

Charges in death of federal inmates rare and usually don't go to trial

Lawyer for Ashley Smith's family, former deputy warden call for change at top of correctional system

By Karissa Donkin, [CBC News](#) Posted: Jan 04, 2018 7:09 PM AT Last Updated: Jan 04, 2018 7:09 PM AT



Matthew Hines is remembered by his family as a kindhearted guy who would help anyone. (CBC)



Karissa Donkin

Karissa Donkin is a journalist in CBC's Atlantic investigative unit. Do you have a story you want us to investigate? Send your tips to NBIinvestigates@CBC.ca.

If two correctional officers go to trial over their alleged part in the death of prisoner Matthew Hines, it could be a first in Canada.

On Wednesday, Alvida Ross and Mathieu Bourgoïn were charged with manslaughter and criminal negligence causing Hines's death.

Both were guards at Dorchester Penitentiary in 2015, when Hines [was beaten and repeatedly pepper sprayed by guards before his death](#).

CBC News has found only two other cases where correctional officers have been charged in connection with a federal inmate's death.

In both cases, the charges were dismissed before correctional employees could ever go to trial.

Julian Falconer isn't involved in the Hines case, but he was the lawyer for families in the other two cases.

And he sees a pattern. He sees a lack of accountability within Correctional Service Canada that makes it difficult to investigate what goes on behind bars.

"I don't find any of this a surprise because not a single serious measure to change how Correctional Service Canada does business has been undertaken by this government or undertaken during the course of my career," Falconer said.

Charges but no trials



Julian Falconer represented the families of Robert Gentles and Ashley Smith, who both died in the federal prison system. He's calling for a change in leadership at Correctional Service Canada. (CBC)

Two decades ago, Falconer represented Carmeta Gentles, whose son, [Robert Gentles](#), died in custody of the Kingston Penitentiary in 1993.

After Gentles refused to turn down his radio, guards at the Ontario prison sprayed him with Mace by guards, then pinned him face down on a cell bed.

After carrying him to another cell, guards noticed Gentles didn't have any vital signs. He was 23.

Guards were charged with manslaughter, but the charges were dropped.

Falconer then represented the family of [Ashley Smith](#), a New Brunswick woman who took her own life inside Grand Valley Institution for Women in Kitchener, Ont., in 2007.

Guards were charged with criminal negligence causing Smith's death, but again, the case never went to trial.

'A lack of accountability'



Ashley Smith took her own life inside a federal prison in 2007. (Submitted by Ashley Smith's family)

"Repeatedly, we see a pattern of a lack of accountability in respect of deaths in the system," Falconer said.

"It's a specific problem when it comes to issues around mental health."

Falconer believes the problem lies at the top.

He singled out Don Head, who was promoted from deputy commissioner to commissioner of the correctional service after Smith's death.

"The same leadership is in charge, regardless of what a jury has found in inquest, regardless of public outcry, regardless of the obvious misleading by Correctional Service Canada," Falconer said.

"The same people stay in charge."

'A deep rooted problem'

Play



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For months, Hines's family believed he died from a seizure.

Later, they learned he was beaten and repeatedly pepper sprayed by guards after he refused to return to his cell.

He begged for his life on a prison shower floor with his shirt pulled over his head, a situation that [federal correctional investigator Ivan Zinger said](#) would have felt much like waterboarding.

The correctional service provided false information after Hines died, telling the public he was "found" in need of medical attention and received CPR, neither of which was true. It has since apologized.

Zinger also found the prison cleaned up the bloodstains after Hines's death, compromising a potential crime scene.

"You have a homicide," Falconer said.

"You have have guards inflicting enough force to now merit them being charged. The scene is cleaned up, blood is cleaned up. Inexplicable. Obviously, there's a deep rooted problem at Correctional Service Canada in the culture, in the leadership. It needs to be fixed."

Symptoms of a larger issue



Robert Clark spent 30 years working inside federal prisons. He sees the death of Matthew Hines as a symptom of a larger problem.

Robert Clark spent 30 years working for Correctional Service Canada at a number of prisons.

He retired as a deputy warden in 2009 and has since written a book called *Down Inside: Thirty Years in Canada's Prison Service*.

Clark sees Hines's death, along with the deaths of Smith and Gentles, as a symptom of the culture of the correctional system, where guards use force before choosing other options.

"There was absolutely no reason those officers who first engaged Hines, or at the time engaged Gentles, couldn't have invested some time in using their interpersonal skills to negotiate with the prisoner, to calm them down, to try to get them to comply without force," Clark said.

"These are things we're seeing increasingly disappearing from the penal system."

Like Falconer, Clark believes change has to come from the top.

Hoped for more from Trudeau

It's something Falconer was hopeful would happen when Justin Trudeau's Liberal government was elected on a platform that included implementing recommendations from an inquest into Smith's death.

But he's been disappointed.

"It is quite clear in my mind that leaving the same leadership in place at [Correctional Service Canada] is an utter failure on the part of the Trudeau government."

Ross and Bourgoïn, both from Dieppe, have yet to enter pleas to the charges.

They'll appear in Moncton provincial court on Feb. 26.