The Question of Liability in Inmate Suicides

Suicide is tragic. Unfortunately, it is not a rare occurrence in penitentiaries. Each year, a number of inmates commit suicide and acts of self-mutilation. How do we cope with these situations? What is our legal responsibility toward inmates? Can the correctional Service of canada be held liable for an inmate's suicide?

To establish liability, the following elements under tort must be present:

- A legal duty owed to the plaintiff (e.g., the inmate);
- A breach of that duty by omission or commission;
- The plaintiff must have suffered an injury as a result of that breach; and
- The defendant's act must have been the proximate cause of the injury.

Common law frequently imposes liability for an omission where the defendant has a duty to act or, as the case may be, to speak. The question depends on whether the defendant has assumed a responsibility toward the plaintiff and whether the plaintiff has relied on that assumption of responsibility.
Responsibility in Correctional Institutions The responsibility of the Crown toward inmates in penal institutions was correctly stated by Cattanach, J., in *Timm v. The Queen*, [1965] 1 Ex. C.R. 174, at p.178, as follows:
The liability imposed upon the Crown under this Act is vicarious. *Vide The King v. Anthony and Thompson*, [1946] S.C.R. 569. For the Crown to be liable the suppliant must establish that an officer of the penitentiary, acting in the course of his employment, as I find the guard in this instance was acting, did something which a reasonable man in his position would not have done thereby creating a foreseeable risk of harm to an inmate and draw upon himself a personal liability to the suppliant.

The duty that the prison authorities owe to the suppliant is to take reasonable care for his safety as a person in their custody and it is only if the prison employees failed to do so that the Crown may be held liable, *vide Ellis v. Home Office*, [1953] 2 All E.R. 149.(1)
In *Gill v. Correctional Service of Canada* (1988)18 F.T.R. 266, the Federal Court Trial Division also examined the duties of prison officers. At page 268, Muldoon, J., stated that:
In fact and in law the appellant's status is utterly secure. From time immemorial the duty of every constable, gaoler, or warder into whose care the custody of any prisoner or other person is committed, has been to keep that prisoner in safe custody. [...]It may also be noted that negligent or wilful dereliction of such duty is actionable [...].
To what extent is the Correctional Service of Canada responsible for the care of inmates? Does the duty to keep the prisoner in safe custody include the duty to safeguard an inmate from an act of self-destruction?

Canadian jurisprudence involving statements of claim from inmate suicides is rather scarce. Nevertheless, we believe that the Correctional Service of Canada's duty includes that persons with custody of an inmate must take all reasonable steps to avoid acts or omissions which, when reasonably foreseen, would be likely to harm the inmate for whom they are responsible. Prisons Versus Psychiatric

Hospitals In the absence of Canadian jurisprudence, the British cases may be of some help in measuring the extent of the duty of care principle. In the case of *Knight and others v. Home Office and another,* [1990] 3 All E.R. 237, the Queen's Bench Division Court examined the case of a mentally ill inmate who committed suicide. In this case, the inmate was known to have suicidal tendencies and was subject to the prison's "special watch" procedure. However, because he was also violent, the inmate could not be placed in the prison hospital wing, where a continuous watch could be kept on him. Instead he was put in a cell where prison officers observed him at 15-minute intervals. Between two 15-minute inspections, the inmate committed suicide. His personal representative brought an action against the Home Office claiming that the standard of care provided for the inmate in the prison hospital was inadequate.

The Court, in rejecting the action, concluded that the standard of care provided for a mentally ill prisoner detained in a prison hospital was not required to be as high as that provided in a psychiatric hospital, since psychiatric and prison hospitals serve different functions. Sharing of Information In the case of *Kirkham v. Chief Constable of the Greater Manchester Police* [1990] 3 All E.R. 246, the Court of Appeal held that the defendant, in this case the police authorities, did have a duty to prevent the person from committing suicide because the police had been specifically informed of the person's mental state and the risk of suicide. By taking him into custody, the police had assumed a duty to take reasonable care of his safety, and that duty had not ended when the person was taken to court and was passed over to the prison authorities. In that case, it was reasonably foreseeable on the part of the police that their actions would affect the deceased after he passed out of their charge. The failure of the police to pass on to the remand centre all information available to them that was relevant to the deceased's risk of suicide amounted to a breach of their duty of care, which was judged to be an effective cause of the deceased's death. The Canadian Situation From these cases, some principles can be applied to the Canadian context. It can be argued that in Canada, the standard of care toward inmates in penitentiaries is somewhat lower than that provided in psychiatric institutions. It can also be said that failure by the Correctional Service of Canada to communicate information regarding suicidal tendencies could be regarded as a breach of its duty of care.

What must be remembered is that the law demands reasonable care in foreseeable situations. The following Canadian case serves as a good example of this principle. In *Funk Estate v. Clapp,* a decision of the British Columbia Court of Appeal [1986] unpublished, the Court of Appeal reversed the decision of the British Columbia Supreme Court to grant a motion for non-suit in the case of a suicide that occurred in a cell of the Royal Canadian Mounted Police station in Prince George. In that case, Mr. Funk, who had been arrested for drunk driving, hanged himself with his belt. Mrs. Funk claimed damages on behalf of herself and her children. The Court of Appeal examined the relationship of prisoner and jailer and stated as to liability:

The relationship of gaoler and prisoner is such that carelessness on the part of the former may cause damage to the latter. It follows that there is a duty to be careful [...] Mr. Funk was entitled to have his gaoler exercise reasonable care to protect him from foreseeable risks.

The Court added with regard to suicide:

There can be no doubt that the trial judge was right when he concluded that suicide is foreseeable for inmates of a gaol. Some people become suicidal as a result of incarceration.

Special measures are called for when a prisoner demonstrates suicidal tendencies. The measures adopted

for certain types of risk must generally be followed with consistency. In the case of Funk, the Court of Appeal stated the following with regard to negligence and deviance from the general practice adopted by authorities:
I think that breach of the practices that prison authorities generally employ, that the defendants accept as appropriate and follow, and that the operating manual directs, is evidence of negligence. It is evidence that, in the absence of any explanation or rebuttal, could lead to a finding of negligence. I conclude that there is a duty to use reasonable care, and that the standards in the operating manual are reasonable standards. Was there a breach of duty? Neither Constable Clapp nor Mr. LaFleche took away Mr. Funk's belt because neither of them saw it in their search. If they had seen it, they would have taken it away. They took away his shoes, his eye glasses, his necklace, and other items. They failed to visually check Mr. Funk for nearly an hour because they were very busy. [The operating manual calls for a check every 15 minutes.] [...]
I conclude that there is evidence of a breach of duty.

In this case, the argument also addressed the question of causation. Causation, according to hospital cases, can be established when a suicidal tendency is viewed as a continuing situation in which the duty of care arises. Failure to discharge that duty can be linked to the death of the person. The same approach can be said to apply for penitentiary cases.

The trial judge concluded that "in the absence of knowledge of abnormal behaviour or suicidal tendencies, or mistreatment or abuse which might tend to aggravate the psychological effects of incarcerations, no duty to guard expressly against the possibility of suicide arises." Seaton, J.A., of the Court of Appeal responded to this conclusion by saying:
I do not think that in 1985 it can be said that there is no duty at all. The evidence indicates, and the trial judge found, that suicide is a foreseeable risk for prisoners as a group. It follows that there is a duty to take reasonable care. If there are suicidal tendencies displayed, greater care will be called for. The American Situation American courts have also dealt with suicides in prisons. To be successful in a claim in the United States, the claimant must establish more than mere negligence on the part of the authorities. The claimant must establish "deliberate indifference" to the suicidal state of a prisoner. The claimant must prove:

- that the defendant knew about the suicidal tendencies and was deliberately indifferent to the prisoner's or detainee's condition in light of such knowledge;
- that the defendant was deliberately indifferent to discovering any potential suicide tendency on the part of the prisoner or detainee; or
- that the defendant's conduct can be considered as deliberately indifferent to the possibility of suicide even with no specific knowledge of the prisoner's or detainee's condition.(2)

We believe, however, that this standard should not apply in Canada. Here, plaintiffs need not prove deliberate indifference on the part of authorities to establish liability, but they may need to prove a higher degree of negligence on the part of prison authorities than that required for authorities from a psychiatric institution. Conclusion The Correctional Service of Canada is not immune from liability in cases of inmate suicide. Liability could certainly be established by proving the negligence of the person having

custody of the inmate, but the degree of negligence to be proved has not been established with certainty. We suggest that it might be higher than what is required for similar cases in psychiatric institutions.

Nevertheless, it must be remembered that, in foreseeable situations, reasonable care must be provided. Failure to provide the standard of care that a particular situation requires may result in a liability suit. In our view, this clearly confirms the need to have appropriate staff training in suicide prevention.

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(1)*See also* McLean v. R. *(1972), 27 D.L.R. (3d) 365 and* Marshall v. Canada *(1985) 57 N.R. 308, at p. 309-310.*

(2)B. Randolph Boyd v. Joseph Harper, *702 F. Supp. 578 (E.D. Va. 1988) at p.579. See also* Estelle v. Gamble, *429 U.S. 97 (1976).*