

SYNOPSIS

In 2008 an inmate of Her Majesty's Penitentiary passed away suddenly while incarcerated. While the inmate's death was unexpected, there were no indications that the cause of death involved foul play. However, there were concerns raised primarily by the inmate's family based on the personal and medical history of the inmate that question the circumstances that had led to the inmate's incarceration at a correctional facility in the first place. In light of these questions and the on-going review of corrections system in Newfoundland and Labrador, the Department of Justice facilitated an independent review of this tragic event. The Honourable Robert Wells Q.C. was engaged to conduct the review and was invited to provide any recommendations stemming from the report that he deemed appropriate.

Investigations and Findings of the Review

An examination of the personal history of the inmate started with his childhood. The findings showed that the inmate showed considerable promise without any indication of the behaviors that would eventually lead to his involvement with the criminal justice system. Around the time of adulthood, the onset of mental health issues became apparent and led to increasingly inappropriate and on occasion, criminal behavior. The behaviors included a loss of interest in himself, friends and family as well as any future aspirations. Eventually, the inmate was brought before the Court where he was sentenced to imprisonment to be served in provincial correctional facility.

The inmate's loss of interest in life in general was apparent during this initial incarceration. Prison authorities were at a loss as how to handle the situation and cooperated with the inmate's family to provide support. In addition, the inmate received psychiatric care while in prison that continued throughout the 11 years until his death in 2008.

After being released from his initial period of incarceration the inmate continued to engage in criminal behavior but his mental state seemed to indicate that he did not think of his behavior as criminal and was described as childlike. In fact, police and lawyers who subsequently came in contact with the inmate were able to discern that there was something abnormal about him and he was on occasion remanded to the care of medical professionals rather than further incarceration in prison. The inmate's condition continued and while sometimes was controlled with medication, did not improve.

The criminal behavior engaged in by the inmate was sometimes of a serious nature. This was the case in his most recent contact with the Justice system prior to his death in 2008. In the course of investigating this incident, the police were given a full statement by the inmate that included a detailed account of his commission of the particular offence. The police were left with no choice but to lay charges.

Upon arriving at the first Court appearance the Crown counsel was briefed by the police officer and a legal aid lawyer appeared on behalf of the inmate. Neither the Crown or Defence counsel had met the inmate prior to this appearance. The Crown and Defence counsel were aware that the inmate had a history of mental health issues but the inmate was vehemently opposed to having anything to do with mental health court. The Defence counsel spoke with

both the inmate and his parents. His parents informed the Defence counsel of the inmate's mental illness and implored counsel not to agree to have the inmate remanded to HMP. Counsel nevertheless felt that the inmate was able to instruct him and therefore saw his duty to act on the instructions of his client and not on the wishes or instructions of his client's parents. He later indicated that he was also aware that an inmate would have access to mental health care at HMP and could be transferred to a medical facility if necessary. There were no indications to the Defence counsel of physical illness. Despite this knowledge of the mental health issues in relation to his criminal history, both the Crown and Defence counsels concluded that the inmate knew and understood what was happening.

The result of that court appearance was that since neither the Crown or Defence counsel referenced any of the inmate's mental health history to the Judge, pleas of guilty were accepted without question. This event is identified as being crucial to the review and the following is a quotation (with personal information removed) of the observations made by Wells, Q.C.:

"Several things stand out on a reading of the foregoing proceedings, they are:

- 1) The speed with which such serious charges were dealt with;
- 2) The fact that the issue of bail was not raised by the Defence. The offences were serious, nevertheless no violence was involved in their commission;
- 3) That though the Crown knew that the Accused was abnormal...and the Defence had been informed by the Accused's parents of his mental disorder, no hint of any such factors was brought to the attention of the presiding Judge.
- 4) Though one cannot know how the Judge may have proceeded had he known of the Accused's mental illness, we do know that if had been so informed, he would certainly have directed his mind to the mental state of the Accused. Had he been told that the Accused's parents were in the courtroom and of their concerns, he would have had the opportunity to explore the issue with them or requested Counsel to do so. The issue of the most appropriate remand...could have been considered and the Judge could have directed his mind to the issue of whether or not it was wise to accept a plea of guilty without ordering a mental health assessment of the Accused. In addition, no one informed the Court of the list of prescription medications which the Accused was taking which we knew was extensive.

Generally, the two weeks spent by the inmate prior to his death were uneventful. His family members made efforts to contact those who had professional involvements with the inmate in the past but had little success. Before any steps could be initiated on behalf of the inmate, his death occurred.

On the evening that the inmate passed away, a random check of his unit was found to be normal and quiet. A little later Correctional Officers heard a huge commotion in the area of the inmate's cell with banging noises and inmates shouting for assistance. It appeared that the inmate who was alone in his cell was in medical distress and had injured himself on the cell fixtures during the process. The Correctional Officers restrained the inmate to avoid further injury. When this was accomplished they moved him to a common area where he was placed in a recovery position. The inmate had stopped struggling by now and the Correctional Officer's attempted to clean blood from the inmate's face. They then noticed the inmate turning blue and that he had apparently lost consciousness. They removed the restraints and applied CPR which

they continued until paramedics arrived. The paramedics then took over and continued CPR until the inmate arrived at hospital where he was pronounced dead.

The question identified by Wells Q.C. in relation to this event is whether the actions of the guards were inappropriate, unnecessarily violent or otherwise wrongful in the circumstances? In response Wells Q.C. states:

“In the totality of my interviews and in my reading of all the materials in my possession, I have found no suggestion that the actions of the guards were in appropriate in the circumstances. They were faced with a situation which came without warning.”

In considering the Correctional Officer’s decision to restrain the inmate, Wells Q.C. concludes:

“I have concluded that they did what they felt they had to do and which their training indicated should be done. Their training and common sense dictated that they could not leave the inmate unrestrained in his cell. He had already done considerable injury to himself as evidenced by the blood at the scene. Though these injuries turned out not to be extremely serious, they could no have known that at the time. There was the clear danger that he could cause greater injury to himself if not restrained, which in my opinion was a risk that they could not take. I believe in the circumstances they acted properly.”

Wells Q.C. went on to consider whether the Correctional Officers exercised unnecessary force which he concluded they did not and in fact had acted with concern in handling a difficult situation.

The Medical Examiner’s investigation concluded that the inmate’s death was due to natural causes. Subsequent interviews with other medical professionals for the review also show that there is agreement that the death is not attributable to the inmate’s incarceration and that he could have died at any time.

With respect to his appearance in Court, Wells Q.C. states that the Defence Counsel would have been wise to have heeded the information and entreaties of the inmate’s parents and raised the issue of mental disorder with the Judge. This would have allowed the Judge to exercise his discretion to learn more from the parents and the police and possibly to order a psychiatric evaluation before accepting a plea of guilty and agreeing to a lengthy remand to the Penitentiary instead of a hospital.

The report concludes by stating that the cause of death of this inmate cannot go beyond the conclusion of the medical examiner and that it would be unfair to say that the inmate died because he was in prison and not at some other place. In addition it was clear that the inmate did not like being remanded to hospital and made every effort to avoid being sent there. However, it is understandable that the family of the inmate is upset because the death occurred in the prison where they believe he should not have been and also because their efforts to have the Court informed of the inmates mental health issues were not acted upon at a time when it mattered.

The recommendations to the Department in relation to the above investigation and findings are attached.

Recommendations

- (1) That either by policy or legislation whenever there is a credible suggestion of mental disorder on the part of a person accused of a serious crime, it should be brought to the attention of the Court by the Defence and/or the Crown at the earliest opportunity.
- (2) That an improved protocol should be formulated by which families should be informed of death or serious injury or illness of an inmate at the Penitentiary.
- (3) That the legislative recognition that a significant number of the persons charged with serious crimes are or may be suffering from some kind of mental disorder should continue. These disorders range from mild dysfunctionality to severe mental illness. In that regard, I believe the establishment of a Mental Health Court in St. John's in 2005 was a much needed reform which was explained as to its application by the recently issued Practice Note from the Provincial Court.
- (4) That if and when a new Penitentiary is built to replace the outmoded Penitentiary which is still in use in St. John's, it should have as part of the facility, a psychiatric

wing or unit, fully staffed at all times to diagnose and treat the mentally disordered who so often come into contact with the Criminal Justice System.

- (5) That the concept of the Mental Health Court should be expanded to all regions of the Province as rapidly as human resources and finances will permit, and should be able to operate with the assistance of psychiatric units in all regions of the Province, which are reasonably accessible and staffed by qualified mental health professionals. I recognize that such units would have significant costs and cannot be provided instantly. Nevertheless they should be recognized as a priority to be developed in accordance with an action plan.
- (6) To assist the reader I have reproduced at the end of this report, marked "B", the recent Practice Note to which I have referred. The Practice Note requires, as required by the *Mental Health Care and Treatment Act*, SNL 2006 c M-9.1, that an application for transfer to the Mental Health Court must be made by the accused person. In my opinion persons other than an accused should also be able to make such applications on an accused's behalf. For example I would not have expected [REDACTED] to make such an application no matter how appropriate it may have been, because in his disordered state of mind he wanted nothing to do with mental health intervention at an institution. As has been demonstrated, his

approach was to "get it over with" as quickly as possible. [REDACTED] thinking is not surprising considering his disorder. One of the paragraphs in the *Diagnostic and Statistical Manual of Mental Disorders DSM IV*, in describing

[REDACTED] says:

"The characteristic symptoms of [REDACTED] involve a range of cognitive and emotional dysfunctions that include perception, inferential thinking, language and communication, behavioral monitoring, drive and attention. No single symptom is pathognomonic of [REDACTED] the diagnosis involves the recognition of a constellation of signs and symptoms associated with impaired occupational or social functioning."

[REDACTED] elaborated on [REDACTED] interview with me when he noted that a diagnosis of [REDACTED] often takes years to arrive at, because a disorder may progress through various levels and complexities.

As I noted earlier, many professionals who have had extensive exposure to the Criminal Justice System are, I believe, aware that a significant number of those accused of serious crimes have some degree of mental disorder or illness, whether temporary or of long standing. The criminal law prescribes sanctions for criminal acts. Desirable legislation such as our *Mental Health Care and Treatment Act* demonstrates a recognition by the Legislature that criminal acts are often committed by persons with greater or lesser degrees of dysfunctionality, mental disorder or illness and that such persons need professional assistance.

I support the concept and purpose of the Act and also the provision that it must be revised every five years. I recommend that in respect of serious criminal matters, an in-depth study be undertaken to determine whether the *Mental Health Care and Treatment Act* should be amended to permit persons other than an accused to make application to the Court for the transfer of a case to the Mental Health Court. That would require an amendment to the Act, which now stipulates that only an accused can make the application for transfer. Such an amendment may engage *Charter* or other issues which are beyond the scope of this review.

I would also recommend that it become a priority that psychiatric units be attached to or within a reasonable distance of all correctional institutions within the Province of Newfoundland and Labrador. I recognize that such a policy would necessitate additional human and financial resources, but I believe that the need exists.

Finally, the point must be made that despite the tragic circumstances of [REDACTED] [REDACTED] death and the grief which it has caused his family, no persons involved in the arrest, court proceedings or incarceration were improperly motivated or intended harm to [REDACTED]. I believe that the matter of mental disorder should have been brought to the attention of the presiding Judge, but nevertheless those involved were in their opinion taking a correct and professional approach to the remand issue.

Several people whom I interviewed expressed the opinion that [REDACTED] tragic death in the penitentiary had its genesis in the tragedy which occurred years earlier, the results of which could not be undone, despite the efforts of his family and caregivers. I believe there are valid reasons for those opinions.



Honourable Robert Wells, Q.C.
St. John's, NL
August 14 2009

"B"

THE HONOURABLE D. MARK PIKE
ASSOCIATE CHIEF JUDGE

[Logo]

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PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR

SPECIALTY COURT APPLICATION PROCESS
PRACTICE NOTE

ISSUED: July 8, 2009

EFFECTIVE: July 8, 2009

The following practice note is issued consistent with Rule 6 of the *Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings* and section 720(2) of the *Criminal Code of Canada*:

BACKGROUND

The Mental Health Court has been operating in St. John's since 2005. The Court is designed to provide an increased level of support, both medical and community-based, to accused persons appearing before it. The Mental Health Court is based on the recognition that certain offenders who suffer from a mental disorder may commit offences as a consequence of their mental disorder or due to lifestyle issues related to their mental disorder such as inadequate or inappropriate housing, lack of employment, lack of support, noncompliance with medications and inappropriate self medication with alcohol or drugs. Health care professionals and corrections personnel will provide medical support and community based support to the individuals who are accepted into the Court.

The Family Violence Intervention Court is a 12-month pilot project in St. John's which commenced on March 25, 2009. The goal of the court is to prevent, reduce and diminish incidents of family violence. For the purposes of this pilot project, family violence means Criminal Code offences committed by the accused arising from or related to his or her relationship with a significant partner. Based upon the principles of therapeutic jurisprudence, the Family Violence Intervention Court emphasizes victim safety and offender accountability through a team approach, individualized support, and offender programming. Counseling for the accused will be delivered through the Learning Resources Program of the John Howard Society.

The Specialty Courts alternate sitting days, with each Court sitting every second Wednesday afternoon in Courtroom #8.

APPLICATION REQUIREMENT

All persons wishing to appear in the Mental Health Court must make an application.

Only those persons who wish to transfer to the Family Violence Intervention Court from courtrooms other than first appearance court must make an application to the Family Violence Intervention Court. Potential candidates for the Family Violence Intervention Court who are referred from first appearance court are not required to make an application.

All applications must be made within a reasonable time.

ACTION

To accommodate the application requirement, the following process will be instituted:

1. When a matter is called and the accused indicates a desire to have the case transferred to Family Violence Intervention Court or Mental Health Court, and an application has been filed, the presiding Judge will adjourn the matter until the next available date in Family Violence Intervention Court or Mental Health Court to have the merits of the application considered by that Court.
2. Applications should be filed and registered with the Criminal Division in the usual manner.
3. The applications may take the form of the applications attached to this Practice Note as Schedule "A".

_____(Signature)
Acting Chief Judge D. Mark Pike
Provincial Court of Newfoundland and Labrador