

The practice of psychologists in the federal correctional system

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INTRODUCTION

Psychologists exercise their profession both in private practice and as paid employees. For the employees, accepting the rules and policies of the organization for which they work constitutes recognition of the employer's right of management. Thus, for example, psychologists who work in the health and social services system or the educational system are subject to internal regulations and policies.

The same principle applies to the federal correctional service. As part of the criminal justice system, the Correctional Service of Canada (CSC) respects the rule of law and has created secure environments to ensure the safety of the public. The CSC's mission has two objectives: actively encouraging and assisting offenders to become "law-abiding citizens, while exercising reasonable, safe, secure and humane control"¹, and ensuring public safety. Given its particular role, the CSC has many written directives and regulations to which the psychologists it employs are subject. As these policies touch on certain ethical issues, we will take a closer look at the situation of psychologists who work within the prison system².

CLARIFICATIONS

The Client and Consent

Within psychologists' professional ethics, the notion of the client has evolved. Under section 5 of the 1983 Code of Ethics, this term meant "a person to whom a psychologist renders professional services." The new Code of Ethics about to come into effect broadens the concept to include the organization benefiting from the services, either as the recipient of these services, or as their mandator or payer³. A psychologist working for the CSC may be required to produce, at the employer's request, an expert assessment of an inmate eligible for parole in order to assess and manage the risk he may present. It is the employer who subsequently submits the psychologist's assessment to the decision-making authority. The psychologist has a responsibility towards the mandator, who is also the employer and the client. But at the same time, the person being assessed has the right to services that conform to professional ethics. The inmate assessment process must meet the requirements of the profession, in particular, for compliance with scientific principles.

The federal correctional service has instituted norms that govern the work of psychologists. These norms alone cannot define the ethical standard. It is up to the psychologist to consider, on the one hand, the employer's mission and the associated requirements, and on the other, the universal character of the ethical standards applying to all members of the Order.

Under certain conditions, an assessment based only on an inmate's file can be performed in compliance with the ethical rules, so long as the report contains no opinion on the inmate, only hypotheses supported by the available information.

The client who is an inmate in the federal correctional system raises other particular issues in regard to our professional requirements. The inmate is not a free citizen; however, he participates in correctional programs voluntarily⁴. He has the right to accept or refuse “any health care or mental health care”⁵. He makes this decision within a system of control and surveillance and he must inevitably be aware of the link between his demonstration of motivation and involvement in his rehabilitation and the pace of his progression towards release. In making his decision to accept or refuse the offered care, the inmate is also aware of the imposed time frame and the benefits of obtaining a positive evaluation of his progress during incarceration. In this context, it may be difficult for the psychologist to obtain free consent in the usual meaning of the term, as stipulated in section 10 of the Civil Code of Quebec; however, he should at least try to satisfy the other requirement mentioned in this section, that is, that the consent be “enlightened,” by providing the inmate with all the relevant information. At the same time, he should keep in mind the instruction of a CSC directive – which complies with our professional ethics – to “remain continually aware that he/she is a consultant to the decision-maker in the evaluation of options rather than the decision-maker him/herself”⁶.

The special character of the environment in which CSC psychologists operate clearly affects the notion of the client and consent. Regarding the pre-release risk assessment and management, a CSC directive⁷ foresees the possibility that an inmate may refuse to consent to an assessment. The assessment is important, as it is required before any decision to grant an inmate a release. If the inmate refuses to consent and public safety is at issue, the CSC can still request the assessment, which in this case, will be based exclusively on the information available in the inmate's file. In other words, a risk assessment can be requested despite the refusal of the person concerned to participate in it.

This issue was previously addressed in a Syndic's Office communication in January 2005⁸. The psychologist's risk assessment and management report must reflect, in the prescribed manner, the procedure that was used. There must be a logical connection between the recommendation made and the materials in the file. If the psychologist did not meet with the inmate, his report will be based solely on information found in the relevant documents in the person's file. His conclusion can contain only hypotheses; he is not allowed to express an opinion on a person he has not evaluated.

We can see that, given the CSC's mission of protecting the public, when the employer acts as the mandator, the process of obtaining consent and the scope of the consent may differ from what usually happens in psychological practice. Now, if the inmate receives psychotherapy, he becomes the recipient of the service. However, even in this case, the client's consent cannot terminate the psychologist's obligations toward his employer.

Professional Secrecy

In this environment, the notion of professional secrecy has a different connotation, given the particular nature of consent. This is true for all the professional activities a psychologist may perform within the correctional system (provision of specific mental health treatment, multidisciplinary intervention with violent offenders, risk assessment and management, counselling or operational support). All parties who have access to information on an inmate are governed by the “need to know” principle, pursuant to the *Corrections and Conditional Release Act*. This Act states that “the protection of society [shall] be the paramount consideration in the corrections process”⁹

Because the inmate is imprisoned, he has access to confidentiality only in therapeutic matters and only if they do not affect the safety of the inmate, the federal cor-

rectional system or the public. By agreeing to be assessed or to participate in treatment, the inmate is deemed to have consented to the disclosure of information concerning him¹⁰. What is more, information on an inmate related to his case management or decisions regarding his release cannot be put under the seal of professional secrecy.

It appears, therefore, that all information related to the inmate's case that could involve a risk to the safety of the inmate or another person inside or outside the federal correctional system has to be reported. However, in this field of practice as in others, the psychologist can exercise his professional judgment in determining the import of information revealed to him. To help ensure that therapy will be maintained, the psychologist could remind the inmate of the limits to confidentiality within the prison system. He could also refer the inmate to another practitioner who is able to intervene in the given circumstances. This is a current practice, according to practitioners working in this field.

Particular Requirements

Psychologists who work in the federal correctional system must deal with the security orientation and the relative nature of the inmate's consent. Although, like all psychologists, they have the obligation to determine the appropriate action when ethical issues arise, the fundamentally non-voluntary character of the psychologist-inmate relationship creates a situation that calls for greater caution. To a lesser degree, in this environment, interventions with inmates who are willing to receive services also require particular care.

By way of conclusion, we note that all the measures commonly applied (for example, ensuring the inmate's understanding of the issues related to professional secrecy limitations, delaying the start of an intervention to encourage the inmate's full involvement) are concrete illustrations of appropriate actions taken by psychologists to encourage the expression of consent in the particular context of the federal correctional system.

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REFERENCES

- ¹ Excerpt from the Correction Service of Canada mission statement.
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- ³ Information taken from the interpretive guide, currently under preparation, which will eventually accompany the new code.
- ⁴ Commissioner's Directive, no. 726, section 12
- ⁵ Commissioner's Directive, no. 803, section 1.
- ⁶ Commissioner's Directive, no. 840, section 11.
- ⁷ See note 3, section 3.
- ⁸ Chronique de déontologie in Psychologie Québec. L'évaluation du risque de dangerosité.
- ⁹ *Corrections and Conditional Release Act*. Principles that guide the Service, sec. 4a
- ¹⁰ See note 4, sections 13, 14 and 15.



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