

## Commentary on Williams (2013)

### Officially sanctioned gambling in prisons: commentary from a federal prison judge

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As one of Canada's 29 Independent Chairpersons, more commonly known as a federal prison judge, I preside over what is called Serious Court. Inmates appear in Serious Court when they have been charged by prison officials for engaging in behaviors that pose a threat to the safety of staff and/or fellow inmates or to the security of the prison. Specifically, these are behaviors that constitute offences in the Corrections and Conditional Release Act and include activities such as threatening, assault, being disrespectful, disobeying orders, attempted escape, inciting, taking intoxicants, or being in possession of unauthorized items or contraband (e.g. weapons and drugs). Behaviors not specifically spelled out in the Act can be captured under a section of the Act that calls attention to anything else deemed a threat to the security of the institution. Gambling is one of those behaviors.

In my seven years serving as part-time Independent Chairperson and hearing over 5,000 cases, I do not recall having heard more than one dozen cases involving gambling in any form. This is not to say that prison officials are not finding more cases of gambling. Rather, instead of treating gambling as a *Serious* charge, the institution can designate an incident of gambling as a *Minor* charge and deal with it in Minor Court. In Serious Court, an offender not only faces the possibility of being sentenced to a period of segregation and/or a significant loss of privileges, a conviction also means that they would not normally be considered for a transfer to lower security for at least six months. In Minor Court, which is presided over by a correctional manager, penalties are more commonly a small fine, and the offence would not ordinarily affect any transfer application. In addition to the options of having a Serious or a Minor charge, when an inmate is caught gambling, prison officials may elect to ask them to stop, counsel them, or otherwise deal with the situation informally. Regardless of the formal or informal mechanisms in place to respond to gambling in the institution, it would appear that very few inmates are caught gambling. Most commonly, they are caught playing cards without any evidence that they were actually betting anything.

Still, in my experience as an Independent Chairperson, and as research has shown, a significant proportion of inmates gamble regularly on card games or sporting events. Moreover, inmates create opportunities to bet on mundane, daily activities, such as whether an end slice of bread tossed in the air would land crust down or up. In my conversations with inmates, it would appear that most of the gambling occurs in a “between friends” manner in which an inmate might lose their canteen items in a bet one day, only to win it back the next day. Accordingly, if that was the extent of the wagering that occurred within the institution, there might not be much to worry about. Further, if there was a way to ensure that this was the extent of it or the limit to the wagering that occurred, we might consider allowing this very limited form of gambling among inmates to occur. Indeed, as DJ Williams points out, if a large proportion of inmates gamble, and if most of the gambling was relatively benign, and we accepted that some forms of gambling may contribute to the rehabilitation and the positive socialization of inmates, there may be a number of benefits associated with the institution allowing some gambling.

However, my experience as an Independent Chairperson leads me to believe that there are at least three substantial and serious problems with allowing inmates to gamble to any extent. First, it is extremely difficult to imagine how prison authorities could provide any opportunity to gamble that inmates could not easily exploit. For example, if you had a system whereby inmates played cards or other table games for near worthless tokens they could simply assign their own mutually agreed upon and unrecorded values to those tokens. In effect, all prison authorities would be doing by providing activities for inmates to gamble would be creating more and easier ways for them to bet at the levels they wish. Importantly, some of the gambling in which inmates currently engage is reportedly at very high stakes. For example, one inmate told me that he participated in a poker game with eight other inmates where the buy-in was \$1,000. Of course, they did not have the cash on the table – all debts and winnings were handled through people outside prison and the monies were withdrawn and deposited in outside accounts.

This brings us to the second problem and that is the matter of inmates having to cover gambling losses. It is already the case that inmates have very limited institutional incomes and very little money in their institutional bank accounts. Further, many inmates are often in debt to other inmates and are on the verge of not being able to cover their debts. The problem is always aggravated for inmates in this situation because with debt in prison comes high interest rates and a zero tolerance for failure to pay. In fact, I come across this problem of inmate debt nearly every time I suggest to an inmate that I am considering taking away their opportunity to purchase canteen for a month. Not uncommonly, they will plead with me not to impose such a penalty because they need the canteen to pay debts and if not paid they risk being assaulted. More often, inmates state that they would rather receive a significant period of segregation than lose their canteen. The issue of the potential risks to inmates of taking away canteen is so serious that Independent Chairpersons have discussed whether we should even be using this form of sanction at all. The

matter of inmate debts, as already suggested, is not only related to their ability to pay directly inside prison. The payment of debt through outside sources leaves open the door for equally serious consequences. Specifically, inmates may have to seek money from family members, who themselves may not have a genuine ability to pay and may even be the subject of threats or violence from the associates of those demanding payment. Alternatively, friends and family of inmates in debt may be asked to engage in illegal activities to pay off a gambling debt.

The third problem relates to the issue of addiction. It is well recognized that a significant portion of inmates either have an addictive personality or are addicts. It is also well-established that these people are at risk of replacing one form of addiction with another. Inmates are also characterized by a higher propensity for violence, preying on weaker inmates, being preyed on by more powerful inmates, and have problems with self-control and problem solving. Allowing those who are being treated for some form of addiction, such as for drugs or alcohol, access to another form of addictive behaviour, or allowing a specific type of activity that makes it easier for inmates to prey upon each other, would likely present additional health, safety and security challenges for prisons.

With the above in mind, we might still acknowledge that some inmates would abide by the rules of an officially sanctioned gambling program should correctional authorities decide to implement one. However, we must always have in mind the reason we have certain rules in prison in the first instance. It is not because we believe that most inmates would pose any kind of security threat without these rules. Rather, it is because at least some small proportion of inmates will pose a threat. With the likelihood that any officially sanctioned gambling program would facilitate further opportunities for inmates to gamble on their own terms, we should expect that we would only be adding to those security threats and the number of individuals associated with inmates outside prison who could be negatively affected.

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