



# The Prisoner Dilemma

## Strapped for funds, Yellowknife's prison has become a mental health ward

By Lauren McKeon JUNE 1, 2010

With just one overworked psychiatrist for the whole territory, the North Slave Correctional Centre has become a de facto psychiatric hospital. Stuck in legal limbo, dozens of prisoners wait—and then wait some more—for justice

Inside Yellowknife's courthouse, behind the plastic shield of the prisoner's docket, Tommy is plucking his fingers: one, two, three, four, from pointer to pinky and back again. It's

October 14, 2009. His AC/ DC t-shirt is split down the side from armpit to bellybutton, but Tommy doesn't seem to notice. He's wearing his usual expression, mouth open in a lazy O, coffee-brown eyes staring at his hands' worried fidgeting. This is his 21st court appearance. The 21-year-old aboriginal man was charged with sexual assault in February 2009. At this point, he's been in custody for Tommy's second lawyer, a man named Abdul Khan who is prone to wearing ill-fitted suits the colour of

over-ripe olives, says he's tried to do better. He's had little luck. As he tells Judge Bernadette Schmaltz, a stern woman who exudes capability and practicality in every detail, right down to her simple wire glasses and short hair, Tommy won't talk to him. He'll stare blankly, sometimes he'll nod at odd places, or shake his head, but Khan has no idea how Tommy wants to proceed—or if he even knows why he's in jail.

It's a thought that seems to distress Schmaltz. "I have never in my experience in the North," she says, "seen [an assessment] take that long." With some difficulty—and a whole lot of prodding—she gets Tommy to respond in a way that few in the Northwest Territories courtroom have seen.

Eventually: "Have you spoken to a lawyer?" Pause. "A long time ago." "Do you want to speak to Mr. Khan?" A shake of the head. No. "What do you want to do?" "Get out." "Yes, I expect you would want to." At this point, it seems possible. Crown prosecutor Terri Nguyen has said Tommy's already been in custody longer than she's seeking sentencing for—if he were even found guilty, which he hasn't been. Schmaltz has even suggested a judicial stay of proceedings (an indefinite suspension) might be appropriate. Likely, but it's not to be. In the end, Tommy isn't released from custody until January 2010. By then, he'll have made 30 court appearances and have spent nearly a year warehoused in his cell inside Pod D, the smallest of four "pods" that comprise the NWT's North Slave Correctional Centre.

Inside NSCC, Pod D has become the de facto ward for special-needs inmates: those who are mentally ill, or those who haven't been diagnosed with anything, but aren't quite all there, either. Wardens and guards alike openly call it the "special needs" pod. Some inmates, like Tommy, who is suspected to have Fetal Alcohol Syndrome (FAS), are officially undiagnosed. Others have been confirmed as having FAS or being schizophrenic or bi-polar. Diagnosed or not, they share one thing in common: they shouldn't be there.

Thanks to a nationwide closure of mental health hospitals in the '90s and a subsequent failure to put savings into community-level programming, the problem is not unique to the NWT. In 2009, Canadian federal corrections investigator Howard Sapers pinpointed mental health care and delivery as the most serious and pressing issue facing Corrections Canada today. "Criminalizing and then warehousing the mentally ill burdens our justice system and does nothing to improve public safety," he wrote in his 2008/09 annual report. "The

demands in this area of corrections are increasing dramatically; the unmet needs are immediate and troubling." Sapers points to two recent in-custody deaths for emphasis: the high-profile case of Ashley Smith, a 19-year-old New Brunswick woman who committed suicide inside an Ontario jail, and that of a First Nations man who, as Sapers details in his report *A Failure to Respond*, slashed his left arm in his cell. Help came, but it was too little, too late. The man was left alone in his cell for half an hour before the ambulance arrived and staff, reported Sapers, "failed to respond in a manner that might have preserved his life."

These core issues are not unique north of 60. But in the absence of any competent response, they become grotesquely inflated. Sapers' office only investigates complaints from inmates in federal institutions; in the territories, there are no federal institutions. Inmates in provincially run facilities can bring issues forward to their provincial ombudsman's office; the NWT doesn't have an ombudsman.

At 475 offenses per 1,000 people in 2007, the NWT's crime rate is more than six times the national average. There are 8.9 times as many assaults, 7.6 times as many sexual assaults, and 3.8 times as many cases of impaired driving. A large proportion of inmates are aboriginal and many struggle with substance abuse. Mental health support is limited. Court-ordered psychiatric assessments must be completed in Alberta—and there is only one psychiatrist servicing the entire territory. Indeed, many here believe were it not for the de facto mental health ward being run out of Pod D at NSCC, many more of the territory's mentally ill would simply be on the street. With the North's long months of 40-below weather and increasingly easy access to cheap crack-cocaine, it would be the Canadian equivalent of a death sentence.

The North Slave Correctional Centre is the NWT's biggest, newest jail. The \$44.1-million facility opened in 2004, replacing the original 38-year-old detention centre. Able to house about 180 inmates, the combined minimum and medium-security facility is

designed to function as a federal penitentiary without actually being one, so that inmates serving sentences won't have to be shipped south.

If anything, it doesn't look like a penitentiary. The idea was to make a facility that, while not exactly comfortable, is at least "non-intimidating," says Guy LeBlanc, the now-retired deputy warden and long-time staff member at NSCC. There are no bars, for instance. The walls are a soothing colour of washed-out Pepto-Bismol. The visiting area is decorated with inmate artwork, swooping aboriginal murals unique to each artist's home region. At Christmas time—a few weeks from our meeting—this area will be used to host a feast for the inmates, and a tree is decorated.

The differences continue outside the jail, too. Standing in the parking lot you can see three out-of-place log cabin-like structures, one of which is the newly built aboriginal fire ceremony building. Come summer, elders will come and inmates will gather in tipis and a new sweat lodge, meeting the spiritual and counselling needs for the jail's largely aboriginal population.

It's not all in the architecture, either. NSCC's elected inmate advisory council, made up of eight inmates, has a semblance of power—and respect.

"Everything they do," says LeBlanc of the present council, "they do for the good and the benefit of the population."

LeBlanc meets regularly with the IAC, fairly beaming when he talks about the current contest to design an IAC logo—even more when he talks about the model bridge he and a team of inmates designed and entered in a local engineering contest.

And that's another thing. The staff (for the most part) are, well, nice. If LeBlanc isn't enough to convince you every prison movie you've seen is wrong, meet Gwen, Pod D's guard, a short woman whose genuine—and seemingly permanent—smile is framed by her blonde bob. Because of Gwen, there are tiny dog-print patterns in the snow covering the “bullpen,” a tiny, fenced outdoor enclosure attached to the pod. For months the inmates pestered her to bring in her dog and a few days ago she relented. “We spoil them,” she says. “We really do.”

As if scripted to prove her point, just a few minutes later, the pod's inmates get a visit from another staff member's dog. Someone rolls up a wad of socks, making an impromptu ball, and a group of inmates play fetch in the pod's common area. LeBlanc laughs, watching the scene: “Only in Yellowknife, eh?”

For an outsider, it's almost easy to forget NSCC is a prison. As Gwen and Guy talk, Tommy bounds over, gripping a handmade card. The inmates are thanking the warden for bringing in Sno-Cones. “Hello, my lovely lady,” Tommy says, proudly flipping over the flimsy computer paper to show Gwen his name, printed out in careful block letters two inches tall, a child's writing. “We've replaced mental health institutions with correctional institutions where the staff aren't even trained to work with people with mental health issues.”

Gwen doesn't know what special-needs label Tommy might have, but a few weeks ago, she caught Tommy in the bullpen with a pilfered lighter trying to sniff the gas inside. Out of all of Pod D's special needs inmates, she says, Tommy needs the most support. To help him deal with day-to-day chores, Gwen's designed a task sheet. There are eight simple tasks—brush your teeth, make your bed, shower—and if Tommy gets them all done he gets a treat at the end of the day. It could be an orange, or it could be an hour of Dragon Ball Z on the TV. “It sounds sad to say,”

says LeBlanc, “but the longer he's in here, the longer he stays alive.” And that's when you feel it: the undercurrent of wrongness. For all the staff's genuine care and support, Pod D is just plain weird. “We've replaced mental health institutions with correctional institutions where the staff aren't even trained ... in working with people with mental health issues,” says Lydia Bardak of the NWT's John Howard Society. “They're trained in security or guard work.”

“There must be a better way,” adds Glenn Flett, a self-described “lifer” and founder of activist group Long-term Inmates Now in the Community (LINC). “We need to recognize those people are deserving of help and it's to the advantage in the long run—and it's a lot cheaper—to have somebody maintained out here.” Like many prison activists, Flett and Bardak would like to see some of the massive cash pumped into keeping inmates housed diverted into developing social and mental health programs outside of jail. It's not that idealistic. In the 2008–09 operating year it cost the territorial government more than \$13 million, or \$258.17 per prisoner per day, to run NSCC. And that's only one jail. Together, the territory's four adult facilities cost \$23.3 million to run. That's an awful lot of money questionably spent, says Bardak. “If we're using [the correctional system] to address our social problems then we're getting poor results,” she says. And that's bad for the whole community: “Poor results means more victims in the future.” Bardak believes by treating inmates badly, the system is not curbing crime, merely turning out angry people.

Neither she nor Flett—who says, somewhat jokingly, that many criminals (including his past self) are “greedy bastards”—advocate an end to jails. “Society needs protection from dangerous people and we'll always have a need for correctional facilities,” says Bardak. “But for the people who are alcoholic, mentally ill, homeless—[jails are] not meant to solve social problems because they're not effective and they're not qualified.” Spending cash on programs sorely

lacking in the NWT is comparatively minimal, and, both believe, money better spent. Especially, says Flett, considering “what the social and economic consequences may be if we don't deal with the problem” of incarcerating the mentally ill population.

There's one sticking point: It's hard to determine just how many special-needs inmates are in the correctional system. “My biggest, number-one complaint,” says Flett, “is the whole justice system fails to do competent testing on people to see if they have mental health issues. They just designate them as criminals and treat them all the same.” That can't fairly be said of all NSCC's Pod D inmates, but what of the jail's other prisoners? There aren't any stats kept and many inmates, fearful of the “crazy” stigma, do a remarkably good job of hiding any issues. “People need to be identified quickly,” stresses Flett.

“Once they're identified, it would be pretty blatantly obvious that it's not enough. That [the correctional system] has a bigger problem than they think they do.”

The territory's correctional system either fails even to identify prisoners with mental health problems; recognizes them but does nothing; or is simply ineffective when it does try to help.

Nationally, it's estimated 11% of federal offenders have a significant mental health diagnosis. Over 20% are taking a prescribed medication for a psychiatric condition and just over six percent were receiving outpatient services prior to admission. Sapers, too, suspects many are entering the correctional system without the benefit of a diagnosis. “If [inmates] are assessed at all,” he writes in his annual report, “their issues are often portrayed as a behavioural problem, not a mental health disorder.” He's also worried about the fate of many low to medium-level special needs inmates.

Like elsewhere in the country, the NWT's extremely mentally ill offenders are not housed in regular jails—even Pod Ds—but instead vastly smaller regional treatment centres. It's not enough, says Sapers. "The vast majority of offenders with mental disorders do not generally meet the acute criteria that would allow them to benefit from services provided," he notes. "Less than 10 percent of offenders are ever admitted or treated." Instead, those offenders stay in the general prison population. In the best of cases, they end up in makeshift wards like Pod D. In the worst of cases, they end up in segregation (often exacerbating their issues) or, as Flett puts it, are made "targets" and brutalized by inmates and staff alike. In sum, the territory's correctional system either fails even to identify prisoners with mental health problems; recognizes them but does nothing; or is simply ineffective when it does try to help. The offenders keep their heads down, their medical, mental, or addiction needs unmet, and wait for their release. So the question is: what happens when they get out?

Yellowknife's answer to that question is Bardak. While not the only inmate advocate in the capital city, Bardak is likely the most well-known and well-liked, not to mention the loudest. She'll never forget what prompted her to get involved in the John Howard Society. It was Oct. 28, 1996, James' 40th birthday. Bardak had met James, who was from Cape Dorset (now a part of Nunavut), while she was in Inuvik working for CNIB. James was blind and in 1996, housed at the Yellowknife jail, thousands of kilometres from his home.

"For months I'd been asking him and the staff, 'What's going to happen when he gets out? He's from Baffin Island,'" recalls Bardak. "Where's he going to go? Where's he going to live? What's he going to do? And nothing, nothing, nothing." Bardak found out at 9 a.m. on James' release date. "I got a phone call from the correctional centre saying, 'James is ready.' I said, 'For what?' and they said, 'Well aren't you going to pick him up?'"

It was 25 degrees below zero that day and James was released from custody in his prison sweats, with no winter coat, no boots, and no money. "There had already been ice, so while I was driving him around town trying to get things figured out, someone slid into my car. And James said, 'We've been in a car accident; that's my first car accident,'" she says, laughing. "That brings me to where I am now."

At this particular moment, "now" is sitting inside her office at the brand new Yellowknife day shelter, which opened in late November. It's a simple space, housed inside the Western Arctic's Conservative candidate's old campaign office. The rectangular one-room common area is filled with dozens of the city's homeless, many of whom have spent time inside NSCC. They lounge on the room's couches, chatting, reading the paper, or playing cards at the tables lining the walls. Joan Osborne's '90s hit "What if God Was One of Us" plays on the radio and a few heads bob along.

Although it was made possible by many people in Yellowknife, the centre is undeniably Bardak's baby. It's part of her answer to questions like: "How do we invest in community support so we don't have to rely on cops, courts and jail?" Before the centre opened, the city's homeless had limited options for shelter during the day when Yellowknife's night shelters are closed and often loitered in the city's malls or its library—also often getting into trouble with the law. Many, Bardak believes, have mental health issues. "Mental illness is the leading cause of homelessness and homelessness is the leading cause of mental illness," she says. "You can't be homeless and stay sane."

If anyone can accurately gauge the relationship between homelessness, mental health, and crime, it's Bardak. It's not a stretch to say she knows most of the city's homeless population. If she's not at the day shelter or the Society's offices or inside NSCC, it's a likely bet you'll find Bardak at the NWT Territorial

courthouse. "There's continually somebody there who's got mental health issues," she says. And they're usually homeless. Today, one stands out in Bardak's mind.

"He was walking through the streets...a lot of people were stopping me scared and worried for this young man because he was talking about collecting souls for the devil," says Bardak. Because of his substance abuse, he believed he was living inside a video game. Facing charges, he was remanded into custody where he waited six months for a mental health assessment. Like others, he would eventually be released with time served. Also, like so many others, it's likely he'll be in and out of jail again. "The catch-and-release program hasn't really benefited anybody very much," says Bardak, who, when then asked about the benefits of programming inside the jail, retorts: "What programs?" Admittedly, like elsewhere in the NWT, resources are scarce inside NSCC—the prison only got a new counsellor in November after being without one for months. (When asked in August about the flack she was getting for being without one, and how challenging it was to run NSCC without one, the jail's warden responded it wasn't a challenge at all.) High priority or not, however Adrienne Fillatre is a welcome addition and is working to become a registered psychologist so the jail can finally do in-house assessments. "People," she says, "have as much right to mental health wherever they are." And there are programs, though they're not necessarily geared toward people like Tommy.

Currently, NSCC program manager Terry Wallis has embarked on a new four-month, five-day-a-week sex offender program—a treatment and counselling program for offenders convicted of sex-related offenses—that will run twice a year, enrolling 12 inmates per session. "It's pretty intense," says Wallis, who interviews inmates to see who best suits the program and is interested

in seeing “how well they manage coming in every day.”

There’s also a family violence program, which also runs twice a year and accommodates the same number of inmates per session; it’s six weeks long. The substance abuse program runs five times a year and takes in the same number of inmates. Wallis and Fillatre are also quick to point out the jail’s chaplain, its resident aboriginal elder, and its visits by members of the Healing Drum Society, an aboriginal program designed to help people deal with the trauma of residential schooling.

It’s not that Bardak doesn’t know about these programs; it’s that she simply doesn’t think they’re enough. She’d like to see sessions that address inmates who aren’t serving long enough sentences to be eligible for such programs—the NWT is notorious for short sentences, even for seriously violent crimes. She wants additional help for those, like Tommy, who are in the indefinite limbo of remand custody, unconvicted and awaiting trial. More inmates also need to be enrolled in work-placement programs to get them used to contributing to society in a positive way, she says. She hired a team of inmates to paint the day centre, for instance.

Federally, Corrections Canada only spends two percent of its annual budget on inmate programming—\$37 million worth of a \$2.2-billion budget. More is spent on paying staff overtime. What’s more, with such sparse programming, says Flett, and without proper supports outside of jail, any counselling or benefits from programming an inmate gets in jail are likely easily forgotten. “In that routine structured environment it’s easy for them to follow what they’ve learned,” says Flett. But outside, it falls apart. “You’re teaching in an artificial environment that’s structured, that hasn’t got anything close to real, real, real life,” says Flett. “The only thing that’s close to real life is everybody is breathing air.”

Tommy is sentenced to one day in jail—a red flag on his criminal record—on January 6, 2010, after changing his plea to guilty. By this time, Tommy has changed lawyers yet again. He was forgotten by the RCMP and left at the jail for several of his scheduled court dates. After three signed court orders, he has, at least, had his mental health assessment, becoming one of the five accused individuals per year the NWT courts send south. On average, each of those assessments costs the territorial government more than \$20,000.

While not a tool for diagnosis, the assessment—Tommy’s third—provides some insight, but largely serves only to confirm Tommy is both fit enough to stand trial (now a moot point following his guilty plea) and likely to reoffend. He has borderline intelligence, shows disregard for the welfare and safety of others, and has a temper, often appearing uncooperative. His newest lawyer, Caroline Wawzonek, describes him as “an individual who certainly needs assistance but has fallen through the cracks.” Tommy, she says, has difficulty caring for himself.

His lengthy pre-trial custody has caused the NWT government to launch an investigation into the services provided by Alberta Health and the territory’s inability to follow up on assessment orders. It’s unclear whether it will result in any changes. Roger Shepard, legal counsel for the government of NWT, says while it is not right that Tommy had to wait so long for his assessment, he believes the case was an isolated one. The territorial government does not keep track of wait times, he admits, but he says he canvassed the Crown attorneys thoroughly and none could recall an assessment wait dragging on so long. If this appears to be a less than failsafe method, it doesn’t seem to bother the territorial government’s own health department. When I asked him about the adequacy of the current system of assessing offenders, Dana Heide, the territory’s assistant deputy minister for Health and Social Services, said “We are very pleased with the services Alberta Health provides.” He declined to go into details about the contract the department holds with Alberta Health to provide assessments, saying only:

“It does not stipulate any policy expectations other than a recognition that when necessary, we will transfer patients to the Alberta Health System.” In Alberta, the answer was much the same. “The agreement encompasses all aspects of health in a general sense,” says Melissa Lovatt, a communications person in the addiction and mental health division of Alberta Health. Lovatt adds clients, regardless of location—NWT or Alberta—are prioritized by need, and wait times at the 12 bed facility are usually two weeks. Individuals who are in urgent need of health care and those with earlier court dates are given priority.

In a way, it doesn’t even matter. Until all the other pieces fall into place—diagnosis, in-custody programming, community support, addiction counselling, affordable housing—people like Tommy don’t stand a chance. Free for less than 24 hours, he broke the terms of his probation and was charged with assaulting a police officer. The night after his release, Tommy returned home—to Pod D.

### **Tommy today**

Tommy pleaded guilty to his latest charge and was released from jail in mid-March. He is now on medication, and his psychiatric assessment concluded he has the mental capacity of an 11-year-old. His current, and newest, lawyer is trying to secure assisted living for Tommy, but estimates it could be a year, or longer, before an appropriate space is available in Yellowknife. In the meantime, there is an effort to get Tommy a placement in a southern facility. He is required to stay at a residence selected by his probation officer as part of the original probation order. Even so, as this story went to press, Tommy, along with many other Pod D veterans, had recently been seen wandering Yellowknife’s downtown streets, or perched on a curb in front of the local Wal-Mart.

We’ll update this postscript with more information if and when it becomes available.