programmes and rules and regulations, the discretionary power of the individual officers dominates any structure of decision-making applied to inmate misconduct.

DEDICATION

To my Family who granted me the opportunity
for this indulgence.

QUOTATION

We react, in many ways, like children to our environment - imbued with myths that provide us comfort as we contend with the realities of our environment.

- B. Atkins & M. Pogrebin (1978)

The Invisible Justice System: Discretion & the Law

If we don't change the direction in which we are going we are likely to end up where we are heading.

- Anonymous

ACKNOWLEDGEMENTS

There are many people who deserve my deep appreciation for their assistance in the preparation of this thesis. This page is for them.

I am greatly indebted to V.I.R.C.C. and the Inspection and Standards division of the B.C. Corrections Branch, for their cooperation and interest. Of special note are Tim Thimsen of I & S, whose initial encouragement was gratifying, John Gillingham, Director, and William Dyke, Deputy Director, of V.I.R.C.C., and the staff of V.I.R.C.C., must be commended for their indispensable role in the study. For making my life in Victoria easier and more comfortable, I am grateful to good friends, George and Kay Baker.

Greatest plaudits should go to my supervisory committee of Dr. John Ekstedt, Dr. Ray Corrado and Mr. Bob Menzies. Their open door policy was, at times, of great relief to me. A special thanks to Dr. Ekstedt, my senior supervisor, for his direction and inspiration. His insightful and critical eye proved to be an invaluable resource.

Aileen (Mom) Sams has been of great assistance in working through the intricacies of graduate life, as have the smiles and chuckles of Mary Sutherland and Kay Cooper. The graduate students hold the key to my best memories and for that I thank them. Lastly, my appreciation goes to Larry, who, despite our occasional disagreements, has been a good friend; and to Allison, for her understanding and love of life.

TABLE OF CONTENTS

| | |
|--|-----|
| Approval | ii |
| Abstract | iii |
| Dedication | v |
| Quotation | vi |
| Acknowledgements | vii |
| List of Tables | x |
| I. Introduction to the Structures of Inmate Discipline | 1 |
| Methodology | 16 |
| Summary | 22 |
| II. Prison, A Utopian Panacea | 24 |
| Development of Correctional Discipline | 24 |
| Reconstructing the Theoretical Models | 27 |
| Building a Legacy | 32 |
| The B.C. Experience | 51 |
| Summary | 56 |
| III. Studies on Correctional Management & Prison Discipline | 59 |
| Structural Factors of Correctional Discipline | 61 |
| Work Relations Affecting Institutional Order | 66 |
| Decisions of Rule Enforcement | 70 |
| Canadian Inroads | 73 |
| Disciplinary Structures & the Dynamics of Misconduct | 79 |
| Discussion | 87 |
| IV. Development of Prison Law | 92 |
| Assessing the Scope of Prisoners Rights | 93 |

| | |
|---|-----|
| The Struggle for External Review | 99 |
| The Lethargy of Judicial Activism | 118 |
| Discussion | 128 |
| V. Methodological Considerations | 134 |
| Introduction | 134 |
| Research Design | 135 |
| Operational Definitions | 137 |
| Research Instruments | 138 |
| Limitations | 152 |
| VI. Analysis of Results | 156 |
| The Inmate Component | 165 |
| Institutional Factors | 169 |
| Summary | 180 |
| VII. Conclusion | 184 |
| Bibliography | 213 |
| Legal Cases Cited | 220 |

LIST OF TABLES

| TABLE | | PAGE |
|-------|--|------|
| 1 | Offence Fequency from Statements of Penalties | 158 |
| 2 | Disposition Frequency from Statements of Penalties | 159 |
| 3 | Offence Frequency from Hearings | 160 |
| 4 | Disposition Frequency from Hearings | 161 |
| 5 | Scale of Disposition Seriousness | 164 |
| 7 | Status of Standardized Offences | 172 |
| 8 | Offence Frequencies at British Columbia . Regional Correctional Centres | |

I. Introduction to the Structures of Inmate Discipline

For the maintenance of good order...

Given the closed and secure nature of correctional institutions one should not be surprised at the conflicting reports of prison justice or the paucity of information regarding administrative decisions. Traditionally these institutions have been shunned by the public and responsibility for their operation has rested upon the administrators with little more than token reference to public accountability. As a result of the general lack of public concern, a private criminal law structure has developed within an isolated setting under a strict regimen of social control. Public curiosity about prison seems to rise and fall depending to a large part upon the publicity given prison disturbances or a particular court case regarding an inmate's grievance. The Canadian courts, however have been reluctant to remove much of the present power base of administrative decision-making within a particular institution. Hence, this isolation has created a situation in which the director of the institution ultimately decides what actions are to be considered reasonable and necessary to control the inmate population, given a particular set of circumstances. For example, in the province of British Columbia the Correctional

Centre Rules and Regulations provide that the director is responsible for "...the management, operation, security and program of that correctional centre" and the "rules for the orderly operation of the correctional centre pursuant to the responsibilities under s.2 of these regulations."¹

In discussing administrative discretion in decision-making and the internal discipline of inmates within a prison setting, a matter of primary importance is the impact of the social structure of the prison upon the individuals making those decisions. The restricted and coercive regimentation creates a situation in which the socially legitimized power of the prison management dominates the relationship to such an extent that any autonomy over individual actions once held by the inmate is dramatically curtailed, if not completely removed.

The power differential characterizing the relationship of the keepers and the kept creates potential for a great deal of abuse of the discretion allowed in administrative and managerial actions. Until recently mechanisms for the external review of these actions were virtually non-existent. However, no longer can one assume in this society that the type of self-regulating management structure which once characterized the prison continues to exist. Increased attention to the role of corrections as a component of a larger criminal justice system has exposed corrections to various forms of external review,

¹Correctional Centre Rules and Regulations s.2 and s.3(1)(c).
Ministry of the Attorney General, Corrections Branch. 1978.

most notably from the court system. The criminal justice system is a subsystem of government and corrections is a subsystem of the criminal justice system. An analysis of the role of corrections within the larger system is essential for an understanding of the power of the administrator(s) of the correctional institution specifically regarding disciplinary actions. As one spoke in a very large wheel, the institutional administrator must successfully interact with government, the police, the courts, labour unions and various community and special interest groups. Carter(1975) pointed out that this web must effectively protect and maintain the institution as well as guarantee needed internal development and change. The internal and external factors on correctional policy such as legislation, law review, short term political needs, professional interests and operational maintenance needs are also strongly emphasized by Ekstedt & Griffiths (1984).

The effect of other subsystems within the criminal justice system, such as the police and the courts, on corrections cannot be underestimated. Their enforcement policies and procedures directly affect the subsequent population size and profile of the institutions. The physical facilities available to corrections personnel result from decisions made by politicians and other government officials and are subsequently filled by the enforcement policies and procedures of the police and the courts.

Often in the capacity of advisors or evaluators, individuals involved in academic research have also been identified as a significant external factor influencing correctional policy. Increasingly individuals involved in criminal justice research are being consulted to evaluate existing or proposed policies in corrections. Contributions of academic research may range from theoretical foundations to the implementation of a training or treatment programme to the evaluation and impact of that programme on the existing correctional system.

Some significant contributions in this area, by academics, dealt with the policies of correctional treatment. Lipton et al. (1975) sent shockwaves through the criminal justice system with their conclusion that "nothing works". Upon hearing this conclusion, many practitioners in the correctional field quickly discarded the treatment programmes in operation. The rehabilitative philosophy employed by corrections had been dying a slow death and for many individuals, this study provided the excuse to discard treatment programmes in search of 'another' panacea.

An earlier study which is well recognized for its impact on criminal justice policy, is the Mobilization for Youth Programme, initiated in New York, in the 1960's. Based upon the propositions in Robert Merton's theory of Anomie, the programme sought to develop work and educational opportunities for underprivileged youth. It was theorized that the causes of crime

and delinquency were correlated to the disparity between an individual's life goals and the means the person had to attain them.

In their desperate search for the ultimate treatment for offenders, the correctional systems in both the United States and Canada failed to note some of the methodological and theoretical flaws in both these studies. Nonetheless, it appears as though criminological research, in Canada, is becoming increasingly involved in the policy making process. The fact that many feel they are having little impact on policy, as academic consultants, may not be as crucial as accepting their renewed and favored profile as legitimate advisors. Shover (1979) documents the impact sociologists have had on correctional policy over the past fifty years. He cites involvement in such areas as parole prediction theory and research, evaluative research on treatment programmes, and research on the exercise of discretion in decision-making by correctional personnel.

The scope of influence accorded these factors has become more apparent to the observers of criminal justice in recent years. The interaction with corrections by the other segments of the criminal justice system has become more visible or more formal, than previously, when the correctional system was, for all intents and purposes, an organization unto itself. Recent emphasis on Federal/Provincial initiatives dealing with jurisdiction and delivery of correctional services tends to

support this notion. The Ouimet report (1969) clearly referred to the importance of all the subsystems of criminal justice working together and other reports and commissions have been developed with this objective in the foreground.²

As the criminal justice system has grown creating complex interactions between social control agencies, powerful external influences on many of its subsystems are inevitable. As the justice system has become more complex and diverse corrections has been forced to adjust its structure accordingly. The characteristics of total institutions referred to by Goffman (1961) are still relevant to the existing correctional institutional structures. However, the internal relationships within the institution are complicated much more than previously, by the influence of other components of the justice system. The multitude of factors impinging on the institutions, presently give justification to remarks from administrators that their initial concern in the past few years has been the management of a government organization, the prison, emphasizing on the one hand concern, the reintegration of the offender and on the other hand, concern for the pragmatics of business such as, costs per bed statistics and the most efficient use of budgeted resources. Observations from the present study recorded

²One could note such reports as, Federal/Provincial Task Force on Long Term Objectives (1976); National Task Force on the Administration of Justice(1976); and The Criminal Law in Canadian Society (1982). For further reference to this discussion of more visible and formalized relationship between corrections and other criminal justice subsystems see Ekstedt & Griffiths (1984, 304-307).

this sentiment which also supports previous work (Duffee, 1980; Sherman & Hawkins 1981). It is often difficult to reconcile these separate goals.

As a result of the developing bureaucracy of today's justice system contemporary correctional institutional managers have much less authority than their counterparts of a generation ago (Bartollas & Miller, 1978; Sherman & Hawkins, 1981). They must still cope with the old problems of overcrowding, budgetary limitations, political patronage and staff conflicts. In addition they must also find solutions for new problems that have risen to prominence such as civil suits and pressures from the courts, increased violence, collective bargaining with prison guard unions, formal bargaining with the inmate interest groups and greater visibility in the community through media involvement and interest in other criminal justice matters. While some of these concerns may be dealt with, in part, by the administrative services of the correctional system, the role of the institutional director is critical in handling staffing problems and inmate disturbances as they occur as well as dealing with the subsequent situations arising from those disruptions.

The administrative support of the institution from the larger correctional system has more to do with the procedural guidelines for the normal operation than effecting a strategy for the effective use of discretion in dealing with a difficult or unusual situation. This division of labour emphasizes, more

fundamentally, the position of the institutional director within the organizational structure of the correctional system; and thus, his power to make decisions affecting the objectives of the institution. To understand the nature of decision-making in institutions, it is important to consider the distinction between management and administration.

Making distinctions between management and administration involves a discussion of forms of organizational decision-making at specific levels in the bureaucracy of the correctional organization. Perhaps the distinction between the two can be made with respect to the tasks performed by each (Ekstedt & Griffiths, 1984). The administration tasks consist of supplying the support services necessary for the continued functioning of the organization. This responsibility may include the development of internal structures to deal with a particular disciplinary philosophy of the organization. The management responsibility would involve defining the philosophy and determining the policies which emerge from it. The difficulty in distinguishing where management ends and administration begins becomes clear in the analysis of the role of the institutional director. He often performs the tasks of both management and administration. The position held by the institutional director as a 'middle manager', between the administrative directives from the regional correctional office and the line personnel within the institution, demands the ability to perform a variety of tasks. The director may be required to perform administrative

tasks such as developing guidelines or standing orders outlining procedures to be taken in a specific institutional situation ie. fire and emergency situations. Additionally, the director performs managerial functions in the manner in which discipline, both of inmates and staff, and order, is maintained within the institution.³

How an administrator deals with particular infractions of the rules of the institution may require attention to all of the above. For a long time, discipline was characterized by idiosyncratic regimes of managers, and the public was generally unaware of the prison conditions and daily constraints to which the inmates are subjected. The system of acceptable conduct in Canadian prisons is based on the maintenance of good order and discipline, as well as perceptions of what is in the best interests of the inmate. The fine line between the maintenance of institutional order and what is in the best interests of the inmate has in the past been achieved through strict regimentation, isolation and the congregate system of incarceration in which the inmates worked and ate together but were prohibited from any form of social interaction with each other. This was referred to as the silent system and was held in place by methods of corporal punishment, menial tasks and psychological torture (Baehre, 1977; Gosselin, 1982). It appears as though those days of total institutional autonomy are over.

³ For an indication as to the structure of management and administration in corrections see, Archambeault & Archambeault, 1982; Coffey, 1975; Duffee, 1980; Ekstedt & Griffiths, 1984.

Questions have been raised regarding the operation of prisons and the arbitrary discretion of management since the inception of long term incarceration as a method of dealing with offenders (Brown Commission, 1849) and have consistently resurfaced (Archambault, 1936; Ouimet, 1969; MacGuigan, 1977). The acceptable limits of conduct in a prison are obviously more restrictive than those in a free society. It appears as though correctional management, acting within the legislative mandate of the federal Penitentiary Act or the Prisons and Reformatories Act, has taken the liberty of defining these boundaries.

The pivotal role played by the correctional officer is crucial in the process of decision-making on disciplinary matters. As these officers initiate the reports on disciplinary infractions, they in essence control the ability of the institutional head to exercise his or her power in a given situation. The power held by the individual institutional manager over daily performance of the institutional staff therefore may not be as pervasive as it may initially appear. Despite the fact that the director has considerable authority to instruct both inmates and officers as he sees fit in the operation of the institution; the real power to administer inmate discipline may lie with the correctional line officer. This, of course, refers to the official reaction to misconduct and the selective enforcement practices of the officers. Having indicated this, the discussion here, does not underestimate the influence of the inmate social structure, or subculture

(Clemmer, 1940; Sykes, 1958) in 'assisting' the officers to maintain order in the institution.

Studies of social and structural variables present within correctional settings suggest that there is a very real threat that the existing traditional structure could break down quickly and easily through inconsistent organizational directives or through stated objectives incompatible with the current structured programs (Cohen, 1981; Flanagan, 1982; Ramirez, 1983). The management must meet the challenge of changing goals in corrections. As Cohen (1981) states in his reconsideration of the apparent failure of administrators to meet this challenge, this is, no doubt is easier said than done. He reiterates his scepticism from earlier articles that very little will change without a major adjustment in attitude and managerial skill at the higher levels of corrections. He outlines the reasons for this managerial failure, by referring to unclear objectives and planning strategies underlying the operation (Cohen, 1979). More specifically, Cohen discusses the failure of corrections to adequately deal with the changing expectations of the public toward corrections, the problems faced by diminished resources, and general criticism of the correctional administration to adapt the system to a changing and dynamic society. Cohen continues by hypothesizing that the managers may

create organizational climates in which administrative strain and role conflict among workers and perhaps themselves, result in poor management and reduced efficacy of client delivery systems of services. (1979, 59)

In light of this, an inquiry focussing on management discretion regarding institutional misconduct might shed some light on the current state of the art in correctional management and more specifically contribute to our knowledge of disciplinary decision-making in institutions. While the director still controls the actions within the institution in the majority of cases, it is necessary to examine the dynamics of the staff organization to understand the role each plays in the process.

In the last twenty years the issue of discretionary decision-making in relation to institutional misconduct has been a much more central issue in American corrections than in its Canadian counterpart. This is inspired, no doubt, by the wave of prisoner litigation since the 1960's. Much of the early literature focussed on judicial intervention and the prisoners' right to due process (Kimball & Newman, 1968; Harvard Centre, 1972; Turner, 1971). Recently a number of reports have been published specifically dealing with the disciplinary process in correctional institutions (Flanagan, 1982, 1980; Barak-Glantz, 1983; 1982). Issues raised indicate that there does not appear to be any consistent sentencing scale with respect to the proportionality of charge to disposition in the discussion of factors important in such a decision. The interesting dilemma posed is that virtually any offence may result in any of the dispositions available. What appears to be a more salient factor is not the offence but the particular circumstances in which it

arises. How one defines a given situation is going to dictate the actions of the actors involved. Allusions to this relationship are noted in Poole & Regoli (1980a), in their discussion of role stress and disciplinary actions, as well as in Ramirez(1983), where he suggests that a disciplinary charge may be more a result of the apprehension of inmate misconduct than the particular action in question.

Despite the reports of Parliamentary committees, Royal Commissions on the Penitentiary system and academic research detailing existing problems within the present structure (as well as potential ones) very little priority is accorded by government officials to 'prison matters'. The majority of individuals in society are more visibly and directly affected by many other social and economic pressures. Whether or not prisoners are being treated fairly or institutional administrators have complete control over inmates in their disposition of institutional justice is apparently of little consequence. As far as substantive reform of internal prison discipline is concerned, one could as easily read the Archambault report (1938) as the MacGuigan report(1977); the recommendations are alarmingly similar. An old question in correctional policy may well need to be altered; the question being, "How can correctional institutions be made more humane?" Society, it seems, is more concerned with retribution than natural justice or 'fair play', in the management of offenders.

In reviewing the literature on the disciplinary process within Canadian institutions, the report by Jackson(1974) on the Matsqui medium security institution in British Columbia stands out. Some of the abuses of discretionary power he noted were replicated by the MacGuigan Commission, three years later. Inmates interviewed by the group unanimously condemned the process, not even willing to recognize its statutory legitimacy. There were numerous procedural abuses by the administration in their seemingly arbitrary application of punishment. The reports by Jackson (1974), Vantour (1975) as well as the MacGuigan Commission (1977) identified procedural abuses in the hearings and recommended an external, independent chairperson be placed on the prison disciplinary board. Up to this point the warden and two institutional staff had comprised the tribunal in the Federal system.

For a fuller understanding of the manner in which Canadian inmates are disciplined and why, the interactive influences of the federal and provincial correctional systems must be taken into account. These systems are further distinguished by the influences of the two-year rule of correctional service in Canada, which specifies certain responsibilities for both the federal and provincial services. What must be acknowledged are the differences between the systems as well as the interrelationships. A study of the provincial system would necessitate a comparative analysis to the federal system. This should result in a comprehensive examination of internal

discipline of inmates within Canadian prisons. The Canadian literature has tended to focus upon federal facilities. This thesis, however, presents a descriptive analysis of a facility at the provincial level in B.C. The facility under study is the secure custody, Vancouver Island Regional Correctional Centre (V.I.R.C.C.). An assessment of this institution could provide impetus for a broader comparative analysis of both provincial and federal correctional institutions in the Canadian Criminal Justice system.

An overriding concern of this study is whether or not a balance can be achieved between the inmate's right to due process and the restrictions demanded for prison security and orderly administration. Prisoners' rights have come to include a wide variety of issues. However, in the context of this study the natural justice doctrine of the court system regarding the correctional system's obligation to the inmate, to act fairly, will be examined.⁴

⁴The duty to act fairly has been recognized to include a duty held by administrators to ensure that the individual affected by a particular decision know the case against him or her and be given fair opportunity of answering it or of being heard (Conroy, 1981). The basic principles of justice require that the accused be fully informed of the above and when the decision has been reached that it be done so judicially, upon material before the courts and not capriciously or in reliance upon considerations not relevant to the charge. These definitions, accepted by some in principle become clouded when implemented. The problems are illustrated in the definitional decisions of the courts and legal scholars (Conroy, 1981; Fogel, 1975; Kaiser, 1971; Mandel, 1978; Price, 1977, 1974; Robin, 1984; Turner, 1971).

Methodology

To obtain some indication as to the nature of discretion in the prison justice system⁵ with particular attention to disciplinary decision-making, a number of methods were employed. In an attempt to gather information about the process, correctional and case law were examined including the relevant statutes and internal regulations. Records from disciplinary hearings were analyzed in addition to incidents which were reported but which did not result in a hearing. The institutional records examined included the years 1980-1984. This time span hopefully will shed some light on any initial impact the Charter of Rights and Freedoms in the Canadian constitution may have upon:

1. judicial decisions regarding disciplinary decisions by correctional officials; and
2. continued development of prisoners' rights and correctional administrative law.

Archival analysis of records and case law was supplemented with questionnaires distributed to staff members including correctional officers and administrative personnel involved in security (ie. Director and Chief security officials), and by

⁵This system of justice within corrections is based upon a complex process the decision-making with regard to inmate behaviour. The process of internal prison discipline of inmates is the foundation of this justice system as the values and attitudes of society provide the foundation for the judicial process within the Canadian criminal justice system.

many hours of conversation and discussion with all levels of staff in the institution. From the methods employed it is hoped that a model of the disciplinary decision-making process may be formulated. The perceptions of the individuals surveyed should give indications as to the extent of formal and informal disciplinary actions taken in this setting, and their attitudes toward the process of discipline.

For the purpose of this study, administrative discretion is defined as the degree of decision-making power held by the director of the institution and his senior officers, with respect to the disciplining of inmates for actions deemed to be in violation of the rules and regulations of that institution. More specifically, discretion is the degree of power held by correctional personnel to choose various options of punishment available to them and the ability to make daily decisions regarding the secure functioning of the institution. They retain this power subject to any limits placed upon them by law, regulation or policy.

It is acknowledged that the correctional organization is directed by a decision-making process which is based upon the individual judgment of its workers. The limitations placed upon those decisions, through statutory guidelines and organizational directives, are to ensure an equitable and consistent application of disciplinary procedures. Abuse of such decision-making power may arise at the point where the application of discipline is more a function of individual

preference or bias than guidelines. Abuse, on a broader scale, may be ascribed to the administrators of the organization to the extent that they are aware of any inconsistency in the application of discipline and do nothing to change it.

Internal discipline is the process by which staff manage and control inmates, for the purpose of maintaining the secure custody of the facility. This includes general regimentation of the daily routine employed to ensure the proper adherence to specific rules and regulations. This must be distinguished from punishment in the sense that discipline may be seen to involve preventive or proactive measures, whereas punishment involves reactive measures. Discipline ranges from enforcement, including methods of maintaining order and daily adherence to the rules, through to final disposition in the disciplinary proceedings.

The disciplinary proceedings may be seen as an element within the punishment response. They refer to procedures followed by the staff when responding to inmate infractions of the rules and regulations. Proceedings may take the form of a hearing if the infraction was considered serious, or merely a warning by a line officer, if not considered so. The focus of this study will be more on the formal processes of rule enforcement, such as the disciplinary hearings, as they are easier to assess and draw conclusions from than the informal processes. This does not rule out the desire to include, as much as possible, the informal processes resulting from daily interaction of the staff and inmate as this is no doubt a large

element of the disciplinary process. Many have suggested that the institution would be unable to function as it does without tacit cooperation between the officers and inmates regarding their respective lots (Irwin, 1980; Henry, 1983; Lowman, 1985). It is recognized that the nature of this cooperation may be more difficult to define and interpret.

In the course of the last few decades the size and costs of the criminal justice system have increased dramatically. Concurrent with this, the sphere of its operations have impacted upon the lives of individuals with greater significance.⁶ As a result, sociologists and criminologists are becoming increasingly intrigued with the process of decision-making within and between the networks of criminal justice organizations. They are not only concerned with the types of decisions made, but are concerned with how they are made and who is making them. Examination of discretion and decision-making is by no means a new phenomenon. However the pressures placed upon the existing structures within the criminal justice system have brought this issue front and centre. Much of the research has focussed upon the practices of discretion in the policing and court system, but the correctional system has for the most part escaped scrutiny. As officials of a society based on discipline and punishment of 'undesirables', the keepers have been given a

⁶The Department of the Solicitor General has released a number of reports indicating this change, Costs of Criminal Justice, 1984. Selected Trends in Canadian Criminal Justice, 1979. The Role of Federal Corrections in Canada, 1977.

relatively free hand in dealing with the actions of the kept. The courts have resisted intervention and retained a 'hands off' policy, for the most part, and the public, it appears, does not wish to intervene either.

In recent years the courts have felt obliged to modify their hands-off approach and intervene in more serious cases where the injustice appears to be a significant one.⁷ At the provincial level in B.C. the courts have rarely become directly involved in prisoner appeals as the remedies for any grievances against the institution may be lodged with the Inspection and Standards Division of the Corrections Branch, within seven days of the incident, or with the British Columbia Ombudsman. These two avenues of appeal appear to give the inmate an adequate and effective voice in protecting his right to due process. The philosophy of the duty to act fairly on the part of the institutional management, which has been accepted in recent years by the Canadian courts for federal inmate appeals, exists here as well. The absence of court cases brought against provincial institutions in the face of numerous cases brought against their federal counterparts may lead one to suggest that there are few problems within the provincial prison justice system. This situation, however, may be confounded by other factors. It may conceal a similar dynamic within both systems but because of the structural peculiarities of each system, such

⁷Martineau v. Matsqui Institution Disciplinary Board(No.2).1979
50 C.C.C.(2d)353.(S.C.C.).

as average sentence length and form of grievance procedures available, the ultimate method of resolution may differ.

Upon the examination of many cases it appears that, while the courts have modified their position with respect to federal inmates' rights, there is still a great deal of reluctance to override any decision made by the management of the institution. There is little evidence to suggest that the situation is markedly different in the provincial systems.⁸ Recognizing the distinction between the federal and provincial systems, in this context, is especially important as, to date, all court cases have been initiated from federal institutions. Provincial institutions in British Columbia rely upon the review of the provincial corrections branch and the Ombudsman, and while there may be an acknowledged duty to act fairly at both levels, the specific legal definition of fairness remains unclear.

It may be questionable at times as to who retains the real power when dealing with the internal discipline of inmates within the prison walls. A result of this study may in fact be that the administrator of the institution is simply that, an administrator, and much of the disciplining is done by the correctional officers. Demands from other parts of the justice system may give the administrator little discretion over the running of his institution beyond budgetary and staffing

⁸Paul Perron v. National Parole Board 1982. F.C.T.D.; Re. Cardinal & Oswald & The Queen (1982) 137 D.L.R.(3d)145; Re. Lance David Blanchard (1982) 67 C.C.C. (2d)171. These and other cases under court review will be further elaborated upon in the chapter on prison law.

considerations. This is important since an understanding of the location of the discretionary power in disciplinary decision-making is central to any assessment of the institution's effectiveness both with regard to the maintenance of institutional order and individual fairness.

Summary

There are a number of issues addressed here and each will be dealt with in subsequent chapters. In doing so, what is desired is a clear definition of the process by which a particular correctional institution coordinates efforts to maintain the security of that institution, and the related process of how it deals with inmate misconduct. During the course of this study a number of more specific hypotheses will be tested such as,

1. the criteria for disposition decisions are based on a desire to maintain order and discipline within the institution. Any charge may incur any punishment if it is seen to promote the maintenance of that order;
2. the increase in total admissions corresponds with an increase in total offences. This may be influenced by the correctional officer's perception of the institution's strained resources and the greater need to maintain order;
and
3. there is an effort to conduct the disciplinary process in a fair and just way. However, this is controlled by a greater

desire to maintain the order, authority and a strict disciplinary code of the institution.

Essentially then, what must be done in the examination of decision-making within correctional institutions is an analysis of power structures within the particular institution as well as the power structures inherent in the larger justice system. To fully understand this process, a recognition of an historical basis of the prison and the punishment response is crucial. The disciplinary process in place in Canadian prisons today is the product of 150 years of correctional philosophy and reform movements. An analysis of this sort without an historical context would not adequately explain the existing dynamic.

This thesis is a descriptive analysis of a secure custody provincial facility in British Columbia and the procedures for the internal discipline of inmates. An historical context will be provided with discussion of the philosophies underlying the correctional enterprise as related to discipline and punishment. The major focus will be on the institution not as an autonomous total institution, but rather as a small part of a larger system whose demands upon the institution are numerous.

II. Prison, A Utopian Panacea

Development of Correctional Discipline

Until the completion and occupation of the Kingston Penitentiary, Canadian corrections was characterized by networks of district gaols and lock-ups representative of British influence. Typically, a gaol would be constructed with a few cells and maintained under the jurisdiction of the local police. These gaols were primarily intended to hold the prisoner until the actual punishment for the particular offence could be carried out. Similar to the United States experience, the emergence of the penitentiary system in Canada beacons a new era in corrections marking a shift in the philosophy and politics of punishment. Up to this point in history, the prison in its various forms had not been used for long term incarceration or as a viable punishment for major offences.

The district gaol system continued as the primary focus for dealing with convicted felons in British Columbia as well as the other western provinces partially in response to the sporadic settlement patterns of the Canadian West (Anderson, 1960; James, 1978). The corrections system in British Columbia was comprised of a network of district gaols until the construction of the British Columbia Penitentiary in 1878. This penitentiary was

part of a wave of prison construction by the federal government in its bid to establish presence and control over the territorial dominion following Confederation in 1867 (Zubrycki, 1980). Through the establishment of a centralized penitentiary system including other institutions such as St. Vincent de Paul (1873); Stony Mountain (1876); and Dorchester (1880), other territories claimed by the federal government.

The penitentiary system in Canada has a rather obscure beginning, not so much in its inheritance of a new disciplinary structure from the United States but in the rationale for such a departure from existing structures. Certainly the influences of new social structures as well as economic factors, in Canadian society, (Finlay & Sprague, 1972; Splane, 1965; Zubrycki, 1980) may account for much of the desire to construct and maintain larger and more secure institutions to control those society considered unfit to live among them because of their behavior. There is no shortage of literature in this area and many writers have demonstrated the move to institutionalization was not only restricted to those sent to prison (Scull, 1977; Rothman, 1971; Smandych, 1981). One cannot conclude from this, however, that there is agreement as to the intentions or motives of the architects of the system. In fact, Smandych (1981) focusses his argument upon the variety of opinions regarding the development of the institutions and concludes that none, alone, sufficiently explain the shift in the acceptable treatment for criminal behavior.

Much of the initial intentions and objectives for the new system may have been spurred by some of the writers in the late 1700's such as Jeremy Bentham and John Howard, in their significant contributions to the manner in which the treatment of offenders was addressed. Disillusionment and a certain amount of revulsion toward the forms of punishment commonly employed by the justice system before the introduction of the penitentiary and long term incarceration, prompted suggestions that the penitentiary system was to be the humane alternative to an anachronistic form of discipline. Lengthy descriptions of the forms of torture accepted as legitimate responses to crime, such as quartering, branding and public executions, have been offered by some researchers in an effort to support a particular argument (Foucault, 1977; Ignatieff, 1978; Newman, 1978). It has been suggested that, partially as a result of the brutality and the particular severity of corporal punishment, there was a gradual transition to what was viewed as a more reasonable response to crime - incarceration. The corporal punishment that was to be replaced was however merely displaced by this introduction. Not as charitable to the 'philanthropists' of the Canadian establishment are the accounts that the development was more a case of economic necessity to maintain control of the newly enfranchised territory of the Canadian West by a centrally located government.

Reconstructing the Theoretical Models

A perusal of the above literature leaves one the freedom to interpret the influences upon the development of the institution and its disciplinary philosophy in North America. They appear to fall into two broadly based categories, 1) liberal-pluralist; and 2) radical-elitist. The liberal-pluralists held the rather conventional liberal philosophy that these developments were as a result of the well intentioned benevolence of some elite members of Canadian society who saw the need for moral reformation and the restoration of a lost moral order. The motive for punishment was based upon the deterrence of both present and future offenders. The Select Committee on Prisons and Penitentiaries in 1836, headed by Duncombe, exemplified this position indicating, "how much the cause of humanity has been aided by the recent improvements to the criminal jurisprudence and the penitentiary systems throughout the world" (Baehre, 1977, 189). The early 1800's in Canada, were characterized by turbulence and disruption of social order. It has been described as a very dynamic period in Canadian social history (Copp, 1974; Finlay & Sprague, 1972). The small, stable and closely knit communities of an earlier time were no longer small, stable or closely knit; the mobility of the people had increased rapidly and changed much of the structured Canadian life. A shift had also occurred in the perception of crime and criminals as a result. Ekstedt and Griffiths (1984, 26) noted that when,

[C]onfronted with an increasingly mobile populace and a growing anonymity in communities, the public perceptions

shifted from crime as an endemic and individually situated phenomenon to crime as symptomatic of increasing corruption in the community and the breakdown of traditional methods of social control.

Thus the criminal was seen as a product of the social environment which had obviously been lacking in proper religious observance and family stability. A movement developed to provide these unfortunates with the correct environment where their behavior could be monitored and redirected to more useful pursuits which would benefit the offender and result in creating another productive citizen. Incarceration, penance, and strict discipline was seen as the solution.

These humanitarian and philanthropic motives have been observed by such social historians as Baehre (1977); Beattie (1977); Bellomo (1972); and Rothman (1971). The growing and more mobile population and the rise of urban industrialism, was a major disruption in the status quo of Canadian society, and crime took the forefront in the social concerns of citizens, particularly in Upper Canada. There are conflicting reports among the above researchers as to the actual rate of crime but all seem to be in agreement that, despite the level of occurrence the perception among the citizens was that it had become a serious problem and something had to be done immediately to remedy the problem. Beattie (1977) noted from an analysis of a number of government documents and newspaper accounts that the citizens felt the only way to re-establish the social order was through new penal methods focussing primarily upon the foundations of morality and discipline. Bellomo (1972,

26) also supported the contention that the motives for the penitentiary were primarily reform oriented in humanitarian concerns of the government and citizens alike,

In examining Upper Canadian attitudes toward crime and punishment there emerges a set of values which most members of society shared, regardless of their political persuasion; the chief differences were those of emphasis rather than substance. The torment and toil of these decades disturbed a large number of Upper Canadians. They saw the maintenance of the dominant morality as the only means of restoring law and order.

The liberal-pluralist perspective is probably best typified by Rothman (1971) in his analysis of the development of the institutionalization of social control mechanisms. He also emphasizes the humanitarian response, the perceived crumbling of the social order, as well as a consensus within society as to what should be done with the more unfortunate members of society and why. While his discussion focussed upon the development of institutions for the insane, he generalized, perhaps erroneously, (Smandych, 1981) to the larger movement of institutionalization of other disadvantaged groups such as the poor, the convicted and the aged. He stated:

The penitentiary, free of corruptions and dedicated to the proper training of the inmate would inculcate the discipline that negligent parents, evil companions, taverns and houses of prostitution, theatres and gambling halls had destroyed. Just as the criminal's environment had led him into crime, the institutional environment would lead him out of it (1971:83).

Proponents of the radical-elitist perspective take quite a different view than the pluralists. From this perspective the development of corrections resulted from the rapid economic development of society and the perceived need by influential

individuals in society to protect their economic interests by controlling the population of undesirables including the poor, the insane, and the criminals. All were seen as a threat to the economic status quo. In a discussion of the political role of the penitentiary, Gosselin (1982, 88) recounts of this period in history,

the century was racked by deep economic crisis and successive waves of popular unrest (which took the form of land occupations and tax revolts) that posed a serious threat to the new state. A system of incarceration, combined with armed repression, assured bourgeois control of the country as a whole. Always in the name of combatting criminality, of course.

Similarly Takagi (1975) refers to the emergence of the penitentiary as a consolidation of power by the state and an extension of the monopoly over the punishment response through more elaborate systems of social control.

Placing greater emphasis on the disorganization of a developing society than Rothman and the other liberal-pluralists, these writers view this disorganization as the catalyst to actions of the powerful and their intervention into the lives of the powerless. Emphasis on the development and ultimate influence of the urban industrialized interests in a developing country predominated the works of these writers. Granted, the traditional and very localized methods of control had proven ineffective in dealing with serious offences. However, given this economic development and the subsequent pressures it put on local and national economies, the gap between the rich and the poor grew and the old paternal

structures proved to be outmoded. Scull argued,

The growth of a single national market and the rise of allegiance to the central political authority to a position of overriding importance undermines the rationale of a locally based response to deviance... These factors contributed... to the development of a state-sponsored system of segregative control (1977, 32-33).

Scull (1977, 33) continues, providing an interesting contrast to Rothman's discussion on the relationship between the conscience and the convenience of institutions as he argues that this reformist movement was spearheaded by economic self-interest.

If prisons, asylums and reformatories and the activities of those running them, did not transform their inmates into upright citizens, they did at least get rid of troublesome people... They remained a convenient way to get rid of inconvenient people.

The perspective which is more convincing may simply depend upon the political predisposition of the reader. Both support valid arguments, varying in degrees of clarity, with the appropriate documentation; although standing alone each fall short of fully explaining the movement to institutionalization. One thing remains clear, the social and economic climate of this particular period in Canadian history had a substantial effect upon the movement toward institutionalization of deviants, including criminals. This climate most certainly affected the attitudes of the citizens and as both agree, albeit grudgingly, the inevitable result of that milieu was the penitentiary.

There certainly were influential individuals involved in the direction of this movement who seemed to generally believe that the moral teachings and the strict disciplinary structure

within the penitentiary would solve the problems of social order and reform the offending individual into an upstanding citizen. On the other hand there were also individuals with a substantial stake in what were rapidly expanding economic empires and were equally disturbed by the growing social disorder. Both of these groups left their respective marks on the development of the penitentiary but, given the documentation available on the empire builders of Upper Canada at that time, it is rather much to expect that the outpouring of 'good works' and philanthropy would overwhelm economic desire.

Building a Legacy

Despite the conflicting ideologies of the origins of the penitentiary system, strict discipline and punishment epitomized the routine of the first penitentiary and set the tone for the development of similar institutions across the country. In the years immediately preceding the opening of Kingston, legislators argued the advantages and disadvantages of the two systems in the United States and finally adopted a model from the Auburn prison in New York. Distinctions between the congregate (Auburn) and solitary (Pennsylvania) systems were discussed at great length both in the United States and Canada, culminating with the United States eventually phasing out the latter.

The Auburn system operated on a strict silent system, allowing no social interaction between inmates, and hard labour. Deprivation, strict discipline and performance of unpleasant

tasks were meant not only to deter those offenders and future offenders, but were also meant to bring about penance and reformation. Beattie (1977, 18) noted a clear intent in the legislation that the primary aim of the institution was a combination of punishment and reformation ideals. It expressed the hope that,

if many offenders convicted of crimes were ordered to solitary imprisonment, accompanied by well regulated labour and religious instruction it might be the means under providence not only of deterring others from the Commission of like crimes, but also of reforming the individuals and incurring them to habits of industry.

This underscores the shift in emphasis to the treatment of the offender. The aim of penitentiary discipline was focussed on the apparent root cause of deviance with the ultimate goal of elimination; rather than the emphasis on retribution by the formal legal system. The latter system had been built on the supposition that crime was an individualized phenomenon arising from some inherent pathology of the offender, not from a social contagion.

Kingston Penitentiary had no system of classification or discrimination by sex or age. The strict discipline and severity of punishment is well documented (Shoom, 1972, 215),

Breaches of regulations in the institution entailed punishment of a swift and often brutal nature. From June 1835 until 1842, the punishments adopted were flogging with the cat-o-nine-tails and flogging with the rawhide. From April 1842 to October 1846, irons, solitary confinement, and bread and water instead of regular rations were added to the list.

To say the regime at Kingston was harsh would be an understatement. The techniques of corporal punishment often

'necessary' were used frequently, supported by arguments that this punishment should deter offenders. The retribution of society, it appears, was simply taken behind the walls in the guise of reform. Whether this was intended as the benevolent reformation of an unfortunate soul or a convenient excuse to remove a troublesome individual, the result was the same - the implementation of a repressive form of social control operated by those in society who are empowered to do so through wealth and position.

There are a number of recorded cases of inmates, particularly children, being punished for contravening the strict disciplinary code (Beattie, 1977; Gosselin, 1982; Jackson, 1983; Shoom, 1972). The case of Peter Charboneau is not unique. In 1845, Charboneau, a ten year old boy, was sentenced to seven years in prison. In one year he was given the rawhide on seventy-one separate occasions for such offences as "laughing", "making faces", "staring", and "tricks at the table" (Shoom, 1972, 216). The extent of the punishments were subsequently recorded by the Brown Commission (1849). The recorded number of punishments meted out in 1843 were 770 raised to 2102 by 1845. In 1846 the number of punishments was 3445. This increased to 6063 in 1847, although the number of offenders subjected to this discipline remained the same. To further emphasize the reign of terror by the institutional management it must be noted that records of the incidences of punishments include only the official sanction. Each of the punishments

could include a number of strokes with the lash or the whip.

These descriptions of the strict discipline which has tended to characterize Canadian corrections, to varying degrees, since the opening of Kingston are best explained through the periodic review of government reports which have documented the system's activities. Soon after 1835, both federal and provincial Royal Commissions and Commissions of Inquiry, as well as Reports to Parliament, have occasionally marked correctional history. The issue of inmate discipline within the correctional setting has been a major focus in many of these reports. Each report launched its inquiry with the vigour and the appropriate display of shock and distain from a seemingly unsuspecting public as allegations were brought forth subsequent to the predictable disturbance. Shaking the powers that be in the Canadian establishment into acknowledgement that problems existed and continued to build within the system, may have been the singularly most difficult task of those concerned with the dehumanizing conditions of incarceration.

The Brown Commission, the first to investigate an institution in the Canadian system, presented its report in 1849, against allegations of arbitrary discipline and brutal treatment of prisoners by staff at Kingston Penitentiary. The complacency of the public regarding the form of treatment or discipline applied by legislated authority to prison inmates remains, perhaps, the most salient factor in the continued abuses recorded regarding the power to punish. The casual

indifference proffered the institutions today was also reflected in the views of a newspaper at the time of this Commission:¹

For some 8 or 10 years it [the institution] has enjoyed the singular fortune of being allowed an unmolested existence, not even an enquiry being instituted as to the success of the system of prison discipline which its establishment introduced into the province. People generally seemed desirous of knowing as little as possible of the internal economy of the penitentiary, whether practically or theoretically, and it was left to the sole discretion and care of the inspectors and warden.

The Brown Commission was given a mandate to investigate the allegations of corruption in the institution and uncovered gross mismanagement and evidence of an excessive use of corporal punishment. Restraint and coercion were seen as the only means to maintain authority, and they were employed to the extreme. This being the first inquiry into the new system of social control the allegations may have come as a shock to some whose overwhelming enthusiasm had welcomed the introduction of the institution. As Beattie noted, what was really on trial was the system itself. What the people of Upper Canada wanted, it seemed, were results as is apparent in an extract from a newspaper,

...Let us hope that such inquiry will not be confined to the mere routines of discipline in the penitentiary, but that it will embrace a matter of still greater importance - that is the question whether or not the establishment of that institution has tended to the reformation of criminals and the diminution of crime in the province (1977:150).

¹ Brockville Recorder 12 November 1846. In Beattie J. (1977) Attitudes Toward Crime and Punishment in Upper Canada, 1830-1850, A Documentary Study. Centre of Criminology. University of Toronto. p.148

Aside from the stated conditions of severe oppression at the institution, the Commissioners proceeded to lay responsibility for the conditions directly where it was thought to be due. The warden, Henry Smith, figured prominently in this as noted by the following summary of charges preferred against him by the Commission. They are as follows,

- a. permitting irregular practices (favouratism) in the penitentiary, destructive of the discipline necessary in such an institution;
- b. mismanagement/negligence reducing the penitentiary to a state of utmost disorder;
- c. gross negligence of duties as a warden;
- d. culpable mismanagement of business affairs;
- e. gross negligence and incapability in regard to books and accounts;
- f. starving inmates; and
- g. pursuing a system of punishment in the management of the discipline which is cruel, indiscriminate and ineffective.

What much of the recommendations of the Brown Commission resulted in was a confirmation of the policies and philosophies underlying the Auburn system. The Kingston experience was perhaps an extreme example of the system out of control; such totalitarian management and absolute power within the institution would no longer be tolerated as was clearly indicated by the charges resulting from this inquiry. A board of

penitentiary investigators was established to ensure this. Researchers have argued about the impact of the Commission as they have debated the impact of subsequent Commissions and inquiries. The Commission did not abolish the lash or corporal punishment in general. However, no one could expect them to. As far as the existing principles of discipline were concerned, the Commission left them intact; their concerns lay with the implementation of the principles not with their validity. In weighing the costs and benefits of the new system, the Commissioners came to the conclusion that a "better" form of institution, given its stated intentions, was a combination of the two separate prison systems initially considered by the architects. Strongly recommended was a system of classification by age and type of offender so as to avoid many of the incongruous situations which were observed. A juvenile institution and institutions for the criminally insane should be constructed separately.

The two reports comprising the findings of the Brown Commission in 1849 were very enlightening. Graced with 20/20 hindsight, the social scientists of today can recognize it as the harbinger of things to come for the Canadian Penitentiary Service. While the next major federal report did not come about until the 1930's, the intervening years saw dramatic changes in Canadian society and hence, in the corrections system. In 1913, another Royal Commission report on the state and management of the Kingston Penitentiary was released. Although not as

contraversial as the Brown Commission, this report found many of the same conditions. By the time of the next major report the system had grown to include a network of penitentiaries throughout the country and the federal government had established itself as the proprietor. Canadian corrections now included a well developed federal system as well as separate provincial systems.

The British North America Act, in 1867, split the jurisdictional responsibility for corrections between the federal government and the provinces. The discussion of some form of dual responsibility arose as early as 1841 with a flexible rule of classification in which inmates would fall into the jurisdiction of the provincial or the federal government. It allowed for a discretionary judgment to be made on the sentence of inmates with more than two years but less than seven years. In 1859 the two year split, held today, was settled dispensing with this discretionary period (Needham, 1980). Having now developed as two separate systems, although with similar problems and philosophical and social interrelationships, the reports of both are important. The federal reports having the most overwhelming effect will be discussed as will the developments in British Columbia leading to the present form of correctional management addressed in the study at V.I.R.C..

The practices of corporal punishment illustrated by the Brown Commission did not cease until much later as correctional philosophy gradually evolved. Some punishments included, hosing

of inmates with a powerful stream of cold water (used regularly until 1913); ball and chain worn while the inmates worked (used until 1933); handcuffing to the bars from 8 a.m. to noon and 1 p.m. to 5 p.m. (used in the 1930's); as a 'cure' for mental defectives, dunking in a trough of ice and slush (abolished in the 1930's); rule of silence (abolished in 1945); and corporal punishment (whipping) (abolished in 1972). (Gosselin, 1982)

The next substantial report on the penal system was released in 1938 in the form of the Archambault Royal Commission report. As the Brown Commission responded to disturbances and unrest at Kingston, the Archambault report was responding to a series of disturbances in institutions across the country which had occurred in the previous five to ten years. To this point, the correctional system had already experienced a turbulent history. The major problems revolved around the treatment and classification of inmates. The administration was now faced with a system comprising of many deteriorating institutions creating further problems with the proper housing of inmates. The institutional system was still favored as the appropriate punishment response. However, emphasis upon punishment and penance was gradually being replaced by an emphasis on rehabilitation. The report greatly enhanced this movement. Within the criminal justice system at the time, there were moves toward creating an atmosphere of constructive treatment for offenders and away from the more obviously punitive objectives of judicial sentencing.

The emphasis on rehabilitation was characterized by the introduction of training and educational programmes and the development of the medical model of treatment. Behavioral scientists were granted access to the institutions to study inmates and conduct a variety of experiments. Many of these experiments were aimed at supporting individualized and deterministic conceptions of criminal behavior. The Archambault report discussed in detail the objectives and purposes of prison discipline which tended to give credence to 'firm but fair' management and through this, supported much of the psychological and psychiatric work being done in the guise of inmate treatment. Such treatment was considered good for the inmate and the maintenance of proper respect for the institutional authority- if not abused by that authority.

The report emphasized the dramatic effect of the list of offences against the penitentiary regulations upon the inmate's conduct and daily experience within prison. Debilitating in its sheer number, the list indicated the extent to which the penitentiary officials could go to ensure the smooth operation of a particular institution. In an attempt to cover all the possible circumstances which may arise, the list became oppressive, incorporating all the aspects of the inmate's existence. The offences ranged from 'neglecting to rise promptly on the ringing of the first bell in the morning' [No. 163(25)] to 'neglecting to go to bed at the ringing of the retiring bell' [No. 163(26)] (Archambault, 1938, 56). With the strict regimen

of compulsory chapel service, hard labour, and corporal punishment, the inmates were constantly reminded of the disciplinary machinery available to the state. The Commissioners noted,

The regulations provide so many trivial offences that may be punished in a drastic manner that it is almost impossible for prisoners to avoid committing some punishable breach of the rules. It is, therefore, necessary for them to exercise constant vigilance and to evolve methods for avoiding punishment (1938:54).

Proper or acceptable conduct was made more difficult by the fact that many of the offences were vague enough to serve as 'garbage' offences. That is to say, if the inmate could not be charged under a particular section for a specific infraction, for reasons of insufficient evidence or mere suspicion of misconduct he could be charged with one of these infractions. The list is replete with examples of vague regulations such as: 1) s.163(16)...commits any nuisance; 2) s.163(28)...in any way offends against good order and discipline; and 3) s.163(29)...attempts to do any of the foregoing things (Archambault, 1938, 55-56).

The Commissioners, after an examination of the offences and requisite punishments, expressed disapproval of the practices of denying library, visitor and letter-writing privileges as punishment because this effectively isolated the inmate from the outside world to which he would supposedly return. They, however, offered no other alternative to replace the punishment of denying privileges. When reviewing conditions of corporal punishment for offences it was noted that a number of European

countries as well as the United States, had abolished it. The Archambault Commission chose, however, to give more credence to their judicial ancestors in England, and to the discipline of inmates through the requirement of corporal punishment for infractions. In the interest of discipline, as in the case of English prisons, rather than for the officer's safety, it was felt that flogging must be retained as a deterrence against violence. It was the decision of the Commission that,

Having in mind that there are in the Canadian penitentiaries a large number of vicious and incorrigible criminals, your Commissioners are of the opinion that, in the interests of the maintenance of discipline it is advisable to retain the right to administer corporal punishment, but that the English policy should be put in effect in Canada so that corporal punishment may only be inflicted with the authorization of the Prison Commission, for mutiny, or incitement to mutiny and gross personal violence to any officer or servant of the prison (1938:61).

Despite this suggested recommendation of temperance, corporal punishment was available to be used as a tool to maintain order within the institutions until the early 1970's. The Ouimet Committee on Corrections, in 1969, demanded that it cease being used as a form of punishment.

In addition to the anomalies of the general regulations of discipline, defects were also found in the internal hearing process for such disciplinary acts. Acknowledging the lack of effective grievance procedures for the inmates and the strong sense of injustice and unfair treatment surrounding the Warden's Court, the Commission demanded that measures be taken to correct these inequities immediately. Perceived to be favoring a more

lenient and permissive treatment of offenders, the Commission went on to indicate that discipline had to be maintained, sternly enforced, and infractions justly punished. The authority of the institution had to be fully respected. Some may not agree, however, that respect for institutional authority and the strict enforcement of a disciplinary code are necessarily compatible. The criteria for justly punished infractions may be distinctly different depending upon the individual involved in such a disciplinary relationship as is present within the institutional setting. Institutional authority in such a relationship of power cannot legitimately demand the respect of those it controls by merely being in the position to impose its will.

In an effort to mitigate the present circumstances somewhat recommendations were made for grievance mechanisms to be styled on the British system and a restructuring of the disciplinary panel from the warden sitting alone, to a panel of three prison officers. A more concerted effort was suggested to use the discretionary power that institutional officials had as soldiers of the state in prison to arrive at a more equitable and personalized system of prison justice.

The Archambault report produced numerous recommendations for restructuring the justice system with respect to corrections in Canada. Among them were statements made on prison discipline as have been noted. Acknowledging the overwhelming desire of the prison administrators to maintain order and discipline, the

Commissioners remarked strongly that this must be tempered with good judgment and not be confounded by the excesses which were apparent from the investigation. They had responded to disturbances within a system characterized by confusion and disruption, and what they had found was a justice system which, through overzealous management, was responsible for these disturbances. The charges within prison should be streamlined and made less oppressive; corporal punishment should remain but only in very specific circumstances, similar to the British system; the disciplinary process should be made more equitable and allow for prisoner grievances and, lastly, the panel should be altered to three persons to help eliminate the bias of a single adjudicator.

The Commissioners had found many of the problems the previous Commissioners had found (Brown, 1849). However, the abuses, in relative terms, had not been as flagrant or notorious. The charges of vicious brutality from the earlier inquiry were not present, and the prison regimen, while strict, was not nearly as openly repressive. While many of the similar problems were present, the focus of this report was one involving the procedural abuses in the administration and management of the correctional system. This shift in focus may have been in response, not to a less coercive system of incarceration, but to a more sophisticated one. At the time of the report there was no need for the correctional officers to resort to the abusive ill-treatment of prisoners as had their

predecessors. This appeared much more a case of subjugation of the mind rather than of the body. Placing the emphasis of correctional reform upon altering the physical structure of the organization and procedure tends to signify only a desire to maintain the existing correctional structure with little interest in improving it, as would be faithful to the rehabilitative philosophy. Subsequent Commissions will find much the same conditions, unfortunately with little of substance which had really changed, giving rise to questions of whether the system would ever live up to the expectations of its reformers.

Challenging the effectiveness of rehabilitation and its rightful place in corrections, and once more in response to further disturbances, another committee, the Ouimet Commission was formed in 1968. In the ensuing years after the Archambault report medical treatments in prison had come under harsh criticism, and the correctional administration, it seemed, was becoming uncomfortable with this sceptre. The broad mandate of this committee was influenced by a desire to examine what had come to be recognized as the criminal justice system.

Focussing on the correctional system and its position within the overall criminal justice machinery, the report of the Ouimet Committee (1969) reflected a growing recognition that despite often conflicting goals, the law enforcement, judicial and correctional processes represented integral parts of the same system. They form a sequence of inter-related functions and

should not operate, or be treated as operating, in isolation of one another.

General recommendations were made for the improvement of the criminal justice system, many dealing specifically with the correctional process. The issue of the punishment of inmates for institutional infractions arose in the form of concerns about corporal punishment. While it was not in use with the frequency found in past inquiries the committee noted that it had been used in recent years in Manitoba and was still on the books in British Columbia although it had not been used for a number of years. Taking the modification in the punishment by the Archambault Commission one step further, the Ouimet Committee on Corrections (1969, 324) stated that "corporal punishment is contrary to modern prison philosophy and practice and we recommend its abolition" (1969:324).

In 1975 a report on specific types of segregation was submitted by the Vantour Report on Dissociation. With corporal punishment no longer considered a legitimate punishment for inappropriate inmate behavior, segregation of the offender from the general population in some circumstances appears to have been considered as having the most serious consequences on the inmate. Not necessarily considered punishment for an infraction against institutional rules, the group subdivided the definition of dissociation into three main categories. It considered the removal of an inmate from the general prison population, 1) to protect certain inmates from harassment by other inmates

(protective dissociation); 2) to serve as a means of punishment for a serious or flagrant disciplinary offence (punitive dissociation); and 3) to ensure the orderly operation of the institution (administrative segregation).

While only punitive dissociation is considered part of the disciplinary process, it has been suggested (Jackson, 1983; Price, 1977) that administrative segregation is an effective tool to segregate an inmate in anticipation of an infraction or upon suspicion of inappropriate behavior which could not be sufficiently substantiated by a charge. The stated rationale for this form of segregation would be for the maintenance of good order of the institution.

The objectives of the study group were to examine the utility of this particular treatment and to decide whether it was the most efficient way of providing protection. Following a detailed examination of the effects and requirements of segregation and an analysis of the three categories, the report concluded that administrative segregation should be maintained as a necessary tool of institutional management. Acknowledging the scope of power for abuse of the regulations, they proposed when and how the segregation units were to be maintained. These units were for those inmates whose behaviour was temporarily disruptive and who must be segregated for short periods of time.

Punitive dissociation as a disciplinary measure was also to be maintained in the event that all other measures failed or were impractical. Having made that qualification, the report

also indicated the importance of the director's powers which should be broad enough to ensure that he can perform his role of protection to the public and the inmates as well as exercise his authority simply and swiftly. It is unlikely that the directors' behavior was modified to any great extent by these recommendations as they were again told that the judgment as to what was appropriate or practical was still up to them.

The MacGuigan report to Parliament on the penitentiary system in Canada (1977) was perhaps one of the most damning reports released on the entire system. Necessity for this committee was brought about by a series of major disturbances in institutions, as was the case for the other reports. It began with the pronouncement that the system was in a state of crisis and actions would have to be taken immediately to prevent its complete break down. The central focus of the suggested rejuvenation was stricter discipline and more security from within; an old cure still searching for the proper ailment. The Committee stated,

The restoration of discipline is our basic objective in the reformation of the Canadian Penitentiary Service. Discipline is essentially an order imposed on behavior for a purpose. It may be externally imposed, but internally imposed self discipline is ultimately more important (MacGuigan, 1977:1).

Attention was focussed upon the maximum security institutions within the system. The committee was given the power to inquire into the administrative problems of the institution; the adequacy of security procedures, facilities and correctional programmes; and the feasibility of things such as

Citizen Advisory Committees and Inmate Committees. With the disciplinary process being the central focus of the report, their discussion of justice within the walls was lengthy and ultimately described, paradoxically, the epitome of injustice.

The committee declared that the rule of law must prevail and be characterized by clear rules and fair disciplinary procedures. The rule of law establishes rights and interests under the law and should protect inmates against the illicit and illegal use of any power, private or public, by providing legal recourse. The Archambault report, thirty-nine years earlier, had made a similar recommendation. Statements made about the arbitrariness of the disciplinary board also echoed statements of earlier Commissions, although the composition of the board had been altered. There were three prison officers now instead of a single chairperson, the warden. However, the biases and idiosyncratic behaviour of the panel were still evident. The MacGuigan Committee recommended the formation of a board with an independent chairperson, external to the institution. This recommendation had been made for similar reasons by two previous studies (Jackson, 1974; Vantour, 1975). This time the Solicitor General did act on the recommendation. There have been mixed reviews by criminal justice personnel regarding independent chairpersons and they have remained within the purview of the federal system, not having ventured to the provincial level.²

² The provincial institutions remain with a single arbitor on the disciplinary panel although those responsibilities may vary between the director of the institution and the deputy director who may also have the responsibility of being the director of

Overall this brief trip through time on the trail of federal reports has revealed that to some extent the concerns of each group of Commissioners were echoed by subsequent Commissioners. The shifting emphasis of the inquiries from concerns of brutality and idiosyncratic management to legal and procedural concerns of inmates' rights and privileges certainly leads one to believe that the system has become much more accommodating. Nonetheless, simply because inmates are not being constantly whipped into line does not indicate that the dilemmas facing the inmate or problems facing management are less serious; they are merely different.

The B.C. Experience

The discussion to this point has concentrated on the development of the penitentiary system in Canada to the exclusion of the provincial gaol systems. Development of the provincial gaols began much earlier with the western expansion of settlers and the Hudson's Bay Company. The Hudson's Bay Charter provided the Governor with the power to create and enforce laws and ordinances in the west. The subsequent mandate extended to the point where the officials of the company became the government's agents of social control (Anderson, 1960). By 1812, the need for a prison was seen as crucial and the Red River settlement in Manitoba became an important centre for prairie justice.

2(cont'd) security.

The discussions of paternalism, humanitarianism and economics which existed during the development of the penitentiary in Upper Canada between the proponents of the liberal perspective and the proponents of a more 'Marxist' perspective were absent. The main consideration for the establishment of the district gaol system was social control of the 'criminal element' in the developing west. For the next fifty years as the Canadian west became more populated the provincial gaol systems developed accordingly. As each province entered Confederation, the gaol systems aligned themselves with the federal system under the North West Mounted Police (upon inception in 1873) acknowledging the provincial government's commitment to a philosophy of social control. The system remained under the authority of the police, both N.W.M.P. and local police superintendents, until early into the 1900's.

British Columbia had a network of lock-ups and settlement guardhouses under the purview of the Hudson Bay Company. The first permanent gaol in British Columbia was Victoria's Bastion Square gaol built in 1858 and operated by the local police until 1871 when British Columbia entered Confederation. The gaol system continued to develop rapidly as the province became more populated and mining towns developed on the frontier. Busily establishing the administrative structure of the provincial system after Confederation, annual reports on the state of the system, which included the practices of discipline, began in 1880 (See Appendix A).

The report outlined a set of standardized 'Rules to be Observed' covering the new gaols in Victoria and New Westminster, stating,

The conduct of prisoners during the year has been good and the punishments for breach of prison discipline of a light character. It is found that kind, generous treatment, with a strict just enforcement of the prison rules, has much improved the conduct of prisoners (Sessional Papers, 1880:337).

The rules applied to the obligations of the inmate to conform to the regimen of the gaol by obeying orders, and maintaining a clean and orderly cell. It also included duties of the gaolers as well as punishments for infractions of the rules, such as, 1) solitary confinement in a dark cell; 2) bread and water diet, full or half rations, combined or not with the first punishment; and 3) cold water punishment, with approval of visiting physician.

As the administrative structure became more cumbersome and the gaol system larger, the police and prison system was reorganized. However, the prison officials were still responsible to the police superintendent. The regulations were amended for all gaols (including the addition of Naniamo and Kamloops) in 1894 and included in the prison report. Much of the report reads as a procedural document outlining duties and specific powers of officials, but it also included a more detailed and explicit list of offences against the institution and the punishments possible for those infractions (See Appendix B). The sanctioning of behavior was not a duty of the warden of the gaol but one of the police superintendent. It would only be

a duty of the warden if the latter were absent (Sessional Papers, 1894).

The initial inquiry into the gaol system in British Columbia was strikingly similar to the initial inquiry into the Canadian system in 1849. This inquiry, in 1901, regarding the provincial gaol at New Westminster dealt to a large extent with allegations of impropriety by the warden. The charges included: neglect of duty; poor treatment of prisoners, and immorality with women prisoners. It subsequently called for the warden's resignation.

Vancouver Island Regional Correctional Centre (V.I.R.C.C.), and its predecessors, figure prominently in this history, although the present structure was only built in 1912. It was constructed to replace the Victoria City Gaol on Topaz Hill built in 1886; which was built to replace the original, but deteriorating Bastion Square Gaol. Once built on its present site in Saanich, V.I.R.C.C. went through a number of changes and took on a series of roles. Initially, from 1913 to 1916 it was known as Colditz Gaol (holding P.O.W.'s from 1914 to 1918); then from 1916 to 1954 as the Colditz Centre for the Criminally Insane. From 1954 to 1966 it was referred to as Oakalla Prison Farm - Vancouver Island Unit; then until 1971 was shortened to Vancouver Island Unit. Since 1971, it has been known as Vancouver Island Regional Correctional Centre (City of Victoria Archives).

Its versatility was mentioned briefly in a report on the State and Management of Gaols in B.C. in 1950 (Pepler, 1950, 24). The report stated,

...in the event of the mental hospital obtaining new quarters for this institution close by, this building could be readily converted into a gaol or institution to house chronic alcoholics and, in addition, if thought advisable, drug addicts. The cell blocks are still intact and with comparatively little expense the building could be converted into an institution of this type..

There had been no major overhaul or improvement of the system in British Columbia since the building of V.I.R.C.C. and the Lower Mainland Regional Correctional Centre (Oakalla), in Burnaby, in 1912 and the report was intended to examine the state of the gaols in the province but more specifically to inquire into the state of overcrowding and general conditions in Oakalla. This was, once again, brought to the attention of the officials through the warning system of unrest and disturbance.

In 1973, the Matheson Commission examined the correctional services and facilities available in British Columbia and made recommendations pursuant to their findings of the state of such services and facilities. It did not deal specifically with the disciplinary process within the institutions, but focussed upon the interdependence of the major components of the criminal justice system in the province. It also emphasized the importance of a systems management approach to changes or reforms to any part of the system.

Dealing more specifically with the management of a particular institution was the Proudfoot Commission (1978) on

female offenders. The appointment of this Commission resulted, again, from allegations of inappropriate conduct. In this case the allegations were regarding conduct between staff and female inmates at Oakalla Women's Correctional Centre. It dealt with a series of issues specific to the effects of incarceration on the female offender. Additionally, it dealt with matters of discipline and the status of the correctional rules and regulations, the same as those in the male institutions. Proudfoot joined the other reports of the federal correctional system appealing for an independent chairperson for the disciplinary tribunal. The Commission also demanded action on the proposed changes to the rules and regulations; this having been completed soon after the publication of the report.

The apparent confusion as to the status of the rules and regulations, resulting from an extended review, had led to great inconsistencies in the manner in which they were being enforced. While this report dealt with a secure custody facility for women in the province, it appears as though the concerns of prison discipline and justice may be similar to those in male institutions.

Summary

The initial and lasting impression from the documentation of the history of discipline in Canadian institutions and provincial goals is the sensation of a system spinning its

wheels in ultimate resignation that the past experiences will reoccur and to anticipate more would be mere folly. This string of reports had all included their share of 'new' scandals which in fact were the forgotten disgraces of the previous reports.

The focus over the years has changed, and granted that the appalling physical brutality evidenced in the early reports is not as predominant, substantial abuses of the power conferred upon the prison officials are still being recorded (Jackson, 1983; MacGuigan, 1977). The questions arising from this become challenges to discover the extent to which these reports can be verified in different institutions and at different levels of correctional jurisdiction in Canada. Correctional history may be described as a series of failures and successes by some observers given, for example, the nature of the physical structural changes in the system or the legal status of the inmate. However, while it can be acknowledged that the prison system has become more accommodating toward the consideration of the separate lives it controls; the indifference and hopelessness of its personnel regarding the system's ability to attain any of its stated goals, overshadows any of its past 'successes'. Once seen as the panacea for all social ills, the prison has become yet another casualty of reform in the attempts by the criminal justice system to achieve the ultimate method of controlling inappropriate behavior.

As the following academic studies indicate, conflicts seem to be an inherent part of the correctional organization and one

should not be surprised by the conclusions reached by these government reports. One may, however, be distressed over the complacency of both the public and the government, after the initial reaction, to accept such realities.

III. Studies on Correctional Management & Prison Discipline

In reviewing the available material concerning the disciplinary process for inmates within the correctional setting, one must initially recognize the overwhelming ability of the process to permeate the actions and intentions of all those involved. Something so integral to the management and operation of the correctional system as the disciplining of inmates, elicits numerous opinions from other structures within the criminal justice system, the political arena and from the community at large. At one point in history, the authority in the correctional process was unquestioned and the value of sanctions was validated merely by their official implementation. The institutional authorities became not only the representatives of society's justice system, they also became the designated authorities of appropriate standards of morality in society. With morality justifying punishment, to a large extent, few dared to intercede. That administrative freedom no longer prevails at the institutional level.

Authority, however tempered, is still the major issue in corrections, this may reflect itself in the power held by the manager of an institution to direct and control the actions of his or her employees or charges; or perhaps more visibly, in the ability of a correctional officer to control the actions of an inmate by imposing his or her will within the limits established

through that official position. The evolution of corrections brought a subsequent evolution of that authority which has been reflected in the internal disciplinary process. A discussion accommodating the past and present disciplinary regimes within the correctional institutions in Canada must include an analysis of correctional management and the organizational dynamics of those institutions. This is necessary in order to fully comprehend the balance of power present in a correctional institution today, and the limitations to authority granted to prison officials. The following studies emphasizing the management and control of inmates are of several types, including,

1. Studies of the structural factors of the correctional organization which could accommodate the strict internal codes of discipline;
2. Sociological and psychological dynamics of prisonization focussing upon studies dealing with the working relationships between the correctional staff; and
3. Studies specifically related to the manner in which correctional staff enforce discipline and deal with institutional misconduct.

These studies will be dealt with separately, for the most part. However, there are some studies which may be included in more than one of the above categories depending upon the scope of their analysis.

Structural Factors of Correctional Discipline

Studies of the decision-making process deal more precisely with the theory and the practices incorporated into correctional administration and management. As a branch of the government, the correctional system and its policies should be seen primarily as a reflection of government organization and hence, subject to the social and political definitions of criminal behavior requiring incarceration. As with any government agency, it is subject to the many daily pressures related to public expenditures and public service personnel. Ramifications for long term or even short term correctional planning, physical restructuring and general policy making decisions are enormous.

The models of correctional policy take on many faces and often alter their form as a result of changing government policy or changing governments. There may be a government position expressed by the corrections branch as to a specific philosophy of correctional treatment but this may be implemented in various forms at the institutional level. Essentially the formation of correctional policy may be comprised of varying degrees of emphasis on the offender and on the community. This underlines what may be the most contentious issue in corrections which questions the compatibility of the custody orientation with the rehabilitation of the offender. The concern, for the most part, is with the protection of society and on the other hand that concern is transferred to energies for the betterment of the

offender. There are four orientations in this model which appear to be the accepted alternatives,

1. Reintegration-high concern for the offender, high for community;
 2. Rehabilitation-high concern for the offender, low for community;
 3. Reform-low concern for the offender, high for community; and
 4. Restraint-low concern for the offender, low for community
- (Duffee, 1980; Griffiths et. al., 1980; Jaywardene & Jayasuriya, 1981). Many researchers have acknowledged the necessity of recognition of the interactionist philosophy when dealing with these models (Bartollas & Miller, 1978; Duffee, 1980; Ekstedt & Griffiths, 1984; Lombardo, 1981; Thomas & Poole, 1975).

This general, rather sweeping approach to correctional philosophy, may in fact be overshadowed by the importance of a more focussed model of communication in the discussion of a particular institution's method of internal discipline. This model, referred to as the Johari window by Bartollas & Miller (1981), and adapted from Luft (1969), is an interpersonal relations model that measures the ability of the supervisor to facilitate or hinder the flow of interpersonal communication. There are four regions in this model illustrating the various levels of interaction between supervisors and others.

FEEDBACK

| | | Known to Others | Unknown to Others |
|--------------------------------------|----------------------|--------------------|----------------------|
| E X P O S U R E | Known to Others | I ARENA | II BLINDSPOT |
| | Unknown to Others | III FACADE | IV UNKNOWN |

The amount of emphasis given each of these alternate modes of communication, as in the case of the above penal philosophies, varies depending upon the behavior of the supervisor. The ease at which a manager of the institution can achieve an optimal level of feedback and exposure i.e. the arena position, the easier it will be for him to fully communicate ideas to the officers in his charge, and have them accepted. The model is based upon levels of awareness in interpersonal interaction. The quadrants represent varying degrees of communication, from the open communication between all parties, ie. the arena position; to an area of unknown interaction in which neither party is aware of certain behaviours or motives. These motives may surface at a later date and then are realized as having influenced the relationship all along. An example of this may be a situation regarding the expectations of organizational goals. The individuals involved in the

relationship may be unaware of a disparity in the expectations of the organization, and thus create difficulties among themselves. Until these disparate motives and behaviours become apparent to both parties the difficulties are likely to continue. These general principles of organizational interaction are crucial in setting the atmosphere of control and discipline. Their importance, while not ignored, seems certainly understated in much of the literature on correctional discipline.

The ability of a correctional institution to fulfill its mandate of the secure custody of offenders could be greatly hindered by a flow of information within an organization which is not based on an attitude of openness and two-way communication. Acknowledgement of the effect of the officers' attitudes toward a particular form of discipline in the correctional process is paramount in any attempt to discuss the effectiveness of the institution. This commitment to a disciplinary philosophy must be understood by all parties concerned. The ambivalence toward corrections shown by the rest of the criminal justice system, and by society, has provided corrections with the ability to function in obscurity and relative anonymity. Thus, many individuals in society may assume that no problem exists with regard to fundamental correctional philosophy, when in fact, one may.

Historically, aside from the reports of disturbances within the federal and provincial systems, and the intermittent inquiries by government, little information appears to have been

directed to the general public about the daily operation of the prisons. However, as the public have become more cognizant of the impact of the criminal justice system, through the print and electronic media, on the lives of inmates and free citizens alike, correctional managers have been forced to become more accountable for their actions to both the administrative branch of corrections and to the public. The reluctance to speak to the media, or anyone outside of corrections, is understandable, given the degree of contact and accountability which has existed in the past, as well as the sincere interest on the part of the public to participate in the warehousing effort once a conviction has been reached in court.

Justice system factors impinge upon corrections at a number of different levels and from a number of different sources. The director of an institution is often at a loss to buffer the institution from these policy assaults and can do little more than follow the directions from the regional branch, provincially or from the correctional service, federally. This was emphasized by Bartollas & Miller (1981) in a discussion of differences between the ability of contemporary institutional directors to make administrative decisions, and the same ability of their counterparts, a generation ago. Carson (1984) also noted this narrowing of decision-making ability in the discussion of the present role of the director.

In the present study, the remark was made by the director to the effect that the position had become one of a "super paper

shuffler". Despite this, he has one final frontier which remains for all intents and purposes, his own. This frontier is the internal disciplinary process with respect to inmate misconduct. In the case of British Columbia while there are directives from the branch and a standardized issue of the Correctional Centre Rules and Regulations, these official documents have the flexibility to adapt themselves to various institutional structures within the province and particularistic philosophies. Testament of this may be noted in the frequency of particular dispositions allotted in different institutions. While the institutional populations vary, observable significant differences appear in the frequency of application of relatively serious dispositions among similar regional correctional centres and institutions of equal security status. Methods of dealing with similar infractions may in fact be quite distinct. In order to obtain a more complete understanding of the factors involved in creating and sustaining the present correctional system, the following literature provides insight into the discussion of the autonomy of corrections and its employees.

Work Relations Affecting Institutional Order

Work relations and job satisfaction among criminal justice personnel has been an important area of study to researchers. Correctional personnel have become subject to studies of this nature more frequently in recent years. Poole & Regoli (1980) studied work relations and cynicism among prison guards. In an

effort to operationalize the term cynicism they made reference to previous work done in the area (Regoli et al., 1979). However, they felt that the importance of the interactionist factor had been understated.¹ The sense of the futility of effort was consistently noted among the guards and the cynicism arising from daily experience was seen as an adaptive response to the frustration and inherent conflict of the environment, as well as a defence mechanism for coping. It was felt that the development of such work styles and ideologies was the result of interaction with others in the institution, at three specific levels, the inmates, the coworkers, and the administrators. The relationship between the guard and the inmate is, understandably, one of structured conflict, by nature of their roles as keeper and kept and was so recorded. One is naturally suspicious of the other and the guard is in a constant state of anticipation in an effort to prevent any disciplinary problems. Surprisingly, the researchers failed to find the comradie which might be expected among the guards given their condition of mutual dependence. They noted collegial isolation and role prescriptions which stressed personal accountability as opposed to any substantial degree of collective responsibility and cooperation.

¹The authors had identified frustration and disenchantment as variables signalling cynicism and had conceptualized it as "a stage of psychological latency where the connection is established between strain toward anomie and the worker's personality." Acting as a defense mechanism it would then allow the worker to maintain his self image by reducing anxiety (Regoli et al., 1979, 185).

To further fulfill the role of the classic alienated worker it appeared as though the administration was unwilling to support their line authority. They gave the impression of being unconcerned and aloof, consequently the inmates seemed free to show disrespect to officers, realizing they had little power to enforce the rules.

These issues of alienation and occupational cynicism have been noted with similar results in other studies (Farmer, 1977; Lombardo, 1981) which also acknowledged the significant effect these may have on institutional policy and management. The effects are difficult to quantify. However, results might be fewer charges laid in the belief that the warden or administrator will dismiss the action; a more lenient and less disciplined staff; a poor social climate in that the workers will be dissatisfied with the working conditions and work generally; and lack of motivation or incentive to do any more than absolutely necessary. All these results pose serious problems to effective management of the institution including the disciplinary control of inmates.

The disciplinary relationships within the institution have been examined by a number of previous studies and the concerns of organizational inconsistencies and correctional worker 'burn-out' have been substantiated (Glaser, 1977; Lombardo, 1981; McLaren, 1973; Poole & Regoli, 1980; Ramirez, 1983; Shoom, 1972). In their study of role stress and custody orientation regarding disciplinary actions, Poole & Regoli (1980) noted an

increase in the commitment of officers toward a custody orientation as role stress increased, resulting in a recorded increase in the reporting of disciplinary infractions. This study typifies many of the others which have acknowledged similar role stress phenomena in conjunction with the social isolation of the officers within the institution, dissatisfaction with their respective positions in the correctional hierarchy, and their exposure to inconsistent and often irrelevant directives from the correctional management. This work was inspired by Jacobs & Retsky (1975) where it was noted that the guards reverted to a role which could be objectively evaluated by superiors when forced, to do so, through the frustration of coping with inconsistent directives and the psychological strain accompanying a guard's job in corrections. That role is one of security and maintenance of institutional order. An alternate response to the cynicism created by the role stress is one of laxity in enforcing the rules and a general apathy toward the maintenance of those rules. This has been noted in various cases examining work relations in a correctional setting (Farmer, 1977; Regoli et al., 1979).

These studies outline the social psychology of some of the relationships within the correctional social structure and emphasize that the disciplinary machinery is strongly reliant on the stability of those relationships to perform effectively. The results should give one cause to question whether the

ambivalence toward corrections in the past can be compensated with renewed efforts to ensure that the socialization of the employees in the system is a positive one, stabilizing what appears to be a very unstable environment.

Decisions of Rule Enforcement

Studies of discretionary decision-making in criminal justice abound. However, studies dealing specifically with correctional decision-making are infrequent and generally lack substance. Corrections is one of the areas of the criminal justice system surviving and flourishing while the public remains relatively unaware of the manner in which it operates. Public exposure to the other parts of the criminal justice system is much greater than it is to the correctional system. It seems, that once an individual has been convicted of an offence, many assume the criminal justice process is over. As a result, horror stories of injustice, cruelty and inhumane conditions in corrections seem to prevail in many discussions because this is all many people are aware of regarding prison. Social scientists have only recently begun to seriously examine the decision-making process behind the walls.

The criminal justice system today is the product of patchwork legislation involving either policing or judicial or prison reform although recently, initiatives have focussed upon concerns for comprehensive system reform. In its history,

corrections has had difficulty fitting into the general criminal justice responsibility for the administration of justice. Once a part of the policing organization, it has attempted to develop a legitimacy of its own. Underscoring its apparent lack of consistently accepted philosophical direction is the predilection of corrections to attach itself to any promising panacea. The experience of correctional practice seems to have been characterized by rejection and ostracism by the other parts of the criminal justice system, and has been acknowledged as the dumping ground for the undesirables labelled by the system. Consequently, personnel working in corrections are ascribed little in the way of social status and the striving for professional status and recognition is often met with scepticism (Jacobs, 1983). It is rather paradoxical, that in being given the responsibility to change those people society has outcast, corrections has been treated by society as society has treated its outcasts. Perhaps partly for this reason the corrections branch and its plethora of institutions have turned unto themselves. No one else appears to be willing to associate themselves with the distasteful task of caring for society's criminals.

Breaking this barrier is a difficult task, as many an interested observer is seen as an outsider poaching for a sensational story to malign the administration. One encounters administrators, who discount as self-serving, efforts to examine the process and its efficiency or its compatibility with other

parts of the criminal justice system. Reference to these studies are made with suspicion and are characterized by comments such as, "we are very sensitive about reports like these in which the subjects always turn out in a bad light".²

Overcoming this obstacle are some social scientists observing particular aspects of correctional decision making. Notwithstanding the general rules and regulations of the corrections system, the process of internal discipline or justice behind the walls is under the purview of the institution itself. Jackson(1974) has the distinction of being one of the very few individuals in Canada to study this form of decision making. His analysis was a descriptive report of the entire disciplinary process in a Canadian penitentiary. Others have examined portions of the process focussing upon the more extraordinary elements such as solitary confinement (Vantour, 1975), and civil liberties and fundamental human rights (Kaiser, 1971; Mandel, 1978; Millard, 1984; Price, 1977). The vast majority of the work done on the Canadian system has been from legal scholars decrying the inadequacies of due process protection and attempting to protect the individual against gross violations of human rights. Both concerns are now entrenched in the Charter of Rights and Freedoms. Prison discipline has been one of the many subjects under review by Royal Commissions or Commissions of Inquiry (Brown, 1859;

²This was encountered in the initial phases of the present study, when the researcher was attempting to gain access into an institution.

Archambault, 1936; Ouimet, 1969; MacGuigan, 1977). Rarely has there been any cause for the corrections system to be moved to extoll its virtues as was noted in the previous chapter on the development of corrections.

Some social scientists in the United States have been a little more successful in breaking down the barriers to study disciplinary and sentencing practices in institutional proceedings (Barak-Glantz, 1982,1983b; Flanagan, 1980,1982,1983; Gifis, 1974; Harvard, 1972). Many have gone beyond mere descriptive analysis to a more elaborate analysis of variables affecting the disciplinary process. These variables range from inmate factors (i.e., time served and race) to factors relating to the discretion of the administration and the ramifications of a system built on relationships of authority and power. In many of the studies there are causal inferences made to the effects of role stress and cynicism among officers but little is written in conjunction with what influences they may have on the ability to affect consistent and reasonable decisions by officers faced with the daily pressures of keeping people locked up.

Canadian Inroads

Aside from broadly based provincial Commissions of Inquiry (Garson, 1983; McGrath, 1968; Pepler, 1950; Shapiro, 1978) any studies detailing prison disciplinary procedures have been in reference to the federal correctional service of Canada. Similar processes in provincial facilities may not have been considered

worthy of review given that the nature of the offences for which the inmates are incarcerated in provincial systems is less serious than those warranting incarceration in federal facilities. However, as will become apparent the same problems and issues discussed in the federal context are very much in evidence at the provincial level.

Approaching the issue from a legalistic perspective, Jackson (1974) reviewed the principles of legality and the legitimation of authority within the prison context. Distinctions between this internal justice system and the societal criminal justice system are many. While the emphasis is placed upon the legal efficacy of the private criminal code and the mechanics of the operation, Jackson also analyzes data from transcripts of disciplinary board hearings over the years 1968-1972 as well as a four month period of personal observation in 1972. Interviews were conducted with inmates, guards, counsellors and administrative staff in addition to several internal committees.

To strengthen his argument that there were substantial violations of human rights within the prison system, the report was a comprehensive structured analysis of the process, interspersed with case studies and examples of particular alleged abuses by the administration. Matsqui Institution, a medium security federal facility in British Columbia's Fraser Valley, was the institution under study. At the time of the study it held a very high percentage of offenders on drug

related charges. Many of them were drug addicts. In examining the proceedings requiring disciplinary actions, Jackson realized that the frequency of drug related infractions in these disciplinary actions was significant. These offences appeared to result in the largest proportion of serious sanctions imposed i.e. segregation and loss of remission.

The regulations did not state that possession or use of drugs was an offence, but the charge laid for possession or using drugs, was under s. 2.29(k) as an act calculated to offend the good order and discipline. It was also a practice to charge drug related offences under s. 2.29(h) as acts of wilful disobedience or failure to obey a regulation or rule governing the conduct of inmates. This was merely one example of how the officers coped with what was considered unacceptable behavior (drug possession or use) when the regulations did not clearly state the action to be taken. Characteristic of such an environment and its mechanisms of control is that the regulations must be ambiguous enough to apply to the innumerable situations which may arise and yet clear enough to ensure that the inmates understand their purpose and respect their legitimacy. What results is a very fine line between legitimate enforcement and subtle abuse.

In his examination of these actions as well as others, Jackson documented incidences of selective enforcement by the line officers similar to that of police officers on the street. He emphasized the pivotal position of the guard and the

subsequent responsibility he has to ensure that the process is fair and to shoulder the blame if it is not. The guard holds one advantage when dealing with the offender that the police officer may not, a prior knowledge of the offender's activities (and possible prior infractions of the rules) gained from contact within the prison. This factor has been acknowledged as significant in many of the penalties awarded for disciplinary infractions. The bias which may result in judgment from the anticipation of misconduct not only rests with the officers but with the conduct of the management in the tribunal procedures. Given the consequences brought about by a conviction in the disciplinary hearing (lost privileges, addition to sentence, parole delayed) and the apparent diversity in sentencing decisions in the hearing, the actual power of the line officer becomes a very real concern. Some may begin to question the degree of control that the director of the institution really has over the disciplinary process within his own walls.

For these reasons, Jackson details the inmate cases which have resulted in court actions, beginning with the initial Canadian case, Regina v. the Institutional Head of Beaver Creek Correctional Camp, Ex Parte McCaud 1968, 2 D.L.R.(3d) 545.(S.C.C.) In an argument in which he formulates a due process model and a bargaining model and finally settles on a compromise, Jackson provides examples of actions taken in cases involving disciplinary transfers and non-punitive dissociation. As stated previously, in Chapter II, the latter may often be

used by the administration to dissociate an irritating inmate against whom the evidence of infraction is very weak, but a suspicion is present. This form of dissociation for the good order and discipline of the institution may, then, effectively become a form of punishment for some tenuous offence category.

To provide the prison justice system with at least the veneer of due process it was recommended that a board of visitors be established, similar to the British system, providing an external community review of grievances. Jackson also emphasized the necessity of an independent chairperson for the disciplinary hearings, as did the Vantour report one year later. He also emphasized the importance of a lawyer's involvement on the side of the inmate. It was his position that the participation of legal counsel might facilitate the development of prison administrative law. Additionally, a negotiation model, emphasizing reconciliation between the parties, was suggested. The qualifier to this is that the dual system of the bargaining model and the due process model depends upon the specific institution and security level. Some cases and some institutions may be more conducive to one aspect of this model than another, but the advantage is that the model "honestly recognizes the inherent contradictions within prison but permits for greater flexibility within different institutions" (Jackson, 1974, 101). It seems that aside from brief statements such as this, many of the factors involved in the social climate of the institution which may ultimately

dictate the actions of those involved, were overlooked.

Jackson's was perhaps the most comprehensive work dealing with the entire disciplinary process in a single institution and the practical, legal and moral ramifications, which could be generalized to the entire Canadian correctional system. He continued his work focussing more specifically on one particular disciplinary award in his 1983 book Prisoners of Isolation, Solitary Confinement in Canada, in which he discussed the courts' inclinations toward what is often considered the most brutal and coercive measure of discipline. A more detailed examination of the court reaction to inmate appeals described by this study will follow at a later point.

As a result of the descriptive nature of the study Jackson(1974) opened many doors and, while answering a great many questions he also succeeded in raising many more. A more focussed series of studies was then necessary in the Canadian context for a complete understanding of the dynamics of discipline within a secure institution. An assessment of the inmates' legal status, particularly as reflected in court decisions, appear to be necessary although Jackson gave the impression that the courts were not interested. This was not the first study which addressed the legal rights of inmates nor was it the last. It was, however, the most complete. The majority of Canadian studies dealing with correctional discipline are in fact substantially legalistic in nature. Kaiser (1971) specifically dealt with the loss of civil rights upon

imprisonment³ and the inadequate legal protection given an incarcerated individual. Discussion continued to focus upon natural justice and the rule of law in corrections (Mandel, 1978; Price, 1977, 1974), Canadian academics and criminal justice practitioners did not become overly involved despite the other unanswered questions, aside from a few intermittent reports which held a limited mandate and which were equally descriptive (MacGuigan, 1977; Vantour, 1975). As a result there was a failure to fully appreciate the importance and influence of the organizational dynamics of the institution within which the disciplinary process exists.

Disciplinary Structures & the Dynamics of Misconduct

The American literature has explored disciplinary decision-making more extensively than the Canadian literature. Comparable work to Jackson's report has been attempted by a number of researchers (Barak-Glantz, 1982, 1983a, 1983b; Flanagan, 1980, 1982, 1983; Gifis, 1974; Harvard Centre, 1972). In their empirical analyses these researchers identified as significant some factors discussed by Jackson, in addition to others.

Flanagan's study of the sentencing procedures in prison (1982) reviewed and subsequently reported many of the findings

³The author discusses the concept of civil death and the implication that the inmate is a slave of the state during his incarceration first mentioned more than 100 years ago in Ruffin v. The Commonwealth of Virginia (1871).

of previous studies dealing with prison justice. In this descriptive study he discussed general issues of deterrence and fairness, analyzing the inherent bias of the panel members toward the inmate, and the apparent dispositional nature of the hearing itself. The data were collected as part of a study of long term incarceration. The final sample of 901 subjects from 14 facilities were randomly selected from a pool of 1000 randomly chosen subjects from 44 facilities. The facilities were stratified by type and size of facility and the subjects were then chosen. Knowledge of specific inmate characteristics and institutional factors may contribute to the level of inmate misconduct predictions, as noted in his earlier work (Flanagan, 1980). However, these variables do not distinguish between types of misconduct observed. He concluded that

These data suggest that dispositions vary across facilities and may be related to variation in the organizational atmosphere, perceived need for controls, institutional population characteristics or other factors (1980:227).

Possibly one of the more significant findings which had been noted in previous work (Harvard Centre, 1972), was the rather tenuous relationship between perceived seriousness of the infraction and the subsequent severity of the disposition. The question demanding further attention was the proportionality of penalties. The researcher could not substantiate the suggestion of arbitrary behaviour of the institutional authorities, nor the implication that the decision was solely an objective evaluation of the seriousness of the offence. This is in contrast to the

Harvard Centre study which noted an arbitrary process of discipline and little in the way of administrative guidelines to assist correctional officers. This study, which had been limited by broad offence categories and a lack of detailed contextual information related to in the original charge, concluded that the research,

...[d]id not support the unqualified contention that the decision-making was based primarily on objective assessment of seriousness, the findings also do not support the opposite notion that it is an arbitrary process based primarily on exogenous factors (1980:234).

Virtually all the studies noted, had reported the incongruity between the original charge and the ultimate disposition as statistically significant or, in non-empirical work, as having been very influential in the decisions which had been observed.

Despite this, the more visible factor, the "inmate component" of the misconduct interaction, has been the major area of study by most researchers on prison misconduct. Two other articles written by Flanagan (1983,1980) dealt with factors which appear to predict some of the misconduct. Flanagan (1983) noted that some of the factors, while important were not sufficiently predictive to justify classification, such as age at commitment, current offence and type of sentence served. Spurious relationships noted were race, intelligence, overcrowding and the type of facility. In an earlier article, taken from the larger study on long term incarceration, Flanagan (1980) noted that the infraction rates of long term inmates were significantly lower than those of the short term inmates. He

concluded that the data suggested a method of adaptation to prison by long term inmates which can be distinguished from those in for the short term.⁴ Differential modes of adaptation were also noted by Barak-Glantz (1983a) in his typology of patterns of misconduct among inmates. Focussing particularly on prison misconduct and its relationship to prisonization, he dealt primarily with solitary confinement. Identifying four types of offenders,⁵ the author invited further research to be conducted on the demographic characteristics of the offender to facilitate future prediction. This type of analysis was considered to be a means to the end product of analysis of the selective enforcement process. Like many of the other researchers (Barak-Glantz, 1982; Ramirez, 1983), Flanagan concludes that the complexity of the staff-inmate relationship in the daily operation of the institution is the overriding factor in the understanding of the justice model in prison, and should be the subject of further study. Much of the research, however, has focussed, and continues to focus upon, the particular characteristics of the uncompliant inmate. Partially

⁴The groups were defined by the researcher as those who had served at least five years of continual confinement before release (long term); and those who had served less than five years (short term).

⁵ The four types of offenders consisted of the Accidental/Incidental offender, identified as a one time offender; the Early Starter, who, not willing to live by the rules, is labelled early as troublemaker; the Late Bloomer, is the offender who becomes a 'disciplinary problem' late in his sentence, often through the anxiety of soon being released; the chronic offender, who is identified as the offender continually in trouble.

addressing this, Gifis(1974) noted that important determinants contributing to charging, were the circumstances under which the offence occurred and the attitude and prior institutional record of the inmate.

Emphasizing the importance of the relationship between the staff and inmate was a further series of studies conducted in Washington State dealing mainly with dissociation but raising additional points of discussion on the gamut of issues related to punitive social control in prison (Barak-Glantz, 1982,1983a,1983b). Barak-Glantz (1982) reported results of a study conducted at Washington State Penitentiary into the uses of punitive isolation, administrative segregation and protective custody over a period of ten years between 1966-1975. The results indicated dramatic and significant shifts in the use of these methods of control over this period. Many of the shifts can be attributed to changes in administrative policy. Data were collected at successive peaks of organizational and administrative changes (1966,1971,1973,1975). From the trend analysis it was concluded that:

these fluctuations and changes coincide with and may be attributed to management philosophy changes which occurred in the Washington State correctional system between 1966 and 1975. It clearly illustrates the uncertainties which ensues from the clash of conflicting interests in a generally liberal context of the rehabilitative ideal, the urgent drive to convert due process into reality and the scepticism of prison reformers concerning the competence and sincerity of all prison staff (1982, 491).

A further study using the same data source (Barak-Glantz, 1983b) examined the effects of solitary confinement as a

deterrent to future inappropriate behaviour, as well as labelling experiences from the solitary confinement unit. Surprisingly, it was discovered that there is little deterrent effect on subsequent experiences with punitive solitary confinement. It was hypothesized that there would be a positive relationship between the number of appearances before a disciplinary board and the severity of the disposition. This was found not to be the case, being inconsistent with previous research (Flanagan, 1982; Suedfeld et al., 1982). The amount of time spent in solitary in fact did not increase substantially with an increased number of prior charges of misconduct.

Two final studies on prison justice were again substantially descriptive in nature, taking issue with general sentencing and decision-making queries (Gifis, 1974; Harvard Centre, 1972). Gifis (1974) used specific cases from his study to emphasize points in his argument concerning discretionary justice in the corrections field. Acknowledging the necessity for maintaining a balance between inmates' rights and custodial discretion he focusses upon the procedures and the impact of those procedures and subsequent decisions on the inmates' daily life.

Gifis examined sixty randomly selected inmate records at the institution under study and noted, as others have, the difficulty in recording data from a base which suits certain purposes of the institution but fails to provide a comprehensive record file to obtain relevant disciplinary data on a particular

inmate. Actions taken by the disciplinary board were kept solely within the confines of the violation report of the personal inmate file with no cross reference to a major record of overall disciplinary board decisions. From these violation cards the researcher obtained his data.

The purpose of this style of research was to convey a sense of how the decision-making process was administered within the prison community. In doing so Gifis hoped to instill the initiatives toward a "cooperative regime" in which inmates and officers pursue complementary goals and develop a rational scheme of rewards and deterrents, administered in a fair and just way. Some may dismiss this as naive idealism on the part of the researcher given the inherent conflicts among inmates and guards which is inextricably linked to their relationship of power. However, this is an example of the type of attitude which drives reform movements. Such optimism is a necessary relief from the stifling cynicism of criminal justice practitioners.

In the analysis of frequency scales of charges and dispositions, Gifis also demonstrated the apparent lack of a seriousness scale in the dispositions awarded at the hearings. As noted, others before and since have acknowledged the situation faced by the inmate of not knowing the ramifications of his actions. Ultimately the decision is in the hands of the disciplinary board member(s) and a personalized criterion for justice. This uncertainty of the inmate and the apparently arbitrary nature of the decision-making process seems to

undermine any deterrent value which may be desired from the eventual decision.

Harvard Centre (1972) was one of the first investigations of this sort, specifically examining the disciplinary structures. In their analysis of "Judicial Intervention in Prison Discipline" they were led to the conclusion that there was little correlation between the type of misconduct and the type of punishment. The study argued for a reasonable balance in procedural due process within the disciplinary structure between the need for a degree of administrative discretion and the individual's right to protect himself against what may be perceived as inappropriate government intervention. This study, in fact, seems to have spawned many of the above mentioned studies. It is a procedural and descriptive analysis of the sentencing process with an overview of the court's role in the prison system, both ideally and in reality. Much of the study refers to Morris v. Travinsono⁶, a court case which originated at the institution under study, the Rhode Island Adult Correctional Centre.

The researchers noted the change in disposition trends resulting from variation in administrative styles and found the disciplinary tribunal to be more of a dispositional process than a fact finding one. Previous knowledge of inmate behavior on the part of tribunal members and the internal and administrative nature of the proceedings further substantiate their conclusions

⁶ 310 F.Supp. 857(D.R.I. 1970)

that the system was biased and maintained inadequate standards for the proper ,balance to exist between the rights to due process of law and the necessity for the administrative discretion, required for the maintenance of good order and discipline within the institution. Concern for the latter is always of paramount importance to the institution. The courts at the time of the study were focussing very little of their collective energies on ensuring that the administrative tribunal was adhering to any form of a duty to act fairly toward the inmate. The courts perceived the judgement of the tribunal to be merely an extension of their administrative function as a committee of the prison management; they therefore maintained a 'hands-off' policy toward intervention, despite appeals by inmates regarding their concerns of violations of civil liberties. This issue will be further developed in an analysis of the courts' past and present attitude toward the internal system of justice behind the walls.

Discussion

At the outset it was noted that a discussion of institutional discipline in the prison setting would necessarily include a great many issues. Institutional discipline overrides concerns for rehabilitation, reintegration and the concern for due process of law, when a situation of inmate misconduct arises within a strict disciplinary code emphasizing security. Granted, that while all these objectives may be given consideration at

some point, the primary concern of the secure institution is the maintenance of order, security and discipline; and to prohibit any action which may be seen to prejudice that order or compromise the security of the institution.

The judgments of correctional personnel, including all levels of authority within the institution about what prejudices the order of the institution, is of interest to this study. The reports cited and the areas covered in this section outline the complexity of the organization in which such an overwhelming relationship of power and authority between two groups of people can exist. The entire organization is geared toward disciplining inmates whether that be in the restriction of movement in the daily routine or in the punishing of inmates who have contravened one or more of the established rules of the institution. In fulfilling society's mandate of isolated and regimented punishment for breaking society's laws, the prison organization has adapted itself to a structure in the institution which is in constant anticipation of disruption.

Emphasis cannot solely be placed upon the suppression of inmates by staff when discussing the complexity of the disciplinary relationship. Internal struggles between management and staff at the institutional level were noted in many of the studies. These struggles go a long way in undermining the degree of authority held by the administration, as seen by the inmates. The legitimacy of an organization divided amongst itself falters rapidly if the policy and practice are inconsistent and

when management and staff, both of whom are apparently representatives of one justice system, cater to two or more different goal structures. The literature noted appears to bear out this concern regarding much of the correctional system.

Into this milieu come researchers of organizational decision-making who find the inconsistencies, but as well, find an organization left to flounder on its own in one of the most unenvied roles society has created. Many of the studies reported similar findings which may be summarized in a short list. Firstly, the administrative contribution to the disciplinary process was the focus of a number of important studies. Dealing almost exclusively with the discretionary decision-making power of the management of the institution, the researchers detailed incidences of bias through familiarity, selective enforcement and the dispositional, rather than fact finding nature, of the disciplinary hearings.

Additionally, the dissatisfaction within the ranks of the correctional personnel that was noted in some studies emphasizes the dynamics within the organization which can seriously effect the consistent functioning of the disciplinary process. Incompatible goal structures between the line officer and the management of the institution can create a divisive quality in the operation to such an extent as to render it ineffective in its mandate to securely hold the offenders which members of society wish incarcerated. Perhaps one of the most telling features of the process and its reliance on the judgement of the

arbitrator is the diversity of sentencing decisions in the hearings. A lack of any form of seriousness scale between the charges and the subsequent dispositions places the inmate in the awkward position of not knowing which offence will result in which punishment; thus, it seems, effectively undermining any form of deterrence the administration may wish to employ.

Secondly, the observations of technical abuses of procedure were recorded in a series of other studies, substantially of a legalistic nature. These will be discussed in more detail later. However, suffice to say, that despite the trappings of the regulations in many institutions advocating due process of law within the tribunal proceedings, many authors failed to find much evidence of this.

Lastly, and perhaps the most frequently cited issue is the effect of the inmate component in the disciplinary relationship. Many of the studies noted, examined factors such as age at conviction, prior record in the institution, race and current offence in an effort to predict future misconduct. There were mixed results. While some (Barak-Glantz, 1983b; Flanagan, 1980) found significant relationships and suggested that further research be done, others (Gifis, 1974; Lombardo, 1981) were more convinced that examining the inmate component to the exclusion of other institutional and system factors underestimated much of the latter's influence; which could be substantial. Accepting that challenge, the present study seeks to explore these institutional and system factors in an effort to describe and

explain the disciplinary process in a Canadian provincial prison.

IV. Development of Prison Law

Discourse on corrections and prisoners' rights in recent years has been dominated by the concepts of natural justice and the fairness doctrine. While non-offending citizens in western democracies have enjoyed traditional notions of due process of law and the legal safeguards of fundamental rights established in law, these principles have not been afforded to the inmate populations incarcerated in Canadian prisons until very recently. This concession was granted only with hesitation and reluctance, and the sentiment remains so.

The widening of the net of included 'rights and freedoms' accorded prison inmates in Canada has challenged the sensibilities of many individuals in society abiding by the classical theory of punishment popularized by Jeremy Bentham in the late 1700's. Granting what are often considered privileges, not rights, to individuals who have violated society's law, is difficult to accept if one has the attitude that the only way to correct behavior is to enforce deterrence, and the only way that this is accomplished is through stringent deprivation. Measurement of public opinion indicates that many feel the inmate should still be recognized, for all intents and purposes, as a slave of the state.

Despite this, the last twenty years of correctional case law has witnessed a significant shift in the manner in which the

Canadian courts view the legal status of the inmate. The progression of cases marking this history will be explored and an examination of the phenomenon of the boundary extension of inmates' rights will be made. The impact of American jurisprudence in this regard cannot be overlooked or taken for granted. The civil rights movement in the 1960's made some inroads into Canada, planting seeds for legal challenges to the machinery of criminal justice and corrections. ¹ It was at this point in the history of Canadian correctional law that the first Canadian case dealing with institutional discipline came before the courts.²

Assessing the Scope of Prisoners Rights

A number of legal scholars and social scientists have attempted to address many of the issues brought about by an increased visibility of human rights in Canada. This encompasses the rights of prison inmates and the power the correctional organization has over them. Passage of the Canadian Charter of

¹The impact of the United States courts in this regard is significant but considered beyond the scope of this thesis. For further information see, Fogel, 1981; Robin, 1984.

²Regina v. the Institutional Head of Beaver Creek Correctional Camp, Ex parte McCaud, (1968) 2 D.L.R.(3d)545. Other cases had been appealed to the courts seeking relief from the discretionary decisions of administrators in the justice system, including those initiated by the same individual appealing the above disciplinary decision. For a more detailed discussion see Price (1977).

Rights and Freedoms³ has further provoked interesting discourse in the analysis of prisoners' rights and the power of discretion held by the administrators. With the entrenchment of the Charter and the demand for the judiciary to become more active in policy making, the possibility of making substantive inroads into the development of correctional law has become a very realistic goal. The courts' emphasis on matters of prisoners' rights and jurisdictional review of institutional decisions, has redirected the focus of a number of inmate appeal cases. For the purpose of this thesis the scope of prisoners' rights will encompass the legal definition of the right to due process of law and fairness within the institution. These definitions are not easily distinguished as the courts are not in total agreement as to their qualities once the fundamentals are established.⁴ The minimum standards of fairness accepted, however, are the right to be informed of the charges pending and the opportunity to answer in defence.

The McGuigan Commission (1977) and other commentators (Harvard Center, 1972; Jackson, 1983,1974; Mandel, 1978; Millard, 1982; Zellick, 1981) have attempted to clarify the role of the courts and the rationale for judicial intervention. The courts have traditionally held the correctional institutions, and consequently the legal inquiries of the internal operations,

³Canada Act (1982) S.C. 1980/83 Ch.11

⁴Note earlier comments in Chapter I regarding the definitional difficulties the courts and legal scholars have had in this area.

at a safe distance. They have maintained a 'hands-off' approach, preferring that institutions deal with their 'internal matters' undisturbed. Traditionally, Canadian, American and British courts have all shown a reluctance to intervene in internal disciplinary procedures, seeing them as a purely administrative institutional concern. The previous non-intervention policy is proving difficult to overcome. The effect of judicial non-intervention has been documented by Jackson who states:

The effect of the hands-off doctrine was to immunize the prison from public scrutiny through the judicial process and to place prison officials in a position of virtual invulnerability and absolute power over the persons committed to their institutions (1983:82).

Currently, however, the courts are beginning to modify their positions with respect to their jurisdiction to review administrative decisions. The courts considered the task of defining prisoners' rights through general principles of natural justice as more cases began to appear in court, primarily in the United States, brought by prisoners protesting the denial of constitutionally entrenched minority, democratic and/or legal rights.

In order to establish a principle of legality in the prison, legal scholars stress the importance of developing specific minimum standards and guaranteed rights (Jackson, 1981; Kaiser, 1971; Price, 1974; Tarnopolsky, 1982). Mandel (1978) explains the functions of this approach:

1. It allows individuals to predict official behavior;
2. It enhances the equality of treatment to the extent that it

circumscribes official discretion to apply rules to concrete cases; and

3. It provides a political guarantee that policy will be defensible to the extent that it is exposed to public scrutiny.

In an effort to "bring the rule of law to corrections", Price (1974) sets out the parameters for such a discussion, asking fundamental questions of how, when and in what form inquiries are to be made into the internal decisions of the prison. Ideological concerns weigh heavily on such a discussion,

1. There is a growing awareness by lawyers that far more people are being effected by low visibility administrative decisions that are subject to no effective form of control devised by law that are effected by the kinds of things that existing administrative law has been directed towards; and
2. Meaningful recognition of inmate input to lessen the debilitating effects of one of the pains of imprisonment--the lack of autonomy (1974, 209-210).

Acknowledged also is the reluctance, not only on the part of the court system, but by the public as well, to recognize claims brought by or on behalf of the inmate. Measurement of this reluctance is illustrated through cases which are characterized by arguments discussing distinctions between what is to be considered a privilege or a right, and by the courts' open acknowledgment of their lack of expertise in correctional matters. The latter supplements the tendency of the courts to defer to the authority of the correctional officials, because judicial interference to any great extent, would be viewed as subverting prison discipline. The subsequent fear that a deluge

of claims by prisoners would follow, similar to the experience in the United States, reinforces this position.

Perhaps the greatest reluctance to accord legal rights has come in the form of the legal interpretation of the status of the disciplinary structure within the institution from which the claims have been generated. The Canadian courts' power to review federal tribunals and their discretionary decisions has until recent years been restricted to those characterized as judicial and quasi-judicial, excluding those with purely administrative functions. The jurisdiction of the Federal Court of Appeal is made explicit in the Federal Court Act,⁵

28(1) Notwithstanding s.18 or the provisions of another act, the Court of Appeal has to review jurisdiction to hear and determine an application to review and set aside a decision or order other than a decision or order of an administrative nature not required by law to be made on a judicial or quasi-judicial basis, made by or in the course of proceedings before a federal board, commission or tribunal, upon the ground that the board, commission or tribunal,

- a. failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b. erred in law in making its decision or order, whether or not the error appears on the face of the record ; or
- c. based its decision or order on an erroneous finding of fact that it made in a perverse and capricious manner or without regard for the material before it.(Emphasis Added)

The disciplinary panel is considered part of the administrative functioning of the institution and thus exempt from judicial review by the federal court under s. 28. Given the ramifications of the decisions made by the panel for the inmate as well as the

⁵R.S.C. 1970, Ch.10 (2nd Supp).

prison, the question as to whether the panel's decisions are of judicial nature or not, has become an important one in many of the cases before the court.

Until recently the limitations to administrative authority within the Canadian prison system appeared virtually non-existent. However eloquent, the legislation lacks clarity, direction or restraint. The judiciary has been equally ambivalent. These factors have certainly contributed to the recent debate over the scope of discretionary decision-making within the prison and the possible review procedures related to those decisions.

By way of contrast, concerns substantiating this reluctance are expressed by Mullan (1981) in discussing the 'new natural justice'. Acknowledging the rather vague distinctions made between judicial, quasi-judicial and administrative bodies as well as the ambiguity of the doctrine of fairness, he speculates that the degree of intervention by the courts into the prison structure:

...may lead to a situation where entirely inappropriate requirements are going to be imposed by the courts upon the statutory decision-making authorities with the result that their work is going to be still further hampered by judicial interference and the taking of efficient and effective decisions made all that much harder(1981:297)

Caution of reliance solely on legal safeguards to the exclusion of other avenues of relief is made by others as well (Landau, 1984; Millard, 1982).

The Federal Court, in the past few years, has accepted a reinterpretation of its role in reviewing some administrative decisions of prison tribunals. As a result, the court has also acknowledged the judicial component inherent in the mandate of the disciplinary tribunal. The questions remain then, how far is the court willing to intervene to protect the rights of inmates to due process, and how will it interpret the judicial component of the administrative tribunal? These issues, in the Canadian context, may have been revitalized with the passage of the Charter of Rights and Freedoms. The courts in the last two years have been besieged by Charter cases of every description in an attempt to set precedent for the interpretation of particular sections.

Prison justice and prison discipline have been central issues in many of these cases. The judiciary are being called upon to make decisions, set precedent and thereby intervene in a field of justice where there has been extreme reluctance to do so in the past. In order to fully appreciate this development, the traditional judicial attitude toward internal discipline will now be examined.

The Struggle for External Review

Examination of inmate cases appealing treatment, prison conditions and disciplinary decisions in federal prisons illustrates that the use of the courts' powers of review has, so

far, been implemented cautiously and prudently. Questions have arisen in these cases regarding procedural fairness and the administrative jurisdiction of the disciplinary tribunal. Concessions on the part of the prison administration regarding an inmate's legal status have been circumscribed to procedural developments in the disciplinary proceedings.

Recognizing the relative impact of these cases on future policy initiatives, the government of British Columbia revised certain elements of the correctional structure to accommodate a more liberal approach to the legal status of the inmate. The 1978 revision to the Correctional Centre Rules and Regulations of the provincial corrections branch in British Columbia was a result of a five year process of re-evaluating correctional goals and responsibilities. It was the first change made to the regulations since 1961, and it resulted in significant alterations with respect to inmate disciplinary procedures. Concerns were expressed regarding the changing face of corrections in Canada since the previous regulations were put in place and there was perceived necessity to realign the ideological emphasis. Many of the provisions in the regulations were no longer applicable or relevant and emphasis was clearly on an increased measure of protection for individual rights particularly from administrative decisions with respect to the disciplinary process:

In recent years, the legal system has become increasingly concerned with the rights of minorities. One facet of this trend is a heightened interest in the rights of prison inmates. This concern goes beyond the

physical environment of prisons, which have long attracted attention, and goes to a fundamental reevaluation of the legal status of the inmate (Information Services, 1979, 9).

The revision of the Correctional Centre Rules & Regulations (C.C.R. & R.'s) incorporated input from a number of sources within the criminal justice system as well as the academic community. The drafters acknowledged a persuasive influence from the federal correctional system with regard to recent court challenges by inmates as well as the recent report of the parliamentary sub-committee (MacGuigan, 1977). The inmates' legal status within the institutional disciplinary structure definitely had been altered. The addition of the reconciliation clause, section 29, reflects the recognition of the volatile atmosphere in the correctional centre and the possibility of diffusing some incidents more effectively through informal negotiation. The inmate was to be advised of any alleged infraction in writing and would be given the opportunity to question witnesses called by the chairman on behalf of both the institution and the inmate.

The notion that the revised regulations were to add greater legitimacy to the prison justice system is clear in the official documents and in the substantive changes in the disciplinary structure. It was recommended that an independent chairperson be established in order to alleviate the charges that the institutional officials violated the principle established in the criminal justice system that there should be an impartial adjudicator in the hearing. This was left as an optional

condition for the institution, as the similar structure had only recently been implemented in the Canadian Penitentiary Service and its implications were unknown.

Finally, the regulations in place since 1961 did not allow for the review of the decision made by the disciplinary panel. Since that time, the Inspection & Standards Division (I & S) had been created (in 1973) which provided such an opportunity to the inmate. The establishment of the appeal process was one of "critical importance in supporting the order of the institution, for both inmates and staff (1977, 13). The new regulations further clarified the role of I & S as an adjudicating and investigating body for all grievances by both the inmates and the staff.

In recent years the B.C. Ombudsman has felt compelled to intervene further, in his investigative capacity, to ensure that the corrections branch maintain the principles and spirit of these changes. Evidence of this arose in 1982 when, as a result of cases which came to their attention, the Ombudsman's office was prompted to recommend guidelines which would ensure greater fairness and equitable treatment for the inmates in provincial institutions. The following year the Ombudsman reported a significant drop in complaints regarding the disciplinary panels, and attributed it to the standardization of procedures and policies (1983, 33). It is unlikely that this is the sole factor involved in the reduction of complaints. Nonetheless, it may be suggested as one of the more significant factors as the

revised procedures were a vast improvement over the previous ones in terms of clarity of purpose, ease of understanding, and specificity.

Faithful to the intentions of the 1978 revised regulations this elaboration of safeguards to inmate rights in the Manual of Operations (1983 s.A3, 5) stated:

Though some of the inmate's normal rights have been suspended or restricted by incarceration, it is nevertheless important to recognize and accept the premise that the principles of administrative and procedural fairness apply to these hearings. An inmate is, in other words, entitled to a fair hearing, to hear and be heard, while undergoing this internal disciplinary process.

The purpose of the disciplinary guidelines outlined in the Manual of Operations is:

to assist staff through the procedural steps in the disciplinary hearings, and simultaneously to ensure that their responsibilities within this fairness framework are properly and adequately discharged according to the C.C.R. & R.'s.

The guidelines outline the Inmate Offence Report (See Appendix C) in more detail than the previous offence reports, and indicate that it must be completed in full and a copy given to the inmate. This report is the formal account of an incident seen as being serious enough by the charging officer to warrant a formal charge and the initiation of a disciplinary hearing. The hearing is to be convened within 24 hours or as soon as possible but not exceeding 72 hours after the incident. Despite these legal trappings the disciplinary hearing is acknowledged as not being a criminal trial, but as being an administrative hearing with procedural rules based on the earlier stated

definitions of fairness.

The substantive principles of legality and natural justice so fundamental to the judicial system, however, seem marked only by their absence. The principle of legality focusses squarely on the legitimacy of the authority in question, in this case the administration and management of the institution. While it may be true that inmates deeply resent the conditions of their incarceration, the manner in which the institutional management handle incidents of inmate misconduct may alleviate some of the inherent resentment felt by the inmates toward the correctional officials. The legitimacy of the administration may survive through consistent and just application of punishment. A major stumbling block halting this process of legitimation may be the very legislation which originally granted it authority. The sweeping and nebulous nature of correctional legislation is so great that various interpretations can, and subsequently, have been made. The thrust of the concept of legality, in effect, performs a dual function by informing inmates as to the conduct acceptable in a certain situation so that they may organize their behavior accordingly. In addition, it is designed to check abuses of discretion by the correctional authority. The legislation in its present form, however, falls to the criticism of other similar legislation in that its mandate is too broadly defined. Jackson states,

The real vice of vague statutes or regulations is that they permit those charged with enforcement to use their own judgement to decide what is within and what is outside the limits of the vague law. Such vagueness

often invites an exercise of discretion to charge or not to charge based not on the quality of the act itself but on considerations having to do with the enforcer's particular values, prejudices and idiosyncrasies (1974:7).

Legislative authority granting correctional officials the power to dispense discipline and punishment at the federal level is found in the Penitentiary Act. It outlines the organization and structure of the federal correctional system. The Act defines the broad scope of responsibility for the correctional system in the declaration that the Governor in Council may make regulations,

29(1)

- a. for the organization, training, discipline, efficiency, administration, and good government of the service;
- b. for the custody, treatment, training, employment, and discipline of the inmates; and
- c. generally, for carrying into effect the purposes and provisions of the act.

Pursuant to these general regulations is authorization for the Commissioner of Corrections to create regulations known as Commissioner's Directives,

29(3) for the organization, training, discipline, efficiency, administration and good government of the service, and for the custody, treatment, training, employment and discipline of the inmates and the good government of the inmates.

This exhaustive legislative authority is precisely what has come under scrutiny in appeals by inmates of the decisions made by the institutional disciplinary tribunals.

The initial case dealing with internal discipline and inmates' rights, brought before the courts in Canada was Regina v. the Institutional Head of Beaver Creek Correctional Camp, Ex

parte McCaud(1969), 2 D.L.R.(3d)545 (Ont. C.A.). The issues brought to bear in this case established much of correctional case law for the next decade. The Court was requested to decide upon the extent of the duty of the institutional authorities to abide by procedural safeguards accorded other citizens. More fundamentally it was requested to establish the scope of the legal authority of the institutional head. The inmate applied for relief questioning the availability of certiorari. In this instance it was necessary for a determination of the nature of the power itself and not the nature of the office since certiorari lay only to "supervise the discharge of authority by a body or person empowered to affect the civil rights of the citizen and required to act judicially" (Beaver Creek, 545). In order to answer these questions the Court initially dealt with whether or not an institutional tribunal was a judicial, quasi-judicial or an administrative body, and if administrative, whether or not the decision of the tribunal was a judicial or quasi-judicial one. Hence the fundamental question was whether or not it (the Court) had jurisdiction to review the institutional decision.

The charges were that the inmate was 1) denied a hearing, 2) denied the right to give evidence, and 3) not told of the charges against him. The inmate asserted moreover, that the punishment was not authorized by law. Initially then, the nature of the writ needed definition. A call for review by certiorari must make the determination,

as to whether a particular proceeding is a judicial one must be made not with reference to the nature of the character of the tribunal but with reference to the power purported to be exercised.... That power is the ability of the authority to affect the civil rights of the person (Beaver Creek, 549).

The court made distinctions between the actions affecting the liberty and personal security of the inmate, those bound by judicial decisions, and those actions affecting the place and manner of confinement, which are purely administrative decisions.

The proper test to be applied is to ask whether the proceedings sought to be reviewed have deprived the inmate wholly or in part of his civil rights in that they affect his status as a person as distinguished from his status as an inmate. If the application of this test provides an affirmative answer in arriving at the decision the institutional head is performing a judicial act (Beaver Creek, 550).

In some instances then, the administration must make decisions which are judicial in nature. In the course of reviewing the actions of the disciplinary tribunal this was not considered to be the case here. The tribunal's decision was solely concerned with actions affecting the place and manner of confinement. The Court declared that the concern for liberty (civil rights) was not an issue as the inmate was, for the time being, incarcerated. It was then, simply a matter of the administrator transferring the inmate from one area of the prison to another in order to maintain the order of the institution, as is his duty. The rationale was explained thus,

Since his right to liberty is for the time being non-existent, all decisions of the Penitentiary Service with respect to the place and manner of confinement are the exercise of an authority which is purely administrative (Beaver Creek, 551).

The reality of further encroachment on the right to liberty in solitary confinement was not addressed, effectively refusing to deal with an institutional judicial decision. This narrow interpretation illustrated the concern of the Court that their decision may encroach excessively upon the ability of the institutional head to control the institution and that it would destroy the legitimacy of his authority within the institution.

While the Court stated that the institutional head shall observe the principles of fundamental justice in matters where he must act judicially, his actions in this case did not affect the rights of the inmate as a person or his statutory rights as an inmate; thus they were not judicially based. The institutional head was, in effect, not answerable to any court for review of his disciplinary decisions. There was in fact then, a breach of the stated principles, but in the eyes of the court it was within the normal administrative functioning of the institution.

The courts made more explicit the judicial and administrative rift a few years later in Kosobook v. Solicitor General of Canada (1977), 69 D.L.R. (3d) 682 (F.C.T.D.). The inmate was given no notice of the hearing after a stabbing incident at Millhaven Institution. He was segregated for the good order and discipline of the institution. Recommendations were made as to the advisability of continued dissociation and once again the inmate was not informed. The Court stated this was purely an administrative function. Therefore the board was not required to

inform the inmate concerning the allegations or evidence presented against him. There was also no necessity for the inmate to be present or for the tribunal to observe the audi alterem partem rule, which states that both parties in a dispute must be given the opportunity to present their case. It appeared as though the Court had retreated even further from addressing the substantive legal issues than it had in Beaver Creek.

Magrath v. the Queen [1978] 2 F.C.232 (F.C.T.D) resulted in a similar ruling that the inmate had no right to appear in person at the hearing. The inmate was being transferred to the B.C. Penitentiary from Mountain Institution and as the transfer process "was different, he had no right to be heard concerning the transfer and is not entitled to reasons why one is carried out or refused." The transfer was merely incidental to an administrative decision based on previous conduct. In this case, while the institution had abided by the court's requirement that the inmate be informed of the charges and allowed the opportunity for defence, it was not felt that this included the right to be present at the hearing. The reviewing court subsequently accepted the institutional decision in this circumstance and continues to exercise this prerogative in transfer situations.⁶

⁶More recent cases regarding transfer hearings have resulted in similar judgements. Morin v. Director of Corrections et al. (1983) 17 Sask R. 333 (Sask C.A.); Re Douglas Hamilton-Horne et al. (1983) 10 W.C.B. 220 (F.C.T.D.); Butler v. The Queen et al. (1983) 5 C.C.C.(3d)356 (F.C.T.D.).

By virtue of the decisions handed down from the courts stating that all the above actions by the administrators are simply perfunctory actions in the daily running of the institution, one can certainly understand the basis for some appeals by the inmates against the seemingly arbitrary and capricious manner of justice afforded them. The power accorded the correctional officials to justify punishment of inmates for misconduct was exceeded, it seems, only by the courts' reluctance to accept the responsibility to review.

Many of the inmate cases before 1982 seeking relief from institutional decisions, be they from disciplinary hearings or not, employed the Canadian Bill of Rights⁷ Provisions are included within the Bill of Rights giving an individual certain democratic and legal rights and freedoms. However, the courts have gained a consistent reputation for their conservative approach and narrow interpretations of the individual sections. This conservative attitude was amplified when dealing with inmate appeals. McCann v. The Queen 1976), 68 D.L.R. (3d) 661 (F.C.T.D.), dealt with an appeal in which a number of inmates at B.C. Penitentiary filed suit requesting a declaration that their confinement in the solitary confinement unit amounted to cruel and unusual punishment contrary to section 2(b) of the Canadian Bill of Rights. This case was not an appeal of the decision of a disciplinary tribunal which resulted in their confinement in the solitary unit. The plaintiffs initiated the application after

⁷Appendix III to R.C.S. 1970.

they had been confined in the Solitary Confinement Unit for an extended period of time. It was based upon the perception that the institutional board had failed to meet the criteria for fair treatment in accordance with the principles of natural justice. Additionally, they argued that this was not an administrative matter but a judicial one requiring review. A application was also presented stating that the institution had breached the principles of fundamental justice including the right to a fair hearing and the right to be present and to be heard. The solitary confinement unit was declared cruel and unusual punishment and the doctrine of fair play was reiterated by the Court. In the final judgement, however, there remained a reluctance to intercede forcefully on the inmates' behalf in order to enforce the ruling. The Court stated,

the plaintiffs also asked, in their prayer of relief (para.(g)), for an order "to compel the defendants to act in accordance with the declaration of this honorable court." Plaintiffs' counsel did not, however, cite any jurisprudence in support of this relief. On the authorities and on the facts of the case, I am satisfied that the plaintiffs are not entitled to this relief. (McCann, 700).

Despite this reluctance to compel the defendants to act, the decision proved to have the desired effect and the inmates obtained the relief they had requested in that they were removed once the facility was declared cruel and unusual. This may be one example where the Court extended its authority into the realm of institutional matters but only to the point necessary to supply the correctional officials with the opportunity to be seen as making the ultimate decision themselves. The delicate

balance of institutional authority and the power of court intervention was seen to have been achieved to the satisfaction of both sides, and the case could be claimed as a victory, of sorts, for both sides. This network of informal pressures serves to further emphasize the politics of punishment.

During the next decade the judiciary gradually began to accept a certain amount of responsibility to review federal administrative tribunals. The first sign of this arose in the case against a decision of the National Parole Board, in Howarth v. National Parole Board (1975) 50 D.L.R.(3d)349 (S.C.C.).

Howarth had been released on parole in May 1971, after serving five years and three months of a seven year sentence for armed robbery. He was a full time student at Queen's University and had been gainfully employed until his parole was suspended by the National Parole Board in August 1973, when he was taken into custody, charged with indecent assault. In September 1973 the charge was withdrawn. Four days later, however, he was advised that his parole had been revoked and he was to remain in custody. Despite repeated requests, he had at no time been told the reason for the revocation and the parole board countered that they were under no duty to explain or to give him an opportunity to be heard.

While Howarth lost his case in the Supreme Court of Canada, Dickson, J. (as he then was), in dissent, spoke of administrative tribunals having a duty to act judicially if the consequences to the inmate were serious enough. He stated:

It means that the tribunal, while exercising administrative functions, must act 'judicially' in the sense that it must act fairly and impartially....The seriousness of the consequence of deprivation for the individual affected by the decision of the board or tribunal exercising statutory powers is manifestly the principle factor in determining whether the board or other tribunal is required to act judicially or quasi-judicially (Howarth, 354).

In a later case involving a police disciplinary board, Nicholson v. Haldimand-Norfolk Police Commrs. Bd. [1978] 1 S.C.R.311 (S.C.C.), the Supreme Court of Canada accepted the common law principle of fairness. While it accepted the Howarth decision in spirit, the decision was distinct. Nicholson reiterated the distinction between administrative and judicial and quasi-judicial decisions. The administrative tribunals have a duty to act fairly and in the spirit of natural justice. This does not mean that it must act judicially. There is a difference between a duty to act judicially and a duty to act fairly. This distinction was to create jurisdictional difficulties for the Federal Court which were confronted in the Martineau cases.

In Martineau & Butters v. Matsqui Institution Inmate Disciplinary Board (1977), 33 C.C.C.(2d)366 (S.C.C.) the inmates were appealing to the Federal Court for relief against a decision of the disciplinary board under s. 28 of the Federal Court Act. The Supreme Court was solely concerned with the jurisdictional authority in the case. In other words, the issue in question was whether the board's decision was a judicial, quasi-judicial or administrative one, and not with the quality of the decision itself. The legal status of the Commissioner's Directives was also very much a question at this point bearing

on the legitimate authority of the institutional director. To remain within the ambit of s.28 of the Federal Court Act the disciplinary board decision was "required by law to be made on a judicial or quasi-judicial basis." The inmates lost this point as the Court stated,

It is significant that there is no provision for penalty and while they are authorized by statute, they are clearly of an administrative, not legislative nature. It is not in any legislative capacity that the Commissioner is authorized to issue Directives but in his administrative capacity. ...The Commissioner's Directives are no more than directions as to the manner of carrying out their duties in the administration of the institution where they are employed.

Proceeding with a second appeal, Martineau applied for relief under s. 18 of the Federal Court Act in Martineau v. Matsqui Institution Disciplinary Board (No.2) (1979), 50 C.C.C.(2d)353 (S.C.C.) which states,

18. The Trial Division has exclusive original jurisdiction

- a. to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief against any federal board, commission, or other tribunal; and
- b. to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney-General of Canada, to obtain relief against a federal board, commission, or other tribunal.

This was a case which was to alter the legal emphasis in prisoner litigation. Relying upon Nicholson, the Supreme Court broadened the power of the judiciary over administrative tribunals by emphasizing the duty to act fairly.

Even though the tribunal was exercising purely administrative and executive functions it retained the common law duty to act fairly and not arbitrarily. Specific reference was made to the possibility of affording procedural protections for those adversely affected. This procedural duty is an extension of English case law.⁸ In Martineau (No. 2) the Supreme Court made it clear that,

interference will not be justified in the case of trivial or merely technical incidents. The question is not whether there has been a breach of prison rules but whether there has been a breach of the duty to act fairly in all circumstances (1979:379).

Dickson, J.(as he then was), further explained the distinctions between the disciplinary hearing and a court. Acknowledging that the hearing is essentially an administrative task and the officials are not obliged to conduct the proceedings in accordance with technical rules of procedure and evidence, there is a duty of fairness required and if that duty is breached the inmate may apply to the Federal Court (Trial Division) on an application for relief by way of certiorari. A duty to act fairly in administrative proceedings having been established, the question became one of degree ie., what did that duty entail? The Supreme Court accepted the principle in Nicholson that fairness encompassed only some of the principles of natural justice. Fairness is reduced to the simple question "Did the tribunal on the facts of the particular case, act

⁸For further details as to the development of English case law and prisoner litigation see, Marin, 1983; Richardson, 1984; Zellick, 1982.

fairly toward the person claiming to be aggrieved?" (Dickson, J. in Martineau No.2, 1979, 379)

This rather vague definition in conjunction with the necessity of a "serious injustice" before the Court would be willing to intervene, has created new hurdles for the aggrieved inmate. The courts' rationale for judgements no longer rests upon the distinctions between judicial and administrative tribunals, but with distinctions between trivial or serious injustice and procedural or substantive fairness. This displacement effect has carried with it the familiar themes of a reluctant intervening court system and its deference to institutional authority regarding disciplinary matters.

The doctrine of the duty to act fairly set forth in Martineau (No. 2) was tested in Oswald and Cardinal v. Director of Kent Institution (1980), 137 D.L.R.(3d)145 (B.C.C.A.). The inmates had been kept in administrative segregation following transfer from another institution as a result of a hostage taking incident. Criminal charges were pending against the inmates for alleged participation in the incident. A recommendation by the classification board for release from segregation after an extended period was refused by the Director. The inmates stated that he had failed in his duty to act fairly as he had conducted no investigation into the incident nor had he heard any submissions from the inmates. McEachern C.J. acknowledged the necessity for significant review procedures of the administrative power to impose administrative

segregation and stated,

I am persuaded, therefore, to conclude, that the proper limit to impose upon the absolute power of the director is a continuing obligation to fairness which in my view, controls the exercise of this kind of public power. (Oswald and Cardinal 1980, 148).

While this decision was an encouraging sign that the courts were becoming more willing to scrutinize the decision-making process, the B.C. Court of Appeal felt that the procedural unfairness here was not of sufficient magnitude for intervention, and overturned the decision stating,

The director is given broad powers under s. 40 of the regulations. He is not burdened with any standards or guidelines in the exercise of his powers in order that the inmate be dissociated. He must have enough latitude to respond to the requirements of prison security as he sees fit (1980, 152).

It seems then, that mere legislation of authority legitimizes it in the eyes of the court, as they concede the power of decision-making 'to those qualified to do so' within the prisons. Hence, given the lack of guidelines in the legislation, the discretion of the correctional administration to deal with inmate discipline appears to be considerable.

The fairness doctrine established with respect to administrative decision-making in the correctional setting has broad implications for custodial facilities (O'Connor & Pringle Wright, 1984). Its status is tenuous at best with respect to disciplinary hearing decisions as the following cases before the courts indicate.

The Lethargy of Judicial Activism

A number of recurring themes have overwhelmed the judgements of the courts in the last few years regarding prisoner litigation. Firstly, despite the invocation of the Charter of Rights and Freedoms the courts are narrowly interpreting the law relating to fundamental or legal rights when an inmate is concerned. The deference to the prison tribunal by the court system remains substantially intact aside from the vaguely defined duty of fairness outlined in Martineau No.2. An appeal by an inmate to quash a decision by a disciplinary board in the absence of legal counsel, was dismissed in Re Howard & Presiding Officer of Inmate Disciplinary Board Court of Stony Mountain Institution (1984) 8 C.C.C.557(F.C.T.D). Section 7 of the Charter of Rights and Freedoms declaring the right to life, liberty and security of the person, was equated with the principles of fairness and natural justice, and the court upheld the tribunal's decision. The chairperson had observed all fairness requirements in his exercise of discretion as he had no obligation to allow legal representation, therefore his decision should not be interfered with. The chairperson had allowed representation for the argument as to whether the inmate should have legal representation at the hearing itself, but denied it at the hearing. "The adjudicator had arrived at that decision in an eminently fair and proper manner."

A recent appeal by Howard at the Federal Court of Appeal revealed one of the few concessions by the court system to grant a modicum of rights to the inmate. While the Appeal Court noted the tribunal's duty to observe the requirements of fairness, it recognized a distinction between s. 7 of the Charter and other legislation . The distinction between administrative and judicial decisions is not addressed in s.7. What it does, is ensure that the right to life, liberty and security of the person is not interfered with, except in accordance with the principles of fundamental justice.

The Court went on to say that there had been a prima facie violation of the right to liberty, because the inmate had been denied the protection of justice. The onus then, lies with the crown to demonstrate that the limitations to that right can be justified under s. 1 of the Charter. Nonetheless, the Court suggested that the right to legal counsel was not absolute, but that the opportunity to present the case adequately should be allowed. This is especially important in cases considered to be serious, and which could jeopardize the freedom of the inmate.

This decision, while extending the avenue of appeal for inmates, it also steps cautiously into the realm of disciplinary decision-making in correctional institutions. The decisions regarding the degree of seriousness of the case requiring legal counsel, and the definitional qualities of the opportunity to adequately present the defence, remains under the purview of the institutional management.

Further defining the parameters of the courts intervention the Federal Court dismissed an application for certiorari to quash a prison transfer and for mandamus to compel the transfer back to the initial institution, in Re Marcel Pilon et al. (1984), 12 W.C.B. 193 (F.C.T.D.). The inmates had not been given a hearing prior to the transfer to an institution of higher security and this, the inmates claimed, violated their rights under the Charter of Rights to life, liberty and security of the person (section 7), and the right not to be arbitrarily detained or imprisoned (section 9). The Court indicated that the Commissioners Directives under which the transfer was made had no force of law, but were merely guidelines for administrative actions, of which a transfer was one, hence it was not reviewable. The Court referred to the directive requiring the administration to provide the opportunity to present reasons for reconsideration. The inmates did not take advantage of the directive in this case and the Court took this as an indication by the inmates that the alleged injustice was not sufficiently grave as to cause grievous harm. Reversing the onus to the inmate seemed to absolve the Court of the responsibility to substantively review the case. The Court was satisfied on the balance of probabilities that this administrative decision to transfer had not violated the stated rights and that there was no obligation on the part of the institution to afford a hearing prior to transfer. Granting that the transfer was an administrative decision the Court stated it should not be

lightly interfered with unless there had been a clear breach of the fundamental duty of fairness.

In an inmate appeal which once again employed section 7 of the Charter of Rights an indication of the direction of the courts in future cases was suggested. In Re Desroches and The Queen (1984) 6 C.C.C.(3d)406 (Ont Div. Ct.) the test of the duty of fairness was considered unnecessary to deal with section 7 as there had been an unacceptable breach of the procedural fairness granted the inmate. In a declaration by the Court that the inmate was entitled to procedural fairness in determination of this responsibility, it was stated that, "the denial of the applicant's opportunities in the circumstances could not be considered an insignificant interference or deprivation whether these opportunities are regarded as rights or privileges."

In conjunction with the deference to the institutions paid by the courts, the interpretation by the court of the commitment to fundamental justice which must be heeded by the correctional officials has been a crucial factor in the development of correctional law since Martineau No.2. In Martineau No.2, Dickson, J. referred to a spectrum test regarding fairness which would dictate the degree of intervention by the court system. Since that time the courts have considered a number of cases and the duty to act fairly by the disciplinary board members has been reduced to situations considered to be serious procedural breaches.

For example, in Re Blanchard & the Disciplinary Board of Millhaven Institution & Hardtman (1982), 69 C.C.C.(2d)171 (F.C.T.D.), the duty of fairness consisted of the inmate knowing the charges and evidence against him and being given the opportunity to respond. There is no general right to counsel, as noted in other cases, as it is up to the chairperson to exercise such discretion. The Court acknowledged interference only if this discretion had been exercised in a 'patently unfair' manner. A case arising from a disturbance at the Lower Mainland Regional Correctional Centre (Oakalla), a provincial institution in B.C., indicates that the courts may be willing to accept cases on review of procedural irregularities. They do, however, remain reluctant to delve into more substantive issues of fundamental justice. In Duhamel et al. v Bjarnason et al. 1985, (B.C.S.C.), the inmates applied for relief under the Judicial Review Procedure Act arguing that the hearings were not conducted in accordance with the Correctional Rules and Regulations, and did not comply with the common law duty of fairness. They also requested that the Court address whether or not the hearing complied with s.7 of the Charter , the right to life, liberty and security of the person; s. 9. the right not to be arbitrarily detained or imprisoned; and with s. 11(d), the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

The Court found a number of irregularities in the procedures followed by the tribunal, contrary to the regulations, and quashed the decisions made by the hearings. Rather than continue to discuss the submissions regarding the Charter of Rights and Freedoms, the Court concluded that because of its findings of non-compliance with the procedural directives, it need not proceed further in its decision. At a time when corrections and the Canadian public are concerned with the impact of the Charter on the present correctional structure, this court has preferred to, once again, defer judgment to some later date.

Regina v. Stanley Wayne Mingo (No.3) (1982), 8 W.C.B. 451 (B.C.S.C.) dealt with the legal concept of double jeopardy to the correctional setting. It emphasized the fundamental distinctions between the Canadian criminal justice structures affecting free citizens, and the prison justice system affecting inmates. The inmate in this case appealed that the defence of Res Judicata was available to him under s. 11(h) of the Charter of Rights and Freedoms. Having been convicted of offences by the disciplinary board, the inmate charged that the criminal proceedings pending from police charges was an abuse of the criminal process.

The Court dismissed the appeal stating that the disciplinary proceedings did not involve 'a court', therefore the 'offences' the inmate was punished for did not have the same meaning as 'offences' within s. 11(h) of the Charter. The

internal proceedings were administrative acts and accordingly, the principle of Res Judicata had no application. The case is presently before the Supreme Court of Canada.

The case of Re Kevin Oscar Peltari (1984), 12 W.C.B. 489 (B.C.S.C.) and his subsequent appeal in Re Kevin Oscar Peltari (1985), 14 W.C.B. 63 (B.C.C.A.), dealing with the same issue accentuates a number of points. In the initial case, Gibbs, J. did not make the fine distinction regarding the meaning of the phrasing of the legislation as did Toy, J. in Mingo. The concern was whether the same offence was involved in the separate charges. This required a determination of whether the offences are identical in the same elements, arising out of the same circumstances. It was decided that this situation had in fact occurred, and the decision was quashed. The differences in the judgments of these cases arising from the same court are dramatic. The interpretation of the legal principles by the judiciary has long been the subject of investigation. These cases further fuel that investigation. On appeal by the Crown, Peltari was dismissed, perhaps rather hastily. The court remarked that a similar case (Mingo) was before the Supreme Court of Canada and although there had been a conflict in the lower court decisions, the hierarchy of the courts must take the initiative to develop a process of dealing with Charter cases. The decision in Mingo at the Supreme Court will have important implications for the operation of correctional institutions and the enforcement of discipline.

From the few cases arising from provincial institutions recently it appears as though the supposition that provincial institutions are affected significantly by the actions of the federal system is supported. Peltari was dismissed because of a federal case, which appeared more serious. A further distinction between the two systems surfaced which may be evidence of why few provincial cases go to court. The Crown appeal of Peltari was declared moot, as the inmate had since been released. As such, the court refused to deal with the issue at hand and chose instead to back away, effectively closing the case.

Paul Perron v. The National Parole Board (1982), 9 W.C.B. 213 (F.C.T.D.) epitomizes the continued reluctance to intervene in the internal matters of the institution. The case involved the transfer of an inmate from a medium to a maximum institution after contraband had been found in the canteen where he and five other inmates worked. He was not given a hearing upon transfer but was granted a hearing at the new institution when applying to return. This request to return was denied. Reversing these actions, Mahoney, J. found a breach of the duty of fairness which went beyond the trivial infraction. The Court went no further in its discussion of procedural or substantive fairness declaring that,

The problem I have with this application is that, to the extent there may be merit in the Applicant's allegation of unfairness, it lies in a perceived, and, if the facts are as the Applicant says rather than the Commissioner has found them, a real unfairness in the result of the Commissioner's decisions. That result is not subject of appeal to this, or any other, Court. There was no unfairness in the process by which the Commissioner

arrived at the decisions he had a right and duty to make (as cited in O'Connor & Pringle Wright, 1984:340).

Essentially, the Court stated that its duty is not to outline the procedures to be adhered to. Rather, its duty is to ensure that the standards of the lawful authority are upheld and rights established at common law are not violated. The judgment in Re Joseph Chester and the Queen (1984) 12 W.C.B.119 (Ont. H.C.), defines this as the right to procedural fairness whether under common law, the Canadian Bill of Rights or the Charter of Rights and Freedoms, as each affords the same protection. The Judge stated:

While the prison authorities have a duty to act fairly in respect of administrative decisions concerning the transfer and treatment or classification within an institution of inmates lawfully committed to that institution, the court will not, in reviewing the exercise of authority by prison officials, lightly substitute their views for those of the Commissioner or his delegates(1982:120)

While serious consideration, as noted, is taken before the court intervenes in the administration of the institution, Walsh, J., in Re LaSalle and Disciplinary Tribunals of the LeClerc Institution and Rene Rousseau (1983) 11 W.C.B. 32 (F.C.T.D.) did intervene and commented on both the procedural and substantive duties of fairness. He quashed a decision to transfer at least in part, for reasons relating to the latter. This was in fact a rather unique case arising from what appeared to be a routine incident. LaSalle was charged with being in an intoxicated state and assaulting an officer. At the disciplinary hearing the next day he received five days detention. The following day he received a subsequent charge, conducting

himself in a menacing manner, arising from the same incident two days earlier. He appeared before the tribunal which was then adjourned to the beginning of the week. He then received a fourth charge of failing to obey an order from the incident. When the tribunal reconvened four days later he asked permission to have legal representation, which was denied. During the hearing he was required to leave the room during which time the chairperson and the witnesses discussed the case. He was subsequently found guilty of the charges.

The Court quashed the decision of the tribunal outlining the procedural unfairness, but Walsh, J. extended his judgement further than this by reviewing the substantive merits of the case. He commented on the capability of the officers and the necessity for them to be able to cope with unruly conduct as the police officers on the street must. This appeared to the Court as an incident exacerbated by overzealousness and whose handling was considered less than proper or fair.

This case in which the court did not split hairs between procedural and substantive fairness, marks a departure in prisoner litigation,

It does away with the need, in a case involving obvious substantive unfairness to hang the judicial hat on some procedural defect in order to justify the decision (O'Connor & Pringle Wright, 1984:343)

As unique as the facts of the case were, so too was the judgement. The courts continue to show reluctance to intervene except in the most exceptional circumstances. Charter provisions were found unnecessary in this case as the remedy was found in

the duty of fairness.

Discussion

No cases involving the decisions of disciplinary tribunals and its duty of fairness in dealing with inmates have reached the Supreme Court of Canada to date, however a number have been granted leave to appeal. While still wrestling with the distinctions between administrative and judicial authority the courts have accepted the tribunal's duty to act fairly. Much of the issue lies in the distinctions between the procedural and substantive nature of the fairness doctrine. The concept of fairness, not having been clearly defined, has, by and large, been interpreted as procedural fairness. As stated in Martineau (No. 2) distinctions have been made between serious and trivial breaches of the duty of fairness, subsequently the court appeared both reluctant to intercede in the affairs of the institution as well as confused as to their role in such a relationship. As these factors are significantly intertwined one appears to feed on the other with the result being a general profile of the courts' stagnant review, highlighted infrequently by substantive and thoughtful decisions such as was the case in LaSalle.

The administrative tribunal of the prison justice system has been given the mandate to restrict the liberty of the inmate, in the best interests of that inmate, and to deny

fundamental due process of law, for the maintenance of the good order and discipline of the institution. Whatever is deemed by the administration to prejudice the good order may be repressed. The magnitude of discretion extended in a situation such as this cannot be considered the exclusive domain of either an external agency in its manner of policing internal activities or the operation of such a process from within an institution.

There must be a certain degree of accountability to the public as well as judgements from the tribunals by the same tenets of fundamental justice adhered to by the external courts. This is partially fulfilled in the federal system by the position of a Correctional Investigator, and provincially, by the internal investigative body of the corrections branch in British Columbia as well as the British Columbia Ombudsman. The Correctional Investigator and the Ombudsman can only recommend that action be taken on a certain case thereby having no authority to impose sanctions if no action is taken. While they have had an impact, the conceptual power base of the prison system does not invite this sort of reform easily.

The failure of the courts to deal with issues of substantive due process and civil rights, before and after the implementation of the Charter, clarifies its position with respect to disciplinary matters in a correctional setting. The tribunals substantially affect the lives and liberties of the prisoners and yet effective review of this process is often balked at and dismissed by the courts. Jackson (1981) captured

the spirit of the courts when he referred to their treatment of the prerogative writs used on appeal by inmates. The decisions, it seems, were not to ensure that the correct decision had been made, but that the procedures used were calculated to inspire confidence in the reliability of those decisions and in the legitimacy of the exercise of administrative authority. The courts have in effect legitimized the process of discipline concerning acts deemed to prejudice the maintenance of good order and discipline of the institution. The vagueness of the legislative mandate provides the administrator with an incredible amount of power to enforce a strict and individualized regimen of discipline/justice.

Despite the recent entrenchment of legal rights, the courts still feel justified in pointing out that unfairness, in a procedural sense, should not imply or trigger intervention, unless serious injustice has occurred. The confusion of what constitutes the fairness doctrine will first of all need clarification. Having derided the courts on their record toward establishing substantive rule of law within the prison setting, one may be comforted to a certain degree by saying that this 'failure' has been tempered with some success. It is a long and difficult process to change legal tradition and since Martineau (No. 2), a restricted duty of fairness has been established in common law where nothing existed before. From what has been considered the cornerstone of judicial review in correctional law, in Martineau No. 2, the fairness doctrine despite its

inherently vague qualities, has at the very least made correctional officials more aware of the duty which must be accorded prisoners in the spirit of natural justice.

While a number of observers seem to acknowledge that a semblance of fairness, in whatever form, must prevail, there is still what Ekstedt (1983) refers to as the antibody effect. This effect refers to correctional decision-making generally, which exhibits an uncanny ability to deflect and resist fundamental structural or managerial changes while retaining the capacity to absorb new programs with virtually no resistance. Any compromise between the restrictions demanded for prison security and orderly administration and the retention of due process rights and fair play must recognize this organizational factor of correctional decision-making.

A demand for a more effective and explicit role played by the courts in reviewing disciplinary proceedings in prison is not an attempt to place strict standards and guidelines on the discretionary power of the officials. Strict standards may ultimately be more detrimental to the disciplinary process than the present discretionary power of the correctional officials, if the principles of natural justice are to prevail. There is a necessity to recognize the important role that individual discretion plays in corrections and to work toward an effective and intelligent use of that discretion. The concept of legitimate authority giving rise to the amount of discretion must be put into perspective. Acknowledging the role of

authority in the guard-inmate relationship, Shoom states,

Because authority is an integral part of the correctional process, the correctional worker must clearly understand that the powers of control and limitation are of a delegated nature, granted to the position he holds by society through legislative enactment. They are not to be construed as personal privilege which can be administered in a capricious manner (1972:183).

The validity of that discretion is not in question, what is of paramount importance is that in any acknowledgement of discretionary power, the limitations to that power must also be acknowledged. The boundaries have not been defined by legislation or by the courts, consequently the individuals who possess that power set the boundaries for their own actions. Thus, correctional personnel holding a position of such power over a group of incarcerated individuals must be seen as creating conditions for incredible potential for abuse of such power, unless such power is tempered by external review or responsible and consistent use of that discretionary power.

The courts both in United States and Canada appear to be moving toward a recognition of the importance of their role of review. The former being much more active in the enforcement of the tenets of natural justice within the prison walls than the latter. It is hoped with the entrenchment of rights in the Canadian Constitution that the Canadian courts will recognize the growing awareness of the right of prisoners to substantive fairness and realize that the recorded arbitrary practices of the institutions must cease. To maintain authority to discipline and punish the correctional authorities must be seen as

legitimate in their role. As it stands now, they are not.

V. Methodological Considerations

Introduction

The scope of this thesis is admittedly broad, which accounts for the form of review taken to this point. The subject of disciplining inmates for infractions against the institutional order strikes at the foundations of the philosophies of punishment in Canadian society and also at the most acceptable methods of controlling incarcerated offenders.

The site chosen for the present study was the Vancouver Island Regional Correctional Centre (V.I.R.C.C.). In an effort to demonstrate, through example, some of the issues of correctional decision-making mentioned earlier, the objectives included the documentation of the methods by which inmate discipline within the institution is enforced and the range of the punishment response. Additionally, it was considered important to address questions of how correctional management and policy makers deal with inconsistencies in the application of punishment and in perceptions of 'justice'.

The institution, V.I.R.C.C., is located in Saanich, west of Victoria on Vancouver Island. It is one of five regional correctional centres under the jurisdiction of the British Columbia Corrections Branch. Commonly referred to as Wilkinson

Road Jail, it consists of 130 beds and houses inmates serving a prison sentence of up to two years, inmates on remand and, when necessary, federal inmates awaiting transfer to federal institutions.

Within the grounds of the institutional property is located the Vancouver Island Community Correctional Centre which acts as a transitional centre between V.I.R.C.C. and the community. Additionally, over the last few years a new facility has been constructed behind the main institution in response to the overcrowded accommodations and deteriorating conditions of the Jail. The new facility has taken on a campus style structure and a living unit orientation. It commenced operation in Spring 1985. The data collected dealt solely with the disciplining of inmates and the incidence of inmate misconduct within the confines of V.I.R.C.C..

Research Design

As this study focusses so directly upon the process involved in the discretionary decision-making of criminal justice personnel, a number of methods were employed to determine the structural and social dynamics of the disciplinary process within the correctional institution. This combination of methods of data collection included,

1. an analysis of the statements of penalties imposed for the fiscal years 1980-81 to 1983-84, outlining primarily the

- charge(s) laid against a particular inmate and the subsequent disposition(s);
2. a content analysis of transcripts from sixty disciplinary hearings chaired by both the Director of the institution and the Deputy-Director;
 3. a questionnaire given to officers of the institution, with questions involving their actions taken to maintain order, their perceptions of various aspects of the disciplinary process, and their attitudes regarding the social climate of the institution; and
 4. supplementing these primary and archival data were the observations of the researcher during the course of data collection at the institution. Conversations and unstructured interviews were conducted with the institutional staff including the management of the institution as well as the correctional and principal officers.

The data were collected over a period of approximately three months during the summer of 1984 and interviews took place during the three scheduled shifts each day. In an attempt to overcome much of the anxiety of the officers that they were under scrutiny or being evaluated for management purposes, an effort was made to clarify the researcher's position as a university graduate student and to conform much of the interview work to the officers' schedules, thus being as unobtrusive as possible. From the observations a great deal of information

significant for the interpretation of data gathered from archival records and the questionnaire on discipline and enforcement practices was obtained.

Operational Definitions

The concept of inmate discipline can be defined by the boundaries set within the institution to regulate and control the behavior of the inmates. This is seen to include the procedures in the daily routine designed to ensure adherence to the institutional rules and regulations. It ranges from the enforcement of these rules and regulations through to the final disposition in a disciplinary hearing were there to be a case of serious inmate misconduct warranting an official sanction.

The distinction between discipline and punishment is often a subtle one. Punishment is considered to be a reactive response to inmate misconduct contravening the recognized parameters of appropriate behavior. The disposition of the disciplinary hearing, or Warden's Court, while considered a consequence of the punishment response, is essentially the final step in the process of discipline ie., the regulation and control of inmate behaviour.

Research Instruments

Statements of Penalties Imposed

These statements are standardized documents which detail inmate characteristics, the regulation(s) breached by an inmate, and the penalty imposed under the provincial Correctional Centre Rules and Regulations (C.C.R. & R.'s) (See Appendix D).

Information compiled on the document included, 1) the name and classification number of each offending inmate; 2) age; 3) date of conviction; 4) length of sentence; 5) number of previous penalties imposed (referring only to infractions committed during the current sentence); and 6) the specific regulation breached and the penalty imposed under the relevant sections of the C.C.R. & R.'s (See Appendix E).

Each institution would submit this documentation to the Inspection and Standards division of the British Columbia Corrections Branch where it would be compiled for use by the branch in annual provincial corrections reports and for general audits of institutions. Until the fiscal year 1983-84, the institutions submitted reports to the corrections branch on a weekly basis. Since that time the institutions perform this function monthly. The change in procedure, it seems, was an administrative one at the branch level; nothing of substance was removed or included at this time.

The collection of data over the four year period was intended to provide information regarding the types of infractions committed and the penalties given for such infractions as well as the demographic information on the offending inmate. The cases (n=546) recorded in the statements represent all charges brought formally against the inmates during that period. Of these cases some have been classified as multiple offenders and further analysis was conducted to determine distinctions between those individuals and the others. Interest also centred upon whether or not there would be significant differences in the outcome of similar offences, were one inmate to have a number of prior convictions against the institutional rules and another having a 'clean record'. It was, however, noted in the preliminary observations that 230(65%) of those inmates charged did not have a previous infraction record during the current sentence of incarceration. Data were unavailable for those inmates convicted of institutional infractions during other incarceration periods. Excluding the missing data for fiscal year 1981-82, 30.4% of the charged inmates (n=107) had three prior infractions or fewer. The remaining 4.6% of the inmates had accumulated more than three prior infractions.

Preliminary analysis indicated that the most frequent infraction against the rules and regulations (n=140) was the failure to "comply with a lawful order on direction of an officer" contrary to s. 28(1) of the C.C.R. & R.'s. This charge

could result from virtually any behavior of an inmate from failing to get out of bed in the morning when ordered by an officer, to failing to come out of his cell during a prison disturbance when ordered by an officer.¹ The second most frequent infraction (n=112) was contrary to s. 28(7) stating that "no inmate shall assault or threaten or attempt to assault another person." The most frequent penalty awarded was under s. 33(1)(f) "that the inmate be confined in a segregation cell for a period not exceeding 15 days"(n=294); a distant second in the frequency of a particular disposition awarded was under s. 33(1)(a) "a reprimand" (n=99).

The range of infraction cases across particular disposition categories revealed a random distribution. A charge of failing to obey an order could result in any one of the eight dispositions available to the institutional management and the data recorded cases receiving a variety of penalties from a reprimand to specified number of days in segregation. A similar situation was noted for the charge of assault, perhaps a less maleable charge than the failure to obey an order. These data appear to support the contention of previous researchers as to the apparent lack of specific criteria in the sentencing

¹Both of these situations were identified in the transcripts of the disciplinary hearings and illustrate the vast range of circumstances falling under the scope of this rule. When there was a dispute as to whether there had actually been an order given the chairman of the hearing obliged with a definition of what constituted an order. It is a suggestion, an implied or direct order by an officer which an inmate is obligated to follow.

process.

A convincing parallel could be drawn from these results to research examining diversity in the judicial sentencing patterns (Hagan, 1975; Hogarth, 1971). One major distinction, however, would be the criminal code parameters used as guidelines for sentencing in the latter situation and not in the former. Accusations of arbitrary and capricious management of prison justice may arise at this point but may still prove to be rather hasty.

What becomes a real concern at this point are the extra-legal factors involved in sentencing and the concept of individualized justice. The data gathered from the current study indicate that the disposition may be more a result of the circumstances surrounding the offence than of the actual offence itself. Data analysis supporting this contention will be discussed at greater length later.

The Hearing

The B.C. Corrections Branch Manual of Operations established disciplinary panel guidelines to which all provincial institutions are to adhere. The authority for these panels are outlined in the B.C. Correction Act, which states that the Lieutenant Governor in Council may make regulations, including regulations for the management, operation, discipline and security of the correctional centres; and for establishing

disciplinary panels,² as well there are provisions for such a structure in the C.C.R. & R.'s.

The C.C.R. & R.'s, revised in 1978, describe criteria for the formation of disciplinary hearings and the rules and procedures for conducting them. The standing orders at V.I.R.C.C. reiterate the guidelines for conducting disciplinary hearings outlined by the corrections branch (See Appendix F) and the management attempt to adhere to them as closely as possible. Data from the disciplinary hearings (n=60) analyzed, indicate to the researcher that the procedural steps in the majority of the cases were closely followed. All hearings are recorded on tape and are kept for at least sixty (60) days in case they become the subject of appeal. Of the tapes examined, there were portions of hearings recorded upon others and segments cut at the end of some tapes. The indication was that the older proceedings had merely been taped over once the sixty day appeal period had expired.

Of the hearings which were analyzed forty (40) were conducted by the Deputy Director, seventeen (17) were conducted by the Director and three (3) by other senior security personnel. A number of explanations could be advanced for the overwhelming number of cases heard by the deputy director. Firstly, the deputy director is also the director of security. Thus one of the primary functions of his position is to ensure the security of the institution is maintained through an

²RS Chap 70 s.47 (1979).

effective internal disciplinary structure.

Secondly, the director has indicated that only the more serious cases are dealt with by him in his role as institutional manager and ultimate authority in that setting. Analysis of the initial findings tends to substantiate this through an examination of the types of offences brought before the Director for adjudication and the ultimate penalties awarded. A breakdown of the charges before the director (n=17) included nine (9) for failing to obey an order; four (4) for threatening the management, operation, discipline, or security of the institution; two (2) for assault or threaten or attempt to assault; and two (2) for creating a disturbance. The subsequent penalties included three (3) inmates losing remission time; ten (10) receiving time in segregation; one (1) receiving a penalty of time already spent in segregation; and three (3) dismissals. These disposition figures indicate a significant difference ($p < .0005$) when compared with those of the deputy director. This may account for the general perception among the correctional officers that the resulting penalty for an infraction depends to a large extent upon the chairperson of the disciplinary hearing. It may, in fact, be more the case that the initially perceived seriousness of the alleged infraction which came to the Director's attention did so because he was seen as the only appropriate disciplinary authority in the case. The perceived disparity in sentencing may be a result of this structured imbalance in the types of cases brought before a particular

disciplinary hearing chairperson, and not so much a function of an idiosyncratic preference of the chairperson.

While this explanation may account for a certain proportion of the variance in the disposition outcomes, it does not completely satisfy evidence from the taped transcripts. It may also be that the inmate is seen as more troublesome than the offence is seen as serious. Notations from the transcripts may be useful here. One case before the Director revealed that the inmate refused to enter a plea and refused to answer any questions put to him. In the absence of a plea, one of not guilty was entered for him. Evidence was presented, the charging officer gave testimony and the inmate was judged guilty. Another case before the Director, in which the inmate failed to obey when ordered to tuck in his shirt, made note of his previous conduct "which would no longer be tolerated". It was a "petty irritation." He was awarded ten days lost remission with the warning of more serious consequences should this occur again.

The most frequent offence noted in the sample of hearings was failing to comply with a lawful order or direction of an officer (n=24) with the second most frequent offence being assault or threaten or attempt to assault (n=18). The most frequent disposition awarded was confinement in a segregation cell (n=21) followed by the second most frequent penalty which was a reprimand (n=20). These positions parallel the data gathered from the official statements of penalties imposed and could be considered an adequate sample of the larger population

of charges. As was noted in analysis of the statements, the data from the hearings also indicated that any charge may result in any of the available dispositions.

With reference to the alleged dispositional nature of the disciplinary hearing, 55% of the inmates pleaded guilty to a single charge and 40% to multiple charges. Eighty-five percent of the inmates were found guilty of the single charge while 62% were found guilty of multiple charges. The substantial decline in both guilty pleas and guilty verdicts in multiple charge cases posed some interesting questions. There was some indication of a hesitancy to convict on both charges and much of this related to the lack of evidence for conviction or the lack of necessity for the charge. It may be that the officers wanted to ensure a conviction and as a result responded with multiple charges whether it was necessary or not.

The multiple charges often included such nebulous offences as failing to comply with an order or breaching a rule or regulation. This supposition is substantiated by other data as well as comments in the judgements by the disciplinary hearing chairman. Remarks relating to such a situation arose in a hearing in which an inmate was charged under s. 28(5) with "threatening the management, operation, discipline or security of the institution", as well as under s. 28(12) with "breaching a rule or regulation" when found to be under the influence of an intoxicant. The chairman remarked, "I have no basic evidence so I find you not guilty on the first charge, but guilty of the

second. You obviously had something." In another case before the chairman of an assault upon an officer the importance of evidentiary rules is accented. The decision recorded a conviction on one charge, of insulting language, and an acquittal on the second, that of assaulting an officer. It was suggested that there was no evidence that the officer was actually struck and as such was an error of reasonable doubt. These decisions do not rest easily on an organization whose primary goal seems to be the maintenance of strict order and whose personnel may not conform to a single interpretation of the most effective method of maintaining that order. Of interest is a comment made by the director shortly after the study had begun. He stated,

I wouldn't be surprised if your report stated that the officers thought that we were soft on the inmates, but if they don't have the evidence for a charge I'll throw it out. They will learn and not do it the next time.

Prison Discipline Questionnaire

The questionnaire distributed to the institutional staff consisted of forty general questions assessing attitudes on a number of issues involving the disciplining of inmates. Questions were asked addressing their perceptions of their role as correctional personnel; their knowledge of the C.C.R. & R.'s; their opinions on the organizational relationships among staff within the institution; and their attitudes with regard to the formal disciplinary proceedings such as the hearing. In addition

to this there were several questions requesting demographic information on the particular officer (See Appendix G).

In developing the questionnaire the researcher attempted to address many of the issues of correctional officer decision-making and job satisfaction which had been referred to in earlier literature. It was often the case that a previous study would have a very focussed hypothesis or set of hypotheses and thus not address completely, the impact of the prison milieu on the disciplinary decision-making of the correctional officers. The questionnaire was designed to include an assessment of this.

Initially it was thought that the most appropriate way to address these questions was through a structured interview format with the officers and the administration of the institution. After a number of such interviews this method was abandoned for practical reasons. It was found that the officers felt much more free to discuss their behavior on the job in the natural course of conversation than being asked questions in an interview. Those initial interviews were then used to refine the questionnaire which was ultimately distributed to as many officers as possible within the institution during the shifts, at the muster meetings, and on the wings. The researcher made himself available to discuss the questionnaire once completed and at anytime during future shifts of the officers. Many of the staff expressed their willingness to do this at these times. However, they were reluctant to complete the questionnaire for

various reasons which will be elaborated upon later. Of the total population of institutional staff of 87³ the researcher was able to obtain 33 unspoiled returned questionnaires for a return rate of 38%.

Once received, a point of interest in the questionnaire was to investigate the similarity between officially recorded infractions (in both type and volume) and the perceptions of the officers as to the extent of those same infractions. The lists of infractions and penalties noted in the questionnaire were taken directly from the C.C.R. & R.'s. When asked what they considered the most frequent disposition some officers (n=13) identified the reprimand, and secondly, being confined to a cell (n=7). In fact the reprimand is, as previously stated the second most frequently awarded penalty; far behind the most frequent of segregation. When examined in conjunction with what is considered the least serious infraction the complexity of the social-structural relationships within the institution begin to develop more clearly. Fifty percent of the officers polled (n=18) suggest that the reprimand is the least serious penalty, followed by the removal of wages for internal jobs. The latter was found to have occurred only twice in the data sample.

³These did not include those having minimal contact with the inmates such as those assigned exclusively to one area for example, records, or those on extended sick leave. They included those officers whose daily shift brought them into contact with prisoners in the capacity of enforcing the order and discipline of the institution.

Considered to be the least frequently awarded penalty by the officers was the imposition of work duty (n=9), which was in fact the case. This was supplemented by some officers (n=7) considering the loss of remission as the least frequent penalty awarded. When crosstabulated with what was considered the most serious punishment, segregation and loss of remission both constituted 38% of the sample of officers polled (n=24). Very few officers (n=6) considered either of these dispositions as being used most frequently. Perceptions of the most serious but least frequently implemented disposition has important implications for the continued effectiveness of the institutional commitment to the maintenance of order. Whether or not what is considered the most serious penalty (segregation or loss of remission) is implemented most frequently does not, however, appear to be at issue. The issue which arises is that what is occurring, that is the overwhelming use of segregation as a punishment response to misconduct, is not seen to be occurring. Therefore 'justice' must not only be done but seen to be done. If a line officer is unaware or underestimates the frequency with which a disposition is employed which he/she considers important for the maintenance of order in the institution, that officer may regard the management of the institution as being unable to fulfill that portion of the mandate effectively.

Misconceptions of 'reality' are not confined to those at the bottom end of the personnel scale. The degree of awareness

of other officers as to the extent and frequency of punishments given becomes glaringly apparent when a more senior officer with a number of years experience related comments on dispositions in the following manner, "if we took away remission the Commissioner would be on our ass so fast it wouldn't be funny. He would have to pay for a few more days."

These inconsistencies recorded between the perceptions of the officers and the official data may be symptoms of other structural inequities and may result in a change of enforcement practices among the officers if they feel that the management is regularly awarding lenient punishments and infrequently awarding harsh ones. When questioned about any changes in their rule enforcement behavior, officers (n=17) responded that the charges were fewer and more lenient. When questioned as to why this had occurred, fifteen identified the management of the institution as the reason for the lack of support given the officers in a disciplinary decision. Much of these preliminary findings tend to support previous work studying the staff working relationships within the correctional setting (Lombardo, 1981; Poole & Regoli, 1980).

The questionnaire was intended to provide insight into the operation of the disciplinary process within a correctional setting through the examination of the attitudes, perceptions and opinions of the correctional staff. It was also meant to provide data supplementing the official records of disciplinary actions taken against inmates. Linkages can be made between the

information gathered from the statements of penalties imposed, the transcripts from disciplinary proceedings and the questionnaire indicating an apparently random distribution of infractions committed and penalties imposed for such infractions. Differences can be observed in the penalties imposed for an infraction depending upon the actions of the chairman of the disciplinary hearing. The recognition of this by the line officer may also be acknowledged. The pervasive attitude that the vast majority of offences coming to the attention of the officers do so more as a result of the particular situation in which an offence arose than as a result of the incident itself, is well documented (Gosselin, 1982; Jackson, 1983, 1974; Lombardo, 1981). This has been acknowledged in both the transcripts of the hearings and from the questionnaire and discussions with the staff.

General observations of the researcher focus on the interactions between the correctional staff at all levels in V.I.R.C.C.. Explanations and discussions of actions taken gave clearer indications of the milieu within the institution than the research instruments could have, and proved invaluable assistance in the understanding of the data. In the following chapter the full scope of the disciplinary process at V.I.R.C.C. will be examined with more indepth data analysis.

Limitations

The inconveniences and peculiarities of field work and of collecting data compiled by another individual often tend to throw up barriers for the unsuspecting researcher. This study is certainly not immune to such barriers.

Attaining access at V.I.R.C.C. was a fairly easy task, requiring only a few telephone calls and a receptive institutional management. The inconvenience, however, was its location on Vancouver Island which required the researcher to commute numerous times from the mainland, over the course of the study. This was tolerated because of the ease with which the study was accepted by the institutional management, and the difficulties encountered in obtaining access to a similar institution on the Lower Mainland. The location of the study was inconvenient in the sense that total and constant presence could not be maintained. However, over the months of the study the staff at the institution and the researcher became comfortable enough with each other to overcome this situation.

The ease at which access was obtained to V.I.R.C.C. may give rise to questions of the efficacy of the data source and whether or not the institution was favorably predisposed to such a study. Given that the analysis was to focus upon the evaluation of procedures of enforcing discipline in the institution these concerns were not considered to be overwhelming. It was to be considered a case study of the response of the institutional personnel to the incidence of

inmate misconduct.

In the collection of data, it was necessary to combine data from two sources in order to compile the statements of penalties imposed. The institution maintains these records monthly and sends a copy to the Inspection & Standards Division of the Corrections Branch (I & S). The institutional records were incomplete and it was necessary to obtain the data from fiscal years 1981-1982 from I & S to supplement the existing records at the institution for the relevant years of study. These data were not as detailed, as I & S tends to truncate the institutional information for their own purposes. As a result data of prior infractions, length of sentence and age of offending inmates for this period were unavailable to be included in the analysis and were recorded as missing. In a small number of cases (n=11) the penalty imposed was also unavailable. While these variations limit the final analysis of demographic data somewhat, it is seen as more aggravating than problematic. The data recording the infraction and disposition were considered the most salient to this portion of the study and, after analysis, they do not appear to be any different from the data collected from the institution.

Data collected from the questionnaire distributed to the institutional staff substantiates much of the archival data as well as the personal observations. The researcher does acknowledge the disappointing return rate (n=33) which was hoped to be stimulated by the researcher's presence. A few

explanations may account for this. Firstly, the researcher entered the institution to conduct the study at an unsettled period in which a number of pressures were descending upon the personnel from outside the institution. There had recently been a bitter contract dispute between the government and the British Columbia Government Employees Union (B.C.G.E.U.) which ended in settlement after a close majority ratification. Bad feelings had carried over, in the months following, between the management of the institution and the staff as well as the staff union. A similar situation (serious contract negotiations) still had not been resolved at the management level with the management team of the institution having been working without a contract for 32 months at the time the research began. The researcher came up against accusations of being a plant for the management of the institution. This was alleviated to some degree as the staff became more familiar with the researcher, over time. This situation coupled with a well documented reluctance of correctional personnel confiding in 'outsiders' (Lombardo, 1981; Jacobs, 1983; Jacobs & Retsky, 1975) certainly had its effects upon the collection of completed questionnaires.

There was, however, less difficulty speaking with the personnel as long as they were not required to document anything. Many hours were spent at the institution during various shifts speaking to the personnel and then immediately retiring to a vacant room to record the information. While these limitations may hinder the extent of the final analysis and

conclusions to some degree, they are acknowledged as circumstances overcome by the triangulation of the data collection and the consideration that they are more irritating in nature than substantive.

VI. Analysis of Results

The data collected from the statements of penalties imposed, the transcripts from the hearings, and the responses from the questionnaire respondents provide insight into the internal decision-making process regarding inmate misconduct. The instruments reflect general trends in enforcement behavior by a group of criminal justice personnel empowered with the authority to discipline and punish.

Of interest in this study was the examination of the decision-making process in a manner which would result in a descriptive analysis of the variety of factors, both inmate and institution specific, which combine to create the unique legal structure within the prison. In order to best achieve this, it was felt that frequency, crosstabular and simple correlational statistics would be most suitable. Additionally with the observations of the researcher and the discussions with the correctional personnel, sufficient information would be provided to assess the magnitude of the factors involved in the disciplinary process and its impact upon the institution, its personnel, and the inmates.

The official records of inmate misconduct gave a general indication of the inmate component in the disciplinary relationship and the extent to which certain inmates were involved in officially recognized misconduct. The questionnaire had a number of objectives, as stated in the previous chapter,

including an assessment of the perceptions of the institutional staff regarding the disciplinary process. From the demographic information gleaned from the questionnaire respondents, these perceptions of the process could be categorized by variables such as job classification and years of correctional experience. Crosstabulations of this information proved enlightening.

In order to examine the general trends in enforcement, the preliminary method of analysis focussed on the overall frequency distributions of the categorized rules. As stated in the previous chapter, the highlight offence, or the most frequent offence, was recorded as s. 28(1) "failing to obey the lawful order of an officer" (n=140) or 25.6% of the total, followed by infractions under s. 28(7) "assault, or threaten or attempt to assault another person" recorded as (n=112) or 20.5% of the total infractions.¹ The statements of penalties imposed and the transcripts of the hearings provided information regarding multiple offenders indicating the range of recorded offences. Between one and four concurrent infractions were recorded on the statements of penalties and one or two were recorded on the disciplinary hearing transcripts.

The distribution of the types of dispositions awarded recorded an overwhelming use of segregation (N=294) or 56.4% as

¹This infraction statistic of assault could not be broken down by assault by an inmate on another inmate or assault by an inmate on a guard, these assaults are combined in the figures. These figures also represent single and multiple offenders as noted in Table 1, although this was adjusted in later calculations to eliminate the influence of repetitive offenders.

Table 1

Offence Frequency from Statements of Penalties

| Charge | 1st | 2nd | 3rd | 4th | total | % |
|----------------------|-----|-----|-----|-----|-------|------|
| Failure to Obey | 132 | 8 | 0 | 0 | 140 | 25.6 |
| Leave Assigned Place | 7 | 1 | 1 | 0 | 9 | 1.6 |
| Property Damage | 42 | 0 | 1 | 1 | 44 | 8.1 |
| Theft | 2 | 0 | 0 | 0 | 2 | .4 |
| Threaten Operation | 87 | 5 | 0 | 0 | 92 | 16.8 |
| Clean & Orderly | 2 | 1 | 0 | 0 | 3 | .5 |
| Assault | 95 | 11 | 6 | 0 | 112 | 20.5 |
| Escape | 11 | 0 | 0 | 0 | 11 | 2.0 |
| Abusive Language | 21 | 5 | 0 | 1 | 27 | 4.9 |
| Indecent Language | 15 | 4 | 1 | 0 | 20 | 3.7 |
| Create Disturbance | 37 | 16 | 3 | 0 | 56 | 10.3 |
| Breach of Rule | 29 | 1 | 0 | 0 | 30 | 5.5 |
| Total | 480 | 52 | 12 | 2 | 546 | 99.9 |

noted in Table 2. The dispositions also are recorded as single and multiple offences although at any one time there was no more than a combination of two types of dispositions awarded.

Similar to the results noted in the statements of penalties imposed are the data from the transcripts of disciplinary hearings reflecting the frequencies of the types of offences and dispositions awarded. While there did not appear to be a significant difference between the types of infractions brought

Table 2

Disposition Frequency from Statements of Penalties

| Charge | 1st | 2nd | Total | % |
|--------------------|-----|-----|-------|------|
| Reprimand | 82 | 17 | 99 | 19.0 |
| Loss of Privileges | 19 | 3 | 22 | 4.2 |
| Confined to cell | 44 | 1 | 45 | 8.6 |
| Loss of Remission | 51 | 8 | 59 | 11.3 |
| Segregation | 266 | 28 | 294 | 56.4 |
| Workduty | 1 | 0 | 1 | .2 |
| Pay Withheld | 1 | 0 | 1 | .2 |
| Total | 464 | 57 | 521 | 99.9 |

before the chairman, notwithstanding the situational factors, the dispositions are quite distinct. A similar situation with the distribution of offences to dispositions noted in the statements of penalties, was also recorded in the transcripts of the hearings, i.e. any infraction could incur any disposition.

Table 3 illustrates the offence frequency recorded in the disciplinary hearings, indicating that the infraction of "failing to comply with a lawful order of an officer" was the most frequent, (n=24) or 32.4% of the cases. The second most frequent offence, as was the case in the official monthly statements, was recorded as "assault, threaten, or attempt to assault another person", (n=18) or 24.3% of the cases. As noted

Table 3
Offence Frequency from Hearings

| Charge | 1st | 2nd | Total | % |
|----------------------|-----------|-----------|-----------|-------------|
| Failure to obey | 23 | 1 | 24 | 32.5 |
| Leave assigned place | 0 | 0 | 0 | 0.0 |
| Property damage | 1 | 0 | 1 | 1.3 |
| Theft | 0 | 0 | 0 | 0.0 |
| Threaten operation | 11 | 0 | 11 | 14.8 |
| Clean & orderly | 1 | 1 | 2 | 2.7 |
| Assault | 15 | 3 | 18 | 24.3 |
| Escape | 0 | 0 | 0 | 0.0 |
| Abusive language | 2 | 1 | 3 | 4.1 |
| Indecent language | 1 | 1 | 2 | 2.7 |
| Create disturbance | 6 | 5 | 11 | 14.9 |
| Breach of rule | 0 | 2 | 2 | 2.7 |
| Total | 60 | 14 | 74 | 99.9 |

earlier the majority (n=40) of the hearings recorded were conducted by the Deputy Director of the institution.

The frequency of the dispositions recorded at the disciplinary hearings are illustrated in Table 4, indicating that segregation was the most frequently imposed penalty (n=21) accounting for 27.6% of the total. The second most frequent disposition was recorded as a reprimand, (n=20) or 26.3% of the

Table 4
Disposition Frequency from Hearings

| Charge | 1st | 2nd | Total | % |
|--------------------|-----------|-----------|-----------|--------------|
| Reprimand | 19 | 1 | 20 | 26.3 |
| Loss of privileges | 0 | 1 | 1 | 1.3 |
| Confined to cell | 6 | 0 | 6 | 7.9 |
| Loss of remission | 9 | 1 | 10 | 13.2 |
| Segregation | 19 | 2 | 21 | 27.6 |
| Time spent | 2 | 11 | 13 | 17.1 |
| Dismissed | 0 | 0 | 5 | 6.6 |
| Total | 55 | 16 | 76 | 100.0 |

cases. All of these reprimands were imposed by the Deputy Director for a variety of offences brought before him.

Much of the data collected in this form, in addition to the observations and interviews with the institutional staff provide a revealing backdrop to the standardized procedures, rules and regulations and the official documentation of the decision-making process within a correctional institution. It seems to indicate that the disciplinary mechanisms of the rule enforcement within the institution is based upon the scope of the discretionary power of the particular individuals involved at various levels in the organization and at various periods of

time during the procedure. As well, those correctional officials involved have the ability to manipulate the process in order to best achieve the maintenance of order and the uninterrupted operation of the institution.

In order to examine the relationship between the charges and dispositions further, a crosstabulation of the two variables was performed. It was hypothesized that any given infraction could be seen as threatening the security of the institution, and thus incurring any given disposition. From the questionnaire, respondents appeared to be in general agreement with this. The crosstabulation revealed that this was in fact the case supporting much of the previous research on sentencing scales and the disciplinary decision-making process.

It is difficult to discuss a sentencing scale when there appears to be a diversity of opinion with respect to the seriousness of one type of punishment over another. When one speaks of the severity of a punishment, what is at issue is the relative impact of that punishment upon another individual. In the construction of a scale of punishment ranging from least serious to most serious, is it fair to assume, as it once was, that physical or corporal punishment is the most onerous and that an official reprimand, or scolding, is the least onerous punishment? Transposing one's values onto another in this case is often tempting and one could suppose that the answer to the above question is self-evident. As the Canadian system does not employ corporal punishment as an official sanction anymore, it is

questionable as to what could replace it as the "most serious" punishment. Further deprivation and limitations to one's liberty and autonomy in the form of segregation or loss of earned remission, may now be considered the most serious.

When asked to rank order the available dispositions in order of seriousness, the correctional staff appeared not to have a consensus amongst themselves as to what this included as noted in Table 5. From this, a crude scale of sentence severity could be constructed as, 1) Segregation; 2) Loss of Remission; 3) Confined to Cell; 4) Loss of Privileges; 5) Pay Withheld; 6) Work Duty; and 7) Reprimand, with segregation as most severe and reprimand as the least severe. However, considering the disparity in the ranking and the sample size this would merely be suggestive.

Emphasizing the difficulty in arriving at an agreement, as to the seriousness of the offence and the severity of the disposition, is the information gained from the crosstabulation of the offences and dispositions of those offenders charged with a single offence. The variety of the dispositions for the multiple offenders was also as numerous.

Table 5

Scale of Disposition Seriousness

| Charge | Most Serious | 2 | 3 | 4 | 5 | 6 | Least Serious |
|------------------------|--------------|----|----|----|----|----|---------------|
| Reprimand | 1 | 1 | 0 | 4 | 5 | 2 | 19 |
| Loss of/ Privileges | 1 | 4 | 6 | 13 | 5 | 3 | 0 |
| Confined/ to cell | 1 | 5 | 16 | 8 | 1 | 0 | 1 |
| Loss of/ Remission | 12 | 9 | 6 | 2 | 1 | 1 | 1 |
| Segregation | 14 | 13 | 1 | 0 | 2 | 2 | 0 |
| Work Duty | 1 | 1 | 1 | 1 | 8 | 17 | 3 |
| Pay Withheld | 2 | 0 | 1 | 4 | 12 | 6 | 7 |

One may suggest that were an inmate to breach a rule of the institution and be charged for it, the charge likely resulted in large part, from the situation in which the incident occurred and his demeanor at the time. When brought before a disciplinary hearing, the case may be considered on its merits, and the inmate on his merits. If found guilty of the offence he could receive any one of the available punishments but would most likely receive a specified number of days in segregation. The course of this process seems predicated upon numerous possible scenarios dependent upon and subject to the suppositions made by a variety of individuals in a short period of time. The construction of suppositions which direct the actions of these individuals has also been based upon prior knowledge of the offender, which may have affected the initial response to the incident.

The Inmate Component

The distribution of infraction and disposition categories were crosstabulated with the available inmate characteristics in an attempt to tap into the 'inmate component' of the disciplinary relationship which previous researchers have identified. The inmate characteristics were, age at admission, length of sentence, and prior infraction record. While these may be interesting to examine and may be useful, in some circumstances, to predict the volume of infractions, this research found them not to be significant factors in

distinguishing between types of infractions, similar to Flanagan (1982). The data from the statements of penalties imposed regarding the age of the inmates and the length of sentence conformed to official data collected at the provincial and federal levels regarding inmate population composition. The median age was 21 years old with a range of 17 to 71, with the mode being 19 years old. The median sentence length was recorded as 123 days or four months, with a range of 9 days to 731 days. Twenty-nine percent (n=139) of the inmates formally charged were being held on remand, and the institution held five federal inmates awaiting transfer, who had been involved in disciplinary action.

The younger inmates proved to be more involved in infractions than did the older inmates. However, that may merely be a function of the proportion of younger inmates to the older inmates. Of the 480 cases recorded 275 or 57.3% were twenty-five years of age or younger and a further 8% (n=37) were between twenty-six and thirty. Those older than thirty accounted for 35% (n=168) of the offending inmates.

Some previous research (Barak-Glantz, 1983; Flanagan, 1980) noted a correlation between inmates involved in the disciplinary process and time served in prison. Explanations of differential modes of adaptation to the prison environment were offered to account for this. No such relationship was discovered in this

study.² However, what should be recognized is the distinction with respect to the type of institution. The short average sentence coupled with the facility under study allowing only for a maximum sentence of two years, may contribute to this factor of sentence length as not being significant. Adaptation to effects of 'prisonization' and subsequent misconduct patterns would more likely be reflected in circumstances in which the inmate was incarcerated for a longer period of time, were such a relationship to exist.

The inmates involved in disciplinary proceedings had a range of previous contact with the disciplinary panel at V.I.R.C.C.. Fully 65% (n=230) of the inmates, however, had no prior infraction record.³ Those having one to three prior infractions included a further 30% (n=107). Dispositional distributions when crosstabulated with prior infraction record did not vary significantly between the individuals as was expected they would.

It was expected that dispositions awarded would become increasingly harsh as the inmate's prior infraction record became larger. When the inmate's prior record was crosstabulated with dispositions awarded, the relationship was found not to be significant. Upon further analysis of the relationship between

²From the statements of penalties, calculations could be made from the length of sentence, and date of infraction to assess the time served.

³These figures are only available for the current sentence and have no bearing on the past criminal record of the inmate. Note also that this excludes missing 1981 data.

charges and dispositions, controlling for the number of prior infractions, no significant relationships were discovered. Neither the types of offences in question nor the dispositions awarded changed substantially given the institutional record of the inmate.

This finding is somewhat incongruous with the responses of the officers regarding the factors taken into consideration when deciding to proceed with a particular charge. It may be, however, that this strengthens the argument that the prevailing circumstances surrounding the incident as well as the inmate's attitude are the stronger indicators related to the decision to charge an inmate. Furthermore, regarding the awarding of punishment, the prior record may not be considered as a significant factor given the short-term nature of the facility within which the incident occurred. As previously stated, the majority of the inmates did not have a prior record and the median sentence length was four months. For many then, prior record is simply not a consideration and other factors such as inmate demeanor may prove more significant in the disciplinary process. Prior record may have a greater impact in longer term federal institutions, as noted in the American literature.

Institutional Factors

In the analysis of general patterns of rule enforcement the parallel between the crime control perspective of the police constable and the rule enforcement role of the correctional officer become very apparent. In the daily routine of patrolling and enforcing their respective codes of conduct their actions seem predicated on the expectation of misconduct. They have been employed by a particular organization to control behavior of a specified group of people. In order to fulfill this mandate they have been given a wide scope of discretionary power in order to most effectively deal with the wide variety of situations and potentially dangerous circumstances which may arise in the course of duty.⁴ The manner of rule enforcement in the achievement of 'good order' is not necessarily strict enforcement nor is it necessarily identical enforcement behavior among the officers.

Characteristic of the environment in which correctional personnel work are feelings of apprehension, fear and anticipation of routine operations exploding into violence. The correctional officers perform their duties of rule enforcement

⁴The test of effectiveness would measure the degree to which the stated goals of corrections are being achieved. The stated goals of a correctional institution may often be identified as conflicting between treatment concerns of the inmate and security concerns for the institution. However, it may be surmised that the primary goal of the institution is the secure custody of the inmates. The effectiveness of the management may be measured by the manner in which order and discipline is maintained resulting in the orderly operation of the institution.

with the powers accorded to them by law. Like the police constables they perform these duties selectively in order to best achieve the balance between tolerance and dominance.

What this study has attempted is an examination of that process of selective enforcement. Selective, because certainly not all breaches of the disciplinary code are seen, nor are all those seen, reported by all the officers. There are distinct differences among the officers as to what should or should not be followed up. The stability or the achievement of the maintenance of order may just as successfully be reached by not strictly enforcing all rules at all times. The total enforcement of the rules may in fact prove more detrimental in such a volatile atmosphere, despite its sensibility to those supporting a strict theory of deterrence.

The questionnaire respondents ranged from security officers within the institution to the Director, varying widely in age and correctional experience. Given the seniority system within which the correctional system operates, those at higher levels of responsibility generally represented greater experience within the system. The age of the officers responding to the questionnaire was a trimodal distribution ranging from 22 years old to 58 years old, and the correctional experience ranged from 2 years to 20 years. Only three officers had any experience with the federal correctional system and the majority (n=20) stated that their experience in corrections equalled their experience at V.I.R.C.C..

Illustrative of the primary decision-making process of an officer choosing when not to charge is the initial perception of the offence being of a serious or trivial nature. Table 7 indicates the difficulty the officers have in dichotomizing the offences in such a manner. Respondents to the questionnaire were initially asked whether or not this could be done as it is in the federal system, their opinions split 49% (n=16) responding yes; and 51% (n=17) responding no. Of those who stated "no, it could not be done", ten (10) continued on to dichotomize the offences. This ambivalence was not alleviated by correctional experience, the experience may in fact have exacerbated these distinctions in that the more experience an officer gained, the more likelihood that the officer would judge the seriousness of the offence by the situation in which it occurred.

Despite the rather crude distinctions between the categories there does seem to be a certain consensus between the respondents as to the seriousness of some offences. Those answering that the offence could be considered either minor or major further emphasizes the notion that the degree of seriousness may often be dependent upon the situation and not the action. This was confirmed by those indicating their initial difficulty in categorizing the offences. The rules were often seen as merely guidelines to the actions of enforcement. When controlling for the individual's job classification, the difficulty in categorizing the official charges in a dichotomized fashion was also encountered. That is to say,

Table 7
Status of Standardized Offences

| Offence | Minor | Major | Both |
|----------------------|-------|-------|------|
| Failure to obey | 11 | 6 | 9 |
| Leave assigned place | 6 | 13 | 7 |
| Property damage | 5 | 15 | 6 |
| Theft of property | 8 | 15 | 3 |
| Threaten operation | 1 | 20 | 5 |
| Clean & orderly | 18 | 3 | 5 |
| Assault | 0 | 21 | 5 |
| Escape | 1 | 22 | 3 |
| Abusive language | 14 | 6 | 6 |
| Indecent language | 18 | 3 | 5 |
| Create disturbance | 1 | 22 | 3 |
| Breach of rule | 6 | 9 | 11 |

individuals at all levels of institutional authority had problems separating the particular offence from the particular situation. The relationship between these variables was recorded as not significant.

This uncertainty about the seriousness of the offence carries over to the factors involved in charging. Some officers (n=19) indicated that there was no difference between the factors considered in the decision to proceed either with a minor or major offence. Of those who did (n=14) the attitude of

the offending inmate was considered most decisive (n=10), followed by the visibility of the incident (n=9), and the inmate's prior institutional record (n=7). Factors noted by the respondents which were considered in the decision to proceed on any offence identified the attitude of the offending inmate as primary (n=26), this corresponded to previous research by Flanagan (1982) and Lombardo (1981). This was followed by the inmate's prior institutional record (n=20), and the visibility of the incident (n=19). Those considering the charge as a function of the particular rule having been broken, numbered one. The majority of the respondents (n=24) indicated that the decision of whether or not to proceed with the charge depended upon the given situation in eighty to one-hundred percent of the cases.

Variations between the levels of authority within the institution with respect to decision-making issues were seen as important. There was no significant variation between the levels of authority in the reaction to the comments that only serious charges result in disciplinary proceedings or that any rule infraction could be seen as threatening the security of the institution (questionnaire items 11 & 12). The responses to both items indicated general agreement to the latter and mixed opinion as to the former. Given the difficulty in dichotomizing the charges initially, the diversity of opinion as to whether or not to proceed with only 'standardized' serious charges, should not be surprising. There appears to be some question as to the

nature of a 'serious' offence.

A significant difference was recorded across job classifications when asked whether the institution can ensure fairness. It appears that this may also be related to the apparent differences in the perceptions of punishment and justice. There was a distinct difference recorded in the discussions with the administration and the officers with respect to the manner with which misconduct should be dealt. Fairplay and 'symbolic' punishment was felt to be the most effective way in dealing with the inmates according to the Director, as "harsh punishment serves no purpose." The officers disagreed with him and tended, in some cases, to take the notion of 'fair but firm' to the extreme. Reference was made by many of the officers to the necessity of the institution having the ability to handle incidences quickly and the right to run a safe and secure institution, autonomously. Therefore the enforcement of the rules is considered fair, given time constraints. In his explanation of his philosophy of justice, the Director acknowledged his belief that the officers do not hold the same philosophy. The exception to this would be his Deputy, who indicated that an effort is made to ensure a fair hearing of the charge and provide the inmate with an opportunity to defend himself. While this may be acknowledged, it is difficult to assess its veracity given the high incidence of the use of segregation and loss of remission, considered the harshest penalties, in all infraction frequencies.

Indication that the officers did not hold the same view of fairness or justice as the institutional administration was revealed in the responses to how and why enforcement patterns had changed. Many officers (n=20) stated that they had become more lenient and were charging less often. The major reasons had to do with the administration and the officers' perception of not receiving support for their charges when brought before a hearing. This was reiterated in their responses regarding their satisfaction with the results of the disciplinary hearings. There is an opinion among the officers (n=16) that there is 'no punishment' given at the hearing; that they are not backed up (n=5) and that the dispositions are inconsistent (n=3). Sixty-one percent (n=20) were slightly to strongly dissatisfied with fifteen percent (n=5) neutral. The remaining twenty-four percent (n=8) ranged from slightly to strongly satisfied.

The effectiveness of the hearings and the officers' satisfaction with the hearing was also examined in the questionnaire. Fifty-five percent (n=18) of the officers responding thought the hearings were only slightly effective or not at all effective. Despite this, the officers polled would prefer the existing structure over any intervention by the courts to ensure compliance to statutory standards. Of those who responded (n=27) eighty-nine percent (n=24) indicated that the court's role is never or rarely necessary in prison disciplinary matters, and the further eleven percent (n=3) responded that the court should intervene only occasionally.

Significant differences were recorded between the job classifications with respect to satisfaction from the outcomes of the disciplinary hearings as well as with the effectiveness of the hearings. Reflecting back to the results indicating a misconception of the frequency of some of the charges and dispositions awarded may account for a portion of these differences.

In order to achieve a certain measuring rod of discretionary power held by an individual officer one could ask the officer to what extent he feels justified in taking a particular action. This justification then, could be considered an indication of the officer's perception of his own power. When asked to agree or disagree with a statement that officers are left entirely to their discretion in any given instance of inmate misconduct, there was a range of answers. There was a wide range of opinion as to the extent of the discretion, however when posed with the statement that, given any set of circumstances, any of the rule infractions could be seen as threatening the security of the institution, 73% (n=24) were in moderate or strong agreement. The seriousness of that threat would be judged by the particular officer and then 'appropriate' action would follow. Thus, not only the 'serious' offences result in formal disciplinary action as some may have initially assumed.

Additionally, when faced with a particular incident, 89% (n=29) of the officers attempt to achieve an informal resolution

before laying the charge. While this is classified as a duty of the officers in the C.C.R.&R's, previous findings are indicative of the extent to which the officers feel justified to proceed on their own in a particular situation. It may, be the case then, that this front-line discretion is the power base of the institution which sets the direction of the disciplinary proceedings as only those proceeded with by an officer come under the direct scrutiny of the senior security personnel i.e. the Deputy Director or the Director. The extent of their power to oversee is not necessarily belittled by this apparent jurisdiction of the correctional officer as will now be examined.

The power to manage the institution and direct the formal policy of discipline and security, ultimately lies with the Director and his Deputy. Guidelines for the disciplinary hearing are outlined in the C.C.R.& R.'s and are also elaborated upon in the institutional standing orders at V.I.R.C.C. (Appendix G). The guidelines provide for the membership of the disciplinary panel to be composed of the Director or Deputy Director acting alone, or the Director or Deputy Director as chairman and two officers selected from time to time by the chairman.

The guidelines for the disciplinary hearings are merely administrative procedures and, aside from the suggestions of a duty of fairness owed the inmate on the part of the institutional management, the Director and the senior security officials are unencumbered by regulations to impose any form of

available and legitimate punishment they feel is necessary. With each institution having its own unique problems and concerns, each institution is likely to have its own unique style of disciplining inmates, despite the standardized rules and regulations. This is borne out by the data in Table 8 compiled by I. & S., which illustrates the patterns of imposing two forms of punishment considered to be most severe, segregation and loss of remission. Aside from the peculiar characteristics of an individual institution, unique management styles appear to be in operation throughout the province at the regional correctional centres. Each institution seems to have its own method of most effectively dealing with its disciplinary problems, given its unique characteristics. Many earlier studies on prison discipline have indicated distinct differences between institutions as well as between the chairpersons of the disciplinary hearings within the same institution. The panels at V.I.R.C.C. take the form of a single arbiter and as noted earlier there were differences observed in the judgements of these individuals. Observations from the sixty (60) hearings indicate a total of seventy-four (74) charges were brought forward; fourteen (14) of these being multiple charges.

Distinctions in sentencing is probably most glaring in the crosstabulation of the individuals with the single charge, illustrating the Deputy awarding a reprimand in nineteen (19) cases while the Director awarded none. Similarly the Deputy awarded cell confinement in five cases while the Director

Table 8

Offence Frequencies at British Columbia
Regional Correctional Centres

| Facility | Fiscal Year | Total Offences | Segregation | Remission |
|--|-------------|----------------|-------------|-----------|
| L.M.R.C.C. Capacity (512) | 79/80 | 963 | 4083 days | 532 days |
| | 80/81 | 1068 | 9062 | 340 |
| | 81/82 | 1102 | 5123 | 901 |
| | 82/83 | 1203 | 5321 | 1010 |
| P.G.R.C.C. Capacity (140) | 79/80 | 593 | 676 | 2056 |
| | 80/81 | 565 | 256 | 1662 |
| | 81/82 | 574 | 945 | 2042 |
| | 82/83 | 671 | 1248.5 | 3039 |
| V.I.R.C.C. Capacity (130) | 79/80 | 247 | 283 | 169 |
| | 80/81 | 157 | 261 | 125 |
| | 81/82 | 108 | 196 | 286 |
| | 82/83 | 127 | 494 | 200 |
| | 83/84 | 129 | 578 | 118 |
| Chilliwack Security Unit Capacity (25) | 79/80 | 25 | 56 | 124 |
| | 80/81 | 15 | 13 | 65 |
| | 81/82 | 26 | 54 | 165 |
| | 82/83 | 39 | 112 | 161 |
| K.R.C.C. (incl. K.C.C.C. Rayleigh & Bear Creek) Capacity (86-KRCC) | 79/80 | 269 | 661 | 505 |
| | 80/81 | 400 | 1209 | 1564 |
| | 81/82 | 309 | 1210 | 1710 |
| | 82/83 | 326 | 1399 | 1563 |

awarded none. Of these cases documented in the hearings five

(8.3%) resulted in dismissals of the charge(s). In three (3) of these cases the dismissals were recorded on one charge, however the inmate was found guilty of the second charge. In the other two cases, the inmate was charged with a single offence which was dismissed because it did not meet the evidentiary requirement of the chairperson who required reasonable doubt.

Dismissals were not recorded regularly in the statements of penalties therefore it is unclear as to the number of inmates found not guilty. Those inmates dismissed on one charge from a set of charges are noted as above and were very small in number. From the hearings, however, figures are available as to the number of not guilty pleas as well as the number of not guilty verdicts. As noted in the previous chapter there was an increase in the number of not guilty pleas on a multiple charge as well as an increase in the number of not guilty dispositions. Eighty-five percent of those inmates charged with a single offence and recorded in the hearing, were found guilty, whereas only sixty-two percent of those with more than one charge were found guilty.

Summary

In this chapter a description of the manner in which a correctional institution attempted to deal with the misconduct of its inmates was offered for consideration. The uncertainty of the volatile prison milieu and the subsequent relationships which create and sustain it has developed such a dynamic, that

the importance of the formal regulations and the private actions of all the participants cannot be separated. In the examination of the official documentation of inmate misconduct, the statements of penalties imposed, the transcripts of the disciplinary hearings, and the questionnaire dealing with disciplinary and enforcement practices of the officers, the pivotal role of each individual officer or inmate in constructing and perpetuating that disciplinary relationship has been illustrated.

The statements of penalties indicated the official level of inmate misconduct by the rule breached and the penalty awarded, including the particular inmate characteristics. In analysis they revealed a random distribution of charges across dispositions and manifested results similar to previous research done in other institutions both in the United States and in Canada. With the implication that any offence may result in any disposition one must look beyond the officially recorded data and attempt to analyze the impact of the discretionary power of the charging and punishing officers and the extra-legal factors prevalent in an institution constructed on the power to punish.

The correctional personnel polled in the questionnaire and interviewed at the institution expressed uncertainty in categorizing the standardized rules as minor or major, many preferring to record some of the rules as both, depending upon the prevailing situation. They also expressed uncertainty in categorizing the severity or seriousness of the dispositions

awarded. These results coincide with the other studies which have documented the lack of a sentencing scale as well as consensus among staff as to the most applicable response to inmate misconduct. These inconsistencies have previously resulted in charges of arbitrary and capricious management of disciplinary practices within the prison.

Could it be that the institution is attempting to make the best of a bad situation? Having acknowledged the overwhelming role discretion plays in the perseverance of this private justice system, can it be justified as a legitimate authority in conjunction with other parts of the Canadian criminal justice system? Is the correctional system merely a mechanism of social control developed to oppress the disadvantaged who become involved with it? Can such a structure whose justice system is based on the power to punish continue to operate and flourish on the foundation of the unfettered discretion of its representatives?

The issues which arise out of these questions are of primary concern in the analysis of the internal justice system of a correctional institution. They become more important when the inconsistencies arise through the correctional hierarchy and extend from distinctions between what constitutes a minor or major offence, to issues such as the most appropriate punishments to be awarded offending inmates for a given offence. The social structural relationships between the correctional officials at different levels tend to disintegrate, as was noted

in the results indicating levels of satisfaction with the disciplinary hearings and the degree to which the individual officer feels that he has control over the process he began.

VII. Conclusion

In the preceding chapters a number of issues have been raised outlining the scope of correctional decision-making regarding inmate discipline. More specifically, a description of the process by which those decisions are made by the correctional management and staff, was presented. Research conducted at V.I.R.C.C. provided insight into the disciplinary decision-making process and in doing so, provided the opportunity to examine the dynamics of the decision-making process. More directly, the human element of a process which allows for one individual's power to discipline and punish another so completely, was observed.

The journey to the description of V.I.R.C.C.'s disciplinary process was a long but necessary one. Essentially what is at issue in this study is not only the logistics of how discipline is managed in one institution, but, more fundamentally, a discussion of the power accorded correctional officials to take whatever action they deem to be necessary to maintain some nebulous standard of good order and discipline within the institution.

At the outset of the thesis it was suggested that the modern correctional institution is influenced to a much greater degree by factors external to the correctional system, than were the correctional institutions of an earlier era. These factors

may impinge upon the institution from other components of the criminal justice system or from outside the justice system entirely. Throughout the subsequent chapters the impact of these factors was discussed in relation to the internal decision-making process regarding the disciplining of inmates. Primarily, what is necessary when examining a process of decision-making in a correctional institution is the recognition that the institution is merely one small part of a more complex justice system. Keeping this in mind, the impact any interaction with other criminal justice or civilian organizations may have on the daily management of the institution, is very important. It was considered necessary, then, to outline the patterns of prison discipline which have developed over the years, and the societal response to periodic government reports and initiatives regarding the federal and provincial correctional systems.

As part of this societal reaction, the position of the Canadian court system was also important to document. These followed allegations of the abuse of the carceral power of correctional officials. In all cases there was reluctance to interfere with the broad statutory authority granted the correctional officials. When there were recommendations for substantive change, correctional reformers came up against probably the most critical barrier, politicians in government. It is the politicians who create the policy framework for the correctional system thus it is these individuals toward whom change must be recommended and from where the change must also

come. This political factor cannot and must not be ignored.

It was not the intention of this study to undertake the task of suggesting the implementation of a model for reform of the magnitude suggested by some of the previous reports on corrections. What it has done is demonstrated the manner in which a process of decision-making in prison, while periodically reviewed, seems overshadowed by a very parochial perspective of the decision-makers and a reluctance to discuss both inmate discipline and the implementation of substantive reform, by those in a position to do so. Carson (1984, 1) makes a comment which is a disturbing, and revealing, epitaph to a society unwilling to accept correctional institutions, yet equally unwilling to discard them. This unwillingness creates an atmosphere more conducive to the correctional system's decay through neglect rather than constructive reform through understanding. He says,

A flurry of violent incidents has once again drawn attention to the operation of the Correctional Service of Canada. This is understandable, yet we question whether the correctional service should be noticed and judged primarily for what goes wrong.

One of the objectives of this thesis was to shed light onto a process of disciplinary decision-making in a provincial institution in an attempt to give this subject much needed, but rarely appreciated, attention. A description of the disciplinary process and the examination of the extent to which correctional staff employ discretion, in their daily activities of enforcing the disciplinary code, were the major focuses.

Much of the interest aroused for this study resulted from the barrage of academic reports written on the prison community, and the phenomenon of carceral power as well as a consistent complacency of the general public to such reports. Studying these reports it is not difficult for one to soon become resigned to the idea that the prison system cannot or will not change. As Ignatieff remarked,

History can help pierce through the rhetoric that ceaselessly presents the further consolidation of carceral power as a "reform". As much as anything else, it is the suffocating vision of the past that legitimizes the abuses of the present and seeks to adjust us to the cruelties of the future (1981:220).

It is this suffocating vision that this study has attempted to overcome. This thesis does, to some extent, continue the barrage of reports critical of the extent of carceral power in corrections, but without the obligatory forecast characterized by cynicism and morbidity. The results indicate that V.I.R.C.C. is subject to similar criticisms laid against other institutions, but cannot shoulder all of the blame for its inadequacies. It is not at the institutional level where the recommendations for reform must be implemented. Within corrections the recommendations must be at a level of the correctional system management whose policies the institution follows. However, as previously stated, prior to the implementation of the changes at this level, the direction of the reformative policies must initially come from the government. The basis of reform initiatives should begin with a recognition and re-evaluation of the poor network of

communication both between corrections and other criminal justice components, and within corrections itself.

Previous studies have outlined the necessity for both management information systems and research dealing with systems analysis when examining certain aspects of the criminal justice system (Bartollas & Miller, 1981; Ekstedt & Griffiths, 1984; Muirhead, 1979). Having observed the communication network and the flow of information at V.I.R.C.C. it is apparent that a change in this system is certainly required. It may not be so much the process which requires change but the attitudes of those involved in the process which requires change. A great deal of knowledge is lost in the filtering of information throughout the correctional organization on a 'need to know' basis and many times those who may require more explicit information regarding a particular policy, such as line officers, may go wanting. If Foucault's discussion of the dialectics of power and knowledge is persuasive to the reader, then, it may be that corrections has yet to reach its full potential as a carceral power.

A discussion of the impact of criminal justice system factors upon the operation of a correctional institution does not exclude the importance of the internal organizational factors affecting the disciplining of inmates. This approach to the analysis of criminal justice decision-making has been accepted by others (Bartollas & Miller, 1978; Duffee, 1980; Ekstedt, 1983) in their identification of forces that affect an

organization.

Issues which have been acknowledged by the management and staff of V.I.R.C.C., but which have not been dealt with to any substantial degree appear to centre upon two general points.

They are,

1. inconsistencies in the manner in which inmates are disciplined and the philosophies of punishments employed; and
2. a balance between the right of the inmate to natural justice in decision-making and the maintenance of the good order and security of the institution.

These issues have been identified as significant in other studies dealing with correctional organizations, managerial styles and decision-making (Cressey, 1959; Duffee, 1980; Thomas & Poole, 1975).

Results of the examination of the disciplinary process at V.I.R.C.C. reveal that the inconsistencies in the manner of discipline and punishment of the inmates involve a number of things. Little consistency among the officers was noted in their perceptions of the severity of the particular infraction or in the decisions to charge an inmate with an infraction against the institutional rules. Inconsistencies in decision-making were also apparent at the later stage in the disciplinary process when the inmate was found guilty at a disciplinary hearing, and sentenced. In the examination of the types of offences receiving a certain disposition it became evident that no effective

sentencing scale or criteria was employed.

The conclusions arising from these inconsistent practices, at first glance, would seem to demand more explicit guidelines to be set by the correctional administration for the disciplining and punishment of inmates. It may be more important to the consistent application of discipline that the correctional administration not implement more rules or generate more directives, but develop the network of communication between the levels of correctional authority. This is important within an institution as well as between institutions, thus breaking down some of the walls from the inside. One of the more salient findings from the study suggests that while the correctional line officer may, in fact, maintain the ability to direct the disciplinary process through his discretionary choices, a great deal of the initial official reaction is predicated not on the offence, but upon the prevailing situation in which the offence occurs. These conditions may be a necessary element of the system of prison justice.

Cautious steps must be taken if one is to accept suggestions that discretionary power be curtailed, in order to ensure that in the fervor of limiting and regulating such discretionary power, it is not eliminated. In controlling discretion in this manner, Atkins & Pogrebin (1978) comment that it should certainly be confined within boundaries, which themselves must be controlled, and that supervisory controls be placed on one decision-maker by another; in effect watching the

watchers. It should not be a great burden that the limits to the present practices of an officer's discretionary power be tempered by the requirement that the use of such discretion be employed in an informed and cautious manner. That is to say, the development of a network of communication where those charging inmates are fully aware of the manner in which those punishing the inmates are managing the process.

The results of the study conducted at V.I.R.C.C. support much of the previous research cited in the literature review as well as the initial hypotheses stated in Chapter I. From the research instruments used, it was evident that the disciplinary process was directed by factors more complex than the incidence of an inmate breaching an infraction of the rules of the institution. An infraction could, and did, incur any of the dispositions available to the institutional officials. While in many cases there were references to the relative fairness and justice of the disciplinary process, the overwhelming factor in the dispensing of discipline in the institution was effort to maintain order and security.

The perceptions of the correctional officers with regard to the manner in which discipline is enforced, was of great importance. Many of these perceptions were based on their feelings that pattern of enforcement was necessary, given the constraints of the facility, as well as the more salient factors dealing with the management response to misconduct.

One significant factor recognized in this process was the appalling breakdown in communication between the levels of authority within the institution and the Corrections Branch. This communication breakdown is most apparent in the assessment of the line officers' perceptions of the types of punishments employed for particular offences and the manner in which the institutional management dealt with inmate misconduct. There were clearly officers who simply were unaware of the punishments awarded and had generalized from the cases they were directly involved with. There also appears to be little interest on the part of the management to correct these misconceptions as noted in the comment early in the research that they (the Director and the Deputy) would not be surprised if this were found.

What has been illustrated here is that the resistance to change in corrections may have as many internal barriers as external ones. As pariah of the criminal justice system, corrections has been ignored, to a large extent, by the public and politicians, and has garnered little in the way of support or encouragement to reform from the judiciary. Consequently, while the corrections system may be more visible and its bureaucracy more complex, it remains, to a large extent, a sub-system of criminal justice left to fumble alone once the demands of the other components of the system are fulfilled. Left alone, corrections has created its own procedures to deal with its charges and, not surprisingly, has become defensive and protective when the only attention received comes from those

whose attention has been momentarily distracted from other societal problems, and whose attention will soon be redirected elsewhere.

Some may suggest that corrections may be counting on society to pay little or no attention to its management of inmate discipline. In such a case, corrections cannot be depended upon to fulfill any initiative attempting to achieve a balance between an inmate's right to the requirements of due process and the demand for the secure operation of the institution. However, considering the development of prisoner litigation, and a heightened awareness of the right to due process, or at least to a duty of fairness, it may be in the interest of the secure operation of the institution that a balance be attained. Additionally, it must be noted that one may tinker with a system from its perimeter, but substantive reform must come from within.

REPORT.

POLICE OFFICE, VICTORIA,
31st October, 1879.

To the Honourable the Attorney-General,
&c., &c., &c.

SIR.—Obedient to the Act providing for the "Proper Management of Gaols," dated April 29th, 1879, I have the honour to submit my first Annual Report on the condition and management of the principal Gaols in the Province, together with an account of the outlying prisons or lock-ups and their management as far as they have come under my observation.

It is satisfactory that the number of criminals received in the different gaols has been gradually decreasing during the last two or three years, although the population of the principal cities has perceptibly increased during the same period.

It is also gratifying to be able to state that the expense of maintaining the prisoners has, through the energy and good management of the respective gaolers, been largely reduced without curtailing the comfort of prisoners or reducing the prison fare.

Mechanical skill among the prisoners has been utilized in the different gaols for making and repairing boots and clothing, which has reduced the cost per man in that respect to less than half what it has been formerly.

The conduct of the prisoners during the year has been good and the punishments for breach of prison discipline of a light character. It is found that kind, generous treatment, with a strictly just enforcement of the prison rules, has much improved the conduct of the prisoners.

The following rules are printed and posted in conspicuous places in the different gaols for the guidance of officers and for the observance of the prisoners:—

RULES TO BE OBSERVED IN THE VICTORIA AND NEW WESTMINSTER GAOLS.

1. All prisoners upon being admitted to the Gaol must be thoroughly searched in the presence of a Constable and Officer of the Gaol.

2. Prisoners must be searched every evening before being locked up in their cells, and the cells and beds must also be searched.

3. The cells in use must be scrubbed and whitewashed every week, and the passages every day.

4. Prisoners shall have clean underclothing and a bath when required, not less than once a week. Hard labour prisoners shall have their hair cut to one inch in length.

5. Strict silence must be observed in the cells, and no shouting or loud talking shall be allowed in the Gaol yard.

6. No lights will be allowed in any of the cells. All lights and fires in the Debtors' room must be extinguished at 8 o'clock p.m.

7. No visitor shall be allowed in the Gaol, or to speak with prisoners, except by permission of the Officer in charge, and some Officer must be present at all interviews with prisoners unless otherwise ordered.

8. The prisoners shall rise at 6.30 o'clock a.m. from April 1st to September 30th, and at 7 o'clock a.m. from October 1st to March 31st, and will be allowed half an hour to wash and dress themselves. A Guard must be on the balcony before the cells are opened.

9. The Gaoler may allow such prisoners as he thinks fit to be out in the Gaol yard an hour and a half in the morning and the same time in the afternoon. On Sundays

and holidays all prisoners, except those in solitary confinement, are to be allowed this privilege.

10. The Chain-gang shall leave the prison for work at 7.30 o'clock a.m. in the summer time (*vide* Rule 8), returning at 5.30 o'clock p.m.; and in the winter time at 8 o'clock a.m., returning before dark. One hour shall be allowed at noon for dinner.

11. All prisoners must obey the orders of any of the prison officers. Those in the Chain-gang, while outside the gaol, must obey the orders of any of the guards.

12. The Gaoler may place such irons on any prisoner, other than a debtor, as he may deem necessary for the prevention of escape, subject to the approval of the Superintendent of Police. The Senior Convict Guard may refuse to allow any prisoner to go out in the Chain-gang until he is ironed to his satisfaction, subject to approval as above.

13. Prisoners' irons must be examined daily; those of the Chain-gang, on leaving for work, by the Senior Convict Guard, and on return by the officer in charge of the Gaol at the time.

14. While the Chain-gang are outside the Gaol, the Senior Guard shall have charge of the guards and convicts.

15. The Assistant Gaolers and Guards, while inside the Gaol, shall be under the orders of the Gaoler or the officer in charge of the Gaol at the time.

16. The Gaoler will be held responsible for the good order, cleanliness, and neatness of the prison.

17. Any prisoner who shall be proved guilty of wilfully disobeying the orders of the officer in charge of the Gaol, or of fighting in the Gaol or Chain-gang, or of refusing to work, or of making an unnecessary noise in the prison, or of destroying clothing or other property of the prison, or of refusing to keep himself clean, or of refusing or neglecting to clean his cell when necessary or when ordered to do so, or of breaking any of the prison rules, may be punished by order of the Superintendent of Police, or, in his absence, by order of any Police or Stipendiary Magistrate, or of any Justice of the Peace when there is no such Magistrate.

18. The punishment to be inflicted upon prisoners for any disobedience of the prison rules shall not be other than the following:—

(1.) Solitary confinement in dark cell, with or without bedding, not to exceed six days for any one offence, nor three days at any one time.

(2.) Bread and water diet, full or half rations, combined or not with No. 1.

(3.) Cold water punishment, with the approval of the visiting physician.

19. In the absence of the Superintendent of Police, the Gaoler or officer in charge of the Gaol, shall have authority summarily to confine any prisoner, for misconduct, in a solitary cell, or to place irons upon his hands and feet should he find it necessary; such restraint not to extend over a longer time than is necessary to bring the matter before the Superintendent of Police, or, in his absence, before a Police or Stipendiary Magistrate, or of any Justice of the Peace when there is no such Magistrate.

20. Any person who may be found interfering with the discipline of the prison shall be excluded from the prison as a visitor.

21. A book will be kept by the Gaoler, in which the conduct of prisoners shall be registered daily, with a view of obtaining a mitigation of punishment from the proper authorities in cases meriting reward.

By order.

C. TOMP,
Superintendent of Police.

The cost of guarding the Chain-gang at Victoria and New Westminster, together with the cost of tools and material used, amounts to about 65 cents per day to each man working in the gang, and it is doubtful if the amount of work done by the convicts is worth the cost to the Government.

Marching the prisoners through the streets in irons does not improve them morally; besides it is a disagreeable sight to most citizens, as well as to strangers who visit our cities.

In connection with my report, the annexed statements, carefully compiled from the prison records, will assist in showing the condition and management of the gaols, and will assist materially in forming an estimate of the amount of crime committed in this part of the Dominion.

RULES AND REGULATIONS

FOR THE GOVERNMENT OF

PROVINCIAL GAOLS AND LOCK-UPS

IN THE PROVINCE OF BRITISH COLUMBIA.

—o—

1. The Warden shall have full charge at all times of the Gaol and the prisoners, and he shall be responsible for the safe custody and general care of the prisoners, and for the state and condition of every part of the Gaol, and its surroundings, and for the general administration of its affairs.

2. The Warden shall conform to the Rules and Regulations himself, and shall see that they are strictly observed by the prisoners and by the officers employed in or about the Gaol.

3. The Assistant Gaolers and Guards, while inside the Gaol, shall be under the orders of the Warden, or, in the event of his absence, of the officer in charge of the Gaol at the time. And when the chain-gang is on the outside of the Gaol the Senior Guard shall have control of the Guards and prisoners.

4. Where there is no Warden, these Rules and Regulations shall apply to the Officer in charge of the Gaol or Lock-up, excepting as to punishments.

5. Upon the admission of a prisoner to the Gaol he must be thoroughly searched in the presence of a Constable, and a list of all articles found on him entered in the Prisoners' Effects Book, and all prisoners must be searched every evening before being locked up in their cells, and the cells and beds must also be searched.

6. No visitor shall be allowed in the Gaol, or to speak with prisoners at any time, except by permission of the officer in charge, and a Gaol official must be present at all interviews, unless otherwise ordered.

7. The cells in use must be scrubbed and whitewashed every week, and the cell buckets every day, and all other parts of the Gaol must at all times be kept in a perfectly clean condition. Prisoners shall have clean underclothing and a bath when required, and not less than once a week. All male prisoners while undergoing sentence shall have their hair cut as close as may be necessary for the purposes of health and cleanliness.

8. The Gaoler may allow such prisoners as he thinks fit to be out in the Gaol yard an hour and a half in the morning and the same time in the afternoon. On Sundays and holidays all prisoners, except those in solitary confinement, are to be allowed this privilege. Prisoners shall not be permitted to promenade in the Gaol corridors without permission, and then only on condition that strict silence be observed.

9. The Warden, or, if there be no Warden, the officer in charge of any prisoner, other than a debtor, may place such irons on the prisoner as he may deem necessary for the prevention of escape. And the Senior Guard may refuse to allow any prisoner to go out in the chain-gang unless he is ironed to his satisfaction. Prisoners' irons must be carefully examined daily; those of the chain-gang on leaving for work by the Senior Guard, and on return by the officer in charge of the Gaol at the time.

10. Any person who in any way interferes with the discipline of the Gaol shall be excluded from the Gaol as a visitor.

11. The prisoners shall rise at 6:30 o'clock, a. m. from April 1st to September 30th, and at 7 o'clock, a. m. from October 1st to March 31st, and will be allowed half an hour to wash and dress themselves. In Victoria, New Westminster, and Nanaimo Gaols, a Guard must be on the balcony before the cells are opened. The prisoners shall leave the Gaol for work at 7:30 o'clock, a. m., in the summer time, returning at 5:30 o'clock, p. m., and in the winter time at 8 o'clock, a. m., returning before dark. One hour shall be allowed at noon for dinner.

12. Strict silence must be observed in the cells, and in all parts of the Gaol. No conversation between prisoners is allowed, except by special permission of the officer under whose charge they are. Prisoners shall not be permitted to visit from one cell to another. No marking or scratching the walls nor spitting upon the floor will be allowed, and no lights shall be allowed in any of the cells.

13. All prisoners before leaving their cells must fold their bedding and leave the same in a tidy condition. Prisoners attending service in the Gaol Chapel shall do so in an orderly manner. Spitting on the floor, shuffling the feet or any unnecessary noise is strictly forbidden.

14. Under no condition whatever are prisoners to use oakum, rags or other material liable to choke closet or drain pipes; nothing but paper regularly supplied will be allowed.

15. Prisoners not under sentence must in no way interfere with or otherwise attract the attention of prisoners under sentence from their work within the Gaol.

16. All prisoners must obey the orders of any of the Gaol Officers; those in the chain-gang, while outside the Gaol, must obey the orders of any of the Guards.

17. Every prisoner will find it to his interest at all times to conform to the Rules and Regulations, and to carefully read them over; but if a prisoner is unable to read they must be read over or explained by an officer to him on application at a reasonable time.

18. No punishments or deprivations shall be awarded to any prisoner except by the Superintendent of Provincial Police, or in his absence by the Warden of the Gaol, or by a Justice of the Peace, who shall have power to order deprivations for the following offences, namely:

- (1.) Disobedience of any of the Rules and Regulations of the Gaol.
- (2.) Common assaults by one prisoner on another.
- (3.) Cursing or using profane language.
- (4.) Indecent behaviour or language towards another prisoner, or any officer of the Gaol, or towards a visitor.
- (5.) Illness or negligence at work on the part of a prisoner sentenced to hard labour.
- (6.) Refusal or neglect to keep himself or his cell in order.
- (7.) Wilfully destroying or defacing the Gaol property.
- (8.) Insubordination of any sort.

19. The punishment to be inflicted upon prisoners for any of the foregoing offences shall not be other than the following:—

- (1.) Solitary confinement in dark cells, with or without bedding, not to exceed six days for any one offence, nor three days at any one time.
- (2.) Bread and water diet, full or half rations, combined or not with No. (1.)
- (3.) Cold water punishment, with the approval of the visiting Physician.

20. The Gaoler or officer in charge of the Gaol shall have authority summarily to confine any prisoner for misconduct in a solitary cell, or to place irons upon his hands and feet should he find it necessary, such restraint not to extend over a longer period than is necessary to bring the matter before the Superintendent of Provincial Police, or the Warden of the Gaol, or in the event of their absence, before any Justice of the Peace.

21. There shall be kept at the Victoria Gaol, and at New Westminster, Nanaimo, and Kamloops Gaols, a "Conduct Book," in which shall be kept a daily record of the conduct and industry of every convicted prisoner confined therein, with the view to determining the amount of remission of sentence to which such convicted prisoner may be entitled for good conduct at the end of every month.

22. Every convicted prisoner sentenced to any of the above named Gaols may earn a remission of a portion of the time for which he is sentenced to be confined, viz: Five days for every month during which he is exemplary in behaviour, industry, and faithfulness, and does not violate any of the prison rules.

23. Every such prisoner who commits any breach of the above Regulations shall, besides any other penalty to which he is liable, be liable to forfeit the whole or any part of any remission which he has earned under Rule 22 of these Regulations.

By command.

F. S. HUSSEY,

Superintendent of Provincial Police and Warden of Gaols.

Appendix C



Province of
British Columbia

Ministry of
Attorney General
CORRECTIONS BRANCH

VIOLATION OF CORRECTIONAL CENTRE RULES AND REGULATIONS
INMATE OFFENCE REPORT

PART I

| | | | | | | | |
|----------------------|-----------|---------|-----------------|-----------|-----|-------|------|
| Surname: | Initials: | Number: | Institution: | Ref. No.: | | | |
| Location of Offence: | | | Date of Offence | Hour | Day | Month | Year |

I, _____, hereby charge the above-named with violation of
Correctional Centre Rules and Regulations, section 28 () ():

Circumstances:

Signature of Reporting Officer: _____ Time: _____

Placement: Remand Protective Custody Confined to Cell
 General Population Segregation Other

| | | | | | |
|---------------------------|------|-----|-------|------|-----|
| Proposed Time of Hearing: | Hour | Day | Month | Year | By: |
| Served on Inmate: | Hour | Day | Month | Year | |

Supervisor's Signature: _____ Time and Date: _____

Director's Signature: _____ Date: _____

Remanded: _____ Reasons: _____ Signature: _____

Appendix C (con't)



Province of British Columbia

Ministry of Attorney General
CORRECTIONS BRANCH

INMATE OFFENCE REPORT

PART II

Name: Initials: No.: Date: Ref. No.:

WITNESSES AND EVIDENCE

Witnesses (Indicate staff or inmate):

- 1. _____ 5. _____
- 2. _____ 6. _____
- 3. _____ 7. _____
- 4. _____ 8. _____

Physical evidence (description, location):

INVESTIGATION

Investigating Officer: Name: Date Assigned:

Witnessed account:

Inmate's account:

Signature of Investigating Officer: Date:

Appendix C (con't)



Province of
British Columbia

Ministry of
Attorney General
CORRECTIONS BRANCH

INMATE OFFENCE REPORT

PART III

Name: _____ Initials: _____ No.: _____ Date: _____ Ref. No.: _____

HEARING

Tape recorded _____ Written transcription _____

Plea: Guilty Not Guilty Refused to Plead

| | | | | |
|--------------|-----|-------|------|--------------------|
| Remanded to: | Day | Month | Year | Reason for Remand: |
| | | | | |

Findings: Guilty Not Guilty

Previous Institutional Offences (current sentence):

Disposition and reasons: _____

DISPOSITION OF EVIDENCE

Returned to inmate/owner Destroyed Other

Details: _____

| | | | | |
|-------|-----|-------|------|--|
| DATE: | Day | Month | Year | |
| | | | | |

Chairman _____ Title: _____

Members: _____

Director's signature: _____

Appendix C (con't)



Province of
British Columbia

Ministry of
Attorney General
CORRECTIONS BRANCH

INMATE OFFENCE REPORT
(Continuation Sheet)

| Surname: | Initials: | Number: | Institution: | Ref. No.: |
|----------|-----------|---------|--------------|-----------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Form 7661 (40)
6/79 100

ADMINISTRATION

1

Appendix D

Certain Rules of Inmate Conduct

28. (1) An inmate shall comply with a lawful order on direction of an officer.

(2) Unless authorized by the director or an officer, no inmate shall leave his cell, place of work, or other place to which he has been assigned.

(3) No inmate shall wilfully disfigure, attempt to disfigure, damage or attempt to damage, a part of a correctional centre or the property of another person.

(4) Unless the owner of the property consents, no inmate shall take or convert property of another person to his own use or that of a third person.

(5) No inmate shall have, attempt to obtain or give or knowingly receive a drug, weapon, or other object which may threaten the management, operation, discipline, or security of the correctional centre.

(6) An inmate shall keep his person, clothing, and sleeping area clean and orderly.

(7) No inmate shall assault or threaten or attempt to assault another person.

(8) No inmate shall escape or attempt to escape lawful custody, or be unlawfully at large, or aid and abet anyone to escape lawful custody or to be unlawfully at large from a correctional centre.

(9) Unless unreasonably provoked by that person, no inmate shall use abusive or insulting language or gesture to a person, and where an inmate alleges he was unreasonably provoked, the onus of proof lies with him.

(10) No inmate shall use indecent language or gesture or participate in an indecent act.

(11) No inmate shall conspire to create a disturbance, create a disturbance, attempt to create a disturbance, or incite others to create a disturbance at a correctional centre.

(12) No inmate shall, without lawful excuse, breach a rule or regulation that applies to a correctional centre.

Source: Correctional Centre Rules & Regulations.
Victoria: Ministry of Attorney General. 1978.

Appendix D (con't)

Disposition

33. (1) Where it is determined under section 32 that the inmate committed the alleged breach, the disciplinary panel or officer conducting the hearing may impose one or more of the following dispositions:

- (a) A reprimand;
- (b) A temporary or permanent loss of one or more privileges enjoyed by the inmate within the correctional centre;
- (c) That the inmate be confined in a cell at the correctional centre for a period not exceeding 192 hours to be served on week-ends, holidays, or evenings during the term of the inmate's confinement at the correctional centre;
- (d) That the inmate's earned remission that stands to his credit and that accrued to him to the time of the breach be forfeited in the amount
 - (i) up to 30 days, or
 - (ii) up to 60 days with the consent in writing of the regional director of corrections;
- (e) That the inmate's remission to the time of the breach be forfeited in the amount
 - (i) up to 30 days, or
 - (ii) up to 60 days with the consent in writing of the regional director of corrections;
- (f) That the inmate be confined in a segregation cell for a period not exceeding 15 days;
- (g) Assignment to employment, work service, or training for a period up to four evenings, week-ends, or holidays in addition to matters referred to in sections 45 and 46; or
- (h) That any pay which has accrued to the inmate for a period up to 30 days be withheld.

(2) Notwithstanding subsection (1) (b), the visiting privileges of an inmate shall not be restricted or revoked under this section except where it is found that the inmate committed a breach as a direct result of a visit.

Source: Correctional Centre Rules & Regulations.
Victoria: Ministry of Attorney General. 1978.

APPENDIX E

Vancouver Island Regional
Correctional Centre

Section DISCIPLINE

Number V700 05 Page 1 of 1

Subject

DISCIPLINARY PANEL

- TIME LIMITATION: 1. The disciplinary panel hearing the allegation shall convene within 24 hours, excluding Saturday, Sunday or holiday.
- MEMBERSHIP: 2. The disciplinary panel may include
(a) The Director or Deputy Director acting alone or
(b) The Director or Deputy Director as chairman and two officers selected from time to time by the chairman.
- POSTPONEMENT: 3. Where an extension of time is required, the Director may postpone the hearing for a period not exceeding 72 hours.
- DEPUTY DIRECTOR: 4. Prior to the hearing as per paragraph #1, the Deputy Director or his delegate is responsible to examine the nature and circumstances of the charge and to report his findings, in writing, to the Deputy Director or Director.
- CHARGE SHEET & COMMITTEE REPORT: 5. A written record of the hearing shall be compiled, including the report of the officer who filed the allegation in writing, an outline of the oral evidence presented, and disposition made.
- ASSISTANCE TO INMATE 6. Where an inmate is illiterate, or is not fluent in the English language, the officer in charge shall appoint a person to assist that inmate in presenting his or her case.

date issued _____ date revised _____

Appendix E (con't)

Procedures - Disciplinary Panel - Steps

1. Identify Panel Members.
2. Identify Accused by Name and Number.
3. Ask Accused if he Received a Copy of Offence Report.
4. Read Charge To Him.
5. Ensure He Understands Charge.
6. Ask How He Pleads To Charge;
 - (a) Guilty, or
 - (b) Not Guilty.
7. Record Plea.
8. If Plea Of Not Guilty, Read out Reports and Call Witnesses.
9. Hear Inmate Account.
10. Determine Guilt or Innocence.
11. Advise Inmate Of Disposition.
12. Draw Inmate's Attention To Section 34.
13. Dismiss Inmate.

Source: Addendum to Correctional Centre Rules & Regulations at V.I.R.C.C.

Appendix F

B.C. Corrections Branch
Statements of Penalties Imposed

Vancouver Island Regional Correctional Centre

Month Ending _____

| Name | Number | Age | Date of Conviction | Length of Sentence | No. of Previous Penalties Imposed | Date | Regulation Breached Section 28 | Date | Penalty Imposed Section 33 |
|------|--------|-----|--------------------|--------------------|-----------------------------------|------|--------------------------------|------|----------------------------|
| | | | | | | | | | |

Signature _____

Director

Appendix G

Prison Discipline Questionnaire

1. Is it possible to categorize the rule infractions in the C.C.R.R. as major and minor infractions?

Yes No
If not, why not?

If so, continue to Question #2

2. Of the following, which would you consider to be minor or major rule infractions?

minor major

- a. failure to comply with an order
- b. leaving assigned place without authorization
- c. wilful damage to correctional centre property
- d. theft of property (other inmate's)
- e. possession of drugs, weapon, ... threaten the management, operation and security of centre
- f. not keeping self and area clean and orderly
- g. assault or threaten to assault
- h. escape or attempt to escape
- i. abusive or insulting language
- j. indecent language, gesture or act
- k. creating a disturbance
- l. breach of a rule or regulation.

3. In your opinion, are these infractions dealt with in a similar manner by the staff?

Never Rarely Occasionally Often Always
1 2 3 4 5

4. What are the major factors considered in the decision to proceed or not with an infraction?

- a. Inmate's attitude/disposition
- b. Inmate's institutional record
- c. visibility of incident
- d. Book infraction
- e. expediency
- f. Other (please specify)

5. Do any of these factors differ depending on whether the rule broken is a major or minor one?
 Yes _____ No _____
6. If Yes, which ones? _____
7. How much of that decision depends upon the given situation the officer finds himself in?
 100% 90% 80% 70% 60% 50% 40% 30% 20% 10% 0%

Next are a number of statements of opinion regarding rule enforcement of decision-making. I would like you to indicate the extent to which you agree or disagree with the statements.

- Strongly Agree 1
- Moderately Agree 2
- Slightly Agree 3
- Neutral 4
- Slightly Disagree 5
- Moderately Disagree 6
- Strongly Disagree 7

8. The officers are left entirely to their discretion in any given instance of misconduct by an inmate.

- SA 1 2 3 4 5 6 7
- N
- SD

9. It is very important to the institutional management that the officers follow established procedures in the performance of their duties of rule enforcement.

- SA 1 2 3 4 5 6 7
- N
- SD

10. Maintaining the order and discipline of the institution is the most important objective in the operation of the jail.

- SA 1 2 3 4 5 6 7
- N
- SD

11. Normally, only the most serious infractions which threaten to disrupt the security of the institution go to charge.

- SA 1 2 3 4 5 6 7
- N
- SD

12. Given a particular set of circumstances arising within the institution, any of the rule infractions could be seen as threatening the security of the institution.

- SA 1 2 3 4 5 6 7
- N
- SD

13. When faced with an incident I try to achieve an informal resolution before laying a formal charge.

SA N SD
1 2 3 4 5 6 7

14. I try to anticipate possible problems with inmates and act to prevent their development.

Never Rarely Occasionally Often Always
1 2 3 4 5

15. In your opinion, do most of the staff do the same?

Yes ___ No ___ Don't know ___

16. Do you talk with or aid inmates who have recieved bad news

Never Rarely Occasionally Often Always
1 2 3 4 5

17. If not, who does? _____

18. How would you describe the general relationship between the correctional officers and the inmates?

V.Good Good Fair Tolerable Poor
1 2 3 4 5

19. Do you make suggestions for improving the unit program?

Never Rarely Occasionally Often Always
1 2 3 4 5

a. If so, to whom? _____

b. Do you feel your suggestions are taken seriously?

Never Rarely Occasionally Often Always
1 2 3 4 5

20. Do you think that over the last few years the way the officers enforce the rules has changed?

Yes ___ No ___ Don't know ___

a. If so, how have the practices changed?

b. Why do you suppose the change has come about?

21. Do you think the type of inmate has changed over the last few years?

Yes ___ No ___ Don't know ___

22. If so, please explain _____

23. A disciplinary hearing should proceed in the same manner as a trial in a courtroom (rules of evidence)?

SA N SD
1 2 3 4 5 6 7

24. Please explain your answer.
25. How effective is the disciplinary process in dealing with institutional infractions?
 V.Effective Moderate Slightly Not at all
 1 2 3 4
26. Are you satisfied with the types of dispositions for a particular offence?
 V.Satisfied N V.Dissatisfied
 1 2 3 4 5 6 7
27. If not, please explain
28. Do courts have a role to play in the internal disciplinary proceedings?
 Never Rarely Occasionally Often Always
 1 2 3 4 5
29. If so, how would you describe their role?
30. Are you familiar with any recent court decisions dealing with prison discipline?
 Yes No
31. If so, how would you describe their current attitude?
32. A correctional institution can assure cases will be dealt with fairly, without the necessity for court review.
 Never Rarely Occasionally Often Always
 1 2 3 4 5
33. The requirement for maintaining the security of the institution and the prisoners' rights to due process can co-exist satisfactorily.
 SA N SD
 1 2 3 4 5 6 7
34. Briefly elaborate on your answer to #33.
35. Prisoners' rights to due process should be an important consideration of the institution.
 SA N SD
 1 2 3 4 5 6 7

36. What do you consider to be included into a definition of prisoners' rights?
37. Rank in order of seriousness, the following dispositions. (most serious=1 least serious=7)
- a. reprimand _____
 - b. loss of privileges _____
 - c. confined to cell _____
 - d. loss of remission _____
 - e. segregation _____
 - f. assigned work duty _____
 - g. pay withheld _____
38. What would you consider to be the most frequently used disposition? _____
39. What would you consider to be the least frequently used disposition? _____
40. What would you consider to be the major factors involved in the decision of punishment at the disciplinary hearing?
- a. inmate's disciplinary record _____
 - b. inmate's attitude _____
 - c. officer's testimony _____
 - d. offence with violence _____
 - e. best interests of inmate _____
 - f. security risk _____
 - g. other _____

Background information

41. Job Classification _____
42. What do you see as your primary job responsibilities?
- a. custodial, security _____
 - b. treatment, counselling _____
 - c. staff supervision _____
 - d. administrative _____
 - e. classification, screening _____
 - f. other _____
43. Age as of your last birthday _____
44. How long have you worked in the correctional system? _____ years
45. How long have you worked at the institution at which you are presently working? _____ years

46. Have you held other job classifications?
 Yes No
47. If Yes which ones? 1)
 2)
 3)
48. Has any of your experience been with
 Federal corrections?
 Yes No
49. Education: (highest level completed)
- a. Elementary school
 - b. High school
 - c. Vocational/Technical Training
 - d. some post-secondary
 - e. post-secondary degree
 - f. some post-graduate
 - g. post-graduate degree
50. Have you taken any correctional officer
 training at the Justice institute?
 Yes No
51. Have you ever been involved in a serious
 disturbance in an institution where you were
 working?
 Yes No
52. Did your attitude toward disciplining
 inmates change as a result of the incident?
53. Please explain

THANK YOU VERY MUCH.

BIBLIOGRAPHY

- Anderson, Frank W. Prisons and Prison Reforms in the Old Canadian West. Canadian Journal of Corrections 2:209-215. 1960.
- Archambault (Chairman) Report of the Royal Commission to Investigate the Penal System in Canada. 1938.
- Archambeault, W.G. & B.J. Archambeault. Correctional Management: Principles of Organization, Policy, and Law. Englewood Cliffs, N.J.: Prentice-Hall. 1982.
- Atkins, B. & M. Porgebin. The Invisible Justice System: Discretion and the Law. Cincinnati: Anderson. 1978.
- Baehre, Rainer. Origins of the Penitentiary System in Upper Canada. LXIX Ontario History 185-207. 1977.
- Barak-Glantz, Israel L. A Decade of Disciplinary, Administrative and Protective Control of Inmates in Washington State Penitentiary: A Research Note. Journal of Criminal Justice 10(6) 481-492. 1982.
- _____. Patterns of Prisoner Misconduct: Toward a Behavioral Test of Prisonization. Sociological Focus 16(2) 129-46 1983(a).
- _____. Who's in the hole? Criminal Justice Review. 8(1) 29-37. 1983(b).
- Bartollas, Clemens & Stuart J. Miller Correctional Administration: Theory & Practice. New York: McGraw-Hill. 1978.
- Beattie, J.M. Attitudes Toward Crime and Punishment in Upper Canada 1830-1850: A Documentary Study. Centre of Criminology. University of Toronto. 1977.
- Bellomo, J.J. Upper Canada Attitudes Toward Crime and Punishment (1832-1851). LXIV Ontario History. 11-36. 1972.
- British Columbia Legislative Assembly. Sessional Papers. 1880, 1894. Victoria.
- Brown(Chairman) Report of the Royal Commission on the Provincial Penitentiary. 1849.
- Canada. Dept. of Solicitor General. Costs of Criminal Justice. Ottawa: Supply and Services. 1979.

- _____.. Selected Trends in Canadian Criminal Justice.
Ottawa: Supply and Services. 1979.
- _____.. The Role of Federal Corrections in Canada. Ottawa:
Supply and Services. 1977.
- Carson(Chairman). Report of the Advisory Committee to the
Solicitor General on the Management of Correctional
Institutions. Ottawa: Ministry of Supply and Services.
1984.
- Robert M. Carter, Daniel Glaser & Leslie J. Wilkins. (eds.)
Correctional Institutions Philadelphia: J.B. Lippincott
Co. 1977.
- Carter, Robert M., Richard A. McGee & E. Kim Nelson. Corrections
in America. Philadelphia: J.B. Lippincott Co. 1975.
- Clemmer, D. The Prison Community. New York: Holt, Rinehart &
Winston. 1940.
- Coffey, Alan R. Correctional Administration: The Management of
Institutions, Probation and Parole. New Jersey:
Prentice-Hall. 1975.
- Cohen, A.W. Failure of Correctional Management Reconsidered.
Criminal Justice Review 6(2) 55-61. 1981.
- _____.. Failure of Correctional Management Revisited.
Federal Probation. 43, 10-15. 1979.
- Conroy, John. Canadian Prison Law Vancouver: Butterworths. 1981.
- Copp, Terry The Anatomy of Poverty: The Condition of the Working
Class in Montreal 1897-1929. Toronto: McClelland &
Stewart. 1974.
- Correctional Centre Rules & Regulations. Victoria: Ministry of
Attorney General. 1978.
- Cressey, Donald. Contradictory Directives in complex
organizations: The Case of the Prison. Administrative
Science Quarterly 4:1-9. 1959.
- Duffee, David. Correctional Management: Change & Control in
Correctional Organizations. Englewood Cliffs:
Prentice-Hall. 1980.
- Ekstedt, John W. Organizational Structure and Decision-making.
The National Parole Board Report on the Conference on
Discretion in the Correctional System. 1983.
- Ekstedt, John W. & Curt T. Griffiths Corrections in Canada:

Policy & Practice. Toronto: Butterworths. 1984.

Farmer, R. Cynicism: A Factor in Correctional Work. Journal of Criminal Justice. 5:237-46. 1977.

Finlay, J.L. & D.N. Sprague. The Structure of Canadian History. Scarborough:Prentice Hall. 1979.

Flanagan, Timothy J. Time Served and Institutional Misconduct: Patterns of Involvement in Disciplinary Infractions Among Long Term and Short Term Inmates. Journal of Criminal Justice8(6) 357-367. 1980.

_____. Discretion and the Prison Justice System. A Study of Sentencing in Institutional Disciplinary Proceedings. Journal of Research in Crime and Delinquency July 216-237. 1982.

_____. Correlates of Institutional misconduct among state prisoners: A Research Note. Criminology 21(1) 29-39. 1983.

Fogel, David. ...We are Living Proof... The Justice Model for Corrections. Cincinnati: Anderson. 1975.

Garson (chairman). Report on Headingly Correctional Institution. Review Committee on Adult Corrections. Manitoba. 1983.

Gifis, S. Decision-making in a Prison Community In The Invisible Justice System: Discretion and the Law B. Atkins and M. Pogrebin (eds.). Cincinnati: Anderson. pp.317-335. 1974.

Glaser, D. Institutional Disciplinary Action and the Social Psychology of Disciplinary Relationships. In R.M. Carter et al.(eds.) Correctional Institutions (2d) 304-19. 1977.

Goffman, Erving Asylums: Essays on the Social Situation of Mental Patients and other Inmates. New York. 1961.

Gosselin, Luc Prisons in Canada. Montreal:Black Rose Books. 1982.

Griffiths, Curt T., John F. Klein, Simon N. Verdun-Jones. Criminal Justice in Canada: An Introductory Text. Toronto: Butterworths. 1980.

Harvard Centre for Criminal Justice. Judicial Intervention in Prison Discipline.Journal of Criminal Law, Criminology and Police Science.63(2) 200-228. 1972.

Henry, S. Private Justice: Toward Integrated Theorizing in Sociology of Law. London: Routledge & Kegan Paul. 1983.

Ignatieff, Michael A Just Measure of Pain: The Penitentiary in

the Industrial Revolution (1750-1850). New York:Pantheon Books. 1978.

Information Services. Background, Information and Description. Correctional Centre Regulations. Victoria: Ministry of Attorney General. 1978.

Irwin, John. Prisons in Turmoil. Boston: Little, Brown & Co. 1980.

Jackson, Michael. Justice Behind the Walls-a Study of the Disciplinary Process in a Canadian Penitentiary. Osgoode Hall Law Journal 12(1) 1-103. 1974.

_____. Inmates' Rights: The case law and its implications for prisons and penitentiaries. The National Parole Board Report on the Conference on Discretion in the Correctional System. 1983(a).

_____. Prisoners of Isolation. Solitary Confinement in Canada. Toronto: University of Toronto Press. 1983(b).

Jacobs, J. What a Prison Guard Thinks: a Profile of the Illinois Force. Crime & Delinquency 24:185-196. 1978.

_____. New Perspectives on Prisons and Imprisonment. London: Cornell University Press. 1983.

Jacobs, J. & H. Retsky. Prison Guard. Urban Life 4:5-29. 1975.

James, J.T.L. Goals and Their Goals in Manitoba 1870-1970. Canadian Journal of Criminology. 20(1) 34-42. 1978.

Jaywardene, C.H.S. & D.J.N. Jayasuriya. The Management of Correctional Institutions. Toronto: Butterworths. 1981.

Kaiser, Gordon E. The Inmate as Citizen: Imprisonment and the Loss of Civil Rights in Canada. Queen's Law Journal 1(2) 208-277. 1971.

Kimball, Edward L. & Donald J. Newman. Judicial Intervention in Correctional Decisions: Threat or Response. Crime & Delinquency 14(1) 1-13. 1968.

Lipton, Douglas, Robert Martinson & Judith Wilks. The Effectiveness of Correctional Treatment. A Survey of Treatment Evaluation Studies. New York:Praeger. 1975.

Lombardo, L. Guards Imprisoned: Correctional officers at work New York: Elsevier North Holland Inc. 1981.

Lowman, J. Images of Social Control in Prison. Unpublished Manuscript. Simon Fraser University. 1985.

Luft, Joseph. Of human Interaction. Palo Alto, Ca.: National Press Books. 1969.

Macguigan, (Chairman) Report to Parliament by Subcommittee on the Parliamentary System in Canada. Ottawa: Supply & Services. 1977.

Mandel, M. The Philosophy of Prisoners Rights. In G. Zellick (ed.) Prisoners rights Vol 1. Toronto: University of Toronto Faculty of Law. 1978.

B.C. Corrections Branch. Disciplinary Panel Guidelines. Manual of Operations - Adult Institutional Services. Victoria. 1983.

Marin, Bayard Inside Justice. London: Fairleigh Dickinson University Press. 1983.

Matheson, (Chairman) Task Force on Corrections Services and Facilities. Province of British Columbia. Victoria. 1973.

Maxim, Paul. Treatment-Custody staff conflicts in correctional institutions: A re-analysis. Canadian Journal of Criminology & Corrections. 18:379-86. 1976.

McGrath (Chairman). Report of the Alberta Penology Study. Edmonton. 1968.

McLaren, D. Cons, Hacks and Educated Screws-the Prison Politics of Discipline and Rehabilitation. Canadian Journal of Criminology & Corrections 18:379-86. 1973.

Millard, Christopher J. The Philosophy, the Politics, the Practice of Prisoners Rights. Canadian Criminology Forum. 5(1) 11-24. 1982.

Muirhead, G.K. A Design for the Development of Corrections Management Information Services. B.C. Corrections Branch Research Report. Victoria: B.C. Corrections Branch. 1979.

Mullan, David J. Administrative Law. Toronto: Carswell. 1981.

Needham, H.G. Historical Perspectives on the Federal Provincial Split in Jurisdiction in Corrections. Canadian Journal of Criminology 22(3) 298-306. 1980.

Ouimet (Chairman). Report of the Canadian Committee on Corrections-Toward Unity: Criminal Justice and Corrections. Ottawa: Information Canada. 1969.

Palmer, John W. Constitutional Rights of Prisoners (2nd ed). Cincinnati: Anderson. 1977.

- Pepler (Chairman). Report of the Commission Appointed by the Attorney-General to Inquire into the State and Management of Goals in British Columbia. Victoria. 1950.
- Poole, E. & R. Regoli. Work Relations and Cynicism Among Prison Guards. Criminal Justice & Behavior 7, 303-14. 1980(a).
- _____. Race, Institutional Rule Breaking, and Disciplinary Response: A Study of Discretionary Decision-Making in Prison. Law and Society Review 14(4) 931-946. 1980(b).
- Prevost (Chairman). Commission of Enquiry into the Administration of Justice on Criminal and Penal Matters in Quebec. 1968.
- Price, Ronald. Bringing the Rule of Law to Corrections. Canadian Journal of Criminology and Corrections. 16:209-56. 1974.
- _____. Doing justice to Corrections? Prisoners, Parolees and the Canadian Courts. Queen's Law Journal. 3:214-94. 1977.
- Proudfoot, (Chairman). Royal Commission on the Incarceration of Female Offenders. Victoria: Province of British Columbia. 1978.
- Ramirez, John. Race and the Apprehension of Inmate Misconduct. Journal of Criminal Justice. 11:413-427. 1983.
- Regoli, R., E. Poole and J. Schrink. Occupational Socialization and Career Development: A Look at Cynicism Among Correctional Institution Workers. Human Organization 38(2) 183-87. 1979.
- Report of the B.C. Ombudsman. Victoria: Ministry of the Attorney General. 1983.
- Richardson, Genevra. Time to Take Prisoners Rights Seriously. Journal of Law and Society. 11(1) 1-32. 1984.
- Robin, Gerald D. Introduction to the Criminal Justice System. New York: Harper Row. 1984.
- Rothman, David J. Conscience and Convenience. The Asylum and its Alternatives in Progressive America. Boston: Little, Brown & Co. 1980.
- Scull A.T. Decarceration: Community Treatment and the Deviant. A Radical View. Englewood Cliffs, N.J.: Prentice-Hall. 1977.
- Shapiro (Chairman). Report of the Royal Commission on the Toronto Jail and Custodial Services. Ottawa: Queen's Printer for Ontario. 1978.

- Sherman, Michael & Gordon Hawkins. Imprisonment in America: Choosing a Future. Chicago: U. of Chicago Press. 1981.
- Shoom, S. Authority: One Aspect of the Correctional Worker-Client Relationship. Canadian Journal of Criminology. 14(2) 181-84. 1972.
- _____. .. Kingston Penitentiary: The Early Decades. Canadian Journal of Corrections. 13:215-219. 1971.
- Shover, Neal. A Sociology of American Corrections. Illinois: Dorsey Press. 1979.
- Splane, Richard B. Social Welfare in Canada (1791-1893). Toronto: University of Toronto Press. 1965.
- Suedfeld, Peter, Carmenza Ramirez, John Deaton, Gloria Baker-Brown. Reactions and Attributes of Prisoners in Solitary Confinement. Criminal Justice and Behavior. 9 (3) 303-340. 1982.
- Sykes, G. Society of Captives. A Study of a Maximum Security Prison. New York: Atheneum. 1958.
- Takagi, P. The Walnut Street Jail: A Penal Reform to Centralize the power of the State. Federal Probation 39, 18-26. 1975.
- Tarnopolsky, W.S. & G. Beaudoin. The Canadian Charter of Rights and Freedoms: A Commentary. Toronto: Butterworths. 1982.
- Thomas, C.W. & E.D. Poole. The Consequences of Incompatible Goal Structures in Correctional Settings. International Journal of Crime and Penology 3:27-42. 1975.
- Turner, William Bennett. Establishing the Rule of Law in Prisons: A Manual for Prisoners' Rights & Litigation. Stanford Law Review 23(1) 473-518. 1971.
- Vantour(Chairman). Study Group on Dissociation. Ottawa: Dept of the Solicitor General. 1975.
- Zellick, Graham. The Prison Rules and the Courts. Criminal Law Review. Sept. 602-616. 1981.
- Zubrycki, Richard M. The Establishment of Canada's Penitentiary System: Federal Correctional Policy 1867-1900. University of Toronto: Faculty of Social Work. 1980.

Legal Cases Cited

- Butler v. The Queen et al. (1983) 5 C.C.C. (3d)356
(F.C.T.D.)
- Howarth v. The National Parole Board (1975) 50 D.L.R.(3d)349
(S.C.C.)
- Kosobok v. Solicitor General of Canada (1977) 69 D.L.R.(3d)682
(F.C.T.D.)
- Magrath v. The Queen (1978) 2 F.C. 232 (F.C.T.D.)
- Martineau & Butters v. Matsqui Institutional Inmate Disciplinary Board (1977) 33 C.C.C.(2d)366 (S.C.C.)
- Martineau v. Matsqui Institutional Disciplinary Board (No. 2)
(1979) 50 C.C.C.(3d)353 (S.C.C.)
- McCann v. The Queen (1976) 68 D.L.R.(3d)661 (F.C.T.D.)
- Morin v. Director of Corrections et al. (1983) 17 Sask. R. 333
(Sask. C.A.)
- Nicholson v. Haldimand-Norfolk Police Commrs. Bd. (1978) 1
S.C.R.311 (S.C.C.)
- Oswald & Cardinal v. Director of Kent Institution (1980) 137
D.L.R.(3d)145 (B.C.C.A.)
- Paul Perron v. The National Parole Board (1982) 9 W.C.B. 213
(F.C.T.D.)
- Re Blanchard & Disciplinary Board of Millhaven Institution & Hardtman (1982) 69 C.C.C.(2d)171 (F.C.T.D.)
- Re Desrochers & The Queen (1984) 6 C.C.C. (3d)406 (Ont. Div.
Ct.)
- Re Douglas Hamilton Horne et al. (1983) 10 W.C.B. 220 (F.C.T.D.)
- Re Howard & Presiding Officer of the Inmate Disciplinary Board Court of Stony Mountain Institution (1984) 8 C.C.C. 557
(F.C.T.D.)
- Re Joseph Chester & The Queen (1984) 12 W.C.B. 119 (Ont. H.C.)
- Re Kevin Oscar Peltari (1984), 12 W.C.B. 489 (B.C.S.C.)
- Re Kevin Oscar Peltari (1985), 14 W.C.B. 63 (B.C.C.A.)
- Re LaSalle & Disciplinary Tribunal of the LeClerc Institution & Rene Rousseau (1983) 11 W.C.B. 32 (F.C.T.D.)

Re Marcel Pilon et al. (1984) 12 W.C.B. 193 (F.C.T.D.)

Regina v. Insitutional Head of Beaver Creek Correctional Camp,
Ex parte McCaud (1969) 2 D.L.R. (3d) 545 (Ont. C.A.)

Regina v. Stanley Wayne Mingo (No. 3) (1982), 8 W.C.B. 451
(B.C.S.C.)