

Office of the Public Sector
Integrity Commissioner
of Canada




Commissariat à l'intégrité
du secteur public
du Canada

**Findings of the Office of the Public Sector
Integrity Commissioner in the
Matter of an Investigation
into a Disclosure of Wrongdoing**

Correctional Service Canada

Case Report
February 2016



The Report is available on our website at: www.psic-ispcc.gc.ca

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The Honourable George Furey
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner of Canada's Case Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing at Correctional Service Canada, which is to be laid before the Senate in accordance with the provisions of subsection 38 (3.3) of the *Public Servants Disclosure Protection Act*.

The report contains the findings of wrongdoing; the recommendations made to the chief executive; my opinion as to whether the chief executive's response to the recommendation is satisfactory; and the chief executive's written comments.

Yours sincerely,

A handwritten signature in blue ink that reads "Friday". The signature is written in a cursive, flowing style.

Joe Friday
Public Sector Integrity Commissioner
OTTAWA, February 2016

The Honourable Geoff Regan
Speaker of the House of Commons
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner of Canada's Case Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing at Correctional Service Canada, which is to be laid before the House of Commons in accordance with the provisions of subsection 38 (3.3) of the *Public Servants Disclosure Protection Act*.

The report contains the findings of wrongdoing; the recommendations made to the chief executive; my opinion as to whether the chief executive's response to the recommendation is satisfactory; and the chief executive's written comments.

Yours sincerely,

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Joe Friday
Public Sector Integrity Commissioner
OTTAWA, February 2016

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Foreword

I am pleased to present you with this Case Report of founded wrongdoing tabled in Parliament as provided for in the *Public Servants Disclosure Protection Act*, S.C., 2005, c.46 (the Act).

The Act was created to provide a confidential whistleblowing mechanism in the federal public sector to respond to the need to address and prevent cases of wrongdoing. The disclosure regime established under the Act is meant not only to stop these actions from continuing and to signal the need for corrective action, but also to act as a general deterrent throughout the federal public sector. This is the reason why founded cases of wrongdoing must be reported to Parliament, which is a powerful tool of transparency and public accountability.

This is the first time that the Office of the Public Sector Integrity Commissioner of Canada is making a finding of wrongdoing under paragraph 8 (d) of the Act - *an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment*. This matter relates to a situation in a federal penal institution in Saskatchewan – the Okimaw Ohci Healing Lodge (OOHL) – that created a safety risk to children.

I am also making a finding of wrongdoing under paragraph 8 (c) of the Act – *a gross mismanagement in the public sector* – in large part due to the systemic nature of the situation at the OOHL.

As these findings demonstrate, I have a broad mandate to investigate a large spectrum of potential wrongdoings. And, in this situation, the execution of my mandate has allowed my Office to potentially avert an unfortunate incident that could have serious consequences on a vulnerable population.

Correctional Service Canada (CSC) collaborated fully throughout the investigation and in responding to my findings, CSC took immediate measures to address this potentially dangerous situation upon learning of the nature of the allegations.

This case report makes a finding of wrongdoing against CSC, based on the management of an institution under its jurisdiction. Nothing in this report represents an assessment or evaluation of the policies and programs of the OOHL, which were not the subject of the protected disclosure or the investigation in this case.

Joe Friday, Public Sector Integrity Commissioner

Mandate

The Office of the Public Sector Integrity Commissioner of Canada is an independent organization created in 2007 to establish a safe and confidential mechanism for public servants or members of the public to disclose wrongdoing in, or relating to, the federal public sector. Specifically, my Office has the mandate to investigate disclosures of alleged wrongdoing and complaints of reprisal brought forward under the *Public Servants Disclosure Protection Act* (the Act).

Section 8 of the Act, defines wrongdoing as:

- (a) a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of this Act;
- (b) a misuse of public funds or a public asset;
- (c) a gross mismanagement in the public sector;
- (d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;
- (e) a serious breach of a code of conduct established under section 5 or 6; and
- (f) knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).

The purpose of investigations into disclosures is, according to the Act, to bring the existence of wrongdoing to the attention of the organization's chief executive and to make recommendations for corrective action.

Under subsection 38 (3.3) of the Act, I must report to Parliament founded cases of wrongdoing within sixty days after the conclusion of an investigation. This Case Report addresses one such investigation and the findings related to the disclosure of wrongdoing made to my Office.

The Disclosure

In March 2015, I initiated an investigation into allegations of wrongdoing, including an allegation that two employees at the Okimaw Ohci Healing Lodge (OOHL) jeopardized the safety of their own children by bringing them into the OOHL, a federal penal institution, and having them supervised by inmates, some of whom had been incarcerated for offences related to children. These allegations, if founded, could constitute wrongdoing under paragraph 8(d) of the Act. My decision to commence this investigation followed a comprehensive analysis of the information provided in a protected disclosure made to my Office.

As a result of the information gathered during the investigation, the scope of the investigation widened to determine whether additional employees at the OOHL had jeopardized the safety of their own children by bringing them into a federal penal institution and having them supervised by inmates.

About the Organization

Correctional Service Canada (CSC) is the federal government agency responsible for administering sentences of a term of two years or more, as imposed by the court. CSC is responsible for managing institutions of various security levels and supervising offenders under conditional release in the community.

The Okimaw Ohci Healing Lodge (OOHL), is one of the facilities that is part of the CSC and is described as a “multi-level security” facility which provides an open environment and is operated much like a minimum security facility. OOHL employs approximately 65 permanent employees.

The inmates at the OOHL live in residential style housing, which provides a greater than normal freedom of movement than other types of federal penal institutions. The OOHL offers services and programs that reflect Aboriginal culture which incorporate Aboriginal peoples' traditions and beliefs into their space. Aboriginal teachings and ceremonies are used to address the needs of Aboriginal offenders. Offenders also have contact with Elders and access to culturally relevant programs.

Results of the Investigation

The investigation found that:

- **The OOHL created a specific and substantial danger to the safety of children, in accordance with paragraph 8 (d) of the Act by:**
 - Allowing a practice of employees bringing children to the OOHL, an environment in which their safety was put in jeopardy.
- **The OOHL committed gross mismanagement, in accordance with paragraph 8 (c) of the Act by:**
 - Allowing the above-noted practice to continue over several years, resulting in a systemic problem.

Overview of the Investigation

The investigation, conducted by Christian Santarossa of my Office, was initiated on March, 9, 2015. He conducted a thorough investigation which included an on-site visit, extensive review of documentary evidence and consideration of witness testimony. As required under the Act, CSC readily provided access to the necessary facilities and the information requested during the course of the investigation.

In keeping with our obligations under the Act, my Office provided CSC with full and ample opportunity to respond to the allegations. On October 30, 2015, my Office provided the CSC's Commissioner with a Preliminary Investigation Report and the opportunity to comment on these results.

In arriving at my findings, I have given due consideration to all information received throughout the course of the investigation, including the information provided by CSC, who agreed with the preliminary findings.

Summary of Findings

Creating a specific and substantial danger to the safety of children, in accordance with paragraph 8 (d) of the Act

The evidence gathered during the investigation demonstrates that 21 employees brought children to the facility at least 73 times since 2011. Furthermore, witness testimony clearly indicated that this practice was well established at the OOHL and had been occurring for many years, possibly since the beginning of 2000. It is important to note that the OOHL employs on average 65 permanent employees, therefore, this practice involved about one-third of the staff complement.

Our investigation revealed that there was no policy or procedure at CSC authorizing employees to bring their children into any institution, including the OOHL. There were 73 documented instances where the employees used a “Child Safety Waiver” form to bring their child to work. This form is solely intended for family members visiting inmates.

A substantial and specific danger to safety

The inmates incarcerated at the OOHL are selected from the general federal correctional population. Of the 39 inmates at the OOHL, 11 were sentenced or had been previously sentenced for crimes involving children, ranging from sexual abuse to violence and neglect causing harm or death.

The OOHL Operational Intelligence Reports reviewed during this investigation provided particular examples of incidents that occurred and could occur at the OOHL. Violent incidents between inmates that are part of “Security Threat Groups” (CSC terminology to identify criminal groups or gangs), such as sexual assault among inmates, contraband of makeshift weapons in an open area, presence of drugs such as cocaine and crystal meth, and segregation placement of an inmate following a “behavioural event”, are all incidents that have been reported in 2014 and 2015 at the OOHL. These incidents reveal the reality of the environment at the OOHL, which is not a regular workplace absent of significant inherent dangers.

The OOHL operates in an open environment which further heightens the danger to the safety of children, given that some inmates had specific conditions imposed on them to not be near children. Many witnesses argued that the open environment at the OOHL suggests that it is a lower risk environment, however the evidence referred to above indicates otherwise.

In my view, the open environment of the OOHL coupled with the inherent dangers present as in other penal institutions, drastically increases the risk of an incident involving children.

The risk of an incident or danger may be reduced by the process used to screen or identify inmates, but the presence of a risk remains. That risk, in this case, is defined and increased by the long-standing informal practice of employees bringing children to the OOHL. These children are not CSC employees, nor are they governed by or subject to any formal CSC policy or program; therefore, there is no reason for their presence and no justification for the systemic practice of bringing them to the OOHL.

Gross mismanagement in accordance with paragraph 8 (c) of the Act

Having established the existence of a specific and substantial danger to the safety of children at the OOHL, it was necessary to ask who is responsible for creating this risk and would this be considered gross mismanagement under the Act.

The factors that my Office takes into consideration when determining whether an act of gross mismanagement has occurred include:

- matters of significant importance;
- serious errors that are not debatable among reasonable people;
- more than *de minimis* wrongdoing or negligence;
- management action or inaction that creates a substantial risk of significant adverse impact upon the ability of an organization, office or unit to carry out its mandate;
- the deliberate nature of the wrongdoing; and
- the systemic nature of the wrongdoing.

As established in this investigation, numerous employees were implicated in bringing children to the OOHL. That being said, a distinction can be made between employees and management. This distinction does not condone or excuse the actions of employees who brought their children into the institution, but rather, it directs accountability of allowing this practice toward those who had the authority to stop it. In this case, those in positions of authority actually participated and endorsed this practice.

Also, this matter, deriving from the OOHL's management actions or inactions, could also put CSC at risk including legal liability, as well as a risk to their reputation and public confidence in federal correctional institutions.

The evidence demonstrates that the practice of bringing children to the OOHL was systemic within that institution. The evidence also suggests that CSC National Headquarters (NHQ) was not aware of this practice. In fact, upon learning of the allegations, NHQ ordered OOHL management to immediately stop the practice. This being said, those in positions of authority at the OOHL endorsed the practice for many years, and are accountable for allowing it to continue. In fact, it appears as if no one openly questioned this practice at the OOHL, but rather reverted to the justification that previous senior management condoned it. Moreover, those in positions of authority responsible for the decision-making process at the OOHL participated in this practice.

Conclusion

The information gathered during this investigation revealed wrongdoing under paragraphs 8(d) and (c) of the Act at the Okimaw Ohci Healing Lodge (OOHL) of Correctional Service Canada (CSC), by:

- Allowing a practice of employees bringing children to the OOHL, an environment in which their safety was put in jeopardy; and
- Allowing the above-noted practice to continue over several years, resulting in a systemic problem.

In accordance with paragraph 22(h) of the Act, I have made a recommendation to the Chief Executive of CSC concerning the measures to be taken to correct the wrongdoing. I am satisfied with the Chief Executive's response to this recommendation and with the measures taken to date by the Department to address the wrongdoing identified in this report. My recommendation and the Department's response follow.

Recommendation and Correctional Service Canada's response

I recommend that CSC National Headquarters establish a means to ensure that it is aware of and actively monitoring local practices in federal penal institutions under its authority, in order to ensure that they are aligned with applicable national CSC policies and guidelines, consistent with the mandate and programs of the CSC, approved at the appropriate level of authority and that they be safe for all persons present in the institution.

The Correctional Service takes the finding of founded wrongdoing seriously. We have reviewed the recommendations in your report and intend to honor those recommendations through concrete actions.

As a first measure, I (Don Head, Commissioner of the Correctional Service of Canada) will discuss with my Regional Deputy Commissioners and ask them to review local practices in their respective region to ensure that any local practices are shared with national staff, and also to ensure that those practices area aligned with applicable national policies.

Secondly, Correctional Service Canada (CSC) will review the specific practices of bringing staff's children in the institution without proper policy at the Okimaw Ohci Healing Lodge and ensure that proper national policies and guidelines are in place to ensure the safety of all staff and visitors to the institution.

In closing, I want to reiterate that CSC will continue to work collaboratively with your office and will take corrective action as necessary.