

Mental Health in Federal Corrections: Reflections and Future Directions

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The Office of the Correctional Investigator (the “Office”) was established in 1973 pursuant to Part II of the *Inquiries Act*.¹ With the proclamation in November 1992 of Part III of the *Corrections and Conditional Release Act (CCRA)*,² the Office was finally entrenched into legislation. The mandate of the Correctional Investigator, as defined by this legislation, is to function as an Ombudsman for federal offenders. The Correctional Investigator is independent of the Correctional Service of Canada (CSC) and may initiate an investigation on receipt of a complaint by or on behalf of an offender, at the request of the Minister or on his own initiative. As well, the Office has a responsibility to review and make recommendations on the CSC’s policies and procedures associated with individual complaints. In this way, systemic areas of concern can be identified and appropriately addressed. The Correctional Investigator is required by legislation to report annually through the Minister of Public Safety to both Houses of Parliament.

Federal offenders are excluded from the *Canada Health Act*³ and their health care needs are not covered by Health Canada or provincial health systems.⁴ The CSC therefore provides health care services directly to federal offenders, including those residing in Community Correctional Centres. The CSC is legislatively mandated to provide health care to offenders through the *CCRA*.

Section 86 of the *CCRA* states that:

- (1) The Service shall provide every inmate with

- (a) essential health care (which includes mental health care), and
 - (b) reasonable access to non-essential mental health care that will contribute to the inmate’s rehabilitation and successful reintegration into the community.
- (2) The provision of health care under subsection (1) shall conform to professionally accepted standards.

Section 87 of the *CCRA* further states that:

The Service shall take into consideration an offender’s state of health and health care needs

- (a) In all decisions affecting the offender, including decisions relating to placement, transfer, administrative segregation and disciplinary matters; and
- (b) In the preparation of the offender for release and the supervision of the offender.

This responsibility requires the CSC to provide health services to federal offenders, either directly or through contracted services. As a result, within the 57 CSC institutions there are five regional mental health treatment centres (one per region) and four regional hospitals which provide post-surgical and palliative care. In addition, Exchange of Service Agreements are



in place for the provision of some services through provincial health care systems.

The Office first raised its concerns about the delivery of mental health services to federal offenders in its Annual Report 2003-04.⁵ This report included a special section highlighting the Office's concerns about the delivery of appropriate mental health services to federal offenders. By and large, the section reflected the Office's support for the mental health strategy developed by the CSC. The Correctional Service's strategy acknowledges that the proportion of federal offenders with significant, identified mental health needs has more than doubled over the past decade. The 2004 strategy, since updated in 2010, was released at approximately the same time as the study on health care needs of federal inmates was published in the April 2004 issue of *Canadian Journal of Public Health*.⁶

This study indicated that inmates have consistently poorer physical and mental health as compared to the general population, regardless of the indicator chosen. That includes such socio-economic measures as level of education and unemployment; health behaviour, such as smoking and substance abuse; chronic conditions, including diabetes and heart conditions; infectious diseases, such as HIV and tuberculosis; mental health disorders, including schizophrenia and mood disorders; and mortality, such as homicide and suicide.

The most recent Annual Report 2010-11 of the Office of the Correctional Investigator stated the following:

The increasing demands for mental health services continue to pose significant challenges for the CSC. The latest internal CSC data suggest that 38% of the male federal offenders admitted to penitentiary require further assessment to determine if they have mental health needs. For admitted women offenders, more than 50% require further mental health assessment.⁷

These above percentages are, in all likelihood, lower than actual figures, as mental illness is typically under-reported in the prison environment, due to stigma, fear and lack of detection or diagnosis. We know, for example, that this data does not include a significant range of mental disorders, as federal corrections has limited capacity to systematically assess cognitive ability, attention deficit disorder, Foetal Alcohol Spectrum

Disorder(s) and other neurological dysfunctions upon admission to a federal penitentiary.

Since 2004, the OCI has repeatedly raised the issue of and reported on the care and treatment of prisoners with mental health concerns. Some of the Office's more significant recommendations include the following:

- Reallocate resources to fully fund intermediate mental health care units;
- Enhance efforts to recruit, retain and train professional and dedicated mental health staff;
- Treat self-harming behaviour/incidents as mental health rather than security issues;
- Increase the capacity of the five Regional Treatment Centres;
- Prohibit forced medical injections of an uncertified offender who is physically restrained for health or security purposes;
- Prohibit prolonged segregation of offenders at risk of suicide or self-injury and offenders with acute mental health issues;
- Provide for independent and expert chairing of national investigations involving inmate suicides and incidents of serious self-injury;
- Expand alternative mental health service delivery partnerships with the provinces and territories; and
- Provide health care coverage 24 hours per day, 7 days per week at all maximum, medium and multi-level institutions.

Despite significant efforts and some new funding, mental health services offered by the CSC to offenders with mental disorders has not kept up with dramatically increasing numbers; the level of mental health services available continues to be seriously deficient.

Canada's federal penitentiaries are also struggling with physical infrastructure and design limitations that compromise the delivery of programs and services needed to address the rising complexity and demands of offenders with mental health concerns. Prisons are not hospitals, and the conditions that prevail there are far from therapeutic or rehabilitative. Incarcerating persons with mental health problems in conditions and environments that are poorly suited to meet their



needs promotes neither public safety nor rehabilitative objectives. Simply put, there is not enough capacity, resources or professionals to meet the increased demands being placed on a system that was never intended to cope with such a profoundly ill population.

For this Office, it has become increasingly apparent that addressing the needs of federal offenders with mental health issues can only be accomplished by mobilizing key provincial health care providers, national mental health organizations and political leaders, as well as enhancing the governance for the provision of mental

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health care in federal Corrections. On June 20, 2008, the Correctional Investigator issued a landmark report, entitled *A Preventable Death*, detailing the tragic death of Ms. Ashley Smith, in which he made the following two key recommendations:

15. *I recommend that the Minister of Public Safety, together with the Minister of Health, initiate discussions with their provincial/territorial counterparts and non-governmental stakeholders regarding how to best engage the Mental Health Commission of Canada on the development of a National Strategy for Corrections that would ensure a better coordination among federal/provincial/territorial correctional and mental health systems. The development of the National Strategy should focus on information sharing between jurisdictions, and promote a seamless delivery of mental health services to offenders.*

16. *I recommend that the CSC undertake a broad consultation with federal/provincial/territorial and non-governmental partners to review the provision of health*

*care to federal offenders and to propose alternative models for the provision of these services. The development of alternative models should include public consultations.*⁸

Despite their far-reaching nature and to the Correctional Service of Canada's credit, these two key recommendations were acted upon. The CSC recently finalized a MH Strategy for Corrections in consultation and partnership with its federal/provincial/territorial (FPT) partners, and developed, with the assistance of an external expert, a framework for alternative models of delivery of mental health services in federal Corrections.

There is renewed optimism that the Mental Health Commission of Canada now has what it needs to ensure that its upcoming Mental Health Strategy for Canada will address the situation of increasing numbers of Canadians with mental illness being warehoused in federal correctional facilities. The reversal of this unfortunate reality in Canadian society can only be achieved through the following commitments:

- Upstream investments in community MH services, inclusive of prevention, diversion (e.g., MH and drug courts), anti-stigma campaigns, and enhanced multi-sectoral services related to mental health issues (e.g., housing, education, assisted living);
- To monitor progress, the development of performance indicators, sound prevalence data and an evaluation framework, which rely on common definition of mental health.
- Investments in appropriate MH services in Corrections, including the creation of intermediate care units in federal correctional facilities;
- Exploration of alternative models of delivery of mental health services which separate Corrections from health care, and security from therapeutic interventions. Acute psychiatric cases and persons who chronically self-harm should not be in a correctional setting; and
- Endorsement of a patient advocate model in federal Corrections.

The work of the Mental Health Commission of Canada can serve as a catalyst to drive these above needed reforms. The outcome indicators of its success can be measured in fewer persons with mental health issues being admitted to provincial and federal custody,



as well as client-focused outcomes, such as helping offenders better manage their illness and improve their overall mental health status while in custody and upon reintegration into the community.

For an Ombudsman's Office, one of the biggest challenges it can face is to attempt to resolve a significant concern which is within its legal mandate, but where the solution lays for the most part outside its jurisdiction. Mental health in federal corrections poses such a challenge. From the perspective of the Office of the Correctional Investigator, addressing the criminalization and warehousing in penitentiaries of those who suffer from mental illness is not simply a public health issue, it's a human rights issue.

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Endnotes

- 1 *Inquiries Act*, RSC 1985, c I-11.
- 2 *Corrections and Conditional Release Act*, SC 1993 c 20.
- 3 The *Canada Health Act*, RSC 1985, c C-6 defines publicly funded health care insurance. The *Act* sets out the primary objective of Canadian health care policy in s 3 as: "to protect, promote and restore

the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers." However, the *Act* specifically excludes "persons serving a prison term in a federal penitentiary" in s 2.

- 4 Health Canada has neither the infrastructure nor the mandate to provide any direct health services, including mental health services, to federally incarcerated inmates. Its current mandate with respect to mental health is in the area of health promotion, facilitation and information sharing. It is not involved in direct mental health care treatment or support except to Aboriginal Canadians.
- 5 Office of the Correctional Investigator, "Annual Report of the Correctional Investigator 2003-2004" (30 June 2004), online: *Office of the Correctional Investigator* < <http://www.oci-bec.gc.ca/rpt/pdf/annrpt/annrpt20032004-eng.pdf>>.
- 6 Francoise Bouchard, "A Health Care Needs Assessment of Federal Inmates in Canada" (2004) *Can J Public Health* S1.
- 7 Office of the Correctional Investigator, *Annual Report 2010-11* (Ottawa, Office of the Correctional Investigator, 2011) at 10.
- 8 Howard Sapers (Correctional Investigator of Canada), "A Preventable Death" (20 June 2008), online: Office of the Correctional Investigator <<http://www.oci-bec.gc.ca/rpt/oth-aut/oth-aut20080620-eng.aspx>>.

