Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE 2017-0224

HEALTH SCIENCES CENTRE and MANITOBA JUSTICE (CORRECTIONS)

REPORT ISSUED ON NOVEMBER 28, 2017

SUMMARY

In May 2017, Manitoba Ombudsman received a complaint from seven in-custody patients on unit PX3, which is a 15-bed adult forensic mental health unit located at Health Sciences Centre. The patients alleged that being confined to their locked ward 24 hours per day without any outside fresh-air time violates a basic human right and impedes recovery from illness.

This issue was resolved shortly after we began our investigation, when in July 2017, access to the forensic courtyard for non-acute security risk patients on PX3 was reinstated.

While our office concluded that the decision to suspend access to the forensic courtyard for in custody patients on PX3 pending a review of security concerns was consistent with applicable laws and policies, the amount of time taken to resolve this matter and resume courtyard access was unreasonable. Accordingly, Manitoba Ombudsman makes the following recommendation:

> **That Health Sciences Centre and Manitoba Justice (Corrections)[1] collaborate to develop a protocol that will assist in the timely identification and resolution of security issues on PX3, in order to help prevent future circumstances that could lead to delays in resolution that directly and adversely affect inmates on the unit.**

OMBUDSMAN ROLE AND JURISDICTION

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose.

[1] Referred to throughout this report as HSC and Corrections or jointly as the public bodies

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. Recommendations and administrative suggestions may be made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can enhance the relationship between government and the public, and reduce administrative complaints.

THE COMPLAINT

On May 30, 2017, a group of seven in custody patients on PX3, the forensic adult mental health unit at HSC, wrote to Manitoba Ombudsman complaining about the absence of outside fresh-air time. In their complaint, the patients argued that being confined to the locked unit 24 hours a day not only violated a basic human right; but also the absence of outside fresh air time interfered with accurate diagnoses and treatment and impeded their recovery.

ISSUES

In response to the complaint, the ombudsman determined an investigation would be conducted into the following administrative issues pursuant to section 15 of the Ombudsman Act:

1. **Were the actions and decisions of HSC and Corrections (the public bodies) to suspend forensic courtyard access for in custody adult mental health patients on PX3 consistent with applicable law and policies?**

2. **Was the length of time the public bodies took to address the security concerns associated with restoring forensic courtyard access to in custody patients on PX3 reasonable?**

BACKGROUND

PX3 is a 15 bed, medium security (locked) inpatient forensic mental health unit located at the Psych Health Centre of HSC. The unit provides court ordered assessments for fitness and criminal responsibility, consultations to Probation Services and disposition assessments for the Criminal Code Review Board (CCRB). Treatment services are also provided for accused and convicted offenders, and for persons found not criminally responsible or unfit to stand trial.

Admission to PX3 is limited almost exclusively to those individuals who are involved with the criminal justice system or under the jurisdiction of the CCRB. Most patients are transferred to PX3 directly from provincial correctional facilities and are considered to be in custody inmates on a temporary absence from a correctional facility. As inmates, patients on PX3 are subject to the Correctional Services Act, regulations and rules of a custodial (correctional) facility. Inmate assessments normally take 30 days, however, if there is a treatment order, inmates may remain on the unit for 60 days up to a maximum of 90 days, unless they are found to be not criminally responsible (NCR), in which case, they remain on PX3 indefinitely.

It had been a long-standing practice at HSC to allow in-custody patients on PX3 access to a secure, open-air courtyard supervised by health-care aides. This practice ended in August 2014 after an in-custody patient escaped from the courtyard in June 2014 due to what was described as human error. Fortunately, the patient returned voluntarily a short time later; however, courtyard access for in-custody patients was suspended pending a security review by Corrections.

In March 2015, the PX3 unit was advised that all in-custody patients were restricted from leaving the locked unit unless they were under the supervision of correctional officers. No access to the forensic courtyard was allowed. In December 2015, an in-custody patient escaped from the unit (not the courtyard) and the suspension of outside access to the forensic courtyard continued.

Six of the seven patients who signed the complaint made to our office were no longer residents of PX3 when we made our initial inquiries at HSC in June 2017 and they could not be contacted for an interview. The remaining patient had been issued passes allowing that individual to leave the unit for periods of time. We were informed by HSC that forensic courtyard access for in-custody patients on PX3 resumed in July 2017 during the course of our investigation of the complaint.

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- Interviews with the manager of patient care, Adult Mental Health Program at HSC; the director of security services at HSC; and the director of operations, custody, Adult Corrections, Manitoba Justice
- Relevant legislation, regulations, policies, guidelines and standing orders
- Documentation including Security Site Assessment, Patient Safety Event Report, departmental email correspondence, and photographs of the secure area
- Site visit to unit PX3 and the secure area of HSC premises (the forensic courtyard) allocated for outdoor air time

POSITION OF HSC AND CORRECTIONS

Forensic Mental Health Unit PX3, HSC

The manager of patient care for the Adult Mental Health Program on unit PX3 provided our office with a copy of a policy that HSC approved in June 2016 titled *Access to the Forensic Courtyard by In-custody Patients.* The policy outlines the purpose and procedures relating to forensic courtyard access, including a review of the risks and benefits of access for individual patients.

The manager explained that HSC fully supports providing forensic courtyard access for in custody PX3 patients, except for patients identified as high risk or patients who may become violent and need special handling. Outside air time was restricted to a secure courtyard area of

the hospital (the forensic courtyard) as outlined in its policy. However, we were advised that despite repeated efforts, it took two years for HSC to obtain the required approval from Corrections to implement the policy and restore courtyard access.

Corrections

The director of operations, custody, Adult Corrections, advised our office that his department supports HSC's treatment philosophy of providing outside air time for in custody patients who are not identified as an acute security risk. However, following the escape by two PX3 inmates in June 2014 and December 2015, Corrections was not able to get the response it felt it needed from HSC Security Services in the event of a security incident. Until it did, Corrections indicated that it could not support HSC's forensic courtyard access policy for in custody patients on PX3.

ANALYSIS OF ISSUES AND EVIDENCE

1. Were the actions and decisions of HSC and Corrections (the public bodies) to suspend forensic courtyard access for in custody adult mental health patients on PX3 consistent with applicable law and policies?

We were advised that the forensic adult mental health unit on PX3 has been in operation for approximately 20 years, and that prior to August 2014, in custody patients were escorted to the forensic courtyard by health care aides.

After an in custody patient escaped in June 2014, forensic courtyard access was suspended in August that year pending a security review by Corrections. The incident was purported to have resulted from 'human error'. The Winnipeg Police Service was alerted but the in custody patient returned voluntarily the same day without incident. The matter was still under review when another in custody patient escaped from the PX3 unit (not the forensic courtyard) in December 2015.

Following the second incident of escape, we were advised that HSC Security Services issued a statement indicating that Security Services staff would "not take any physical action to apprehend or maintain custody of a PX3 inmate that has any potential to injure either the inmate or security staff."

Corrections officials reviewed the forensic courtyard area and determined that due to security concerns they were unable to reconcile, they would not approve courtyard access for in custody patients on PX3.

We reviewed the Correctional Services Act (the CSA) and specifically, how the act applies to in custody offenders who are transferred from a provincial correctional facility to another facility for treatment; in this case, to the forensic mental health unit PX3.

Subsection 1(2) indicates that an offender is still under the supervision of Corrections when the offender is admitted to a facility outside the correctional facility; as is the case when an offender (inmate) is granted a temporary absence to receive medical treatment.

Subsection 3(3) of the act states that the rules of the correctional facility continue to apply to in custody patients (inmates) during their temporary admission to a hospital or another treatment facility.

> **Where Act continues to apply**
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> **3(3)** Notwithstanding subsection (2), where the custody of an inmate of a particular custodial facility is temporarily turned over to a sheriff, sheriff's officer or police constable, or an inmate of a particular custodial facility is transferred to, or is granted a temporary absence from the particular facility to permit the inmate to be admitted to, a hospital or other place that is not a custodial facility, this Act, the regulations and the rules of the particular facility continue to apply to the inmate as though the inmate had remained and were still within the particular facility.

Subsection 2(1) of the act speaks to its purpose and states that inmates will be supervised and controlled in a "safe, secure and humane accommodation" during their period of incarceration.

When we inquired about the existence of a policy or standing order specifying the amount of daily open or outside air time inmates should receive, Corrections explained that open air access has not been defined in policy because open air access is standard practice in correctional facilities. We were advised that, generally, inmates are on units that are unlocked for most of the day and are offered approximately one hour of outdoor open air access daily.

While open air access for inmates may be the standard in correctional facilities, subsection 41(1) of the act permits restrictions or limitations on inmate movements, such as outside (open air) access, for reasons of safety, security and order, as determined by the head of the facility.

Based on our review of the relevant legislation, regulations and other evidence presented to our office, we are satisfied that the administrative decisions made and the actions taken by Corrections, to suspend forensic courtyard access, pending a security review, were made within the scope of Corrections' authority and mandate to ensure the safety and security of patients, staff, and the general public.

2. Was the length of time the public bodies took to address the security concerns associated with restoring forensic courtyard access to in custody patients on the forensic mental health unit of HSC reasonable?

While we found that the administrative decision to suspend forensic courtyard access pending a security review in itself, is justified, the length of time it took to resolve the matter could not be adequately explained.

Information we received from HSC indicates that the first meeting held with Corrections to discuss its suspension of courtyard access for PX3 inmates occurred on July 8, 2015. HSC also provided information indicating more meetings involving HSC and Corrections representatives to discuss courtyard access took place on December 9, 2015, February 5, 2016 and May 4, 2017.

We were also advised that on the advice of Corrections to HSC in April, 2016, HSC Mental Health Program management developed a policy with respect to providing safe and secure fresh air access to in custody patients on PX3 following the incidents of escape. The policy titled *Access to the Forensic Courtyard In-custody Patients* was 'approved' in June 2016 by HSC but required approval by Corrections before it could be implemented.

At least eight email communications pertaining to forensic courtyard access for PX3 inmates were exchanged between the public bodies between July 19, 2016 and May 23, 2017. We note that these emails included a number of representatives from HSC, the Winnipeg Regional Health Authority and Corrections.

The public bodies seemed unable to resolve the matter of forensic courtyard access until July 2017, following the ombudsman's notification to the public bodies of the complaint and investigation.

Corrections conducted a security site assessment for PX3 in July 2017 and obtained clarification from HSC Security Services about their security response and supervision. Corrections advised our office that, based on the information it received, forensic courtyard access will be permitted for non-acute custody patients in accordance with HSC's policy.

The complaint to our office resulted in a positive outcome, however, it is unfortunate that courtyard access for patients held in custody on PX3 was suspended for almost three years; an amount of time which seems unduly long, preventable and contrary to the standard daily open air time available to other persons in lawful custody in Manitoba correctional facilities.

We acknowledge that finding a balance between appropriate medical treatment and adequate levels of safety and security presents unique challenges for healthcare and correctional services providers. Nevertheless, this case illustrates the importance of collaboration by public servants to prevent situations like this one that consumed significant amounts of time and resources to reach an agreement on an issue that all stakeholders acknowledged has merit.

It is our view that the lengthy delay in restoring courtyard access to in custody patients is an indication that the public bodies involved need to explore more effective and efficient ways to satisfy their equally valid but often conflicting interests. For this reason, Manitoba Ombudsman makes the following recommendation:

- That Health Sciences Centre and Manitoba Justice (Corrections) collaborate to develop a protocol that will assist in the timely identification and resolution of security issues on PX3, in order to help prevent future circumstances that could lead to delays in resolution that directly and adversely affect inmates on the unit.

JOINT RESPONSE FROM MANITOBA JUSTICE AND MANITOBA HEALTH, SENIORS AND ACTIVE LIVING TO THE RECOMMENDATION

We provided the public bodies an advance copy of this report. We received the following combined response to the recommendation:

> *The majority of custodial patients at PX3 are managed by the Winnipeg Remand Centre (WRC). The Assistant Superintendent of Security for WRC will continue to be the primary representative and contact for managers at the Health Sciences Centre. The Assistant Superintendent will continue to attend PX3 regularly and participate in unit based meetings, at which time any outstanding concerns regarding custodial patients can be addressed. When multiple centres are involved or systemic concerns are raised, the Director of Operations is included in these discussions.*
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> *Additionally, and further to the recommendation in the draft report, Corrections and the WRHA will establish a protocol for cross-system resolution of issues and concerns. We will provide you with a copy of the protocol once it has been developed.*

We are pleased that the public bodies have accepted our recommendation and have committed to providing our office with a copy of the protocol for cross-system resolution of issues and concerns, once developed. The release of this report concludes our involvement regarding this complaint.

MANITOBA OMBUDSMAN