Best Practices to use when Housing High-Risk Offenders in the Community: A Legal and Non-Profit Perspective

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&
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JOHN HOWARD SOCIETY OF THE LOWER MAINLAND

ABSTRACT

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By Kailey LeMoel and Don Wilson

Chairperson of the Supervisory Committee: _____

In 2008, BC Corrections was found partly responsible when a high-risk offender re-offended against a young boy while under the supervision of Probation. The courts determined that the Probation Officer was negligent. The doctrine of vicarious liability allowed BC Corrections to be found partly liable. This decision has prompted agencies to look at their current policies surrounding placement of high-risk offenders in order to determine their own levels of liability. The John Howard Society of the Lower Mainland of British Columbia (JHSLMBC) decided to reflect inwards as well. With funding from the Law Foundation, the JHSLMBC has developed a set of best practices to use when housing high-risk offenders in the community. This type of client has strict conditions, and is challenging to place in appropriate long-term housing. Maintaining a pro-social life while living in low-income areas poses its own challenges. This paper follows three high-risk offenders as case studies through their challenges of living in the community, reviews three legal cases exploring various aspects of liability, and concludes with the JHSLMBC's recommendations.

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S e c t i o n 1

THE OVERALL ISSUES

"Without a sense of caring, there can be no sense of community" Anthony J. D'Angelo

What is this Paper About?

Successfully housing a high-risk offender in a basement suite, an apartment, a duplex, and in the larger community is difficult for many reasons. These challenges are presented for both the person released and staff who assist these individuals. Without support, funding, and appropriate housing, the at-risk populations will stay at-risk. With the lack of affordable housing, individuals who are released from prison are confronted with a multitude of barriers when trying to find a home. Many of these men and women find themselves in emergency shelters and exposed to the very issues which sent them to prison in the first place. These people are supposed to focus on managing their risk levels, staying clear of addictive substances, and adhering to likely Parole, Probation, or Discharge conditions. Instead, many are dealing with the fundamental challenges of being homeless. When this same situation is occurring for high-risk offenders, community safety is impacted.

High-risk pertains to the notion that a person has a high potential to harm others. Typically, high-risk offenders have strict conditions. Being banished from or to the Downtown East Side or a location highly concentrated in poverty, open drug use, and criminal activity, is an example of that. Frequently, the source of financial support offenders initially have comes from income assistance, disability, or part time

employment. This means high-risk offenders may not be able to live near more affordable locations. If they are not allowed to live near parks and schools, then finding housing clear of these areas is complicated. This paper does not intend to disagree with certain conditions placed on high-risk offenders. We are highlighting the need for appropriate housing, other than locations which are highly concentrated in poverty, open drug use, and criminal activity.

In light of this, the John Howard Society of the Lower Mainland (JHSLMBC) set out to create a set of "best practices" to use when housing high-risk offenders in the community. Funding was allocated to the JHSLMBC in order to achieve our goals. These goals are as follows:

- Review case law with legal researcher, BC Correctional staff, and BC Probation staff to create a housing placement plan that is compliant with court orders, for each identified high risk offender
- Review housing placements for the identified high-risk offenders associated with this project
- Provide follow up support to high-risk offenders associate with the project.
- Complete case notes on each high-risk offender associated with the project.
- Complete research notes on the Criminal Code and court decisions reviewed for the project.
- Develop a presentation kit, a power point presentation and website links, detailing best practices of housing placements for high risk offenders in the community, and promote public safety and compliancy with court orders
- Draft final report for the project

This paper is the final report for the project. The first sections have outlined the driving force behind this

project. The D.H. cases[1] whereby BC Corrections was found partly liable when a high-risk man on Probation sexually assaulted a young boy. The potential reaching results of this judgement was in need of review. The subsequent sections will outline how the courts are dealing with high-risk offenders in the community. Following that, this paper will describe best practices that can assist the JHSLMCB and other agencies in areas of high-risk offenders and housing. The final sections will review three case studies with regards to the challenges that high-risk offenders have to overcome in order to be successfully placed in long term housing. In conclusion, detailed recommendations will be presented.

[1] This case is cited as *R. v. D.H.*, 2008 BCCA

S e c t i o n 2

R. V. D.H., 2008 BCCA

"No law or ordinance is mightier than understanding" Plato

Introduction

The case of *R. v. D.H.*, 2008 BCCA[2] can be considered the driving force behind the JHSLMBC project. BC Corrections was found partly liable when a high-risk offender re-offended against a young child. Due to this ruling, the JHSLMBC wanted to examine what kind, if any, liability would be delegated if a similar situation occurred. At times, the JHSLMBC and other non-profit agencies assist high-risk clients in their Community Residential Facilities[3] and their Homeless Partnership Initiative (HPI). This section describes the general overview of the D.H. case, how the courts determined negligence, why BC Corrections was found partly liable, and how this decision may impact homeless placement service providers.

Factual Overview

The D.H. case involved a single mother with two children living in a house. The defendant, a man on Probation for offending against young boys, moved into a suite in the same house. This residence was approved by his Probation Officer. The Honourable Justices, who wrote the BC Court of Appeal responses, referred to the defendant as a high-risk offender. The Probation Officer explained to the mother that the

[2] This paper will commonly refer to this case as the "D.H. case".
[3] The term "half-way house" is commonly used instead of CRF. For the purposes of this paper and project, they are used interchangeably

defendant was to have no contact with any children under the age of eighteen. Neither the specific offence for which the defendant was convicted of, nor the victim type, was provided. The mother eventually allowed the defendant to babysit her children alone, and misled to the Probation Officer by saying the defendant had no contact with her children. In addition, the defendant lied to the mother and said he had been caught with a seventeen year old prostitute, and that was why he was on Probation. The young boy became a victim of several sexual offences. The judge found BC Corrections partly liable. This ruling was sustained in the BC Court of Appeal in 2008.

The defendants were found liable for the damages suffered by the young boy for a total of $540,000. Below is the breakdown of the damages from the case *D.H. v. Kline*, 2006 BCSC:

> **Summary**
>
> **122 I find the defendants liable for the damages suffered by J.H. and assess his damages as follows:**
>
> | | |
> |---|---|
> | **Non-pecuniary damages:** | **$100,000** |
> | **Future care for education:** | **240,000** |
> | **Future care for psychotherapy** | **25,000** |
> | **Loss of earning capacity:** | **175,000** |
> | **Total:** | **$540,000** |
> | | **--------** |
>
> **Costs**
>
> **123 I will reserve my decision on costs pending the continuation of this trial on January 29 and 30, 2007.**

The courts ruled that the Province of BC and the man on Probation were required to pay $270,000 each. In 2008, the Province of BC appealed. The judge upheld their appeal and ruled the mother of the young boy was also liable. The Province of BC and the mother split the $270,000 equally. Therefore, both parties were expected to pay $135,000.

The Court's Point of View in the D.H. Case

In the D.H. case the courts determined the Probation Officer was negligent because s/he approved the residence of the defendant despite the fact that the conditions of his order were to have no contact with anyone under the age of eighteen. In examining the physical layout of the residence, the courts also determined that contact with anyone under the age of eighteen was inevitable given the presence of shared common areas like the front door, the laundry room, the backyard, and the front door. In addition, the court decided that the PO was in a proximate relation with the infant and his guardian. *Prima facie* duty of care was established. The appeal decision ultimately decided that the notification provided from the PO to the mother was sufficient in content regarding the potential harm of the defendant.

In understanding this case, a legal definition of several terms is required. These terms are duty of care, standard of care, negligence, and vicarious liability.

Important Definitions

Duty of Care

Duty of care is a term used in both criminal law and civil law. It is the major crux when determining negligence. In a legal context, person A may have a duty of care towards person B if it is reasonably foreseeable that negligent conduct on the part of A is likely to cause damages to B. Therefore, the duty of care hinges on the closeness of the relationship between A and B. That closeness is what the courts refer to as *proximity*.

Over time, the courts developed a two-stage process for determining whether or not there is a duty of care. The first stage has two parts. First is the analysis of the proximity of the two parties. If proximity between the parties is established, the courts move onto the second stage which is to look for any circumstances within the relationship that might negate the duty of care for policy reasons. There has not been a lot of explication on this particular issue in Canadian case law. Nonetheless, if no policy issues arise within the relationship, a *prima facie* duty of care exists. The term *prima facie* simply means *on its first appearance*.

In the second stage the courts will consider policy reasons outside of the relationship to see if there are legitimate reasons that a duty of care should not be applied to the person, or the group of persons. One of the biggest policy concerns of the court is the concept of "expanding liability". In other words, the courts cannot impose unlimited liability and hold everyone liable for everyone else's problems. So there must be some reasonable limit to the duty of care. The problem becomes where to set that limit. In addition, the courts are concerned about second-guessing government policy decisions. Typically, the courts will grant wide deference to such actions or decisions. Other policy concerns include efficient administration, societal values, and societal needs.

In the D.H. case, the court found the Probation Officer was in a proximate relationship to the young boy. The court decided this given that the child's age and gender was in Mr. Kline's victim target group, the residence of Mr. Kline was in close proximity to the child, and the *Public Service Act* and *Parole Act*[4] dictate that the Probation Officer had a responsibility to monitor Mr. Kline's compliance with his

[4] This Act was repealed and replaced November 1, 1992 by the *Corrections and Conditional Release Act*. The Parole Act remains in the service for reference purposes.

Probation order. Therefore, the harm to the young boy was foreseeable given Mr. Kline's criminal record, the child's age and gender, and the assessment that Mr. Kline was a high risk offender.

Standard of Care

Once a duty of care is owed by the defendant, the obligation of the defendant is to observe the standard of care that is appropriate given the circumstances. The standard is to be determined in regard to what kind of action was reasonable in all the circumstances. What is reasonable depends on the likelihood of harm or foreseeable harm, the gravity of the harm, and the burden or costs that would be incurred to prevent the injury. Individuals are expected to act in accordance with general and approved practice. The higher the risk of injury involved, the greater degree of care must be taken.

Where expert and professional activity is being carried on, the law requires the defendant to exercise the care, skill and expertise of someone who normally professes the activity in question. A defendant who shows that he has acted in accordance with general and approved practice may clear himself of negligence. However it is still open to a plaintiff to show that the general practice is negligent, or one that no reasonable person would follow.

In the D.H. case, the appropriate standard was that of a reasonable Probation Officer in similar circumstances, who would be familiar with the statutory scheme, the policy directives issued by the Ministry of Attorney General, and the terms and conditions of the Probation order imposed on Mr. Kline. This PO would also appreciate the likelihood and seriousness of the harm in placing Mr. Kline in the house.

Negligence

In order to claim negligence, these six components have been recognized as requirements:

- A duty of care is actually owed
- The harm caused was reasonably foreseeable
- A standard of care existed
- A breach of the standard of care
- Damages
- Causation

Most importantly however, to establish a negligence claim, the plaintiff must show that the defendant did *not* meet the appropriate standard of care. The courts ruled that the assaults by Mr. Kline upon the young boy would not have occurred but for the Probation Officers' creation of a dangerous situation when he allowed Mr. Kline to reside in such close proximity to a child who fit into his target group.

Vicarious Liability

The doctrine of vicarious liability makes an employer or principal liable for the actions of another without the employer or principal being directly at fault. By being responsible for the activity or enterprise in which the wrong arose, the employer or principal should be held responsible for third party losses that result from the activity or enterprise.

Apart from precedents, the court may find an employer/employee relationship based on broader policy rationales. These include a sufficiently close relationship to the tortfeasor[5], and the wrongful act must

[5] The person who was at fault

be sufficiently connected to the conduct authorized by the employer. For example, BC Corrections could be named in a writ due to their employee doing their work.

In the D.H. case, the courts concluded that a reasonable Probation Officer would not have approved the defendant to live in the residence near the child. Finally, due to the doctrine of vicarious liability, which was mentioned above, the courts found BC Corrections partly liable.

How the John Howard Society Fits In

The legal researcher for this project decided there is a clear employer/employee relationship between an agency proving housing services and its employees. Therefore, the vicarious liability doctrine makes the JHSLMBC and other social service providers liable for the acts of negligence of its employees acting in the course of their employment.

Vicarious Liability in the Non-Profit Sector

With regards to how this notion of vicarious liability plays out in non-profit organizations like the JHSLMBC, Cassels Brock & Blackwell LLP (2008) state, "...the matter is particularly acute in the charitable and non-profit sector because, for the most part, the law provides no special protection to them..." (p. 1). With no special protections, these charities face the same liability challenges as agencies that profit and therefore have more resources (Cassels Brock & Blackwell LLP, 2008). Therefore, this paper also highlights the need for non-profits and other agencies to incorporate appropriate insurance.

Statutory Duty of Care versus Common Law Duty of Care

The most common basis for determining a duty of care is finding a "statutory" duty. For example, the Ministry of Children and Family Development may have certain statutory duty to protect its young clients against any known abuser. The other basis for determining a duty of care is by way of common law. The common law may also find a duty of care where a relationship of sufficient proximity exists and where some harm is reasonably foreseeable. The legal researcher decided that The JHSLMBC has no statutory duty to enforce conditions of release. In addition, he also determined the JHSLMBC does not hold statutory duties to protect residents.

However, the JHSLMBC does have a contractual duty to monitor and supervise residents at its halfway houses. Employees and volunteers of the society likely have a common law duty of care towards residents, other clients, and staff. This is based on the inherent dangerousness of the JHSLMBC clients[6], and the proximity of the staff to residents. Staff members interact with residents on a day to day basis.

The standard of care of an employee or volunteer of the JHSLMBC, any other social service agency, or non-profit organization is that of a reasonable employee in similar circumstances. This standard would include a reference to the established policy and procedures of the JHSLMBC, and the directives issued by contract holders. For the Community Residential Facilities that the JHSLMBC operates, Commissioner Directives from the Correction Service Canada further direct that standard of care.

The JHSLMBC initiated this project to review best practices within our programs and to assist our community partners in delivering the most appropriate services that ensure safety for all in our

[6] This is the foreseeability of harm

communities. Programs impacted by these practices include Community Residential Facilities, the Homeless Partnership Initiative (HPI), Community Services, and Affordable Housing.

Community Residential Facilities (CRF's)

Community Residential Facilities are usually referred to as half-way houses. The John Howard Society of the Lower Mainland operates two houses located in Vancouver and Surrey, and are contracted with the Correctional Service of Canada. The staff members are professionals trained in areas such as risk management, the identification of crime cycles, motivational interviewing, the signs of substance abuse, and report and case note writing. The JHSLMBC has experience working with high-risk, resistant offenders, and has intimate knowledge of the challenges and barriers that can increase risk to reoffend, and/or cause doubt in an offender's confidence to cope outside of prison. To reduce this cause for anxiety, we assist offenders within Federal Correctional Institutions by offering pre-release planning prior to their arrival at the Community Residential Facilities.

The Homeless Partnership Initiative (HPI)

The HPI program employs three outreach workers to assist adults who are homeless or at risk of being homelessness by locating safe, affordable short and long term housing. The goal is to assist and encourage individuals to utilize community resources that encourage pro-social lifestyles. The HPI team was created to reduce the risk of homelessness in the Greater Vancouver Regional District. Initial contact is usually made through institutional visits. However, the HPI team is also open to drop in clients and phone calls. Several of these individuals are considered high-risk offenders as well. Housing placements plays a large part in this position.

Community Services

The Community Service Office assists those who have come in contact with the criminal justice system, those who have been impacted by, or are at risk for involvement with the criminal justice system. The staff members, practicum students, and volunteers support many types of individuals who are both incarcerated and in the community. They also support those who pose a risk for homelessness. The services provided include assisting with identification applications, education information, referrals to certain employment programs, locating affordable housing, locating available emergency shelters, tax information, free telephone, access to a computer, and more. In short, this office connects their clients to the resources they need. In doing so, the staff members make contact with high-risk individuals in the community. Locating available and appropriate housing is frequently the team's goal.

Tim's Manor

Tim's Manor has ten two-bedroom affordable housing units. Six units are for Federal clients or those on conditional releases, while four units are for the general public who require affordable housing. As the demand for affordable housing is high, the JHSLMBC assesses each applicant's need for housing based on criteria which includes the applicant's income, current living situation, and personal/family requirements as compared to other agencies. This ensures that priority is given to households in the greatest need.

Clients who live at Tim's Manor may receive support in areas of meal planning, cooking, budgeting money, managing finances, housekeeping, personal care, appointments, or using public transit. The house is located near food banks, a Salvation Army, a recreation centre, shopping, a library and a walk-in clinic. This housing project believes that all people deserve safe and affordable housing.

Section Wrap-Up

This section highlighted the driving force behind the project and final paper. As mentioned, the Law Foundation has graciously funded this six month project whereby the JHSLMBC and a legal researcher examined several cases in Canada to determine the JHSLMBC's liability given similar circumstances, discuss the issues surrounding high-risk offenders in the community, and create a set of best practices that can be utilized when working with high-risk offenders. The next section considers further Canadian court decisions beyond the D.H. case.

S e c t i o n 3

OTHER RELEVANT CASES

"Who to himself is law, no law doth need,
Offends no law, and is a king indeed"
George Chapman

K.L.B. v. British Columbia, 2003 S.C.J.

The K.L.B. case involved social workers who improperly placed foster children in a dangerous home. The courts ruled this placement was done without regard to organizational reports citing the dangers, without adequate supervision of the placement, and without adequate discussion with the foster parents.

Factual Overview

The appellants, K.L.B., P.B., H.B. and V.E.R.B., are siblings. Prior to placement in foster care, they lived in extreme poverty. Their father was an alcoholic and frequently violent toward their mother. After an incident in 1966, their mother brought the two elder boys to social services and requested an emergency placement. Shortly after this, the two younger children were apprehended as well. All four children were placed in the same foster home. Later, the children were placed in a second foster home. The children suffered abuse in both foster homes. Instead of being treated as family members, they were subjected to harsh and arbitrary disciplinary measures. These children were humiliated in front of each other.

Prior to placing the children in the first foster home, The Ministry of Children and Family Development's social workers had interviewed the foster mother, and judged her to be cooperative and caring[7]. Her file, however, contained a 1959 report stating that she was dishonest and insincere about what went on in her home. It also contained repeated warnings from subsequent years that placements should only be made in her home on a short-term basis. The courts ruled that the social workers disregarded these warnings. The first foster mother normally cared for up to eight foster children. This was four times the ideal number. The social workers did not probe into the children's unhappiness when they visited the home. At times, home visits did not happen for several months.

Following this initial placement, the social workers moved the children to the second foster home. However, not only was that home considered over-placed, they had previously been rejected for further foster placement in Alberta as well. This was out of concern that they had drugged a child in their care. Their foster children were also removed after the foster mother had hit a foster child with a knife. The courts ruled that the social workers did not read file information on the second foster family prior to making the placement. Nor did they ask that family about their history as foster parents.

Negligence

Apart from allowing the applicants' claim for sexual abuse, the government was found directly liable in negligence to the children. On appeal, the negligence action was overturned, due to the expiry of a limitation period. This decision was upheld even though the Court of Appeal recognized that the government would otherwise have been found liable in negligence.

[7] The Ministry of Children and Family Development is commonly referred to as "the Ministry" during the following sections

Duty of Care

The court found that the government had a duty under the *Protection of Children Act* to place children in adequate foster homes and to supervise their stay. Indeed, the statutory duty provides a higher standard than negligence normally, described as the “careful parent test.”

Foreseeability

The courts ruled that it was reasonably foreseeable that some people, if left in charge of children in difficult or overcrowded circumstances, will use excessive physical and verbal discipline. It is also reasonably foreseeable that some people will take advantage of the complete dependence of children in their care, and will sexually abuse them. To lessen the likelihood that either form of abuse will occur, the government must set up adequate procedures to screen prospective foster parents. And it must monitor homes so that any abuse that does occur can be promptly detected.

Standard of Care

The appropriate standard existed when the negligence allegedly occurred. In the case of K.L.B., the standard of care was what a careful parent would do at that time. The court found this standard to be a proper assessment of the proposed foster parents. The courts also ruled what the acceptable limits of discipline with the foster parents would be. Further, the fact the foster homes were "over-placed" and had a documented history of breach played into the court’s decision. Therefore, the trial judge found that the government negligently failed to meet this standard of care. The government did not establish proper placement and supervision procedures, as required by the *Protection of Children Act*. However, though the governments’ actions were negligent, the court found that the suit was statute barred.

A.G. v. Family and Child Services for British Columbia, 1989 B.C.J

This case involved three social workers employed by the Ministry of Human Resources. The social workers were the defendants. The plaintiffs sought damages for negligence allegedly committed by the defendants in apprehending seven infant plaintiffs in the exercise of their statutory power. The superintendent had no direct involvement with the events, but had delegated certain powers and duties including the power to apprehend.

Factual Overview

One defendant interviewed the three older "G" children at school. She took from the interview that the eldest G. daughter was being sexually abused by the father, M.G., and a decision was made to apprehend her.

The mother, W.G., was away from home with the four older children at the local swimming pool. That afternoon, before W.G. returned home, M.G. was taken to the police station, although he was not under arrest. That same defendant apprehended the three babies and put them in an approved foster home. When the four older children returned home they were apprehended by another defendant, who was an emergency services worker.

In June the matter was dropped by the Ministry. The "G" family appeared to be a normal, close knit, loving family, and there seems to be no evidence to indicate otherwise. The first defendant had no special training in interviewing children, or training on domestic abuse issues, and had relatively little contact with the children and/or family. The courts ruled that her decision to apprehend was made

without either parent having been interviewed and without any exploration by that defendant's supervisor of possible alternatives to apprehension. The case resulted in the court deciding that the Ministry was not liable.

The Statutory Powers and Duties of the Workers

The power to apprehend the children comes from section 9 of the *Family and Child Service Act*. Section 11 provides that, not later than seven days after the apprehension, the superintendent must present a written report to the Provincial Court. At that stage, the Court can make one of a wide range of orders, including returning the child to the parents. The usual course of proceedings is contemplated by section 12 of the *Family and Child Service Act* which provides for a hearing to determine whether the child is in need of protection.

The Plaintiff's Allegations of Negligence

The plaintiffs contended that the social workers acted negligently by apprehending the children for several reasons. First, the social workers lacked grounds to consider that the children were in need of protection. Second, the social workers failed to carry out an adequate investigation of the residence. Third, they failed to give due regard to the views of the RCMP officer. This officer expressed there were no reasonable grounds for alleging sexual assault, and saw no necessity for apprehension. Fourth, the social workers failed to give reasonable consideration to the possibility of alternative methods that were less drastic than apprehension.

Negligence Finding

While the social workers' actions showed many significant errors in judgment, they were acting within their discretion granted under the *Family and Child Service Act*. Therefore, the court ruled the Ministry was not liable. Further, the decision to apprehend was probably done too hastily and was based on equivocal evidence. Though the evidence of sexual abuse was equivocal, there was reliable evidence suggesting that sexual abuse might have been happening. The courts determined that apprehension is allowed to prevent future possible abuses. The defendant's had a reasonable, even if possibly mistaken, basis for believing that such future abuses could happen. No finding of negligence is possible where an individual is operating within the scope of their statutory discretion.

In addition, section 23 of the *Family and Child Service Act* provides a defence for any person acting in good faith in the course of their social work. The plaintiff's only made allegations of bad faith of the first defendant mentioned. That being said, she had neither animosity nor collateral purpose. She was considered to be acting in view of protecting the children. While she perhaps became too close to the case, the courts ultimately decided this is not alone sufficient to prove "bad faith."

B.M (Guardian ad litem of) v. British Columbia, 2009 BCCA

This case involved a father in Manitoba convicted of aggravated assault against his son. He broke his son's leg, and refused to accept any responsibility for it. That same father moved to British Columbia, met a woman, and she gave birth to their child. Due to the father's previous convictions, a social worker became involved. The social worker was made aware of the father's file, of his high-risk to re-offend. Therefore, an order was placed on the father to not be allowed alone with the child. The mother, the father, and the

baby were living with the grandmother. The whole family was complying with the orders. The new mother and father were taking part in parental courses. There had been no incidents or problems for months.

The social worker lifted the order against the grandmother's wishes. Shortly after that, the father, the mother, and baby moved out of the grandmother's house. A few months later, the father was alone with the child. He shook the child so hard that the baby is now blind. The issue at trial was about whether or not the Ministry of Children and Family Development was liable for the removal of the no access without supervision provision that was imposed on the father.

The Social Worker's Breach of the Standard of Care

The main social worker in the case prepared a revised risk reduction service plan for B.M. on August 20, 2002. On or about August 23, 2002, that social worker came to the house and informed everyone that the supervision restriction was lifted from R.M. The family was asked to sign the risk reduction service plan. There had been no previous indication that the supervision order was going to be lifted. No questions had been asked. No information about the plan or its origin was forthcoming. This was a significant change to the parenting plan that had been in place since early June when B.M. was three weeks old.

The family expressed their surprise and concern over the change. B.M.'s grandmother suggested that it might be better to leave the supervision requirement on. There was no response from the social worker. Up to this time, R.M. had never been left alone with his son.

There were no documented reasons within the Ministry for lifting the supervision requirement. There was no documented reassessment of risk. The social worker could not point to anything that showed what

review was undertaken, what analysis was done, or what conclusions were reached that led to the decision that lifting the supervision order was appropriate. It is not known how or why the social worker made this decision. Neither she nor anyone else from the Ministry testified. The red flag that had been raised by R.M.'s injury to his first son had never been lowered. There was no feedback on R.M.'s particular risk demonstrative of the child's safety while in his care.

The social worker described that it had been an ongoing struggle to decide whether to make changes to the initial plan because R.M.'s denial of being a threat meant that the triggers that led to the assault were unknown so that it was difficult to tailor a service plan. This was identified as the biggest factor under appraisal. This factor never changed. It had never been determined that B.M. would be safe in R.M.'s care, and the original comprehensive risk assessment remained in effect.

The standard of care owed in this case is that of a reasonable social worker. The courts ultimately decided that the Crown acted in breach of the standard of care when social workers failed to follow mandatory policy and practice standards and failed to remediate that failure when opportunity arose.

Section Wrap-Up

These rulings affect all agencies, government and non-profit alike. All organizations must ensure their policies and procedures pertain to working with high-risk offenders in the community and address the risk of harm. For the JHSLMBC, it has done the same. The D.H. case, along with others mentioned, have driven the agency to create a better more effective way in housing high-risk clients. The first component of this project was having a legal researcher determine when, or if at all, the JHSLMBC could be found partly liable

in similar situations. The second component of this project is the creation of several “best practices” to utilize when housing high-risk offenders in the community. The next chapter introduces these topics.

S e c t i o n 4

HIGH-RISK OFFENDERS IN THE COMMUNITY

"Out of this nettle, danger, we pluck this flower, safety" William Shakespeare

Introduction

The term "high-risk" offender is not a precise legal phrase. It is used in a variety of practical contexts. An individual can either be at a "high-risk" of reoffending, or the offence itself may be a "high-risk" in that it relates to sexual attacks, violence causing bodily harm, or activities leading to significant property damages. Typically, the term arises in cited expert evidence given for example, by Forensic Psychologists and Parole Officers. In a non-technical sense the term is used by the Crown to describe individuals who have lengthy records, and pose a high risk of recidivism. More often than not, the term is referring to an assessment by Correctional Service Canada that classifies the individual as a "high-risk" offender.

As individuals make their way through the criminal justice system, they are subject to a series of risk assessments. When offenders begin a Federal sentence, they undergo a risk assessment which identifies their crime cycle, risk factors and security classification before being placed in their respective institution. Before individuals are released on conditional release, the National Parole Board sets the conditions that the individual must follow on release.

High-Risk at Correctional Services of Canada

Correctional Services of Canada has a Federal responsibility under the *Corrections and Conditional Release Act* to supervise offenders on conditional release[8]. Correction Service Canada's risk-assessment is based on an individual's static and dynamic factors. They use a number of risk assessment tools with differing purposes. An offender with a high rating in any of the first four assessment tools would qualify as a "high-risk" offender. The table below describes these tools:

Tool Name	Acronym	Purpose
Statistical Information on Recidivism	**SIR**	**Quantify recidivism rates**
Psychopathy Checklist-Revised	**PCL-R**	**Quantify risk of future violence**
Violence Risk Appraisal Guide	**VRAG**	**Quantify risk of future violence with those of a history of mental disorder**
Historical, Clinical, and Risk Management	**HCR-20**	**Same as above**
The Level of Service Inventory Revised	**LSI-R**	**Identify appropriate treatment programs and half-way house**
Spousal Assault Risk Assessment	**SARA**	**Determine the likelihood of spousal assault**

Figure 1 Risk Assessment Tools

High-Risk at a Provincial Level

British Columbia Corrections has a Provincial responsibility under the *Corrections Act* to supervise offenders who have been sentenced for less than two years. These sentences can be given as a conditional

[8] If they have been sentenced for two or more years

sentence, which means the man or woman serves that time in the community[9]. Probation is the most common conditional sentence whereby those who have committed a less serious crime must follow certain conditions for a time that cannot exceed three years. A Probation Officer is assigned to the individual and will supervise him or her while in the community. Sometimes, these men and women are considered high-risk offenders. In the D.H. case the defendant was considered the same. The risk assessment tools which are used by Federal corrections are also used by BC Corrections when deciding what person is high-risk or not.

Under the equivalent Provincial level, an individual can receive a discharge when the judge still finds the person guilty, but uses a discharge instead of convicting the person[10]. Typically, discharges are used for minor offences where the person who committed the offence is responsible for convincing the judge that the discharge is necessary[11]. There are absolute discharges and conditional discharges. Conditional discharges are most common and constitute the same situation as Probation. Absolute discharges results in no criminal chare or record.

High-risk individuals are sometimes struggling with mental disorders or developmental disabilities and may have had contact with British Columbia's Forensics. For example, the *Mental Health Act* is the Provincial legislation which covers when to detain an offender via the *Canadian Criminal Code*. Under the *Mental Health Act* a man or woman may be detained in a Provincial mental health facility to receive appropriate treatment and care if that person has been found not criminally responsible on account of mental disorder, has been found unfit to stand trial due to mental disorder, or who is ordered to be detained in a

[9] http://www.cba.org/BC/public_media/criminal/203.aspx
[10] et., al
[11] et., al

Provincial mental health facility. The *Mental Health Act* also delegates that during detention, the man or woman is subject to direction and discipline.

The *Forensic Psychiatry Act* is the Provincial legislation which describes the powers and duties of the Forensic Psychiatry Services Commission. In it, the Commission is said to be responsible for providing forensic psychiatric services for those accused persons in remand for psychiatric examination, those held under the *Canadian Criminal Code* or the *Mental Health Act,* those in need of psychiatric care or assessment while in custody, and those held under a court order.

Dangerous Offender & Long-Term Supervision Order Designations

Both the Dangerous Offender and Long-Term Supervision Order designation require a risk assessment report. The court may order remand for up to sixty days to complete the assessment. To apply for this assessment, the Crown must demonstrate that there are reasonable grounds to believe that the offender might be convicted, but not yet sentenced, of certain serious crimes in the *Canadian Criminal Code*. These offences include that of a personal injury offence (s.752), sexual interference (s. 151), invitation to sexual touching (s. 152), making or distributing child pornography (subss. 163.1(3) & (4)); sexual assault (s. 271), and other offences of a sexual nature.

The application requires consent of the Attorney General before the hearing. There must be seven days of notice to the offender including an outline for the basis of the application. There is no requirement of notice prior to a plea. The hearing is conducted by judge without a jury.

Dangerous Offender Provisions

A Dangerous Offender hearing follows a conviction for an antecedent offence which must be either a sexual assault or an indictable offence punishable by more than ten years of imprisonment that involved actual or threatened violence, or represented a danger to the life, safety or psychological wellbeing of another person. It may lead to indeterminate confinement.

There are two branches under which a person might be designated a Dangerous Offender. The first is a finding that the offender constitutes a threat to the life, safety, or physical/mental well-being of other persons[12]. The second is a finding that an offender has shown a failure to control his or her sexual impulses.

If an individual is designated a Dangerous Offender, he or she is automatically sentenced to an indeterminate sentence. After seven years of incarceration, he or she can apply for Full Parole or Day Parole. If a Dangerous Offender is granted Day Parole, he or she will be living in a half-way house. Two years after that, the Dangerous Offender can apply for Full Parole. They are only allowed to ask for Full Parole every two years. This means that the National Parole Board can reject the person from Full Parole, and the Dangerous Offender would have to wait two years to apply again.

Long-Term Supervision Order Provisions

The Long-Term Supervision Order designation became its own category in 1997. It represents the middle ground between an indeterminate sentence and a fixed term. Those designated Long-Term Supervision

[12] This is based on evidence of either a repetitive pattern of violent behaviour, excessive brutal violence, or trauma

Orders are sentenced to at least two years imprisonment followed by supervision on conditions for up to ten years with suspension and revocation procedures, along with a new offence for non-compliance.

The Long-Term Supervision Order designation is made pursuant to an application under Section 752.1 of the *Canadian Criminal Code*. An offender can be designated as Long-Term Supervision Order if there is a substantial risk of reoffending and reasonable possibility of eventual control of the risk in the community. A Long-Term Supervision Order is not only used for sexual offences. Repeated spousal abuse could trigger an application, though the risk of reoffending must be substantial.

As a result of the Long-Term Supervision Order designation, the offender may be supervised in the community for a maximum of ten years[13]. While on Long-term Supervision, the offender will be subject to conditions imposed by Correction Service Canada and the National Parole Board. Failure or refusal to comply is an indictable offence punishable with up to ten years imprisonment.

S. 810(1) Orders

Under the *Canadian Criminal Code* anybody who fears that another person will cause personal injury or damage to himself, spouse, child, or property, can go before a Justice of the Peace and seek a Section 810(1) Order[14]. The judge may order the defendant to keep the peace and be of good behaviour for up to twelve months, and abide by any other reasonable conditions considered desirable for securing the good conduct of the defendant. These conditions are supervised by Probation Officers. The phrase

[13] This is discretionary
[14] This paper will refer to these as 810 Court Orders

"keep the peace and be of good behaviour" generally is something broader than lawful behaviour. However, some case law supports the proposition that the phrase simply means to obey the law.

Section 810 Court Order powers exist alongside a similar common law preventive justice power. Under these powers, the court may bind a person not because he has committed an offence, but because it is thought from the person's behaviour that he may commit, or cause others to commit, offences against the Queen's peace. Precautionary proceedings can be used to prevent a breach of the peace. These orders are not open to appeal. However certiorari[15] orders are available. An anticipated breach of the peace is sufficient. It need not be shown that the person was in actual fear at the time.

S. 810(2) Orders

Similar to 810 Court Orders, the *Canadian Criminal Code* also has 810.2 Orders. Any person who fears that someone will commit a serious personal injury offence may go before the Provincial court judge and argue to have this order placed. This fear must be shown to be reasonable and the offences must be named.

Prohibitions Regarding Sexual Offenders

Upon conviction for certain sexual offences against persons under the age of fourteen, the court may make an order prohibiting the offender from:

[15] A certiorari order is an order by a higher court on review/appeal for the production of the record from the trial level decision.

- Attending a public park or public swimming area where persons under the age of fourteen years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre
- Seeking any employment that involves being in a position of trust or authority towards persons under the age of fourteen years
- Using a computer system for the purpose of communicating with a person under the age of fourteen years

These conditions may be for life. Or, the court can impose these conditions for any shorter duration.

Section Wrap-Up

High-risk offenders are typically given stricter conditions while on Probation or Parole. The Dangerous Offender and Long-Term Supervision Order designations add further restrictions and prohibitions to offenders. This section aimed to highlight what these restrictions can look like in the community. These same provisions, although at times appropriate and mandatory, also create more difficulty in finding housing. The next section provides three case studies in which these issues are prevalent.

S e c t i o n 5

THREE CASE STUDIES

"It is far easier to take a man out of prison than it is to take the prison our of a man, particularly after lengthy incarceration has institutionalized almost every aspect of living" Larry Howett

Introduction

These case studies highlight major barriers that high-risk offenders come up against while locating housing which is affordable, safe, and meets their conditions of release. This section will outline three case studies that the JHSLMBC has assisted in the last three years. All clients are male and high-risk offenders who were released into the community. Their names have been kept anonymous and their whereabouts kept vague for confidentiality purposes. Their stories illustrate the important challenges this type of client faces once in the community. Below are the stories of Matthew, Cam, and Peter.

Matthew

Matthew is an Aboriginal male between the ages of forty and fifty. He is considered a high-risk offender and was given an 810 Court Order for two years. Matthew came to British Columbia where he was taken in by a supportive self-help group. He was brought to their meetings and from there was connected to Aboriginal resources. Last year, Matthew was referred to the Homeless Partnership Initiative (HPI) program at the JHSLMBC because he wanted to find long term housing closer to the city. Staff members

documented that Matthew was advised against this move because he would be further away from educational and vocational resources, Aboriginal spirituality, and other safety nets. Regardless, Matthew very much wanted to move there.

The HPI Team and Matthew

The HPI team transported Matthew to downtown, and connected him to an emergency shelter for one night. The police detachment in the previous area was notified of the move. He was driven to his Parole Office to discuss his conditions. He was then driven to a downtown income assistance office where a file was opened. The HPI team also assisted in connecting Matthew to a Pastor who helps offenders in the community. This Pastor acted as a strong community anchor to Matthew and offered support in an urban setting.

The HPI team's goal with Matthew was to find him long term housing. In order for that to happen, he would have to spend some time in a shelter while he worked out his financial situation with the team. In the mean time, staff members searched with Matthew for a suitable placement. Within five days of the referral, Matthew was accepted into a room at a downtown shelter. The staff at the shelter provided day-to-day support as he continued to work with the HPI team for long term housing.

Matthew called the HPI team six days after getting a room at the shelter to say he was accepted into one of the hotels in the downtown area. It was a bachelor room with a fridge and a hot plate. The rent was affordable once he received income assistance. He explained that he completed the "intent to rent" form

for the room as well. Matthew was documented as being very happy about this accomplishment. He was therefore a high-risk offender who was successfully placed in long term housing.

The HPI team and Matthew met fairly often. Case notes indicate that he was keeping to a regular routine and still happy. Clothes and shoes were provided by the Salvation Army. Matthew was making long term plans for education through shelter staff. He collected bottles and cans at night to earn extra money. He made a friend who was homeless in the city. However, peer association continued to present a barrier for Matthews's long term success.

The Challenges

Death in the Family

Matthew received word that his sister had passed away in an untimely manner in another province. He became very upset and called the HPI team. As it turns out, Matthew had lost many close friends and family in his life. He was unsure how to grieve. The HPI team received a signed Release of Information sheet from him, and explained the situation to the Pastor. The team was concerned about Matthew because he seemed unable to express his feelings. He was a high-risk offender placed into a high-risk situation and set of circumstances.

A member of the HPI team received a call from the RCMP one night. Matthew had been found walking across a major bridge connecting the city to a rural area. No foot traffic was allowed on this busy bridge. The RCMP brought Matthew to where the HPI team member was working. He was depressed and had a

cut over his eye. It had been raining that night so he was very soaked. His personal and emotional areas of life had been unsettled.

Ongoing Addictions

Over some food with the HPI team member, Matthew admitted that his homeless friend was selling drugs. He had accompanied the drug dealer while he worked. The friend gave Matthew some speed and within time, Matthew owed him a substantial amount of money. The friend had hit Matthew in the face when the debt could not be paid right away. Matthew was afraid and fled. His substance use was therefore considered problematic.

He was waiting for a ticket to arrive at the Greyhound station. He wanted to move to where his other sister lived, or up North. To make matters worse, Matthew received contact from a woman who claimed she had his child. He was upset and wanted to know the truth. Without the HPI team knowing, Matthew was given permission to move back to where his sister lived. He did not call to let anyone know. It is easy to imagine that Matthew felt a low level of optimism for the future.

Cam

Cam is a Caucasian male who is aged between forty and fifty. His attitude towards authority was poor. Cam has been a client of the JHSLMBC for over three years as part of the Community Services Office. The staff at the Community Service Office had been assisting him with mail, ID replacement, and general support through his constant intake and release from Provincial jails. Eventually Cam served time in a Federal penitentiary. He was designated a high-risk offender when released and an 810 Court Order was

imposed. He became angry and upset with this news when meeting with his Parole Officer after she explained that an 810 Court Order would impose conditions that may make it harder to find a place to live. He was released to live at a high security halfway house until his Warrant Expiry Date. His Parole Officer contacted our HPI team to assist with possible long term housing.

The HPI Team and Cam

Cam had been successfully placed in a temporary hotel downtown in the summer of last year. While there, the HPI team was assisting him to locate long term housing. For the time being, the maximum amount of rent he could afford was $375 per month from income assistance. There were a few places in a suburb away from downtown that would fit his price range. Our HPI member drove him to the suburb to meet potential landlords. They had stopped for coffee and while in the bathroom, Cam had relapsed and used drugs. The meetings with landlords were terminated and Cam was brought back to his temporary hotel downtown.

He called back several weeks later and apologized to the HPI member. He was welcomed back to the Community Services Office to use the computers and the phone with the HPI team. He explained to staff that he clearly understood all boundaries with regards to belligerent behaviour and that no drugs or alcohol use would be permitted. Cam did return and started working with the HPI team again with the goal of long term housing. He eventually found housing which was consistent to his 810 Court Order conditions. He remained in the community for several months.

The Challenges

Attitude

Cam's mistrust in authority figures and structured systems may be understandable. However, that type of attitude creates a difficult client to assist. For example, Cam became the most upset when he learned that his Parole Officer had contacted the HPI team and asked them to assist in locating long-term housing. His point of view was that he had already served his time in the Canadian penitentiary. Any further conditions, or freedoms taken away, were considered extra and unnecessary punishment. Staff members noted that Cam tended to take the stance of an "oppressed individual". This allowed Cam to negate any need for appropriateness in the future.

Ongoing Addictions

Cam's ongoing battle with addiction severely affected his ability and level of community functioning. The meetings with landlords were terminated when Cam nearly overdosed in the car when he was supposed to be finding long term housing. Although the Community Service Office welcomed Cam back as a client, landlords will not necessarily show the same amount of forgiveness. High-risk offenders living with severe addictions are challenging to place in the community. Ongoing support is needed.

Peter

Peter is an Aboriginal male who is aged around forty to fifty. He was released from a Federal penitentiary after completing a lengthy sentence for a series of high profile sexual offences. While incarcerated, Peter

worked very hard to do every possible intervention and program offered by Correctional Service Canada to deal with his sexual deviance. He voluntarily repeated a few programs while incarcerated. Staff members noted that his commitment seemed genuine and commendable, in as much as he was asked to co-facilitate some of the programs. Upon release, a well funded campaign followed Peter around explaining to the news stations that he was an "untreated high-risk sex offender". Labels such as "remorseless" and "dangerous" were tagged along his name. The 810 Court Order has been renewed three times in Peter's case.

Peter had a family member in the area that became his main support system. He was invited into the family home not because Peter was about to be homeless, but because the family wanted to support him. The police publicized the name and address of Peter's support home. This created such a high level of fear that the supportive family members were threatened by neighbours. Peter moved to a halfway house for a short term stay. Then, he again relocated to another suburb. But no matter where Peter went the police publicized his move. This became very strenuous for Peter. He eventually ended up living in a short term shelter near his family. A staff member at the shelter contacted the HPI team in hopes that they could assist in finding long term housing.

The HPI Team and Peter

The HPI team met with Peter at the shelter and started to review affordable and available housing. A suitable hotel that was within his budget was visited. The hotel also complied with his 810 Court Orders. However, Peter's only mode of transportation was transit. This hotel ended up being approximately three

hours away, by transit, from where his support system was located. When Peter turned down the opportunity, staff at the shelter accused him of not accepting their assistance and of being uncooperative. An HPI team member noted that Peter remained calm through all the public accusations. He showed maturity, and the ability to deal constructively with adversity. It was important that this individual deemed a high-risk offender had the safety net to assist him when he had to cope with the stressors of the 810 Court Order, by police, and community members.

The HPI team member wrote,

> "Without a very broad safety net composed of interventions and persons that will assist the client with the stress and fear created by institutionalization and release pressures it is almost impossible for a client designated a high-risk offender to create the kind of opportunities necessary in order to succeed" (HPI Team, 2010).

The Challenges

High Profile

This case was considered very high profile which means Peter's identity and whereabouts were constantly on the news channels and newspapers. Public notification can create a very stressful environment for high-risk offenders, and like in Peter's case, for their families. Television shows and published books portray sexual offenders as the "lowest of the low" type of offender. It understandingly creates fear and anger in community members. With Peter's case the community members took it upon themselves to threaten the

safety and well being of Peter's family members. Therefore, this type of offender can present several challenges upon release.

This paper does not wish to comment on sexual offender notification policies. The case study merely points out how incorrect information about high-risk offenders can escalate an already highly emotional situation.

Follow-Up of the Case Studies

To the best of the HPI's knowledge, Matthew, who endured the death of a family member shortly after being released, has continued to live in another province closer to his family members and support systems. This writer could not locate any information on his current situation. Cam, the client with a quick defensive stance, is now being held in isolation in a Provincial institution. Due to privacy laws, the police detachment who was working with Cam would not share information for follow-up. Peter, who was the most high profile client, has been residing successfully in another area. He still visits his family members for support. The sensationalization surrounding his release has subsided and he no longer is receiving active media attention.

What has been learned from the Cases?

In general, the cases studies highlighted the challenges that high-risk clients come up against after being released into the community. At times, the most dangerous people in the province are released homeless, un-medicated, and without financial means. These barriers, compounded with lower optimism, loneliness,

and isolation can contribute to the likelihood for lack of success. This is not meant to scare the public. The purpose is to illustrate what changes need to be made for British Columbia and high-risk offenders.

As a response from the court's decision in the D.H case, along with the in-depth look into our case studies, the JHSLMBC created a set of best practices to use when housing high-risk clients. This project helped create a set of best practices which can guide staff to best assist high-risk offenders. The next section describes the process.

S e c t i o n 6

BEST PRACTICES TO USE WHEN HOUSING HIGH-RISK OFFENDERS IN THE COMMUNITY

"You can spend the money on new housing for poor people and the homeless, or you can spend it on a football stadium or a golf course" Jello Biafra

High-Risk Offenders in the Community

Typically, high-risk offenders will have strict conditions allowing them to live in certain areas and restricted from others. Their conditions of release, whether it be supervised by Parole or Probation, will most likely restrict their lives. Finding and maintaining housing this type of client therefore is difficult. This section discusses best practices created in order to promote success for clients, enhance public safety, and minimize liability for all involved.

The Advisory Group

Two meetings were held with professionals, service providers, and managers to examine the complex issues involved in housing high-risk offenders. The group identified issues that need to be addressed when housing high-risk offenders in the community. The most critical need areas were identified as safety, support, conditions, risk, and housing. The table below identifies the issue and goals of each stakeholder:

Safety	Support	Conditions	Risk	Housing	Before Release	Notification
For the community	Establishing a relationship with offender	Being aware of conditions/orders	Adequate risk assessment	Long term placement	Staff to know crime cycle and behavioural issues	Considering the need for it
For offenders	Easy access to support	"Active" supervision	Risk-Needs balance	Affordable housing	Appropriate plans before release	Disclosure of important information
For the staff	Social skills, counselling, employment	Minimize access to previous victims	Risk Management	Communication between housing/offender	Reasonable release plans	Notify at risk persons

Figure 2 Best Practices Tally

The group listed twelve areas that workers need to address when assisting a placement in the community. All considerations must ensure the safety of the community, the individual, and the worker. These areas are described below.

Safety

When looking at safety the working group noted that the safety of the community, the offender, and staff is paramount. This can only be achieved if all those involved with the high-risk offender (workers, friends, or family) have the ability to share information. In order to achieve this, the high-risk individual must sign a Release of Personal Information form that is dated for a specific time period with an option to renew as needed, stating what information is to be shared and with whom it will be shared. The group felt this is the only way everyone's safety can be managed in a fair, reasonable and just manner.

Resiliency

The committee noted that achieving safer communities does not start by raising our fences or adding barbed wire. The members believe high-risk offenders can be held accountable by their support systems. These support anchors can include volunteers, family, workers, and friends. For example, there is a community-based reintegration program called Circles of Support and Accountability (CoSA), which is operated by volunteers, supported by staff, and sponsored by Christian churches in Canada.

CoSA is "... designed to support people newly released from prison who have been convicted of sex offenses, admit to committing these offences, and request CoSA's help to prevent further offending" (http://www.stjohnsottawa.ca/pages/cosa.html). The individuals that CoSA assists are high-risk clients and generally require large amounts of support in the community.

The CoSA program is a great example of how pro-social people can surround an individual, support them, build relationships and trust, and hold them accountable for possible mistakes and poor decision making. The group agreed that volunteers in the community, with appropriate training, are a valuable resource for high-risk offenders.

The larger topic around support systems is finding out how the community, other agencies, and volunteer programs can start understanding resiliency. It can be difficult for community members to accept the idea that creating meaningful and appropriate relationships with potentially dangerous men and women could be the strongest strategy towards a successful reintegration. These relationships with positive anchors help assist high-risk individuals become accountable for their actions. Bonded support

systems help keep large issues in check. Volunteers are a valuable resource to high-risk offenders' community functioning and success.

Education

Educating community members and the courts on the designated areas that the committee suggests workers need to address when placing high-risk offenders in the community is important and could be achieved by having community forums. This province shows a need for partnerships and collaborative initiatives between groups, rather than specific individuals or agencies becoming the "lightning rod", as demonstrated in Peter's case study.

Needs Assessment

Risk Management is a concept that is used by Correctional Service Canada, BC Corrections, and other agencies. It is widely accepted form of assessment. It also directs Probation and Parole Officers as to what to monitor for more than other issues. Most professionals who assist high-risk offenders know about the seven dynamic factors. These factors are found in the offenders' correctional files and include community functioning, attitude, personal/emotional, marital/family, employment, substance abuse, and associates. The offenders, high-risk or not, are rated on these seven large issues while in the institution and while out in the community.

The group felt that community workers could use these seven dynamic factors to develop a needs assessment. Once an individual's strengths and areas for growth are determined, SMART (Simple, Measurable, Attainable, Realistic and Time Framed) goals could be set. These goals could be then

prioritized with outcomes measured on a regular basis with the high-risk offender, and all those involved in providing support.

For example, with regards to substance abuse, discovering whether or not a client has a history of substance abuse or is currently consuming drugs is important to that person's community functioning level. Asking the client what they need to overcome addiction is a good start. On the other hand, asking the client what they need in order to stay clean allows the conversation to both dig deeper than a risk assessment and stay positive. That being said, not every client is as black and white as using and staying clean. At times a client will still be consuming narcotics, while having low needs in that area. Every client has different needs.

Notification

Several Federal laws pertain to notification. Most Federal legislation terms these issues as 'information sharing'. For example Sections 8, 12, 18, and 24 of *The Privacy Act* pertain to information sharing. The *Correctional Conditional Release Act* describes what situations would warrant sharing the offenders' information to the victim and what specific information that could include. There are Commissioner Directives[16] that describe when Correctional Service Canada can share information about the offender to the victim. Further, Commissioner Directive 701 includes references to *The Privacy Act*, the *Correctional Conditional Release Act*, and *The Official Languages Act* which explains when Probation and Parole Officers can release information about the offender. Section 490.012 of the *Canadian Criminal Code* is an order to comply with the *Sex Offender Information Registry Act*. The group decided that

[16] CD 784 & 784-1

clients need assistance through the notification process as it can be strenuous and isolating and increases some client's risk to re-offend.

Working with Conditions

Rather than trying to fight conditions with the corrections system, it is more positive and community oriented to try and have the client understand and work with their conditions. As most professionals know, conditions are decided by the Provincial Courts at the Provincial level, and by the National Parole Board at the Federal level. By plainly asking the client, "How can we work with the conditions given?" the client may be able to demonstrate their own understanding of their conditions. This unto itself has a high degree of effectiveness. With regards to clients who demonstrate cognitive development difficulties, identifying prompts or reminders may further assist their understanding.

A case plan or personal plan is an effective way to promote a successful outcome. Below is an example of a case plan provided by the JHSLMBC and consists of goals which must include four separate sections. Those sections are personal goals, needs, conditions of release, and aftercare goals. This form is completed by the client and their support worker.

Intervention Plan at Guy Richmond Place (JHSLMBC)

Name:
DOB:
FPS#:
Parole Officer:
Arrival Date:
Date Plan Developed:
CRF Worker:
CRF Name:

This plan is the resident's individual plan as it relates to this CRF's activities and programs, the residents' personal goals, and the conditions of the residents' release. Its purpose is to figure out where people are going and what kinds of support and services they will need to get there.

The plan is developed with the participation of the resident, the resident's parole officer and the CRF staff and must be completed within 30 days of arrival. A part of the process in developing the plan is to ask the resident and those who work with him about the things they would like to achieve. It is also finding out what gets in the way of doing the things people like to do now and hope to do in the future. The plan is to be reviewed on a monthly basis. In addition, all goals must be **SMART that** is **Specific, Measurable, Attainable, Realistic and Time Framed and list the supports needed to reach the goal and who does what.** Lastly, all four areas of the plan must be prioritized.

A) **Personal Goals** (e.g. reconnecting with family, weight lifting, saving money, learning how to appropriately resolve conflict, cooking, getting to know the community, etc).
Review Date:
Results of Review:

B) **Expectations of Release** (these are the residents release conditions like not associating with certain people, not using drugs/alcohol, not to be near or in certain areas, meeting curfews, etc **And** the house rules like doing chores, being respectful of others, cleaning up after cooking, etc)
Review Date:
Results of Review:

C) **Needs** (e. g. I.D., complete income tax, resume, bus pass, work boots, etc)
Review Date:
Results of Review:

D) **Exit Plan** (e.g. living accommodation, damage deposit, rent, bed, dishes, furniture, welfare, outreach support, etc).
Review Date:
Results of Review:

Resident Signature: **CRF Worker Signature:**

Figure 3 JHSLMBC's Case Plan Template

While on release, understanding the conditions is imperative because once that high-risk offender has reached his Warrant Expiry Date, will they understand why they weren't allowed near parks? Or will they just feel excited that they can finally go to the park because their release is over? The difference between those two questions is critical and relates back to how to make communities safer.

Communication

Being sure that the appropriate resources are communicating to one another regarding a high-risk offender in the community is vital to a successful release. For example, having a staff member from the Lookout Shelter call the JHSLMBC to say that our mutual client has found long-term housing is helpful in community based work, assuming he has signed a release of personal information. When community support workers are aware of what resources are out there besides Job Wave, that knowledge and communication can be useful for the client on release, or even just past their release.

Empowerment

This term means different things to different people. With regards to clients on release from an institution, empowerment is the concept of having control over one's life. It is an idea of ownership and being involved in one's own processes.

The group was asked how clients on Parole, Probation, or just past their release can be empowered. In other words, how can clients be a part of their own release? The group decided this could be accomplished by having the high-risk offenders be part of setting their own plans and goals. After their Warrant Expiry Date, these individuals need to be connected to a community and its members somehow. This could take the form of Warrant Expiry release planning. Professionals who work under a risk management perspective in corrections know about release planning from an institution. Warrant Expiry release planning would be similar. But the client is being released from the remainder of controls set upon him or her rather than being released from an institution.

In addition, the idea of 'meeting people where they are' was introduced. If a client is a highly functioning person in society, showing them how to brush their teeth will not appropriately assist them. Similarly, putting a client through group facilitation for male adults while the client has an IQ of 52 may not be the most appropriate choice either. All clients are different and have different needs. Assisting clients at the point of 'where they are' in life is the start of empowerment so they are not either belittled or set up to fail.

Motivational Practices

As a best practice, motivational practices can look like positive reinforcement or even motivational interviewing. Expressing to a client that they have succeeded in something, even if it is small, goes a long way. As for motivational interviewing, it is a larger topic. For the purposes in this paper, we have examined two components. First, motivational interviewing holds strong to the idea of rolling with resistance. At times, high-risk offenders may be abrasive, angry, frustrated, or have poor social skills. Understanding resistance assists staff and volunteers remain calm and empathetic towards the client. Second, motivational interviewing explains that too many questions posed towards the client at one time often leaves the client feeling interrogated or overwhelmed. Similarly, questions of who, what, where, why and when, leads to one word answers. Closed questioning typically results in more questions.

Section Wrap-Up

These practices were created in order to best assist high-risk offenders in the community. Their conditions restrict many facets of their life. High-risk offenders are sometimes the toughest clients to assist. As these individuals sometimes present as abrasive, aggressive, emotional, confused, frustrated, unemployable, or have poor social skills, using this set of best practices will guide workers to try and empower their client and to focus on the individual needs of that person.

This section outlined the need for appropriate housing which complies with high-risk offenders conditions of release. Housing placements must consider what the common or shared areas are, what the proximity is to daycares and schools, where transit is available, and the affordability of the client. The next section will conclude the discussions surrounding high-risk clients and the community.

S e c t i o n 7

THE CONCLUSION

"The care of human life and happiness and not their destruction is the first and only legitimate object of good government" Thomas Jefferson

Overall Look

In 2008, BC Corrections was found partly responsible when a high-risk offender re-offended against a young boy while under the supervision of Probation. The courts determined that the Probation Officer was negligent. The doctrine of vicarious liability allowed BC Corrections to be found partly liable. This decision has prompted agencies to review at their current practices surrounding the placement into housing of high-risk offenders.

With funding from the Law Foundation, the JHSLMBC has created a set of best practices to use when housing high-risk offenders in the community. This type of client usually has strict conditions, and is up against difficult barriers. Locating housing that adheres to their conditions of release while remaining affordable is therefore a difficult task. In addition, maintaining a pro-social life while living in low-income areas can be trying.

This project reviewed three legal cases exploring various aspects of liability. It also provided a review of three actual persons meeting the criteria of high-risk offender in need of a housing placement. The D.H. case, which drove this project, was explained in full detail, along with other negligence decisions.

The Housing Aspect

There is a lack of affordable housing in the Lower Mainland. Individuals who are released from prison are confronted with barriers when trying to find housing. Many of these men and women find themselves in emergency shelters and exposed to the very issues which sent them to prison in the first place. Finding appropriate, long-term housing can be a difficult process. When these people should be focusing on managing their risk levels, staying clear of addictive substances, and maintaining finances, they are often focused on the challenges of being homeless. When this same situation is occurring for high-risk offenders, community safety is impacted.

Wrapping Up the Best Practices List

This project argues that to better assist high-risk clients in the community, and to better serve the community, service providers should adopt the provided list as their guide. As mentioned, this list consists of safety, resiliency, education, a needs assessment, notification considerations, working with conditions, communication, empowerment, mental health considerations, positive reinforcements, life skills, and pro-active advocacy. In practice this could be as easy as one single piece of paper, almost like a tack sheet. The next page shows an example.

The Framework: Everyone deserves the chance to become a responsible citizen!

1. **Discuss how safety of the community and staff will be ensured..... .....** ☑
2. **What kind of support systems do you have?.....** ☑
3. **What are your NEEDS regarding: Employment, Attitudes, Associates, Substance Abuse, Family/Marital, Personal/Emotional, and Community Functioning?.....** ☑
4. **How are we going to work with your conditions?.....** ☑
5. **What other agencies, programs, or organizations will you be working with?.....** ☑
6. **How can you be included into your own release?.....** ☑
7. **Have we addressed any mental health concerns?.....** ☑
8. **I will continue to provide positive reinforcements.....** ☑
9. **What life skills do you most need assistance with?.....** ☑
10. **How will I pro-actively advocate for you?.....** ☑

Figure 4 Example of Possible Tack Sheet

This tack sheet could take the form of whatever the worker or agency wanted. For example, this particular tack sheet would be useful for an initial meeting between client and worker. Or, the best practice list could be set up in such a way that every month, it is revisited between client and worker. Regardless the form these practices take, the overall theme is to plan for success, to improve life skills, and to create safer communities.

Staff members need to work pro-actively while in the community with high-risk clients because high-risk offenders sometimes have poor life skills. Trying to assist a person before negative events occur requires forward thinking in someone's case. For example, instead of waiting for a client go for their first interview, try asking some brief questions first:

- What are you planning on wearing?
- Do you have a copy of your resume to bring?
- Do you know how to get to the place of the interview?
- What are you going to say when the boss asks for a criminal record check?

By doing so, support anchors can pro-actively assist the client before he/she even went to the interview.

The Big Picture

These issues can be framed in a two-tiered structure. The first tier is the process of searching, locating, and securing affordable long-term housing for high-risk offenders. This includes considering references, land lords, waiting lists, applications, meetings, wearing appropriate apparel, discussing smoking, phoning, visiting the potential home, and time management. Once someone is in a long term housing situation, then begins the needs requirements, developing/maintaining life skills, washing clothes, eating, and financial planning. The amount of life skills required to search and secure safe, long-term housing is vast.

The next and final section will look at the JHSLMBC's recommendations regarding these issues.

S e c t i o n 8

RECOMMENDATIONS FOR THE FUTURE

"The best thing about the future is that it comes only one day at a time" Abraham Lincoln

This final section outlines the JHSLMBC's and the legal researchers' recommendations for future changes. In general, positive change will happen when counter initiatives provide support to persons considered high-risk. Supervision of these clients is equally important to the protection of society and the success of the person in question. These recommendations cover the specific topics of mental health considerations, ongoing staff training, policy, person centred plans, ideas on how to avoid negligence cases, and what the judges in Canada need to clarify.

Mental Health Considerations

Incarcerated men and women near their dates in which they are eligible for releases like Day Parole, Full Parole, or their Statutory Release Date. If requested, their names are released to several halfway houses and treatment centres to see if they would an appropriate fit to that program. Staff members or the managers of these programs read through their files to decide a tentative admission or not into their program. This process is commonly referred to as "screening". Further meetings are held once a week to make the final decisions as to who will be admitted into certain programs.

This screening process provides an opportunity for community workers to have mental health considerations regarding the client explained. Unfortunately, this does not always happen. Therefore, this project proposes to change a minor procedure. Individuals deemed high-risk could be given the option to fill out a Release of Personal Information form to the program they prefer. This form should be made to expire after one year. If the high-risk offender signs the Release of Personal Information, those who screen this client can then have access to his or her mental health records, medication updates, mental capacity, and ongoing struggles. Service providers have documented that their staff members find out about the full mental health of the client only after they have been admitted into their program. It would seem more productive to have that information beforehand.

That being said, not all high-risk offenders are being released into programs where information can legally be shared. As this project argues, many individuals are released from an an institution without secured living arrangements and without community support. For these clients, primarily at the Provincial level, a community-based volunteer model may need to be considered.

Volunteers offer a valuable opportunity for high-risk individuals to build positive appropriate relationships. This was highlighted during a discussion around support anchors and resiliency. If volunteers were connected to a Provincial program, the proper mental health information has the potential to travel the same way it does at the Federal level. This, of course, is assuming the client is willing to sign a Release of Personal Information form. Besides what the Provincial high-risk client self reports on their own accord, it currently seems impossible to know the full mental health picture of that individual any other way. A change in procedure needs to be considered.

Ongoing Staff Training

Avoiding liability consists mostly in having reasonable policies and practices that are actually followed by staff and residents, geared toward safety and risk control. Practices that acknowledge, and have some mechanisms for dealing with especially dangerous individuals will mitigate a negligence claim. The legal researcher recommended non-profits and other agencies to enable ongoing staff training.

Each staff member and volunteer should have a clear understanding about what individuals in the program, or halfway house, are high-risk and why. These types of practices include file flagging and colour coding specific offenses. Each staff and volunteer should have a clear understanding of the psychological assessments of these high-risk individuals. Each person has their own set of triggers or behaviours which elevate risk. Therefore, each staff and volunteer should be able to explain what those triggers are. Also, confidentiality agreements must be in place in all agencies providing services. The researcher decided that the ability to demonstrate this risk-based knowledge would ultimately help agencies avoid liability. In this line of service and employment, the ignorance stance rarely will succeed.

Policy, Policy, Policy

There should be a clear procedure for residents and staff members to voice safety or security concerns in relation to high-risk residents in the halfway houses. Specifically, agencies should address threats from violent or sexual offenders who are residents.

Following policy seems like an obvious point. However, it is possibly the most important. In case law, negligence generally arises when an employee or agent makes a mistake. That is where they do not follow organizational policy. The importance of following established practice and policy issues always need to be discussed in staff training in reference to the liability of the organization. There should be ongoing review of the staff's knowledge of security and safety policies along with best practices. This could be executed either through mock situations, written questions, oral examination, or review of past practice.

Person-Centred Plans

This project promotes the need for person centered plans, motivational techniques that assist the client to accept ownership of their situation. The outcomes of release plans, relapse plans, and successful release into the community should be both determined by the client and appreciated by the client.

The tack sheet example provided an illustration for service providers. That tack sheet model could be reviewed once a month with the individual who is considered high-risk. Having the input from the client, as mentioned, is a great way to promote empowerment. In addition, there was an example of a case plan that illustrated what S.M.A.R.T. goals can look like in practice. Both are considered person-centred plans.

Avoiding Liability Continued

In the D.H. case, it was demonstrated that the man on probation knew of his conditions. One of these conditions was to have no contact with anyone under the age of eighteen. To avoid partial liability given the similar situation, the agency that is assisting, or is responsible for where the client was going to live,

could adopt a simple form to sign. It would merely state that the high-risk individual declares he/she knows of their conditions and by living in the area where placed does not breach any of those conditions. Below is an example:

(The Agency's Name that is Assisting the Client)
(The Agency's Contact Information)
(Date)

I, _____, know and understand all my conditions of release. I declare to have no housing conditions, directions, or orders that preclude me from residing at any location.

By moving into this housing complex located at:

_____
_____
_____
_____

I am not breaching any of my conditions.

Signed,

_____

Dated: _____

Figure 5 Example of Client Understanding Form

What the Canadian Courts Could Clarify for the Future

In the D.H. case, the judges focused on the physical layout of the housing complex in which the defendant had contact with the young boy. The wording of what constitutes appropriate housing for high-risk offenders is therefore imperative for future negligence and liability cases in Canada. This project argues that these judges commented on only one type of housing complex. It is that of an actual house, which

had been divided into separate suites. This project asks: if a similar case occurs again, but it happens in a condominium apartment, would the judge use the same language from these previous cases? Or further, what are the appropriate housing requirements for high-risk offenders in situations with trailer parks, or any other type of housing situation?

A Close-Up of the Wording in the D.H. Case

In the initial lawsuit whereby the judges decided BC Corrections was to be found partly liable, as was the man on probation, the choice of words the judge uses only applies to negligence in a house situation. For example, the judge discusses how the living arrangement was "... a home in which the occupants although living in separate suites, shared several common areas" (Paragraph 65). The judges also stated that these common areas, "...included a front entrance, a laundry area, and front and back yards shared with the occupants of the home's upstairs suite" (Paragraph 7). This theme of "shared facilities" was found throughout the decision. In the appeal, the judge also referenced the importance of the physical layout.

The JHSLMBC argues that if a similar liability case occurred again in Canada, involving an apartment, the courts could assume the same decision. People living in separate suites with common areas like laundry and front door access lays out a typical apartment. Yet it still leaves the options open for a trailer park. The only shared spaces in trailer parks are back yards and possibly driveways/parking areas. Everything else the judges pointed out in the D.H. case would not transfer easily into a similar sexual offence in a trailer park. What if five separate townhouses shared one court yard? In conclusion, this project recommends that the BC Court of Justice and BC Court of Appeal decide what appropriate housing is for high-risk offenders in British Columbia and possibly Canada. We need to agree on what exactly is "shared space".

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