

Deliberate Indifference

Identifying and Reducing Risk to Protect
Service Users, Staff and Agencies

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Vita Community Living Services

- ▶ Who we are
- ▶ Who we serve
- ▶ What we do

(www.vitacls.org)



Vita Community Living Services

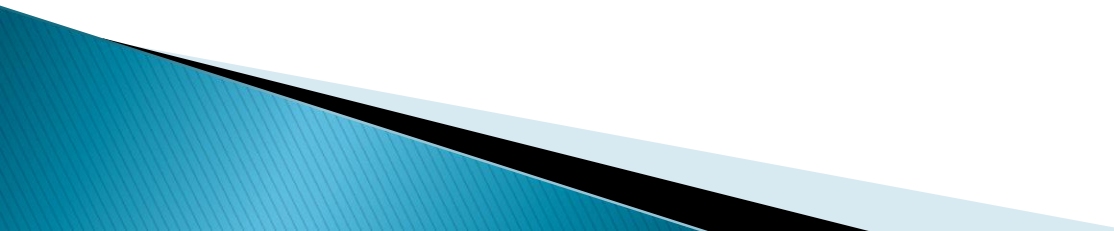
- ▶ 31 group living environments
- ▶ 4 treatment homes
- ▶ 5 community participation programs
- ▶ 1 work experience program.
- ▶ Serving:
 - ▶ 210 residential members;
 - ▶ 264 CPP members
 - ▶ 92 families through respite.

Vita Community Living Services

The clinical and educational department has 3 behaviour therapists, 1 art therapist, 2 co-therapists and an educational department, which provides a variety of curricula for individuals with intellectual disabilities.

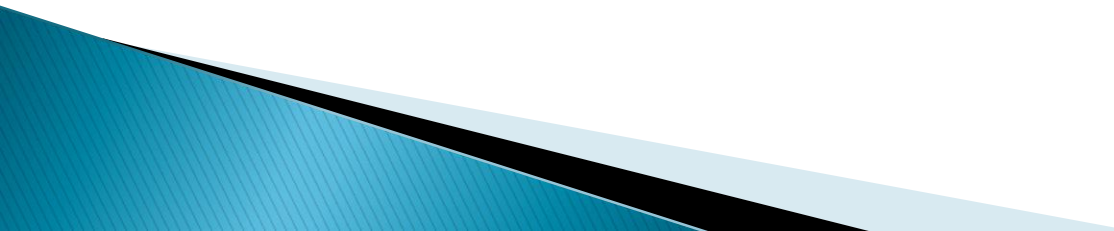
In addition we contract out for specialized sexuality consultation and ongoing psychological and psychiatric support.

How We Got Here


- ▶ The desk
 - ▶ The notes
 - ▶ The conference
 - ▶ The cobra
- 

How We Got Here con't

... to be guilty of "deliberate indifference" they must know they are creating a substantial risk of bodily harm. If they place a prisoner in a cell that has a cobra, but they do not know that there is a cobra there (or even that there is a high probability that there is a cobra there), they are not guilty of deliberate indifference even if they should have known about the risk, that is, even if they were negligent--even grossly negligent or even reckless in the tort sense--in failing to know. But if they know that there is a cobra there or at least that there is a high probability of a cobra there, and do nothing, that is deliberate indifference.[*Billman v. Indiana Dep't of Corrections*, 56 F.3d 785, 788 (7th Cir. Ind. 1995)]

- ▶ A bus ride.
 - ▶ “That’s where they should have started.”
 - ▶ Deliberate indifference assures ... that’s where we start.
- 

Defining Deliberate Indifference

- ▶ The conscious disregard of a substantial risk resulting from one's actions or omissions.
 - ▶ Occurs when there is an awareness of a situation that could result in serious harm, *and* a lack of action to prevent that harm or reduce the risk.
 - ▶ More than negligence, deliberate indifference is knowing about a danger and doing nothing to keep people safe from that danger.
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Avoiding Deliberate Indifference

Risk

+

Awareness of the risk

=

Responsibility to manage
the risk



A little background...

Deliberate Indifference is a legal provision that has been used to show liability for harm in

- ▶ Prisons
- ▶ Schools
- ▶ Child and Family Services

While a common concept in the United States, similar laws are in place in Canada under our human rights legislation.

(Howard, 2002)

Example – Prisons

Several cases of prisoner to prisoner rape before the US Supreme Court have resulted in prison officials being held liable for such assaults where, ***“the official acted or failed to act despite his knowledge of a substantial risk of serious harm”***.

The Supreme Court further clarified that ***“the prison official need only know that there is a serious risk to an inmate's health or safety, even though the official may not be aware of the precise threat.”***

(Man & Cronan, 2001 p 134-5)

Example – Schools

Schools have been found liable for incidents of student to student bullying, harassment and assault when school officials have not responded to known risks.

In *Patterson v. Hudson Area Schools*, “the court observed that a [school] district *is deliberately indifferent when its actions are ineffective and yet it continues to use those same methods to no avail.*”

(Childress, 2011)

Example – Wexford Residence Nursing Home in Scarborough ON

In March 2013, a 72 year old resident of the nursing home was charged with second-degree murder in the death of a fellow resident, as well as aggravated assault in the brutal beating of another resident. The man charged had engaged in physical attacks and verbal assaults against residents and staff for months and had been moved five times, largely due to these conflicts.

Following this tragedy, a total of a further seven resident-on-resident abuse incidents — four involving physical abuse and three of suspected sexual abuse — were reported by The Wexford Residence between April and July 2013.

Similar incidents have occurred in other Ontario nursing homes.

Wexford Residence Nursing Home

Ministry of Health reports state the Wexford Nursing Home failed to identify residents prone to aggression, assess them and develop strategies to curtail their behaviour. Furthermore, it did not develop care plans to protect vulnerable residents, nor did it give clear instructions to staff on how to handle abusive residents and protect vulnerable ones.

The MOH Inspector stated “the severity of the harm and risk of harm to residents arising from the non-compliance was very high...The (home) failed to protect residents from abuse.”

(Boyle, 2013)

What does the literature recommend be done to ensure safety and avoid litigation?

- ▶ Be aware of the risks
- ▶ Take steps to prevent harm resulting from these risks
- ▶ If harm does occur, respond quickly *and* effectively to ensure it does not happen again

(Childress, 2011; Man & Cronan, 2001)