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# ETHICAL DILEMMAS FACED BY CORRECTIONAL PSYCHOLOGISTS IN CANADA

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There are numerous ethical issues that correctional psychologists in Canada face on a regular basis. This article analyzes the following ethical issues as they relate to the adult correctional context in Canada: (a) who is the client, (b) confidentiality, (c) protection of psychological records, (d) informed consent, (e) assessment, (f) corroboration, (g) refusal of services, (h) non-discrimination, (i) competence, (j) knowledge of legal structure, (k) accuracy and honesty, (l) misuses of psychological information, and (m) multiple relationships. This article is organized around three of the four principles of the Canadian Psychological Association's ethics guide.

**Keywords:** ethics; correctional psychology; forensic psychology

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**P**roviding psychological services with a grounding in ethics is ultimately intended to protect the people served by psychologists (Koocher & Keith-Spiegel, 1998). This implies a need to analyze mainstream psychological ethics as they apply to forensic situations in Canada (Committee on Ethical Guidelines for Forensic Psychologists, 1991). Given this context, the purpose of this article is to discuss some of the common ethical concerns in one subdiscipline of forensic psychology: correctional psychology with adult offenders.

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### **CORRECTIONAL PSYCHOLOGY**

For the purposes of this article, a correctional psychologist shall be defined as a psychologist who works directly with or for a penal institution in a capacity related to the provision of psychological services to adults. With some exceptions, the majority of offenders seen by correctional psychologists have been legally convicted. Within this context, the main tasks of a correctional psychologist include (a) psychological assessment, (b) delivery of rehabilitative programming, (c) staff consultation, (d) addressing the psychological concerns of offenders in segregation, (e) crisis assessment and intervention for staff and offenders, (f) court testimony, and (g) research activities (Hawk, 1997; Leis, Motiuk, & Ogloff, 1995). There are also sub-areas of practice within correctional psychology (i.e., specialties with sexual offenders, domestic violence, etc.). However, the duties of correctional psychologists fall into two categories: (a) assessment or intervention addressing offender risk, and (b) traditional psychological services (Ogloff, 1995).

### **SCOPE OF CORRECTIONAL PSYCHOLOGY IN CANADA**

It is difficult to determine how many psychologists work in correctional environments in Canada. This is due to a lack of specialty registration records at the level of provincial colleges and the Canadian Psychological Association (CPA; G. Leicht, personal communication, November 2003; P. Black, personal communication, November 2003). However, there are some employment data available from the Correctional Service of Canada (CSC), the agency responsible for the custody of all offenders in Canada who are serving sentences of 2 years or longer. In December 2001, the CSC directly employed (i.e., noncontract) 245 psychologists in both community and penal situations (CSC, 2001). Despite the lack of an accurate census or registry, from the existing CSC data, it appears that there is a substantial minority of psychologists who choose to work in penal institutions in Canada.

## VALUES IN CORRECTIONAL PSYCHOLOGY

Prior to a discussion of the ethical issues in correctional practice, one needs to acknowledge that there is frequently a conflict in fundamental values between forensic milieus and typical psychological practice. Psychological ethics typically value cooperation (CPA, 2000; Parrott, 1999). However, correctional work is frequently performed in the context of an adversarial system and unique social microcosm (Burns, 1969; Fogel, 1993; Johnson, 1987; Knapp & VandeCreek, 2001; Robertson, 2003; Silberman, 2003). This unique social microcosm is frequently characterized by (a) a para-military staff hierarchy, (b) an “us versus them” separation between staff and offenders, (c) continual separation from mainstream society, (d) a perceived hierarchy among the offenders that is often linked to their respective crimes, (e) an obvious presence of gangs, and (f) social pressure among the offenders themselves to conform to antisocial values. Clearly, correctional psychologists need to be continuously aware of and explicit about the value system within which they are performing their duties. Moreover, such an ethical standard goes beyond knowing one’s own values and having sensitivity to the values of one’s client, but also involves knowing the values of the correctional social context itself (i.e., safety of the public, security of the institution, good order of the institution, and so on). Furthermore, one ought to recognize that services provided in one value system could potentially be interpreted differently by another value system.

## SPECIFIC ETHICAL SITUATIONS

This article will now discuss many common ethical issues faced by psychologists in adult correctional practice. This author has organized these ethical issues around three of the four principles of the CPA ethics code (CPA, 2000).

### PRINCIPLE 1: RESPECT FOR THE DIGNITY OF PERSONS

*Who is the client?* Correctional practice can be quite confusing with regard to who the client is at any one particular moment (Anderson,

Limandri, & Tilden, 1998; Kendall & Morris, 1991; Kilburg, 2002; Kramer, Kleindorfer, & Colarelli, 1992; Kramer, Kleindorfer, & Colarelli-Beatty, 1994; Leschied & Wormith, 1997; Newman, Robinson-Kurpius, & Fuqua, 2002; Saxton, 1986; Wolff, 1998). There are many instances when the client is someone other than the person with which one is directly working (Ogloff, 1995). Moreover, there are many situations in corrections where the client is, in fact, society at large (i.e., the government is indeed working on behalf of the general public; Brodsky, 1980). Given this, there is a need to clarify to all parties involved what their respective roles are in psychological activities (Monahan, 1980). This often implies informing the receiver of services and third parties what they will and will not be privy to prior to the commencement of any psychological activities. That is, in correctional practice, a psychologist needs to be clear as to who the client is during any psychological activity (Leschied & Wormith, 1997; Monahan, 1980; Ogloff, 1995).

To assist in clarifying who the client is at any one given time, it is helpful to keep in mind the two major kinds of services conducted by correctional psychologists noted above (Ogloff, 1995). When a psychologist is performing risk assessment, or is involved in rehabilitative programming addressing risk, the government is typically the client (Ogloff, 1995). In such a situation, a psychologist does not owe strict confidentiality to an offender who happens to be receiving psychological services (Ogloff, 1995). Rather, there is an obligation to clarify the relationship at the earliest possible opportunity with the assessed party (CPA, 2000). However, despite confidentiality being substantially limited in this situation, in Canada there is still an obligation under the Privacy Act (which regulates how federal institutions can "collect, use, disclose and dispose of personal information") (Privacy Commissioner of Canada, 2003, p. 1) to ensure that personal information is only disclosed to approved parties on a need-to-know basis (Ogloff, 1995; Privacy Act, 1985).

When a psychologist performs traditional psychotherapeutic activities, the offender is more likely to be thought of as the client (Ogloff, 1995). However, even in this latter situation, the degree of confidentiality that a client can expect in correctional psychology is lesser than one could expect in the community due to security and safety risks commonly found in an institutional environment (Ogloff, 1995).

*Confidentiality.* Confidentiality is one of the fundamental qualities of a therapeutic relationship (Corey, Corey, & Callanan, 1998; CPA, 2000; Josefowitz, 1997; Pope & Vasquez, 1998; Roberts, Geppert, & Bailey, 2002). In correctional practice, confidentiality can range from essentially no confidentiality (i.e., court-ordered assessments) to levels of confidentiality present in general psychological practice. However, typically the actual level of confidentiality is somewhere between these two extremes. It is vital that a psychologist understands any limitations to confidentiality and is able to accurately communicate these to all invested parties (CPA, 2000; Josefowitz, 1997).

In correctional psychology, there is debate as to the level of confidentiality that should be present during psychological interventions (Brodsky, 1980; Siegel, 1976). Moreover, this issue is frequently complicated by the numerous security concerns in a prison environment. Due to such concerns, the issue of confidentiality affects correctional psychologists quite frequently, whereas issues with regard to confidentiality are relatively rare outside of many prison contexts (Brodsky, 1980). With regard to the Duty to Protect on this issue, it appears that the Supreme Court of Canada (in incidental nonbinding opinions) has upheld such a duty provided there is an identifiable class of potential victims (Truscott & Crook, 2004). However, for more detailed information on the Duty to Protect in Canada, the reader is encouraged to consult Truscott and Crook (2004).

To provide context to this issue, in prisons, particularly higher security prisons, a warden is frequently the unquestioned leader of the institution (Brodsky, 1980; Burns, 1969). There exists a paramilitary style in the chain of command, where orders from nonpsychological superiors are expected to be followed when they are given (Watkins, 1992). Frequently, this hierarchy contributes to a struggle between prison administrators and correctional psychologists when the principles of confidentiality, integral client relationships, responsibility to one's client, and autonomy in decision making are juxtaposed with institutional security (Brodsky, 1980; Watkins, 1992). For instance, suppose an offender informs a psychologist during a session that an escape attempt is about to take place. At this juncture, the psychologist is faced with a dilemma: Should he or she inform correctional authorities and risk revealing the identity of the client to others in the institution? On one hand, if a prisoner escapes and there is serious

harm committed in the process, a psychologist with foreknowledge could certainly be charged with failing to warn prison officials. This point might be magnified when one considers that, legally, all correctional employees within the penal environment (at the federal level in Canada) are peace officers under the law and therefore would have the obligations of a peace officer in such a situation (Corrections and Conditional Release Act, 1992; Corrections and Conditional Release Regulations, 1992; Peace Officer Designations, 1992). On the other hand, if the psychologist does warn prison officials and the client is harmed because of their actions (i.e., the offender is labeled by other offenders as a "rat"), the repercussions to the offender could also be problematic (Brodsky, 1980). Thus, correctional psychologists need to be explicit prior to the initiation of psychological services with regard to how such situations will be handled. Limitations to confidentiality in a correctional environment will likely include issues such as escape plans, physical injury, or the taking of hostages in addition to the typical limitations of psychological contact (i.e., harm to self, others, or a child; American Association for Correctional Psychology, 2000). However, it is quite conceivable that correctional management may ask for information beyond what is necessary for the security of the institution. What is important is that psychologists make clear to all interested parties what types of information will or will not be kept confidential.

Correctional psychologists have an obligation to be aware of any legal boundaries to confidentiality specific to their work. For instance, a correctional psychologist should ensure that his or her record keeping and communications safeguard any person's right to privileged communication with their legal counsel, particularly in remand situations (i.e., the client is awaiting trial; Committee on Ethical Guidelines for Forensic Psychologists, 1991). In essence, correctional psychologists need to maintain their records carefully and be aware of any legal requirements that would require the release or nonrelease of information.

*Protection of psychological records.* Given security issues in institutions, protection of psychological records is a frequent concern for correctional psychologists (American Association for Correctional Psychology, 2000; American Psychological Association, 1999;

Blackwell, Autry, & Guglielmo, 2001; Brodsky, 1980; Johnson & Helms, 2003). There is administrative pressure placed on psychologists to ensure that all of their records are placed in appropriate official inmate files (typically the psychological files). However, some psychologists are hesitant to place all of their psychological information in official psychological files because nonpsychological staff members are sometimes granted access to these files (Blackwell et al., 2001). Some psychologists react to this by creating "shadow files" where a psychologist will oversee the protection of psychological information personally and unofficially. However, there are problems with such an unofficial system. First, as an offender has the right to view all information the government has about him or her, the keeping of shadow files might be considered illegal and unethical as the offender has no way of knowing that such files exist (Evans & Quarrington, 1997; *McInerney v. MacDonald*, 1992; Privacy Act, 1985). Second, it is common for offenders to be transferred to other facilities for a litany of reasons. If there is a transfer in a case where there are shadow files, psychologists in other facilities will be presented with incomplete psychological records. It is the position of the author that it is best practice to maintain all of one's records in the official files. However, these records must be kept with the knowledge that nonpsychological staff might someday view the psychological records. Therefore, it is suggested that notes are kept using general language, particularly if the issues dealt with in therapy are not directly criminogenic.

*Informed consent for psychological treatment and vulnerable populations.* Informed consent for psychological treatments and assessments in corrections should be constantly monitored and documented (Corey et al., 1998; Evans, 1997; Kitchener & Anderson, 2000). However, this is an issue in which there has been diverse and, perhaps, radical opinion. Indeed, some have suggested that serious and repetitive offenders should be subjected to involuntary behavioral therapy (McConnell, 1970). Although such positions have been criticized in the discipline of psychology, they can provide an impetus for the posing of serious questions by correctional psychologists today. For example, how does one get genuinely voluntary consent in a penal environment that is geared toward rewarding compliance with correc-



tional planning and punishing noncompliance (a set up remarkably similar to involuntary behavioral therapy to begin with; Brodsky, 1973)? A serious inquiry might be made as to whether the institutional context itself hampers free and voluntary informed consent (Brodsky, 1980). There are real incentives for offenders to receive favorable psychological services and comparable inverse consequences for failing to participate. This places the onus on correctional psychologists to ensure that consent to psychological services is informed and, to the greatest degree possible, voluntary. Special effort ought to be made to ensure that the offender actually wants to receive psychological services by explicitly asking an affected offender questions pertaining to their actual desire to participate in psychological activities. Moreover, if it is found that the offender does not want services in the genuine sense of the word but still insists on providing consent, it is important to exercise caution in service delivery with such offenders (Evans, 1997).

Correctional psychologists disproportionately come into contact with people in society who are vulnerable and issues arise from this vulnerability (Kitchener & Anderson, 2000). As there is a power difference between the correctional psychologist and the person receiving the services, caution needs to be taken to ensure no advantage is taken of any recipients (Kitchener & Anderson, 2000). This implies vigilance from correctional psychologists at all times during and after psychological services.

*Assessment.* According to Brodsky (1980), there is a tremendous emphasis in correctional psychology on the assessment of offenders. The questions addressed in different assessment reports vary depending on their purpose and where an offender is within his or her sentence. The danger in correctional environments is that the psychological assessment becomes an end in and of itself, and the results are then simply placed in offender files. With assessments, there needs to be a clear rationale as to why the assessment is being completed and justification for the assessment methods chosen (Groth-Marnat, 1997).

*Corroboration.* Whenever feasible, a correctional psychologist should corroborate the information acquired from offenders during assessments. There is a serious issue with regard to potential lying,

malingering, or “impression management” in correctional settings (Gudjonsson & Sigurdsson, 1994; Lanyon, 2001). Alternatively, there are some offenders who attempt to present themselves as worse off than they actually are (Gudjonsson, 1999; Gudjonsson & Sigurdsson, 1994; Horselenberg, Merckelbach, & Josephs, 2003). Thus, there is a burden to reasonably ensure that the information one has about an offender is accurate, to note the sources of information consulted explicitly throughout one’s formal reports, and to document inconsistencies.

*Refusal of services.* A common situation in correctional practice is offenders refusing to consent to the process of psychological assessment. Despite this, there is frequently tremendous pressure on psychologists to ignore such a refusal and proceed with an assessment due to society’s interests (i.e., a risk review of a supposedly dangerous offender). In such situations, there is a real question presented as to whether or not a psychologist should conduct psychological activities. To add to the weight of this issue, the point could be made that actuarial measures (i.e., measures that often do not require actual responses of the person being assessed) are better than clinical judgment and that information from third party sources can conceivably contribute more reliable information to forensic assessments than the interviewee (Campbell, 2003; Hanson, 1998; Hanson & Thornton, 2000). Indeed, from this perspective, an argument could be made that actually seeing the assessed party might hinder the objectivity of a psychological risk assessment. Recently, the issue of refusal of services was addressed in the Federal Court of Canada in a case where a psychologist chose to perform a risk assessment on an offender without that offender’s consent (*Inmate Welfare Committee, William Head Institution v. Canada*, 2003). Ultimately, the court decided that the psychologist was justified in performing such an assessment as it was deemed to be in society’s best interest. Moreover, the Alberta College of Psychologists shared the opinion of the court on this matter by indicating that “risk assessments are . . . not psychological services provided for the benefit of the offender . . . they are for the benefit of the community” (D. Truscott, personal communication, October 2003). However, the fundamental question on this topic remains: Is it ethical (as opposed to permissible) to make a formal psychological statement

of risk about someone who does not wish to have a statement of risk made about them? From this base perspective, it appears almost indefensible to ethically perform a risk assessment that has not been ordered by the courts or another legal authority on anyone who does not wish to be a part of an assessment. As such an action would represent disrespect for the dignity of persons and could be conceivably based on inaccurate information, it would hence be inconsistent with the CPA ethics code.

Another variation of the above issue is the question of whether a correctional psychologist can meaningfully contribute any information to decision makers that could assist with a case without interviewing a person. For instance, decision makers meet frequently to decide on numerous issues for offenders (i.e., transfer, escorted absence, and so on). Such decision boards typically consider cases at a rate where it would be impossible for any one person to interview all of the affected individuals involved. Would it therefore be harmful to have a psychologist involved in this situation to assist decision makers, or is it conceivable that psychological input might be helpful? Ultimately, the author argues that it would be ethically permissible to contribute general information about best practice in such forms. However, if a psychologist were to be asked to provide a specific psychological opinion on a particular offender without having reviewed his or her files and interviewed him or her, it would not be ethically acceptable.

Thus, involvement in decision-making boards would be endorsed with one major exception: Psychologists should avoid decision-making involvement in any board that is primarily disciplinary in nature (Weinberger & Sreenivasan, 1994; Williams, 1986). To be a member of such a board would represent a profoundly damaging multiple relationship. Moreover, the participation of a psychologist in the decisions of a board explicitly administering punishment to others raises serious ethical concerns in and of itself (CPA, 2000; Weinberger & Sreenivasan, 1994). The above assumes that the psychologist in question is a member of the disciplinary board itself. Should the psychologist instead be called to testify for such a board, that psychologist should approach such testimony as he or she would any other hearing process (i.e., with caution).

**PRINCIPLE 2: RESPONSIBLE CARING**

*Competence.* It is important that psychologists only deliver services in areas in which they are competent (Kitchener & Anderson, 2000). Moreover, it is vital that correctional psychologists are clearly aware of the boundaries of their competence at all times. The issue of knowing one's competence is heightened when the psychologist is asked to perform the role of an expert witness (Rosine, 1995). The burden of knowing the boundaries of one's competence is extraordinary for an expert witness (Macartney-Filgate & Snow, 1997; Rosine, 1995). In such a situation, one ought to assiduously review current and past literature for data that are both in support of and critical of one's conclusions.

Despite the above, correctional psychologists are frequently presented with more routine questions of competence in their daily practice. A fundamental question that needs to be asked in this area is, At what point is someone competent to work as a correctional psychologist (Pope & Vasquez, 1998)? Many psychologists have not been specially trained in forensic psychology nor have they acquired supervised psychological experience in a correctional environment. Although there is certainly considerable overlap between the activities of a correctional psychologist and those of a mainstream psychologist, there are also numerous unique qualities to the work. To help bridge this gap, it is suggested that a psychologist receive approximately 1 year of supervised practice in a correctional environment in order to have a basic idea of the issues involved in correctional practice. Moreover, new correctional psychologists should participate in training with regard to the issues related to their work. In addition, correctional psychologists need to consult regularly about daily issues in practice with their colleagues or experts in the area of forensic psychology. The process of ensuring demonstrable competence involves active self-evaluation and keeping oneself current in areas of correctional competence (intellectually and emotionally) (Pope & Vasquez, 1998; Singer, 1980; Stricker, 1992; West, 2001). One needs to be constantly cognizant of what one is doing, and why, in any given situation (i.e., ensure methods are employed that have been shown to work) (Pope & Vasquez, 1998).

*Knowledge of legal structure and process.* Although it is important for all psychologists to be aware of and abide by the relevant legislation that is determined by one's geography and policy environment, the burden of knowledge is somewhat more explicit for correctional psychologists. Moreover, confidence in this knowledge is important as correctional work occurs in a highly litigious environment. Correctional psychologists have an obligation to understand the fundamental rights of all the parties in their daily practice (CPA, 2000). In Canada, this implies that a correctional psychologist be aware of the Charter Rights of all parties involved in any correctional psychological intervention (Canadian Charter of Rights and Freedoms, 1982). In addition, a correctional psychologist needs to be aware of specific correctional legislation and policies pertaining to the specific environment within which he or she is working (Canadian Charter of Rights and Freedoms, 1982; Griffiths & Verdun-Jones, 1994).

#### PRINCIPLE 3: INTEGRITY IN RELATIONSHIPS

*Accuracy and honesty.* In correctional psychology, there is an unremitting emphasis placed on predictive validity. Although there are many circumstances where other forms of validity are important, the major type of validity of concern to correctional psychologists is predictive. This places a unique responsibility on correctional psychologists to offer services that are forthright in terms of their error rates so that their consumers or their clients can know, in as precise a terminology as is possible, what the limits are to correctional psychological assessments (Freedman, 2001; Rogers, 2000). In terms of practice methodology, correctional psychologists should predominately use psychological techniques that have been found to have an effect on recidivism, as this is the ultimate variable that evaluates whether psychological interventions have worked (Pope & Vasquez, 1998). Moreover, the major dependent variable of correctional psychology research needs to be recidivism, or at least it needs to be considered. In essence, every activity in forensic practice needs to be performed with the clear goal of reducing future harm.

*Misuses of psychological information.* Abuses of psychological information occur frequently in institutional environments (Brodsky, 1980). Despite this, there is an obligation on the part of psychologists to ensure that the information they produce is used appropriately (Brodsky, 1976; Brodsky, 1980). For instance, it is commonplace that decision makers place undue emphasis on any negative information contained in psychological reports, while ignoring any positive information. Sometimes such a bias might extend to the practice of psychologist shopping within a penal setting. Psychologist shopping occurs when a decision maker simply continues to request psychological opinions until such time that they receive one with which they happen to agree. As this is often done without a psychologist being aware that it is happening, there is a need for psychologists to be vigilant in their monitoring for such practices.

*Multiple relationships.* The issue of multiple relationships is a frequently occurring ethical issue in a correctional environment (Evans & Hearn, 1997; Knapp & VandeCreek, 2001; McGuire, 1997). According to Evans and Hearn (1997), where this issue most frequently occurs is with the mixing of therapy and assessment roles with the same client or receiver of services. However, multiple relationships are also present in numerous other situations. On a practical level, such situations could lead to problems with regard to maintaining rapport with a receiver of services or the client. Moreover, such practices are likely to be embracing two separate value systems with the same client. Such dual roles (a) lead to confusion as to the role of the psychologist, (b) create ambiguity in terms of who is benefiting from the psychological relationship, and (c) lead to a blurring of professional boundaries. To be clear, the mixing of psychological roles should be strongly discouraged in correctional psychology (CPA, 2000; Iverson, 2000). If at all possible, it is recommended that separate psychologists be used to perform separate psychological roles (Evans & Hearn, 1997; Iverson, 2000). If this is not possible, then a psychologist needs to explicitly clarify that there is a conflict in the roles in a manner that is easily understood.

According to Weinberger and Sreenivasan (1994), the issue of multiple relationships also comes up in correctional environments when there is a conflict in the staffing roles that psychologists are asked to

perform. This is particularly the case in emergency situations within the prison, where psychologists are sometimes called on to assist in searching or in general security functions, such as monitoring an institutional security post. However, the interpretation of what is and is not an emergency is often ambiguous. For instance, there are cases when being short-staffed is considered an emergency. The question needs to be asked at what point or with what duties does a psychologist essentially lose any perception of being a professional with an independent opinion (i.e., distinct from security staff). It is highly unlikely that this issue will go away any time soon without substantial administrative support and direction.

### CONCLUSION

This article has sought to describe many of the ethical issues encountered by psychologists in correctional practice. Although not exhaustive, the article provided a flavor for the context in which ethical issues transpire in correctional settings. With this context, professionals outside of corrections can have a better sense of the commonly presenting issues for correctional psychologists. It is hoped that this article serves as an impetus for both discussion and change for psychologists who work within correctional environments.

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