

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**RAYMOND LAPPLE, JEROME CAMPBELL, SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**  
Defendant

Proceeding under the *Class Proceedings Act, 1992*

**MOTION RECORD  
(Certification Motion Returnable December 6, 2017)  
Volume 1**

March 6, 2017

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## MOTION RECORD

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Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**RAYMOND LAPPLE, JEROME CAMPBELL, SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**  
Defendant

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION  
(Certification Motion Returnable December 6, 2017)**

The Plaintiffs will make a motion to the Honourable Justice Edward Belobaba, on December 6, 2017, at 10:00 a.m. or as soon after that time as the motion can be heard, at 361 University Avenue.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally:

**THE MOTION IS FOR:**

- (a) an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended (the “CPA”);
- (b) an order appointing Raymond Lapple, Jerome Campbell, and Samir Abdelgadir as representative plaintiffs for the class;

- (c) an order defining the class as:

All current and former prisoners of correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**") since December 10, 2002 who are or were remanded, except the Excluded Persons (the "**Class**"); and,

All current and former prisoners of the Correctional Institutions since December 10, 2002 who are or were serving a sentence at a Correctional Institution or who have violated parole and are or were imprisoned at a Correctional Institution as a result, except the Excluded Persons; and

"**Excluded Persons**" are all prisoners detained by the Canadian Border Services Agency in accordance with the *Immigration and Refugee Act*, S.C. 2001, c. 27 and all prisoners of Elgin-Middlesex Detention Centre (solely with respect to their incarceration at Elgin-Middlesex Detention Centre).

- (d) an order that the within proceeding is certified on the basis of the following common issues:

- (1) By its operation or management of the Correctional Institutions, did the defendant breach a duty of care it owed to the class to protect them from actionable physical or psychological harm?
- (2) By its operation or management of the Correctional Institutions, did the defendant breach a fiduciary duty owed to the class to protect them from actionable physical or psychological harm?
- (3) By its operation or management of the Correctional Institutions, did Ontario breach the life, liberty and security of the person interest of the Class under section 7 of the *Canadian Charter of Rights and Freedoms*?
- (4) If the answer to common issue (3) is yes, were Ontario's actions arbitrary or resulting in grossly disproportionate effects and therefore impacted the life, liberty and security of the person in a manner contrary to the interests of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*?
- (5) Did the actions of Ontario constitute arbitrary imprisonment or detention under section 9 of the *Canadian Charter of Rights and Freedoms*?
- (6) Did the actions of Ontario constitute cruel and unusual punishment under section 12 of the *Canadian Charter of Rights and Freedoms*?
- (7) If the answer to common issue (3), (4), (5) or (6) is "yes", were the defendant's actions saved by section 1 of the *Canadian Charter of*

*Rights and Freedoms*, and if so, to what extent and for what time period?

- (8) If the answer to common issue (3), (4), (5), or (6) is "yes", and the answer to common issue (7) is "no", do those breaches make damages an appropriate and just remedy under section 24 of the *Canadian Charter of Rights and Freedoms*?
  - (9) If the answer to any of common issues (1), (2), or (8) is "yes", can the court make an aggregate assessment of damages suffered by all class members as part of the common issues trial, and if so, in what amount?
  - (10) Does the defendant's conduct justify an award of punitive damages?
  - (11) If the answer to common issues (10) is "yes", what amount of punitive damages ought to be awarded against the defendant?
- (e) an order approving the proposed litigation plan;
  - (f) an order appointing Koskie Minsky LLP and McKenzie Lake LLP as class counsel;
  - (g) an order staying any other proceeding based on the facts giving rise to this proposed class proceeding;
  - (h) an order declaring that no other proceeding based upon the facts giving rise to this proceeding may be commenced without leave of the court;
  - (i) an order that the defendants shall pay to the plaintiff his costs of this motion plus any applicable taxes; and
  - (j) such other relief that counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) this action was commenced on August 15, 2016 pursuant to the *CPA*;
- (b) this action seeks damages on behalf of the Class for staffing-related lockdowns at the Correctional Institutions;

- (c) the Correctional Institutions suffer from chronic staffing-related lockdowns whereby prisoners in the Correctional Institutions are confined to their cells;
- (d) the proposed representative plaintiffs advance claims for negligence, breach of fiduciary duty and violation of sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**");
- (e) the pleadings herein disclose causes of action in negligence, breach of fiduciary duty, and breach of sections 7, 9 and 12 of the Charter;
- (f) there is a large class that is objectively defined consisting of all current and former prisoners of Correctional Institutions since December 10, 2002, except the Excluded Persons;
- (g) there is a rational relationship between the class and the common issues and the class is not unnecessarily broad;
- (h) the claims alleged in the Statement of Claim raise common issues, the determination of which will substantially move the litigation forward;
- (i) in light of the access to justice concerns and with regard to achieving judicial economy, a class proceeding is not only the preferable procedure for resolving these claims but is the only manner by which these claims can be realistically adjudicated;
- (j) a class proceeding in this case would constitute the fairest, most efficient and manageable means of adjudication of the common issues;
- (k) the proposed representative plaintiffs, Raymond Lapple, Jerome Campbell, and Samir Abdelgadir, can fairly and adequately represent the interests of the class, with whom he has no conflict on the common issues;
- (l) the proposed representative plaintiffs has produced a workable litigation plan for advancing the claims on behalf of the class up to the common issues trial and afterwards;

- (m) the *CPA*;
- (n) the *Rules of Civil Procedure*;
- (o) the *Negligence Act*, RSO 1990, c N1 and amendments thereto; and
- (p) the *Canadian Charter of Rights and Freedoms*; and
- (q) such other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the affidavit of Raymond Lapple sworn February 23, 2017;
- (b) the affidavit of Jerome Campbell sworn February 27, 2017;
- (c) the affidavit of Samir Abdelgadir sworn February 23, 2017;
- (d) the affidavit of Antonio Cefaratti sworn February 27, 2017;
- (e) the affidavit of Jeannette Tossounian sworn February 28, 2017;
- (f) the affidavit of Denis Robitaille sworn February 27, 2017;
- (g) the affidavit of Biaggio Donovan sworn February 28, 2017;
- (h) the affidavit of Timothy Hayne sworn March 2, 2017;
- (i) the affidavit of Shaheed Ali sworn March 2, 2017;
- (j) the affidavit of Dr. James Austin sworn March 1, 2017;
- (k) the affidavit of Dr. Stuart Grassian sworn March 2, 2017;
- (l) the affidavit of David Rosenfeld sworn March 2, 2017;
- (m) the affidavit of Sylvia Tse sworn March 2, 2017;

- (n) the affidavit of Leonard Greason sworn March 5, 2017;
- (o) the affidavit of Patrick Larose sworn March 6, 2017; and
- (p) the affidavit of Maurice Villeneuve.

March 6, 2017

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Court File No.: CV-16-558633-00CP

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SUPERIOR COURT OF JUSTICE**

BETWEEN:

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
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Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF RAYMOND LAPPLE**

I, **Raymond Lapple**, of the City of Stouffville, in the Province of Ontario, **MAKE  
OATH AND SAY:**

1. I am a plaintiff in the within action and as such have knowledge of the matters hereinafter deposed, except where stated to be on information and belief, in which case I disclose the source of my information. I believe these facts to be true.

**BACKGROUND**

2. I reside in the City of Stouffville, in the Province of Ontario.

3. I was born on December 14, 1960 in Toronto, Ontario.

4. I was charged and remanded into custody at Maplehurst Correctional Complex ("**Maplehurst**") on May 30, 2009. I was a prisoner at Maplehurst from that time until February 20, 2013, when I was sentenced and transferred to a federal correctional institution.

5. At Maplehurst, I lived in a cell measuring approximately 6 by 9 feet. I was double bunked with another prisoner.

6. The cell also contained a toilet and a sink, a small table, and two stools to sit on.

7. While I was on remand at Maplehurst, Maplehurst was frequently locked down. During a lockdown, prisoners are confined to their cells. Although I do not recall the precise amount of time that Maplehurst was locked down, I recall that there was a lockdown approximately every week or every two weeks.

8. Lockdowns would generally last for up to three days at a time.

9. I occasionally asked prison guards why Maplehurst was locked down. I was told that the lockdowns were caused by shortages of staff.

10. Prisoners were given no advance notice of staffing related lockdowns, nor information about how long the lockdown would last.

11. When there was no lockdown, prisoners were typically provided with yard access. During lockdown, I was required to remain in my cell. Yard access was cancelled and there was no access to fresh air or sunshine.

12. When there was no lockdown, my family could visit. My parents often travelled from Welland, Ontario to visit me. During lockdown, family visits were cancelled. On occasion, my family would drive from Welland to Maplehurst and would be advised upon arrival that Maplehurst was locked down and that my parents could not visit me. My family members were not advised how long the lockdown would be likely to last or when the family visit could be rescheduled.

13. When Maplehurst is not locked down, inmates are typically permitted to use the telephone to make collect calls. Inmates were also permitted to watch the television. During lockdown, there was generally no telephone and no television privileges.

14. When Maplehurst was not locked down, I attended chaplaincy programs. Other inmates would also attend religious services. Muslim and Christian prayer services were available. In addition, Alcoholics Anonymous and Narcotics Anonymous were available when the facility was not locked down. None of these programs or services were available during lockdowns.

15. When Maplehurst was not locked down, a volunteer would deliver books every week or every other week. During lockdown, this service was not available.

16. During lockdown, other than screaming to other inmates through the hatch in my cell door, I was not able to speak with anyone other than my cell mate.

17. During lockdown, my personal hygiene suffered. There were generally no showers available during this time, and I was forced to remain in an unclean state for days.

18. Similarly, when the facility was not locked down, I was able to access clean bedding once a week. When Maplehurst was locked down, I had no access to clean sheets.

19. Sometimes, after two or three days of a staffing-related lockdown, inmates were given a few minutes to use the telephone or to shower. If I was really quick and took a very fast shower, I was able to also use the telephone during this period.

20. Tensions arising from lockdowns led to fighting among inmates when they were released. For example, upon release from lockdown, inmates would frequently fight over access to the telephones.

21. I believe lockdowns to constitute inhumane treatment of prisoners.

22. After I was released from prison, I was diagnosed with post-traumatic stress disorder and anxiety. I believe that my post-traumatic stress disorder and anxiety were caused in part by lockdowns in Maplehurst.

### **THE NATURE OF THIS ACTION**

23. I retained the law firms Koskie Minsky LLP to prosecute this class action against Her Majesty the Queen in Right of the Province of Ontario (the “Defendant”) naming myself as one of the proposed representative plaintiff in respect of the matters described in the Statement of Claim in this action.

24. This action is brought on behalf of:

All current and former prisoners of correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**") since December 10, 2002 who are or were remanded, except the Excluded Persons; and,

All current and former prisoners of the Correctional Institutions since December 10, 2002 who are or were serving a sentence at a Correctional Institution or who have violated parole and are or were imprisoned at a Correctional Institution as a result, except the Excluded Persons; and

"**Excluded Persons**" are all prisoners detained by the Canadian Border Services Agency in accordance with the *Immigration and Refugee Act*, S.C. 2001, c. 27 and all prisoners of Elgin-Middlesex Detention Centre (solely with respect to their incarceration at Elgin-Middlesex Detention Centre).

25. The Statement of Claim in this action asserts on behalf of the class members negligence, breach of fiduciary duty, and breach of the *Canadian Charter of Rights and Freedoms* with respect to staffing related lockdowns at the Correctional Institutions.

#### **MY MOTIVATION IN COMMENCING THE ACTION**

26. I have commenced this action to ensure these important issues are determined by the court, to promote access to justice for the other class members, and to bring about behaviour modification.

27. Garth Myers of Koskie Minsky LLP has advised me, and I believe that litigating individual lawsuits of this nature against the defendant will be very expensive. The documentary evidence will likely be extensive and time-consuming to review. Mr. Myers has advised me, and I believe, that it is likely that there will be thousands of relevant documents.

28. Further, there will be substantial expert costs in litigating this action through to trial.

29. I cannot afford to litigate this case on my own and it would not make sense to litigate this case for my benefit alone.

#### **I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF**

30. I am prepared to act as representative plaintiff in this class proceeding. I understand that as representative plaintiff, I would be obliged to direct this litigation, give instructions to my lawyers and to act in the best interests of the class members. For example, I understand that any

settlement discussions with the defendant cannot relate only to my damages, but must relate to the claims of the class members as a whole.

31. My counsel are Koskie Minsky LLP and McKenzie Lake Lawyers. My counsel has been providing me with updates regarding this action.

32. I understand the major steps of class actions to include:

- (a) preparing and serving a statement of claim;
- (b) a motion for certification, which I understand involves the court's consideration of whether this action is appropriate to proceed as a class action. I also understand there will be cross-examinations for this motion and that my ability to fairly and adequately represent the class will be in issue;
- (c) if the action is certified, there would be notice to the class of the certification and the right to opt-out (i.e. a chance for class members not to participate in the class action);
- (d) the disclosure and exchange of relevant documents;
- (e) examinations for discovery, where the defendant can examine me about my claims and those of the class and our counsel can examine the defendant representatives;
- (f) a pre-trial conference where a judge can help the parties towards a settlement of the case;
- (g) a trial of the common issues (i.e. a trial that only deals with the certified common issues as opposed to the issues individual me and other Class Members);
- (h) notice to the class if individual hearings or participation is required;
- (i) the determination of individual issues, if required;
- (j) the distribution of proceeds (if any) of a money award by judgment or settlement;

- (k) appeals, which might include appeals from the certification motion, other motions, or the trial of the common issues; and
- (l) settlement discussions, which could happen at any time.

33. I understand that as representative plaintiff I would have, among others, the following responsibilities:

- (a) review and keep myself informed of the steps in this litigation;
- (b) familiarize myself with the issues to be decided at the common issues stage and other issues in the action;
- (c) help prepare the affidavits and other materials in support of certification, other motions and the materials that would be used at a common issues trial;
- (d) attend any cross-examination on my affidavit or otherwise;
- (e) attend the examinations for discovery;
- (f) assist in preparing and executing an affidavit of documents, which will list the relevant documents that I have in my possession, power or control;
- (g) attend at the common issues trial, providing any direction or assistance to class counsel and give evidence regarding the case;
- (h) express my views on any settlement offers that I receive or that I make on behalf of Class Members; and
- (i) assist in preparing materials in support of a court approving any settlement.

34. I am committed to actively directing this litigation and maximizing the recovery for the class. I have been advised by Mr. Myers and accept that I owe a duty to all members of the proposed class to provide fair and adequate representation. I intend to work with counsel to obtain the best recovery for the whole class, consistent with good faith and meritorious advocacy.

35. I believe that I can fairly and adequately represent the interests of class members and I am committed to fulfilling my obligations as their representative.

### LITIGATION PLAN

36. I have reviewed a copy of the draft litigation plan. I understand that the litigation plan provides for notice to the class members if the action is certified. I do not have the expertise to evaluate the legal aspects of the plan, but my lawyers have formulated this plan and I understand from them that it is designed to provide a workable method of determining the issues in this action.


37. I do not have a conflict of interest with the proposed class members with respect to any of the common issues in this case.

SWORN BEFORE ME at the City of Stouffville,  
this 23 day of February, 2017.



A Commissioner for taking Affidavits (or as may be)

Dalia Boulos, a Commissioner, etc.,  
Province of Ontario,  
while a Student-at-Law.  
Expires August 22, 2019.

  
Raymond Lapple

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**RAYMOND LAPPLE, JEROME CAMPBELL, SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF JEROME CAMPBELL**

I, **Jerome Campbell**, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the plaintiff in the within action and as such have knowledge of the matters hereinafter deposed, except where stated to be on information and belief, in which case I disclose the source of my information. I believe these facts to be true.

**BACKGROUND**

2. I reside in the City of Toronto, in the Province of Ontario. I was born on November 25, 1992.

3. I was incarcerated in Toronto South Detention Centre ("**Toronto South**") on March 1, 2016, awaiting trial. I was a prisoner at Toronto South until November 22, 2016.

4. While I was a prisoner at Toronto South, Toronto South was frequently locked down. During a lockdown, prisoners are confined to their cells.

5. Every time Toronto South was locked down, I and other prisoners asked guards for the reason for the lockdown. The guards would typically answer, "No staff, that's all I can tell you." I only remember a few times that we were told that the lockdown was for a reason other than understaffing.

6. Lockdowns at Toronto South could last anywhere from one day to two weeks.

7. While I was incarcerated at Toronto South, the prison was locked down approximately 75% of the time due to understaffing.

8. Prisoners were given no advance notice of staffing related lockdowns, nor information about how long the lockdown would last.

9. When Toronto South was not locked down, I and other inmates were permitted to exercise, play basketball, watch television, and use the telephones. During staffing-related lockdowns, we were not permitted to exercise, play basketball, watch television or use the telephones.

10. When Toronto South was not locked down, my family could visit me. During staffing-related lockdowns, family visits were not permitted. Between four and five times, my mother and my sister were turned away after arriving at Toronto South to visit me because the facility was under a staffing-related lockdown. My family members were not advised how long the lockdown would be likely to last or when my family visit could be rescheduled.

11. When Toronto South was not locked down, I participated in the Toronto South Alcoholics Anonymous program, the life skills program, and the story of a parent program where I was able to record myself reading to my daughter. I also was able to work on my high school GED. During staffing-related lockdowns, none of these programs were available.

12. When Toronto South was not locked down, I and other inmates had regular access to showers. During lockdowns, showers were not regularly permitted. The longest period of time I was prevented from showering due to a staffing-related lockdown was 8 days.

13. During staffing-related lockdown, other than screaming to other inmates through the hatch in my cell door, I was not able to speak with anyone other than my cell mate.

14. After we were released from staffing-related lockdown, there was a lot of fighting among inmates. For example, fighting over telephones and showers right after release from lockdown was particularly common, as access to these had been denied during lockdown.

15. During staffing-related lockdown, I was confined to a small cell with another inmate. The distress caused by lockdowns contributed to many physical altercations between me and my cell mates. As a result of our confinement in close quarters for many days, the smells from the toilet, the frustration of missing programs, and telephone calls, among other things, we would get angry, irritated, and frustrated with each other. This often escalated into physical altercations between me and my cell mate.

16. During staffing-related lockdowns, I often felt that my life was over. I became extremely emotional, negative, and angry. I was also incredibly bored. Sometimes I just tried to sleep all day.

17. I now often feel depressed and anxious.

18. I believe staffing-related lockdowns are inhumane to inmates.

#### THE NATURE OF THIS ACTION

19. I retained the law firms Koskie Minsky LLP to prosecute this class action against Her Majesty the Queen in Right of the Province of Ontario (the "Defendant") naming myself as one of the proposed representative plaintiff in respect of the matters described in the Statement of Claim in this action.

20. This action is brought on behalf of:

All current and former prisoners of correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**") since December 10, 2002 who are or were remanded, except the Excluded Persons; and,

All current and former prisoners of the Correctional Institutions since December 10, 2002 who are or were serving a sentence at a Correctional Institution or who have violated parole and are or were imprisoned at a Correctional Institution as a result, except the Excluded Persons; and

"**Excluded Persons**" are all prisoners detained by the Canadian Border Services Agency in accordance with the *Immigration and Refugee Act*, S.C. 2001, c. 27 and all prisoners of

Elgin-Middlesex Detention Centre (solely with respect to their incarceration at Elgin-Middlesex Detention Centre).

21. The Statement of Claim in this action asserts on behalf of the class members negligence, breach of fiduciary duty, and breach of the Canadian Charter of Rights and Freedoms with respect to staffing related lockdowns at the Correctional Institutions.

### **MY MOTIVATION IN COMMENCING THE ACTION**

22. I have commenced this action to ensure these important issues are determined by the court, to promote access to justice for the other class members, and to bring about behaviour modification.

23. Garth Myers of Koskie Minsky LLP has advised me, and I verily believe, that litigating individual lawsuits of this nature against the defendants will be very expensive. The documentary evidence will likely be extensive and time-consuming to review. Mr. Myers has advised me, and I verily believe, that it is likely that there will be thousands of relevant documents.

24. Further, there will be substantial expert costs in litigating this action through to trial.

25. I cannot afford to litigate this case on my own and it would not make sense to litigate this case for my benefit alone.

### **I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF**

26. I am prepared to act as representative plaintiff in this class proceeding. I understand that as representative plaintiff, I would be obliged to direct this litigation, give instructions to my lawyers and to act in the best interests of the class members. For example, I understand that any settlement discussions with the defendants cannot relate only to my damages, but must relate to the claims of the class members as a whole.

27. My counsel are Koskie Minsky LLP and McKenzie Lake Lawyers. My counsel has been providing me with updates regarding this action.

28. I understand the major steps of class actions to include:

- (a) preparing and serving a statement of claim;
- (b) a motion for certification, which I understand involves the court's consideration of whether this action is appropriate to proceed as a class action. I also understand there will be cross-examinations for this motion and that my ability to fairly and adequately represent the class will be in issue;
- (c) if the action is certified, there would be notice to the class of the certification and the right to opt-out (i.e. a chance for class members not to participate in the class action);
- (d) the disclosure and exchange of relevant documents;
- (e) examinations for discovery, where the defendants can examine me about my claims and those of the class and our counsel can examine the defendants' representatives;
- (f) a pre-trial conference where a judge can help the parties towards a settlement of the case;
- (g) a trial of the common issues (i.e. a trial that only deals with the certified common issues as opposed to the issues individual me and other Class Members);
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29. I understand that as representative plaintiff, I would have, among others, the following responsibilities:

- (a) review and keep myself informed of the steps in this litigation;
- (b) familiarize myself with the issues to be decided at the common issues stage and other issues in the action;
- (c) help prepare the affidavits and other materials in support of certification, other motions and the materials that would be used at a common issues trial;
- (d) attend any cross-examination on my affidavit or otherwise;
- (e) attend the examinations for discovery;
- (f) assist in preparing and executing an affidavit of documents, which will list the relevant documents that I have in my possession, power or control;
- (g) attend at the common issues trial, providing any direction or assistance to class counsel and give evidence regarding the case;
- (h) express my views on any settlement offers that I receive or that I make on behalf of Class Members; and
- (i) assist in preparing materials in support of a court approving any settlement.

30. I am committed to actively directing this litigation and maximizing the recovery for the class. I have been advised by Mr. Myers and accept that I owe a duty to all members of the proposed class to provide fair and adequate representation. I intend to work with counsel to obtain the best recovery for the whole class, consistent with good faith and meritorious advocacy.

31. I believe that I can fairly and adequately represent the interests of class members and I am committed to fulfilling my obligations as their representative.

#### **LITIGATION PLAN**

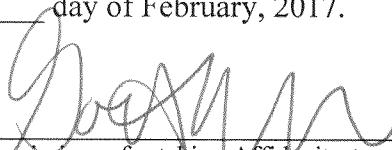
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from them that it is designed to provide a workable method of determining the issues in this action.

33. I do not have a conflict of interest with the proposed class members with respect to any of the common issues in this case.

SWORN BEFORE ME at the City of Toronto, this

27 day of February, 2017.

  
A Commissioner for taking Affidavits (or as may be)

Garth Myers

  
JEROME CAMPBELL

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**RAYMOND LAPPLE, JEROME CAMPBELL, SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF SAMIR ABDELGADIR**

I, **Samir Abdelgadir**, of the City of Mississauga, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a plaintiff in the within action and as such have knowledge of the matters hereinafter  
deposed, except where stated to be on information and belief, in which case I disclose the source  
of my information. I believe these facts to be true.

**BACKGROUND**

2. I reside in the City of Mississauga, in the Province of Ontario.

3. I was born on May 29, 1981.

4. I was charged and remanded into custody at Maplehurst Correctional Complex  
("**Maplehurst**") on June 9, 2011. I was a prisoner at Maplehurst from that time until November  
3, 2015, when I was released following a determination that I was not guilty of the criminal  
charges against me.

5. At Maplehurst, I lived in a cell measuring approximately 6 by 9 feet. I was double bunked with another prisoner.

6. The cell also contained a toilet and a sink, a small table and two stools to sit on.

7. While I was on remand at Maplehurst, Maplehurst was frequently locked down. During a lockdown, prisoners are confined to their cells.

8. Every time the jail was locked down, I and other prisoners asked guards, lieutenants, or the Maplehurst superintendent for the reason for the lockdown. I was advised that approximately 90% of lockdowns were caused by "security issues due to lack of staff". I was told this by guards, lieutenants, and the superintendent.

9. Lockdowns at Maplehurst would generally last from one day to three days in a row. On occasion, lockdowns would last longer than three days. The longest I was locked down for at one time was approximately one week. Lockdowns longer than three days would occur when staffing-related lockdowns were followed immediately by security-related lockdowns which could then be followed immediately by another staffing related lockdown.

10. Prisoners were given no advance notice of staffing related lockdowns, nor information about how long the lockdown would last.

11. Occasionally, staffing-related lockdowns would occur for three days, followed by a one-day break from lockdown. The following day, another staffing-related lockdown could begin and would last for another three day period. I would therefore be in staffing-related lockdown for six days out of seven.

12. I believe that I was under lockdown for approximately two thirds of time I spent at Maplehurst. It felt as though lockdown was the norm rather than the exception.

13. When Maplehurst was not locked down, I and other inmates were entitled to take showers when we were out of our cells. We were also permitted to use one of the three telephones available to inmates. During staffing-related lockdowns, showers and telephone calls were not permitted.

14. After three consecutive days of staffing-related lockdown, inmates were typically permitted to leave their cells for 30 minutes to shower or to use the telephone. Most of the time, there was insufficient time to both shower and use the telephone. We would have to choose one or the other.

15. On occasion, even after three days of lockdown, I and other inmates were not permitted to leave our cells for thirty minutes to use the telephone or shower.

16. When Maplehurst was not locked down, I and other inmates were entitled to receive visits from family and friends. During staffing-related lockdowns, these visits were not permitted. I recall that on over one hundred occasions, my family members would arrive at Maplehurst but would be told that the facility was locked down and they could not see me. My family members were not advised how long the lockdown would be likely to last or when the family visit could be rescheduled.

17. When Maplehurst was not locked down, I and other inmates were entitled to watch television and read newspapers that had been ordered by inmates. We were also given yard time where we could get fresh air and sun. Approximately every two weeks, or sometimes less frequently, a librarian would provide access to books. None of this was available to inmates during staffing-related lockdown. There was no television or reading material, no fresh air, and no sun. We were confined to our cells with virtually no stimulation.

18. I am Muslim. While Maplehurst was not locked down, every Friday I engaged in a customary congregational prayer in the Maplehurst chapel in accordance with my Muslim faith. This prayer typically lasted 20 to 30 minutes. During staffing-related lockdown, I was not permitted to engage in my congregational prayer on Fridays.

19. When Maplehurst was not locked down, I attended Chapel service on Sundays where a Christian service was provided. I am not Christian, but this service helped to satisfy my spiritual needs. When Maplehurst was under a staffing-related lockdown, Chapel service was not available.

20. When Maplehurst was not locked down, I had regular visits with a psychiatrist. When Maplehurst was under a staffing-related lockdown, I was not permitted to see a psychiatrist.

21. During staffing-related lockdown, I was confined to a small cell with another inmate. The distress caused by lockdowns contributed to many physical altercations between me and my cell mates. As a result of our confinement in close quarters for many days, the smells from the toilet, the frustration of missing programs, prayer, and telephone calls, among other things, we would get angry, irritated, and frustrated with each other. This often escalated into physical altercations between me and my cell mates.

22. During staffing-related lockdown, other than screaming to other inmates through the hatch in my cell door, I was not able to speak with anyone other than my cell mate. After we were released from staffing-related lockdown, there was a lot of fighting among inmates. For example, fighting over telephones and showers right after release from lockdown was particularly common, as access to these had been denied during lockdown.

23. As a result of the staffing-related lockdowns at Maplehurst, I now suffer from depression and anxiety. I take Cipralex to help with my condition.

24. I believe staffing-related lockdowns are inhumane to inmates.

#### THE NATURE OF THIS ACTION

25. I retained the law firms Koskie Minsky LLP to prosecute this class action against Her Majesty the Queen in Right of the Province of Ontario (the "Defendant") naming myself as one of the proposed representative plaintiff in respect of the matters described in the Statement of Claim in this action.

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28. I have commenced this action to ensure these important issues are determined by the court, to promote access to justice for the other class members, and to bring about behaviour modification.

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#### **LITIGATION PLAN**

38. I have reviewed a copy of the draft litigation plan. I understand that the litigation plan provides for notice to the class members if the action is certified. I do not have the expertise to evaluate the legal aspects of the plan, but my lawyers have formulated this plan and I understand

from them that it is designed to provide a workable method of determining the issues in this action.

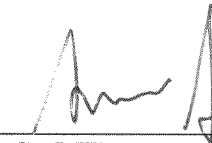
39. I do not have a conflict of interest with the proposed class members with respect to any of the common issues in this case.

SWORN BEFORE ME at the City of Mississauga,  
this 23 day of February, 2017.



A Commissioner for taking Affidavits (or as may be)

Dalia Boulos, a Commissioner, etc.,  
Province of Ontario,  
while a Student-at-Law.  
Expires August 22, 2019.



SAMIR ABDELGADIR

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

---

**AFFIDAVIT OF ANTONIO CEFARATTI**

---


I, **Antonia Cefaratti**, of the City of Toronto, **MAKE OATH AND SAY:**

1. I am a former inmate of Ontario Correctional Institution and a putative class member in this action and, as such, I have knowledge of the matters hereinafter deposed to in this my Affidavit. The information contained in this affidavit is based on my personal knowledge or on information provided to me, in which case I indicate the source and believe it to be true.
2. I was incarcerated at Ontario Correctional Institute from approximately February 21, 2012 to April 15, 2012.
3. During my time at Ontario Correctional Institute, I experienced lockdowns. Sometimes the lockdown lasted for up to two days.

4. When Ontario Correctional Institute was locked down, I asked the guards the reason for the lockdown. The guards told me that the lockdowns were in place because the facility was short-staffed.
5. During lockdown, inmates were confined to their dormitory area, but were permitted to attend a communal dining area in small groups.
6. When Ontario Correctional Institute was not locked down, we had daily access to the yard and to a gym. During staffing-related lockdowns, there was no yard or gym access.
7. When Ontario Correctional Institute was not locked down, inmates had access to programs. For example, I attended Narcotics Anonymous and Alcoholics Anonymous. During staffing-related lockdowns, no programming was available.
8. When Ontario Correctional Institute was not locked down, prisoners were permitted to have visitors. During staffing related lockdowns, visits were not permitted.
9. Lockdowns typically occurred without warning, explanation or the slightest indication of their probable length. No notice was given to family members or other visitors who had planned visits and many would attend (some traveling long distances) only to be told on arrival that visitation was cancelled due to a lockdown. The prison would not advise how long it was likely to last and therefore when the visitation could be rescheduled to.
10. I now see a psychologist for the Post-Traumatic Stress Disorder I suffer from, among other things, the lockdowns I experienced in Ontario Correctional Institute.

11. This affidavit is sworn in support of a motion for certification of the within proceeding and  
for no other or improper purpose.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario, on this  
27 day of February, 2017.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)  
Garth Myers.

  
\_\_\_\_\_  
Antonia Cefaratti

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

---

**AFFIDAVIT OF JEANNETTE TOSSOUNIAN**

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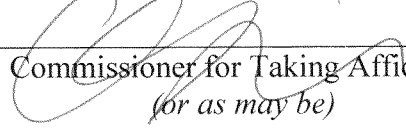
I, **Jeannette Tossounian**, of the City of Ottawa, **MAKE OATH AND SAY:**

1. I am a former inmate of Vanier Centre for Women ("**Vanier**") and a putative class member in this action and, as such, I have knowledge of the matters hereinafter deposed to in this my affidavit. The information contained in this affidavit is based on my personal knowledge or on information provided to me, in which case I indicate the source and believe it to be true.
2. I was incarcerated at Vanier from February 15, 2012 to November 21, 2013.
3. During my time at Vanier, I experienced lockdowns. During lockdowns, inmates are confined to their cells.
4. When Vanier was locked down, I asked the guards for the reason for the lockdown. Guards would typically respond that they were short-staffed.
5. Lockdowns at Vanier lasted up to five days.

6. Staffing-related lockdowns came without warning, and inmates were never advised how long the lockdown would be likely to last.
7. When Vanier was not locked down, I had access to a telephone, the television, and to showers. During staffing-related lockdowns, I was not permitted to use the telephone or to watch the television, and there was typically no access to showers.
8. When Vanier was not locked down, I participated in various programs. For example, I attended a financial management program. During staffing-related lockdowns, no programs were available.
9. When Vanier was not locked down, I had access to a book cart. During staffing-related lockdowns, there was no access to the book cart.
10. When Vanier was not locked down, I had access to the yard where I could get fresh air and sun. During staffing-related lockdowns, we were confined to our cells and there was no yard time and no fresh air.
11. When Vanier was not locked down, I attended a Christian service at chapel. During staffing-related lockdowns, chapel service was not available.
12. I am suffering from Post-Traumatic Stress Disorder as a result of, among other things, staffing-related lockdowns at Vanier. I also can no longer be in small spaces.
13. I believe staffing-related lockdowns are inhumane to prisoners.

14. This affidavit is sworn in support of a motion for certification of the within proceeding and  
for no other or improper purpose.

**SWORN BEFORE ME** at the City of  
Ottawa, in the Province of Ontario, on this  
28 day of February, 2017.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

  
\_\_\_\_\_  
**Jeannette Tossounian**

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

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**AFFIDAVIT OF DENIS ROBITAILLE**

---

I, **Denis Robitaille**, of the City of Ottawa, **MAKE OATH AND SAY:**

1. I am a former inmate at the Ottawa Carleton Detention Centre, the Central East Detention Centre and the Toronto South Detention Centre and a putative class member in this action and, as such, I have knowledge of the matters hereinafter deposed to in this my Affidavit. The information contained in this Affidavit is based on my personal knowledge or on information provided to me, in which case I indicate the source and believe it to be true.
2. I was incarcerated at the Ottawa Carleton Detention Centre on remand from on or about December 23, 2013 to June 2, 2014, again from October 13, 2014 to approximately February 24, 2015, and again while serving the last days of my sentence from on or about November 1, 2015 to November 6, 2015.

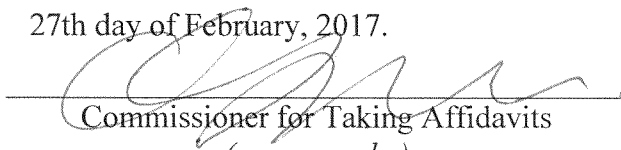
3. I was also incarcerated at the Central East Detention Centre in Lindsay, Ontario, serving my sentence from on or about February 24, 2015 to approximately October 31, 2015, with the exception of a period from September 29, 2015 to approximately October 9, 2015, when I was incarcerated at the Toronto South Detention Centre for my appeal.
4. During my time incarcerated in the detention centres listed above, I experienced many lockdowns. Sometimes the lockdown would only last for one day (or part of a day) but sometimes they lasted for several days. I can recall one time being locked down for approximately four days without being allowed to leave my cell for practically any purpose. I can recall other stretches where we would be in lockdown for at least part of the day for weeks at a time. I would estimate that the Ottawa and Lindsay detention centres were in lockdown more than half the time I was there.
5. During lockdowns, I was often locked in a cramped cell with another. During my last period of incarceration at the Ottawa Carleton Detention Centre in November 2015, the jail was in lockdown for almost my entire six-day stay and I was locked in a cell with two other inmates. In the November 2015 period, there was only a two-bed bunk so as the third inmate I was forced to sleep on the floor of the cell every night on a very thin mat, with my head by the toilet. I can recall occasions when one of my cell mates would have to go to the toilet after I was already laying down. I would sit up and move for the inmate to do his business, but I found this to be disgusting and demeaning.
6. During a lockdown, inmates are confined to their cells. Typically there is no access to the communal dining area, recreational areas, or visits from family and/or counsel. Programs to help inmates prepare for release into the general public are also unavailable during a lockdown.

Sometimes we would go a few days without showers, but when people complained the guards would organize “rotating” showers. This meant a few inmates at a time would be allowed to leave their cells and go to the shower. Usually, you would be given exactly five minutes, from the time your cell door opened until you were required to be back in your cell. Realistically, this meant showers would only be for two to three minutes.

7. While on lockdown, inmates would have their meals and use the toilet in their cells. When I was double or triple bunked in a cramped cell, this was particularly unpleasant. Eating and defecating in such close quarters with strangers was the most degrading experience of my life.
8. It is my understanding that inmates are supposed to be outside for fresh air every day in “yard time”. However, I was given yard time very rarely during my incarceration due to full or partial lockdowns. During my several months of incarceration at the Ottawa Carleton Detention Centre, I can only recall three or four occasions when I was given yard time, or less than once per month. While at the Central East Detention Centre in Lindsay, I can only recall four or five occasions where I was offered yard time.
9. Lockdowns typically occurred without warning or the slightest indication of their probable duration. Usually we would learn the reason for the lockdown from the “cleaners” – inmates who were allowed to leave their cells to work and clean the institution – and on other occasions from the guards themselves. There were a few instances where the lockdown was due to some type of security issue, but overwhelmingly the most common reason for the lockdown was staffing shortages. In some cases it was because there were not enough “blue shirts” (regular guards), and on other occasions it was because a “white shirt” (supervisor) was unavailable for work that day.

10. No notice was given to family members who had planned visits and many would attend (some coming from long distances) only to be told on arrival that visitation was cancelled due to a lockdown and the prison would not advise how long it was likely to last and therefore when the visitation could be rescheduled to. My mother is disabled and travels in a wheelchair. It is very difficult for her to get to the Ottawa detention centre on Innes Road. It was very demoralizing and stressful for both of us when she showed up at the jail only to find out that her pre-scheduled visit with me was cancelled. Prison is often hostile, monotonous and stressful, and many inmates really look forward to these family visits. When they are cancelled at the last minute it can be very upsetting, particularly when one is also confined in the difficult conditions of a lockdown described above.
11. In addition to the stress and degrading conditions, I found the most dangerous time in jail was in the first hour or two after a lockdown. A variety of stresses, disagreements, debts and grudges only seemed to build during lockdowns, and as soon as inmates were released from their cells fights and assaults were very common.
12. This Affidavit is sworn in support of a Motion for Certification of the within proceeding and for no other or improper purpose.

**SWORN BEFORE ME** at the City of  
Ottawa, in the Province of Ontario, on this  
27th day of February, 2017.

  
Commissioner for Taking Affidavits  
(or as may be)

  
**DENIS ROBITAILLE**

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

*Proceeding under the Class Proceedings Act, 1992*

---

**AFFIDAVIT OF BIAGGIO DONOVAN**

---

I, Biaggio Donovan, of the City of Thunder Bay Ontario, **MAKE OATH AND SAY:**

1. I am a former inmate at the Thunder Bay District Jail and a putative class member in this action and, as such, I have knowledge of the matters hereinafter deposed to in this my Affidavit. The information contained in this Affidavit is based on my personal knowledge or on information provided to me, in which case I indicate the source and believe it to be true.
2. I was incarcerated at the Thunder Bay District Jail on a many occasions during the last 10 years.
3. During my time in the Thunder Bay District Jail, I experienced many lockdowns. Sometimes the lockdown would only last for one day (or part of a day) but sometimes they lasted for several days. I can recall one time being locked down for approximately 20 days one month.

I estimate that Thunder Bay District Jail was in lockdown approximately 40 - 50% of the time I was there.

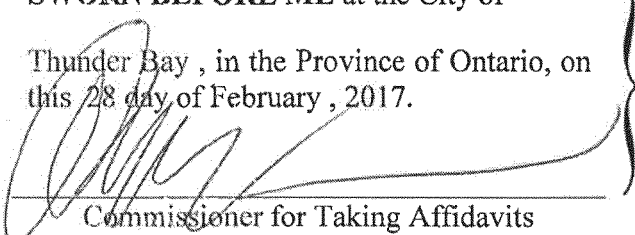
4. I was not aware of any reason other than staffing shortages which could be the cause of most of the lockdowns.
5. The tensions created by lockdowns were terrible.
6. I was often locked in a cramped cell with 2 or more other inmates. Some inmates had to sleep on the floor because the facility was so overcrowded that there were not enough beds for everyone. This caused a great deal of tension between the inmates and placed me at risk due to the tension and no place to retreat to or get help.
7. During a lockdown, inmates are confined to their cells. Typically there is no access to showers, the communal dining area, fresh air, or visits from family and counsel. Programs to help inmates prepare for release into the general public are also unavailable during a lockdown. Laundry is not done during a lockdown and the cells accumulate filth. It also put a great deal of tension amongst the inmates and between inmates' and guards.
8. The lockdowns typically occurred without warning, explanation or the slightest indication of their probable duration. Similarly, no notice was given to family members who had planned visits and many would attend (some traveling long distances) only to be told on arrival that visitation was cancelled due to a lockdown and the prison would not advise how long it was likely to last and therefore when the visitation could be rescheduled to.

9. I suffer a great deal from the lockdown experience and the things that happened as a result of the "lockdowns". As a result of this, I suffer from depression and have bad memories of my time at Thunder Bay District Jail every day.

10. This Affidavit is sworn in support of a Motion for Certification of the within proceeding and for no other or improper purpose.

**SWORN BEFORE ME** at the City of

Thunder Bay , in the Province of Ontario, on  
this 28 day of February , 2017.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

  
\_\_\_\_\_  
**BIAGGIO DONOVAN**

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN :

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

---

**AFFIDAVIT OF TIMOTHY HAYNE**

---

I, Timothy Hayne, of the Town of Watford, Ontario, **MAKE OATH AND SAY:**

1. I am a former inmate at the Central East Detention Centre, the Toronto East Detention Centre, the Toronto West Detention Centre, Hamilton Wentworth Detention Centre, Maplehurst Detention Centre, Elgin Middlesex Detention Centre and the former Mimico Correctional Centre as well as brief visits to other detention centres in Ontario. I am a putative class member in this action and, as such, I have knowledge of the matters hereinafter deposed to in this my Affidavit. The information contained in this Affidavit is based on my personal knowledge or on information provided to me, in which case I indicate the source and believe it to be true.
2. I was first incarcerated in Ontario in or about 1985. I was incarcerated at various times in the detention centres indicated above between 2004 and 2016. I am unsure of the specific dates but believe the following to be accurate in regard to when I was incarcerated in various

institutions : Mimico Correctional Centre in or about 2004; Central East Detention Centre and Toronto East Detention Centre in or about 2007; Toronto West Detention Centre in or about 2010. I was in the previous Maplehurst Detention Centre before it was rebuilt and the newer Maplehurst in or about 2005. I have spent extensive periods of time in Elgin Middlesex Detention Centre beginning in or about 1985 at intervals up until 2016.

3. During my time in the detention centres listed above, I experienced many lockdowns. Sometimes the lockdown would only last for one day (or part of a day) but sometimes they lasted for several days extending into weeks. I can recall one time being locked down for approximately 14 days while in Central East Detention Centre. The lockdowns were very frequent and came without any prior notice.
4. I was often locked in a cramped cell with 2 or more other inmates. Some inmates had to sleep on the floor because the facilities were so overcrowded; there were not enough beds for everyone.
5. During a lockdown, inmates are confined to their cells. Typically there is no access to showers, the communal area, fresh air, or visits from family and/or counsel. Programs to help inmates prepare for release into the general public are also unavailable during a lockdown. Laundry is not done during a lockdown and the cells accumulate filth.
6. The lockdowns typically occurred without warning, explanation or the slightest indication of their probable duration. Similarly, no notice was given to family members who had planned visits and many would attend after traveling long distances only to be told on arrival that visitation was cancelled due to a lockdown and the prison would not advise how long it was likely to last and therefore when the visitation could be rescheduled to. I was not aware of

any reason other than being told that there were staffing shortages as the cause of most of the lockdowns.

7. This Affidavit is sworn in support of a Motion for Certification of the within proceeding and for no other or improper purpose.

**SWORN BEFORE ME** at the Town of  
Watford, in the Province of Ontario, on this  
2nd day of March, 2017.

Chelsea Smith  
Commissioner for Taking Affidavits

Timothy Hayne  
Timothy Hayne

**Chelsea Erin Smith, a Commissioner, etc.,**  
Province of Ontario, while a Student-at-Law.  
Expires June 29, 2019.

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

---

**AFFIDAVIT OF SHAHEED ALI**

---

I, **Shaheed Ali**, of the City of Toronto, **MAKE OATH AND SAY:**

1. I am a former inmate at the Don Jail, Central North Correction Centre, and Toronto East Detention Centre and a putative class member in this action and, as such, I have knowledge of the matters hereinafter deposed to in this my Affidavit. The information contained in this Affidavit is based on my personal knowledge or on information provided to me, in which case I indicate the source and believe it to be true.

**The Don Jail**

2. I was incarcerated in the Don Jail in or around July 7, 2001 to February 15, 2002, September 2002 to March 2003 and at various times July 2006, and again from March to April of 2010.
3. During my time in the Don Jail, I experienced many lockdowns. Sometimes the lockdown would only last for one day (or part of a day) but sometimes they lasted for several days. I

can recall one time being locked down for approximately five days. I estimate that the Don Jail was in lockdown approximately 20% of the time I was there.

4. I was often locked in a cramped cell with 2 inmates. Some inmates had to sleep on the floor because the facility was so overcrowded, there were not enough beds for everyone.

### **Central North Correctional Centre**

5. I was incarcerated in Central North Correction Centre in or around 2004 and 2005. I was incarcerated in Central North Correction Centre for several months.
6. During my time in the Central North, I experienced many lockdowns. Sometimes the lockdown would only last for one day (or part of a day) but sometimes they lasted for up to three days.
7. I estimate that the Central North was in lockdown approximately 15% of the time I was there.

### **Toronto East Detention Centre**

8. I was incarcerated in Toronto East Detention Centre in or around June 2010 to February 2011.
9. During my time in the Toronto East Detention Centre, I experienced many lockdowns. Sometimes the lockdown would only last for one day (or part of a day) but sometimes they lasted for up to five days.
10. I estimate that the Toronto East Detention Centre was in lockdown approximately 10-20% of the time I was there.

### **Lockdowns at the Don Jail, Central North Correctional Centre, and Toronto East Detention Centre**

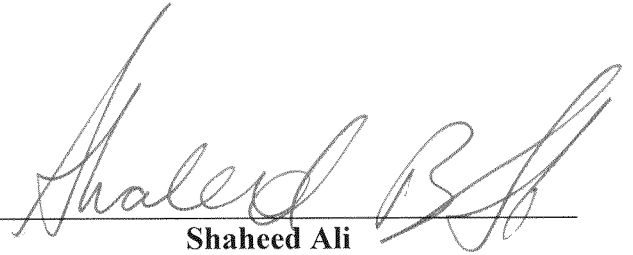
11. During a lockdown, inmates are confined to their cells. Typically there is no access to showers, the communal dining area, fresh air, or visits from family and generally no visits from counsel. Programs to help inmates prepare for release into the general public are also unavailable during a lockdown. Laundry is not done during a lockdown and the cells accumulate filth.
12. The lockdowns typically occurred without warning, explanation or the slightest indication of their probable duration. Similarly, no notice was given to family members who had planned visits and many would attend (some traveling long distances) only to be told on arrival that visitation was cancelled due to a lockdown and the prison would not advise how long it was likely to last and therefore when the visitation could be rescheduled to.
13. When we asked guards for the reasons for the lockdowns at the Don Jail, Central North Correction Centre, and Toronto East Detention Centre, they typically told us the lockdowns were caused by staffing shortages.

14. This affidavit is sworn in support of a Motion for Certification of the within proceeding and  
for no other or improper purpose.

**SWORN BEFORE ME** at the City of  
Shaheed Ali, in the Province of Ontario, on  
this 2<sup>nd</sup> day of March, 2017.



Commissioner for Taking Affidavits  
(or as may be)



**Shaheed Ali**

**Patia Boulos, a Commissioner, etc.,**  
**Prothonotary of Ontario,**  
**Notary Public at-Law.**  
**Expires August 22, 2019.**

Court File No.: CV-16-558633-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
 and GREGORY SMITH

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO  
 Defendant


Proceeding under the *Class Proceedings Act*, 1992

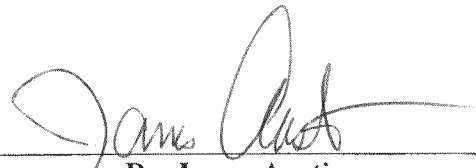
**AFFIDAVIT OF DR. JAMES AUSTIN**  
**(Sworn March 01, 2017)**

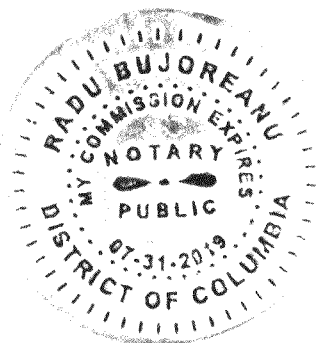
I, **Dr. James Austin**, of the City of Malibu in the District of California., **MAKE OATH**  
**AND SAY:**

1. I have been retained by Koskie Minsky LLP on behalf of their clients in this proceeding.
2. A copy of my report is attached as **Exhibit "A"**. A copy of my curriculum vitae is attached as an appendix to my report.
3. Attached as **Exhibit "B"** is a copy of my Acknowledgement of Expert's Duty.

SWORN BEFORE ME at the City of Washington,  
 in the District of Columbia this 01 day of  
 March, 2017.

  
 A Commissioner for taking Affidavits (or as may be)

  
**Dr. James Austin**



District of Columbia: SS  
 Subscribed and Sworn to before me  
 This 01 day of March 2017

  
 Radu Bujoreanu  
 Notary Public, D.C.  
 My Commission Expires July 31, 2019

*THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF DR. JAMES AUSTIN  
SWORN BEFORE ME, THIS 1<sup>ST</sup> DAY OF MARCH, 2017*



---

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*



# **The Use of Prison Lockdowns and Its Impact on the Ontario Correctional System**

Prepared by

James Austin, Ph.D.  
The JFA Institute

## Background

1. The Ontario Ministry of Community Safety and Correctional Services (MCSCS) operates numerous facilities that consist of correctional centres, detention centres, jails and treatment centers. A number of facilities have opened and closed since 2000. The subject of this report is the correctional centres that have been experiencing major periods of “lockdown” solely due to staff shortages.

2. There have been concerns raised that the MCSCS is excessively using lockdowns to manage its prisoner population. I have been asked to assume that under current MCSCS policies, whenever there is a “shortage of staff” at a correctional facility, a lockdown is imposed until such time that the staff shortage no longer exists. According to a news report, there were 678 lockdowns in the MCSCS facilities between April 1, 2013 and March 31, 2014.<sup>1</sup>

3. Staff shortages that result in frequent and lengthy prison lock-downs are unheard of in the United States. In the course of preparing this report, I have investigated a large number of state prison and large jail systems in the United States. None of them have frequent and lengthy prison lockdowns that are caused by staff shortages.

4. In this report I examine the historical use of prison lockdowns and their consequences on inmate, staff and public safety.

## Qualifications

5. I am currently the President of the JFA Institute, a position I have held since 2003. I have previously served as the Director of the Institute of Crime, Justice and Corrections at the George Washington University (1999 to 2003); and as the Executive Vice President for the National Council on Crime and Delinquency (1982 – 1998). From 1970 – 1975 I was employed by the Illinois Department of Corrections at the Stateville and Joliet prisons as a correctional sociologist. I received my Ph.D. in sociology from the University of California, at Davis.

6. I have implemented inmate classification systems for juvenile and adult custody in over 30 local and state correctional systems. I have also collaborated with corrections officials in Ohio, Mississippi, Colorado, Georgia, Illinois and New York to reduce the number of prisoners assigned to administrative segregation.

7. I continue to serve as an expert in the *Plata et al., v. Brown* case where the California prison population has been safely and significantly reduced by over 40,000 prisoners. My opinions in that matter were cited by the three- judge panel and U.S. Supreme Court’s decision to affirm the three-judge court depopulation order.

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<sup>1</sup> <http://globalnews.ca/news/1545818/ontarios-short-staffed-jails-face-chronic-lockdowns/>

8. I have served as the project director of the corrections options technical assistance program of the Bureau of Justice Assistance (BJA), an arm of the US Department of Justice that provides a wide variety of assistance to local jails, probation, parole, and prison systems. I directed two BJA projects that focused on juveniles in adult correctional facilities and a national assessment of adult and juvenile private correctional facilities.

9. In 1991, I was named by the American Correctional Association as its recipient of the Peter P. Lejin's Research Award. In 1999, I received the Western Society of Criminology Paul Tappin award for outstanding contributions in the field of criminology. In 2009 I was the Recipient of the Marguerite Q. Warren and Ted B. Palmer Differential Intervention Award, American Society of Criminology, Corrections and Sentencing Division.

10. I served as the Chair of the National Policy Council for the American Society of Criminology. In 2007 I was appointed to the California Department of Corrections and Rehabilitation Expert Panel on Adult Offender Recidivism Reduction Programs.

## **The Use of Prison Lockdowns in the United States**

11. A lockdown in a correctional facility in the United States is used when there is a significant security threat to the overall safety of staff and inmates at a specific facility. As such a lockdown is an *exceptional and extreme security measure* taken by a correctional agency to gain control over a prison or housing unit.

12. Under most circumstances, such lock-downs are of a short duration (a few hours or days) until the nature of the threat can be identified and neutralized. Typical rationales for ordering a lock-down are as follows:

- a. Response to a major incident involving multiple inmates and staff;
- b. Sweep of housing units and work areas in search of contraband and weapons;
- c. Intelligence of planned escape or violence against staff or inmates; and
- d. Identification of communicable disease.

13. From 1970 to 2000, there was a frequent use of lockdowns as the U.S. prison population rose from about 200,000 to over 1.5 million people. The use of lock downs was a result of severe prison crowding as the state and federal governments sought to keep pace with the rapidly rising prison population. But as the prison populations have stabilized and actually begun to decline, there has been a decline in the use of lock-downs. A review of the number of publicized lock-downs that have occurred in the United States since 2014 shows they have been limited to only a few state correctional facilities in the U.S. (New York, Georgia, Delaware, Illinois, Oregon, Utah, Wisconsin, and Mississippi).<sup>2</sup>

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<sup>2</sup> <https://www.correctionsone.com/lockdown/>

14. In all of these instances listed above, the lock-downs the circumstances that triggered the lockdown were addressed. None occurred as the sole result of staff shortages. Repeated or frequent use of lockdowns would suggest that the situation has not been addressed and that the factors that triggered the security threat were not resolved. In essence the facility is out of control.

15. There are a number of practices that serve to restrict the use of lockdowns in the United States which can be summarized as follows:

- a. *Lockdowns are generally limited to maximum security prisons or housing units.*

Assuming the agency has a well functioning classification system, the use of lock-downs is not used for medium and minimum security facilities as those places are housed by inmates who pose no major security threat.

- b. *Staff shortages cannot be used as a sole justification for a lockdown.*

While an insufficient number of staff may contribute to a temporarily dangerous situation that results in a lock-down, such shortages do not by themselves justify such an extreme action. In the United States, staff shortages are dealt with by authorizing over-time and/or reducing some inmate activities for some portion of the prison population. If staff shortages persist, then the operational capacity of the prison is reduced which in turn reduces the prison population to an acceptable level.

- c. *Prison lockdowns may only impact certain portions or segments of the prison population.*

To the extent possible, prison lock-downs should be limited to only those housing units within the prison where there is a credible threat to staff and inmate safety. For example, inmates on work details, maintenance work, assigned to rehabilitative programs are allowed to continue in such services.

## **Consequences of Widespread and Frequent Lock-Downs**

16. There are a number of negative consequences for staff, inmates, and society that are associated with the frequent and unnecessary use of lockdowns.

- a. *Deprivation of basic prisoner rights and freedoms*

When an entire prison is locked down, a large number (typically the vast majority) of the prison population is denied basic rights and freedoms. In a lockdown situation, all inmates are treated as if they have been assigned to an administrative segregation unit where one is confined to his/her cell 24 hours a day. Such cells are not designed for people to be confined to them for 24 hours per day. There is no access to recreation, showers, telephones, family visits, and

other basic services. Inmates are fed in their cells which adds to unsanitary housing conditions.

*b. Interruption in the participation in rehabilitative programs*

When a lockdown is imposed, prisoners who are participating in risk reduction programs (e.g., education, substance abuse treatment, etc.) are unable to continue in structured classes and curriculums. If the lock-downs are either lengthy and/or persistent, the ability of the prisoner to complete the required course work or classes is impaired which in turn adversely impacts the quality of the programs.

*c. Increases Length of Stay for Sentenced Inmates*

In the United States, assignment to work programs and rehabilitative programs results in good time credits being awarded to prisoners which in turn reduces a prisoner's length of stay (LOS) in prison. The frequent use of prison lock-downs will serve to reduce the amount of good-time credits earned by inmates, which in turn increases their LOS which then increases the prison population and the need for additional staff and bed capacity.

*d. Increases Mental Health Illnesses*

A significant number of prisoners suffer from acute or mild (e.g., depression, anxiety, etc.) mental illnesses. Confining such people to their cells for frequent and/or lengthy periods of time can only serve to worsen their mental health conditions.

*e. Negates Positive Relationships Between Staff and Inmates*

In a lock-down situation, the normal day to day interactions between staff and inmates in housing units, work assignments, recreation yards, dining halls, and rehabilitative programs are interrupted and adversely effected. A lockdown is a massive form of punishment that is imposed on the largely law abiding prison population for reasons that are not related to inmate misconduct. Understandably, prisoners are upset for the reasons stated above. Tensions and frustrations mount with much of the anger directed that those staff who are and will continue to be in daily contact with the inmates once the lockdown is lifted. Rather than improving prison safety, frequent and unwarranted use of lockdowns will serve to worsen prisoner and staff safety.

*f. Increases Recidivism Rates and Risk to Public Safety*

If a correctional system increasingly relies upon prison lock-downs to manage its prison population, there is an associated risk that recidivism rates and public safety will be adversely impacted. Higher numbers of prisoners will be released from that system in worse shape than when they were admitted. Whatever

positive effects that rehabilitative and meaningful work programs would have had will be diminished. Family visitation and contacts, which are also associated with lower recidivism rates, will also be compromised. The mental health conditions of many inmates will either worsen or remain untreated. Collectively, frequent use of prison lock-downs will only serve to increase the risk to public safety.

## **Conclusion**

17. Prison lockdowns represent an extreme and rare security action by prison officials to control an immediate and significant security threat to the entire prison population and its staff. They are not to be used to only address a shortage of security staff. Frequent use of prison lockdowns for such purposes will serve to exacerbate tensions between staff and inmates, and, among inmates. In the long run, they will serve to worsen inmate and staff safety. Frequent use of lockdowns will also negatively impact the conditions of confinement and interrupt prisoner access to and the impact of rehabilitative programs. Consequently, recidivism rates will be adversely impacted thus increasing the risk to public safety.

## APPENDIX "A"

### James Austin

#### MAJOR POSITIONS HELD

2003 – Present	<i>President, The JFA Institute, Washington, D.C.</i>
1999 -2003	<i>Research Professor and Director, Institute for Crime, Justice, and Corrections, Department of Sociology, The George Washington University, Washington, D.C.</i>
1982 - 1998	<i>Executive Vice President National Council on Crime and Delinquency San Francisco and Washington, D.C.</i>
1974 - 1982	<i>Research Associate National Council on Crime and Delinquency San Francisco</i>
1970 - 1974	<i>Correctional Sociologist Illinois Department of Corrections Joliet, Illinois</i>

#### EDUCATION

B.A.	1970, Wheaton College, Wheaton, Illinois, Sociology
M.A.	1975, De Paul University, Chicago, Illinois, Sociology
Ph.D.	1980, University of California, Davis, California, Sociology

#### RELEVANT PROFESSIONAL EXPERIENCE

2016 – present	Evaluation and Design of Objective Jail Classification System, Santa Clara County, CA.
2016 – present	Evaluation of Sacramento County, CA Criminal Justice System and Inmate Classification System

2012 - present	Orleans Parish Prison Population Projections and Jail Reduction Strategic Plan.
2014 - 2015	Master Jail Plan, Sonoma County (with Carter Goble Lee).
2011 – present	Monitor, Consent Decree, Walnut Group Correctional Facility, Mississippi Department of Corrections (adult and juvenile populations)
2014 - 2016	Validation study of the San Francisco Adult Probation Risk and Needs Assessment System (COMPAS), San Francisco County.
2010 – 2014	Consultant. Technical Assistance on Solitary Confinement in Maryland, New Mexico, and Illinois. Vera Institute.
2011 – 2015	Director, Los Angeles County Sheriff Jail Population Projections and Impact of AB 109. Funded by Public Welfare Foundation.
2005 – 2014	Director, Design and Evaluation of the Maryland Department of Public Safety and Corrections (MDPSC) Risk and Case Management System (Parole, Probation and Prison). MDPSC and Open Society Foundation.
2013-2014	Evaluation of the Contra Costa Probation Department's Response to AB 109- Realignment.
2012-2013	Evaluation of Alternatives to Incarceration, San Diego County.
2012 – 2013	Evaluation of the Short-Term Technical Violation Pilot Study. U.S. Parole Commission.
2012	Co-Director. Evaluation of the Oklahoma Administrative Segregation System. Oklahoma Department of Corrections.
2011 - 2012	Consultant. Study of Colorado Administrative Segregation System. Colorado Department of Corrections and National Institute of Corrections, U.S. Department of Justice.

2010 – 2011	Co-Director, Revalidation of the Texas Pardon and Parole Board System. Texas Pardon and Parole Board.
2009 – 2012	Director, Prison Population-Justice Re-investment Initiative. Pew Charitable Trusts.
2010 – 2011	Special Consultant, Jail Population Projection Study, US Department of Justice and Orleans Parish.
2008 – 2009	Special Consultant, Administrative Segregation/Super Max Parchment Study. Mississippi Department of Corrections and ACLU
1998 – 2011	<i>Director</i> , Correctional Options Program (Bureau of Justice Assistance, U.S. Department of Justice)
2007 – 2008	Director, Harris County Pretrial Services Re-Validation Risk Assessment Study. (Harris County, Texas).
2005 – 2008	Director, Montgomery Pretrial Services Risk Assessment Validation Study. (Bureau of Justice Assistance, U.S. Department of Justice).
2003 – 2006	<i>Director</i> , Assessment of Sexual Assault in the Texas Prison System. (National Institute of Justice).
2002 – 2006	<i>Director</i> , Parole Guidelines System Project, Maryland Parole Commission. (Baltimore Open Society Institute).
2003 – 2006	<i>Director</i> , Validation Study of the Alameda County Juvenile Detention Risk Assessment System (Alameda County, California).
2002—2006	<i>Independent Expert</i> , Office of Youth Development, Louisiana Department of Public Safety and Corrections, Jointly Appointed by State of Louisiana and U.S. Department of Justice, Civil Rights Division
2003-2004	<i>Director</i> , Evaluation And Redesign Of Systems For Berks County Pretrial And Sentenced Populations. (Berks County, PA).

2002 – 2003	<i>Director</i> , Validation of the Pennsylvania Parole Guidelines. Pennsylvania Board of Probation and Parole. (Pennsylvania Commission on Crime and Delinquency).
2001 – 2003	<i>Director</i> , Development of the Kentucky Parole Risk Assessment System. Kentucky Parole and Pardon Board.
1998 – 2004	<i>Monitor</i> , Georgia Juvenile Justice Corrections System, Jointly Appointed by State of Georgia and U.S. Department of Justice, Civil Rights Division.
1997 - 2002	<i>Director</i> , National Technical Assistance Program for External Prison Classification Systems (Oregon, Wisconsin, Virginia, Tennessee, Texas, Oklahoma, and Montana) (National Institute of Corrections)
1996 - 2002	<i>Director</i> , National Technical Assistance Program for Internal Prison Classification Systems (Washington State, Oregon, Missouri, South Dakota, Connecticut, Colorado, and Florida)
1996 - 1999	<i>Director</i> , National Survey of Juveniles in Adult Correctional Facilities (Bureau of Justice Assistance), GWU.
1996 - 1999	<i>Director</i> , National Multi-Site Boot Camp Evaluation (Adult and Juvenile) (National Institute of Justice), GWU.
1995 - 1999	<i>Director</i> , Evaluation of "Three Strikes and You're Out" Laws in California and Nationally, (National Institute of Justice), NCCD
1996 - 1999	<i>Director</i> , National Survey of Privatization in Corrections (adult and juvenile facilities) (Bureau of Justice Assistance), NCCD.
1992 - 1997	<i>Director</i> , Correctional Options Evaluation (National Institute of Justice and Bureau of Justice Assistance), NCCD
1997	<i>Director</i> , Congressionally mandated evaluation of the D.C. Department of Youth Services Agency (YSA)

	operations, classification system, staffing levels, physical plant, mental health, information services and program services, (National Institute of Corrections, Bureau of Prisons), NCCD
1992 - 1997	<i>Director</i> , National Structured Sentencing Evaluation (Bureau of Justice Assistance), NCCD
1995 - 1997	<i>Director</i> , Congressionally mandated evaluation of the D.C. Department of Corrections operations, classification system, staffing levels, and physical plant, including, comprehensive cost analysis of long-term options for the Lorton Complex, (National Institute of Corrections, Bureau of Prisons), NCCD
1991 - 1997	<i>Director</i> , Design and Implementation of the New York City Department of Corrections Objective Jail Classification System (Consent Decree, New York City Department of Corrections), NCCD
1991 - 1995	<i>Director</i> , Philadelphia Prison System Classification and Population Projections Project (Consent Decree, City of Philadelphia), NCCD
1991 - 1994	<i>Director</i> , Evaluation of Jail Drug Treatment Programs (National Institute of Justice), NCCD
1990 - 1993	<i>Director</i> , Evaluation of the Los Angeles Sheriff's Boot Camp Program (National Institute of Justice), NCCD
1991 - 1993	<i>Director</i> , Design and Implementation of the Cook County Objective Jail Classification System (Cook County Sheriff's Department), NCCD
1990 - 1991	<i>Director</i> , California Assessment of the Overrepresentation of Minority Youth in Juvenile Justice (Office of Criminal Justice Planning), NCCD
1988 - 1992	<i>Director</i> , Experimental Test of Electronic Monitoring Program, Oklahoma Department of Corrections (National Institute of Justice), NCCD
1987 - 1992	<i>Director</i> , Experimental Test of the Prison Management Classification System (National Institute of Corrections and Washington Department of Corrections), NCCD

1986 - 1990	<i>Director</i> , National Jail Classification Project (NIC), NCCD
1985 - 1987	<i>Co-Director</i> , California Youth Authority Parole Risk Study (Packard Foundation and CYA), NCCD
1984 - 1986	<i>Co-Director</i> , Study of Institutional Violence at San Quentin (Consent Decree, California Department of Corrections, NCCD
1982 - 1987	<i>Co-Director</i> , Experimental Study of Juvenile Court Probation Services, Salt Lake City, Utah (OJJDP), NCCD
1983 - 1985	<i>Co-Director</i> , Illinois Department of Corrections Early Release Evaluation (NIJ), NCCD
1980 - 1984	<i>Co-Director</i> , Supervised Pretrial Release Test Program (NIJ/LEAA), NCCD
1981 - 1983	<i>Co-Director</i> , Evaluation of California AB2 Bail Reform Act (OCJP), NCCD
1980	<i>Senior Research Associate</i> , California Alternatives to Incarceration Study (State Legislature), NCCD

## SPECIAL APPOINTMENTS

2006 – 2007	Expert Panel on Adult Offender and Recidivism Reduction Programming, California Department of Corrections and Rehabilitation
2003	Advisory Committee, The Little Hoover Commission Report on California Prison System
1999- 2003	Chair, National Policy Committee, American Society of Criminology
1987 - 1994	Trustee, Robert Presley Institute of Corrections Research and Training
1991	Governor's Task Force on Prison Crowding, State of Nevada

- 1988 Governor's Task Force on Corrections, State of Oregon
- 1981, 1986 National Academy of Sciences, National Panels on Sentencing and Prison Overcrowding

## EXPERT WITNESS/LITIGATION

- 1987 - 1989 Office of the Special Masters, Ruiz v. Lynaugh, Evaluation of the TDC Classification System and Inmate Violence
- Appointed by Court to produce evaluation report of classification system to determine if inmate violence had been reduced.
- 1989 - 1991 U.S. Department of Justice, Civil Rights Division, U.S. v. State of Florida: Florida Department of Corrections, et al., Case No. TCA 86-7330 (N.D. Fla)
- Expert Witness Retained by Plaintiffs to determine whether women should be excluded from certain post positions in the DOC.
- 1990 - 1991 King County (Seattle, Washington) District Attorney's Office, Hammer v. King County
- Expert Witness Retained by Defendants to determine if minority staff was being discriminated against.
- 1990 - 1991 Office of the Attorney General, State of Texas, Lamar v. Collins
- Expert Witness Retained by Defendants to determine if use of local incarceration rates by selected counties was appropriate.
- 1991 Office of the Attorney General, State of Texas, Alberti v. Sheriff of Harris County, et al., No. CA-H-72-1094
- Expert Witness Retained by Defendants to determine if use of local incarceration rates by selected counties was appropriate.

- 1991 - 1992      U.S. Department of Justice, Civil Rights Division, U.S. v. The Parish of Orleans Criminal Sheriff's Office
- Expert Witness Retained by Plaintiffs to determine the appropriateness of excluding females from certain post positions within the jail.
- 1991 - 1994      Calvin R. vs. Illinois Department of Corrections. Consent Decree.
- Appointed by Court to produce evaluation of classification system and to implement internal classification system to reduce inmate violence.
- 1995      International Fidelity Insurance Co. et al. v. Charles Nobel et al: In the United States District Court of the Southern District of Texas, Houston Division.
- Expert Witness Retained by Defendants to determine the Failure to Appear rates for defendants released on surety bond versus O.R.
- 1995      Sandra Herrera, et al., v Pierce County, et al.
- Retained by Plaintiffs to evaluate whether inmates were being properly classified and housed in the local jail.
- 1995 - 1996      Montoya v. Gunter, et al.
- Retained by Defendants to determine whether inmate who was killed while incarcerated had been properly classified and housed.
- 1995 - 1997      Inmates A,B,C and D v. Illinois Department of Corrections  
Consent Decree
- Appointed by Court to produce evaluation of the level of control of housing and job assignments by gangs.

1995 - 2002	<p><u>USA v. Michigan and Cain v. Michigan Consent Decrees</u></p> <p>Expert witness retained by Defendants to help Department of Corrections reach compliance with court order regarding classification system.</p>
1996	<p><u>Rentschler v. Carnahan et al.</u></p> <p>Retained by Defendants to evaluate the impact of crowding at the Colorado maximum security prison.</p>
1997	<p><u>Carlos Morales Feliciano v. Pedro Rossello Gonzales Consent Decree</u></p> <p>Retained by Special Master to conduct a comprehensive assessment of the inmate classification system that was designed and partially implemented by the Administration of Corrections.</p>
1998 - 1999	<p><u>Southern Ohio Correctional Facility (Civil Action No. C-1-93-436).</u></p> <p>Retained by the Ohio Department of Rehabilitation and Correction to serve as an expert witness on classification issues as they pertain to the Lucasville riot.</p>
1998 - 1999	<p><u>Busey et al. v. Corrections Corporation of America</u></p> <p>Retained by CCA to develop an objective classification system for the Youngstown facility and have all inmate's properly classified according to the classification criteria. No expert report, deposition or court testimony.</p>
1998 - 2000	<p><u>Holloway, et al., v. King County</u></p> <p>Retained by plaintiff's counsel to examine the validity of client's claims that sexual harassment of female correctional officers by male inmates was being encouraged by male correctional officers and departmental policy. Declaration and deposition.</p>

2001	<u>Gartrell et al., v. Ashcroft et al.</u>  Retained by plaintiffs to examine if BOP inmates placed in Virginia Department of Corrections are unnecessarily having their expression of religious freedoms unnecessarily restricted? Report submitted but no deposition or court testimony.
2001 - 2005	<u>Austin, et al., v. Wilkinson, et al.</u>  Retained by defendants to examine the classification process used to assign inmates to the Ohio State Penitentiary – a high maximum security prison. Expert report but no deposition or testimony.
2008- present	<u>Plato and Coleman v. Schwarzenegger.</u>  Retained by plaintiffs to develop plan to depopulate the California Prison Population. Reports submitted and deposed by defendants, two expert reports submitted and court testimony.
2013 - 2014	<u>Coleman v. Brown</u>  Expert declaration, deposition and court testimony in support of plaintiff's motion regarding mentally ill inmates in segregation.
2012	<u>Louis Henderson, et al., v. Kim Thomas</u>  Expert declaration and testimony on behalf of plaintiffs on the appropriateness of segregating inmates based on HIV status (Alabama). Court ruled in favor of plaintiffs.
2016	<u>Mark Duke, et al., vs. Jefferson S. Dunn</u>  Expert declaration on behalf of plaintiffs on proper classification of inmates at the St. Clair prison facility (Alabama). Case pending.

2010 – present

Ollie Caruthers, et al., vs. Al Lamberti, et al.

Appointed population management expert to evaluation factors impacting the Broward County Jail population.

## MAJOR PUBLICATIONS

### **Books**

- 2011 It's About Time: America's Imprisonment Binge (with John Irwin), 4<sup>th</sup> Edition, Cengage, Publishing.
- 1993 Reinventing Juvenile Justice (with Barry Krisberg), Beverly Hills, CA: Sage Publications.
- 1978 The Children of Ishmael: Critical Perspectives on Juvenile Justice (with Barry Krisberg),

### **Articles**

- 2010 "Reducing America's Correctional Populations", 2001. Justice Research and Policy, Vol, 12, No. 1, pp,1-32.
- 2009 "Prisons and the Fear of Terrorism." August 2009. Criminology and Public Policy. Vol., Issue 3: 641-649.
- 2009 "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs." 2009. Criminal Justice and Behavior. Vol. 36, No. 10: 1025-1037.
- 2006 "How Much Risk Can We Take? The Misuse of Risk Assessment in Corrections." 2006. Federal Probation. Vol. 70, No. 2: 58-63.
- 2004 Richards, Stephen C., James Austin, and Richard S. Jones. 2004. "Thinking About Prison Release and Budget Crisis in the Blue Grass State." Critical Criminology: An International Journal, Vol. 12, No.3: 243-263.

- 2004 Richards, Stephen C., James Austin, and Richard S. Jones. 2004. "Kentucky's Perpetual Prisoner Machine: It's All about Money." Review of Policy Research, Vol. 24, No. 1 (at press).
- 2003 "Why Criminology Is Irrelevant", Criminology and Public Policy, Vol. 2, No.3: 557-564
- 2003 "Three Strikes Laws", in Current Controversies in Criminology, Ronald Weitzer, ed., Prentice Hall: Upper Saddle River, NJ.
- 2003 "The Use of Science to Justify The Imprisonment Binge", Convict Criminology, Jeffrey Ian Ross and Stephen C. Richards, eds., Wadsworth: Belmont, CA.
- 2003 "Its About Time: America's Imprisonment Binge", Punishment and Social Control, Aldine De Gruyter: New York, NY.
- 1999 "Are We Better Off?: Comparing Private and Public Prisons in the United States", Current Issues in Criminal Justice. Vol. 11 (2): 177-201.
- 1999 "The Impact of 'Three Strikes and You're Out'", Punishment and Society, Vol 1(2): 131-162.
- 1998 "The Limits of Prison Drug Treatment", Corrections Management Quarterly, Vol. 2, Issue 4, Fall 1998, pp. 66-74.
- 1996 "The Effect of 'Three Strikes and You're Out' on Corrections" in Three Strikes and You're Out: Vengeance as Public Policy, David Shichor and Dale K. Sechrest, eds., Sage Publications: Thousand Oaks, CA.
- 1996 "Are Prisons A Bargain?: The Case of Voodoo Economics", Spectrum, Spring 1996, pp. 6-24.

- 1995 "The Overrepresentation of Minority Youths in the California Juvenile Justice System: Perceptions and Realities" in Minorities in Juvenile Justice, Kimberly Kempf Leonard, Carle E. Pope, and William H. Fyerherm, eds., Sage Publications: Thousand Oaks, CA.
- 1994 "Three Strikes and You're Out: The Likely Consequences". St. Louis University Public Law Review, 14, 1, pp. 239-258.
- 1993 "Classification for Internal Purposes: The Washington Experience" (with Chris Baird, and Deborah Nuenfeldt), Classification: A Tool for Managing Today's Offenders, Laurel, MD: American Correctional Association.
- 1993 "Objective Prison Classification Systems: A Review", Classification: A Tool for Managing Today's Offenders, Laurel, MD: American Correctional Association.
- 1986 "Using Early Release to Relieve Prison Crowding: A Dilemma in Public Policy," Crime and Delinquency (October):404-501
- 1986 "Evaluating How Well Your Classification System Is Operating," Crime and Delinquency (July):302-321
- 1985 "Incarceration in the United States: The Extent and Future of the Problem," The Annals (March):15-30
- 1983 "Assessing the New Generation of Prison Classification Models," Crime and Delinquency (October):561-576
- 1982 "Do We Really Want to Get 'Tough on Crime'?" Corrections Today, Vol. 44, No. 6:50-52
- 1982 "Bail Reform in California: The Passage of AB2" (with E. Lemert), Pretrial Services Annual Journal, 1982, Vol V:4-23
- 1982 "Review of Fatal Remedies: The Ironies of Social Intervention" (Sam D. Seiber) in Crime and Delinquency, Vol. 20, No. 4:639-641

- 1982 "The Unmet Promise of Alternatives to Incarceration" (with B. Krisberg), Crime and Delinquency, Vol. 28, No. 3:374-409
- 1982 "Promises and Realities of Jail Classification," Federal Probation, Vol. 46, No. 1:58-67
- 1981 "Wider, stronger, and different nets: the dialectics of criminal justice reform" (with B. A. Krisberg), Journal of Research in Crime and Delinquency, Vol. 18, No. 1:165-196
- 1980 Instead of Justice: Diversion, Ph.D. Dissertation, University of California, Davis

## AWARDS

- 2009 Recipient of the Marguerite Q. Warren and Ted B. Palmer Differential Intervention Award, American Society of Criminology, Corrections and Sentencing Division
- 1999 Recipient of the Paul Tappin award for outstanding contributions in the field of criminology, Western Society of Criminology
- 1991 Recipient of the Peter P. Lejins Research Award, American Correctional Association

*THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF DR. JAMES AUSTIN  
SWORN BEFORE ME, THIS 1<sup>ST</sup> DAY OF MARCH, 2017*



---

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*



Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

**Plaintiffs**

**- and -**

**HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF ONTARIO**

**Defendant**

Proceeding under the *Class Proceedings Act*, 1992

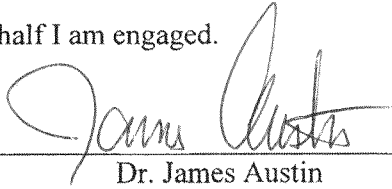
**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is James Austin, I live in the City of Malibu, in the state of California.
2. I have been engaged by or on behalf of Koskie Minsky LLP to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.


- 2 -

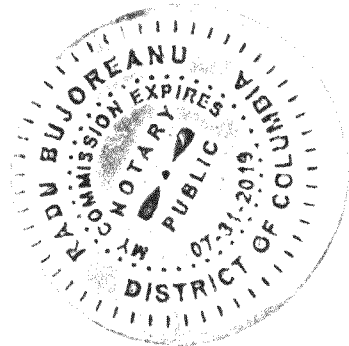
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

March 1, 2017

  
\_\_\_\_\_  
Dr. James Austin

KM-2536235v1

District of Columbia: SS  
Subscribed and Sworn to before me  
This 01 day of March 2017  
  
\_\_\_\_\_  
Radu Bujoreanu  
Notary Public, D.C.  
My Commission Expires July 31, 2019



Raymond Lapple et al.

Her Majesty the Queen in Right of the  
and Province of Ontario

Plaintiffs

Defendant

Court File No.: CV-16-558633-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto  
Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF DR. JAMES AUSTIN**  
**(SWORN MARCH 24, 2017)**

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert** LSUC #: 309420

Tel: 416-595-2117 / Fax: 416-204-2889

**Jonathan Ptak** LSUC#: 45773F

Tel: 416-595-2149 / Fax: 416-204-2903

**James Sayce** LSUC#: 58730M

Tel: 416-542-6298 / Fax: 416-204-2809

**Garth Myers** LSUC#: 62307G

Tel: 416-595-2102 / Fax: 416-204-4924

Lawyers for the Plaintiffs

Court File No.: CV-16-558633-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
 and GREGORY SMITH

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF DR. STUART GRASSIAN**  
**(Sworn March 2, 2017)**

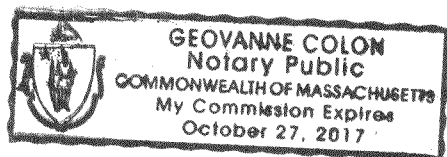
I, **Dr. Stuart Grassian**, of the Village of Chestnut Hill, in the City of Newton, State of Massachusetts, **MAKE OATH AND SAY:**

1. I have been retained by Koskie Minsky LLP on behalf of their clients in these proceedings.
2. A copy of my report is attached as **Exhibit "A"**. A copy of my curriculum vitae is attached as an appendix to my report.
3. Attached as **Exhibit "B"** is a copy of my Acknowledgement of Expert's Duty.

SWORN BEFORE ME at the City of Newton, in  
 the State of Massachusetts this 2<sup>nd</sup> day of March,  
 2017.

  
 A Commissioner for taking Affidavits (or as may be)

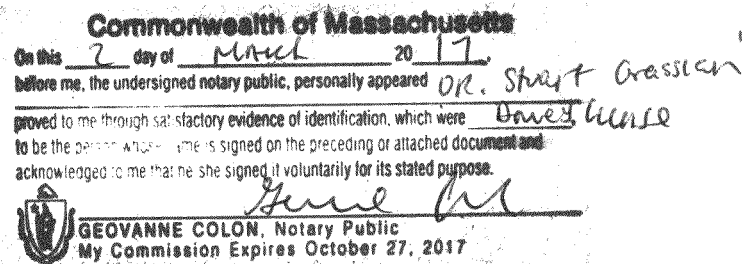
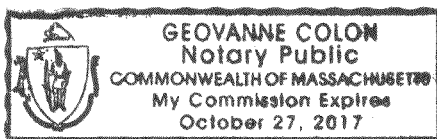
  
**Dr. Stuart Grassian**



This is Exhibit "A" referred to in the  
Affidavit of Dr. Stuart Grassian  
sworn before me, this 2<sup>nd</sup> day of March, 2017.

*Giovanne Colon*

Commissioner for Taking Affidavits



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**Declaration: Psychiatric Report in *Lapple v. HMO*.**

**I. Introduction.**

I am a Board-certified psychiatrist, licensed to practice medicine in the Commonwealth of Massachusetts and was on the teaching faculty of the Harvard Medical School for over 25 years. My C.V. is attached hereto.

I have extensive experience in evaluating the psychiatric effects of stringent conditions of confinement in correctional institutions – conditions involving deprivation of perceptual, social and occupational stimulation. In the present litigation, I was asked to provide a report responding to the following:

1. I was asked to describe my background and expertise as it relates to issues affecting prisoners, their mental health and well-being, and the issues I identify in my report. I was also asked to attach a copy of my CV.
2. Based upon my education, experience and professional opinion, I was asked to provide my opinion whether the lockdown alleged in the Statement of Claim would give rise to harm to the class members, and if so, what is the nature of such harm and would there be common themes or experiences which would relate to such harm.

For the purpose of rendering my opinion, I was asked to assume that the allegations regarding the lockdown conditions and the prevalence of staffing-related lockdowns set out in the Statement of Claims are true.

## II. Qualifications Regarding the Psychiatric Effects of Solitary and other Conditions of Segregated Confinement.

During the course of my professional career, I have had extensive experience in evaluating inmates who were experiencing, or had in the past experienced, segregated confinement. In 1983, I published an article in the American Journal of Psychiatry (AJP) describing a particular psychiatric syndrome associated with solitary confinement. The article also noted that this syndrome had been previously described in the psychiatric literature. This article<sup>1</sup> is attached hereto and incorporated herein.

My observations and conclusions generally regarding the psychiatric effects of solitary confinement have been cited in a number of U.S. federal court decisions, for example: *Davenport v. DeRobertis*, 844 F.2d 1310 (7th Cir. 1988), *Coleman v. Wilson*, 912 F.Supp. 1282 (E.D. Cal., 1995), *affirmed sub nom Brown v. Plata* (2011, 131 S. Ct. 1910), *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), and in the concurring opinion of Justice Kennedy in *Davis v Ayala*, (2015) 135 S. Ct. 2187.

I prepared a written declaration for *Madrid* describing the medical literature and historical experience concerning the psychiatric effects of restricted and isolated conditions of confinement as well as of other conditions of restricted environmental and social stimulation, and subsequently compiled the general (non-institution, non-inmate specific) portions of that declaration into an article entitled *Psychiatric Effects of Solitary*

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<sup>1</sup> *Psychopathological Effects of Solitary Confinement*. Am. J. Psychiatry, 140:1450-1454, 1983.

*Confinement*, 22 Wash. U. Journal of Law & Policy (2006) (attached hereto and incorporated herein). This article describes the extensive body of literature, including clinical and experimental literature, regarding the effects of decreased environmental and social stimulation, especially in relation to the effects of solitary confinement on prisoners.

I have given lectures and seminars regarding these issues. They include, but are not limited to, lectures at Harvard Medical School-Beth Israel Hospital, Boston, at meetings of the Nova Scotia, Virginia and New York State Bar Associations, The Office of Military Commissions of the U.S. Department of Defense (regarding Guantanamo detainees), The Federal Capital Defenders Habeas Unit, The John Jay College of Criminal Justice, and the American Correctional Association, as well as invited testimony before state legislative hearings in New York, Massachusetts and Maine.

I have been retained as an expert in class-action investigations and lawsuits regarding these issues in Massachusetts (2), New Jersey, New York (3), California (2), Kentucky, Michigan, Ohio (2), Pennsylvania, Texas and Florida, as well as individual cases in other states, including Alabama, Arizona, California, Connecticut, Florida, Georgia, Kansas, Kentucky, Illinois, Louisiana, Maine, Massachusetts, Mississippi, Nevada, New Mexico, New York, North Carolina, Nova Scotia, Oregon, Pennsylvania, Tennessee, Texas, Vermont, Virginia, the State of Washington, Washington D.C. and Wisconsin. Moreover, in addition to a number of individual cases, I have been retained as an expert in class-action lawsuits regarding juvenile detention in New Jersey, Ohio, Texas and Wisconsin.

I have been retained and consulted by a variety of public advocacy groups, including The Legal Aid Society of New York, Prisoner's Legal Services of New York, the Center for Constitutional Rights, The Massachusetts Correctional Legal Services, The Massachusetts Civil Liberties Union, the National Prison Project of the American Civil Liberties Union, the Department of Corrections of the State of Florida, and various religious organizations. I have also been appointed to the Advisory Committee of the New York State Commission on Quality of Care & Advocacy for Persons with Disabilities.

Since the tragic events of September 11, 2001, I have also been consulted regarding the confinement of a number of individuals who were deemed to be "enemy combatants" and/or were either charged with or convicted of conspiring against the United States. These include individuals who were confined in Guantánamo, in the Navy Brig in Charleston, S.C., in the Federal ADX prison in Florence, Colorado and in the SeaTac facility in Seattle, Washington, as well as in federal detention centers in New York City and Miami, Florida.

### **III. Lockdowns and the Conditions Therein.**

It is set out in the Statement of Claim that there are 35 provincial prisons in the Province of Ontario, and they have all been chronically and repeatedly locked down due to staff shortages. As a result, lockdowns throughout the Province are both frequent and lengthy

— often lasting days, or weeks. It is also set out in the Statement of Claim that some large prisons in metropolitan areas are locked down up to 60-70% of the time.

When a prison is on lockdown, all of the inmates confined therein face major deprivations. These deprivations are basically similar to those encountered by individuals placed in punitive or administrative segregation.

One obvious difference is that individuals placed in segregation most commonly are housed alone (“solitary confinement”), although there are a number of prisons where prisoners in segregation share their cell with one other inmate who is likewise in segregation (“double-celling”). In lockdown situations in Ontario, on the other hand, it is my understanding that most prisoners in general population share a cell with one or two other inmates. The impact of this difference will be discussed below.

As noted, the deprivations imposed upon an entire prison population in lockdown situations are in many ways similar to those imposed upon individuals confined in solitary. In general, solitary confinement and prison lockdowns both result in a deprivation of adequate levels of perceptual, social, and occupational stimulation. In significant ways, the deprivations following a prison lockdown are actually more severe than those generally found among individuals confined in solitary confinement. These deprivations include:

- Inmates are confined to a small cell 24 hours a day, with no opportunity even for the one hour a day of exercise outside of cell generally afforded inmates in solitary confinement.
- As is generally the case with inmates in solitary confinement, there is no opportunity for conjoint recreation, programming, or religious services.
- Being confined in a small cell with other inmates (generally one or two others) creates hostility, paranoia and violence.
- Lawyer visits may be cancelled and even lawyer phone contact may be limited or entirely eliminated, which would deprive the inmate of proper access to aid in preparing his legal defense and representation. This deprivation is not experienced by inmates in solitary confinement.
- For the same reason, there is no family contact – in person or by phone. Again, this is substantially worse than the deprivations experienced by individuals in solitary confinement.
- Inmates often have no ability to take a shower for extended periods of time.
- Similarly, they may not be provided the materials needed to keep their cell clean or to have clothing laundered. Again, this is worse than the conditions generally prevailing in solitary confinement.

#### **IV. The Psychiatric Effects of Segregated Confinement and Other Conditions of Restricted Environmental Stimulation.<sup>2</sup>**

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<sup>2</sup> The following description is a summary of material from my Washington University article.

It has long been known that severe restriction of environmental and social stimulation has a profoundly deleterious effect on mental functioning; this issue has, for example, been a major concern in medicine in treating a wide variety of patients, including for example, patients in intensive care units, spinal patients immobilized by the need for prolonged traction, and patients with impairment of their sensory apparatus (such as eye-patched or hearing impaired patients). The issue has also been a very significant concern in military situations and in exploration - polar and submarine expeditions, and in preparations for space travel. Appendix A of my Washington University article describes a number of these. Prison lockdowns as described in the Statement of Claims create similar conditions as those cited in this section and would be expected to produce similar psychiatric difficulties.

In regard to segregated confinement, the United States was actually the world leader in introducing prolonged incarceration - and solitary confinement - as a means of dealing with criminal behavior; the "penitentiary system" began in the United States in the early 19th century, a product of a spirit of great social optimism over the possibility of rehabilitation of individuals with socially deviant behavior. This system, originally embodied as the "Philadelphia System," involved almost an exclusive reliance upon segregated confinement as a means of incarceration, and also became the predominant mode of incarceration - both for post conviction and also for pretrial detainees - in the several European prison systems emulating the American model at the time.

The results were catastrophic. The incidence of mental disturbances among prisoners so detained, and the severity of such disturbances, was so great that the system fell into disfavor and was ultimately abandoned. During this process, a major body of clinical literature developed which documented the psychiatric disturbances created by such stringent conditions of confinement. The paradigmatic disturbance was an agitated confusional state which, in more severe cases, had the characteristics of a florid delirium, characterized by severe confusional, paranoid, and hallucinatory features, and also by intense agitation and random, impulsive violence – whether directed at others or self-directed.

The psychiatric harm caused by solitary confinement became exceedingly apparent. Indeed, by 1890, in *In re Medley*, the United States Supreme Court explicitly recognized the massive psychiatric harm caused by solitary confinement: “This matter of solitary confinement is not ... a mere unimportant regulation as to the safe-keeping of the prisoner .... [E]xperience [with the penitentiary system of solitary confinement] demonstrated that there were serious objections to it. A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.”

Concerns about the profound psychiatric effects of such conditions of isolated confinement continued into the twentieth century, both in the medical literature and in the news. The alarm raised about the “brainwashing” of political prisoners of the Soviet Union, Communist China, and especially of American prisoners of war during the Korean War, gave rise to a major body of medical and scientific literature concerning the effects of sensory deprivation and social isolation, including a substantial body of experimental research.

The medical literature, as well as my own experience and observations, has demonstrated conclusively that, deprived of a sufficient level of environmental and social stimulation, individuals will soon become incapable of maintaining an adequate state of alertness and attention to the environment. Indeed, even a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern towards an abnormal pattern characteristic of stupor and delirium.

This fact is, indeed, not surprising. After even a relatively brief period of time in a situation of intense monotony and inadequate levels of meaningful environmental stimulation, an individual is likely to descend into a mental torpor - a “fog” - in which alertness, attention and concentration all become impaired. In such a state, after a time, the individual becomes increasingly incapable of processing external stimuli, and often becomes “hyper-responsive” to such stimulation; for example, a sudden noise or the flashing of a light jars the individual from his stupor, and becomes intensely unpleasant.

Over time, the very absence of stimulation causes whatever stimulation is available to become noxious and irritating.

(It should be noted that what is lacking in solitary and small group confinement, and by extension prison lockdown, is not the absence of all stimulation, but rather the lack of meaningful, anchoring stimulation. The stimulation of, for example, steel doors banging and inmates yelling does not ameliorate the effects of environmental deprivation. Instead, such noxious stimulation has been shown to worsen the effects of such deprivation. Indeed, in various interrogation situations, such as that used by the British in interrogating suspected IRA members, and that used by the United States military and CIA in interrogation at Guantanamo, noxious stimulation - especially high decibel noise - was intentionally used to worsen the psychiatric effects of solitary confinement.)

An adequate state of responsiveness to the environment requires both the ability to achieve and maintain an attentional set - to focus attention - and the ability to shift attention. The impairment of alertness and concentration in solitary confinement and lockdowns leads to two related abnormalities:

- a. First, the inability to focus, to achieve and maintain attention, is experienced as a kind of dissociative stupor - a mental “fog” in which the individual cannot focus attention, cannot, for example, grasp or recall when he attempts to read or to think.
- b. Second, the inability to shift attention results in a kind of “tunnel vision” in which the individual's attention becomes stuck - almost always on something intensely

unpleasant - and in which he cannot stop thinking about that matter; instead, he becomes obsessively fixated upon it. These obsessional preoccupations are especially troubling. Individuals in isolated confinement easily become preoccupied with some thought, some perceived slight or irritation, some sound or smell coming from a neighboring cell. This preoccupation grows to the point that it becomes maddening. In my first published article on this subject<sup>3</sup>, I described the struggle to control increasingly obsessional violent thoughts of revenge: "I try to sleep 16 hours a day, block out my thoughts – muscles tense – think of torturing and killing the guards ... I can't stop it. Bothers me. I have to keep in control. This makes me think I am losing my mind. Lay in bed too much – scare yourself with thought in bed. I get panicky – thoughts come back. – picture throwing a guard in lime – eats way at his skin, his flesh – torture him. Try to block it out, but I can't."

In general, solitary and small group confinement, and by extension prison lockdown, causes a characteristic syndrome, and anyone subjected to these conditions would be expected to suffer from this syndrome. And some of these symptoms tend to persist even after release from such confinement:

1. **Hyper-responsivity to External Stimulation,**  
**Impairment of Social Relations.**

As noted above, the lack of meaningful environmental stimulation leads to a progressive intolerance of all stimulation – even of intrinsically non-noxious stimulation. This burden creates a major impairment in functioning which has been shown to persist for an indefinite period of time even after release from prison. Individuals leave prison and are overwhelmed by the stimulation they experience in the community. This is especially true as regards social stimulation; even formerly gregarious individuals tend to become loners, to avoid people and social settings.

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<sup>3</sup> Grassian, S. : *Psychopathological Effects of Solitary Confinement*. American Journal of Psychiatry, 140:11, 1983.

2. **Anxiety, Panic Attacks.**

These problems are almost universally described in the published literature concerning solitary and small group confinement. And the problems tend to persist after return to conditions of general population or release back to the community. Individuals become jumpy, hyper-reactive; they complain of anxiety, heart pounding, sweating, and have a difficult time calming themselves – especially in new or unfamiliar situations.

3. **Difficulties with Thinking, Concentration, and Memory.**

The impairment of alertness in solitary/small group confinement inevitably results in cognitive impairment, and published research has demonstrated that this cognitive impairment can persist after one year of release from confinement.

4. **Perceptual Distortions, Illusions, Hallucinations.**

As described, for example in my American Journal of Psychiatry article, perceptual aberrations are extremely common, as are simple hallucinations. More complex, frightening hallucinations do occur – albeit infrequently. These types of symptoms are terribly distressing during confinement, but they only rarely persist after release from confinement.

5. **Intrusive Obsessional Thoughts.**

These are among the most painful symptoms experienced by individuals in solitary and small group confinement, but neither the published literature nor my own observations indicate that they are likely to persist after release.

6. **Problems with Impulse Control.**

This problem has been cited extensively in the literature, and includes dangerous behavior, including violent behavior directed towards self and others. There is evidence that as regards solitary confinement in prisons, this problem persists after discharge from prison.<sup>4</sup>

7. **Overt Paranoia, Psychosis, Psychotic Delirium.**

These are the most severe psychiatric disturbances associated with solitary and small group confinement. However, those individuals who experience such catastrophic psychiatric breakdown will inevitably suffer for an indefinite time– and possibly permanently – from such symptoms.

## V. Small Group Confinement.

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<sup>4</sup> See, e.g. Mears, D, Bales, W. (2009) *Supermax incarceration and recidivism*. Criminology, 47(4) 1131-1166.

Major concerns have been raised in conferences and from my own professional experience about “double-celling” of inmates confined in situations of segregation and environmental deprivation. Such situations have led to increasing hostility and paranoia between the cellmates, and even murder. And these concerns are not confined to the prison situation. Most of the following description is a summary of material contained in my Washington University article, cited above (Appendix A, pp.357-361). Material not contained in that article will be separately cited:

Many studies—both anecdotal and experimental—have been made of individuals confined together in small groups; groups thus described have ranged in size from two to approximately sixty individuals, the larger groups include reports of men isolated on a Pacific island, submarine inhabitants, Antarctic explorers, etc.. The most consistent finding was of dramatically increased levels of hostility, interpersonal conflict and paranoia. Individuals exposed to such conditions also tend to become irrationally territorial, staking out “areas of exclusive or special use, [and] acting with hostility to trespasses by others.”

Confined groups comprising just two individuals may be the most pathogenic of all, associated with especially high rates of mutual paranoia and violent hostility. Admiral Byrd believed it to be extremely unsafe to staff an Antarctic base unit with just two men:

It doesn't take two men long to find each other out . . . the time comes . . . when even his [campmate's] unformed thoughts can be anticipated, his pet ideas become a meaningless drool, and the way he blows out a pressure lamp or drops his boots on the floor or eats his food becomes a rasping annoyance. . . . Men who have lived in the Canadian bush know well what happens to trappers paired off this way . . . During my first winter at Little America I walked for hours with a

man who was on the verge of murder or suicide over imaginary persecutions by another man who had been his devoted friend.”

The pathogenicity of such dyadic groups was confirmed in an experimental study involving volunteer sailors living and working together in dyadic pairs, socially isolated from the world for a period of ten days. Under such conditions, the sailors developed evidence of subjective distress, inability to concentrate, a breakdown of inner controls on behavior, hostility, and increasing schizoid withdrawal from social contact (Cole, J.D., 1967).

Psychiatric disturbances have been described among staff wintering-over in Arctic and Antarctic work stations. The small group isolation conditions at these stations have been compared to life in prisons by at least one researcher: “... the isolation imposed by the harsh environment [of the Antarctic] is rarely experienced outside penal conditions” Researchers have described progressively worsening psychiatric breakdown as the length of time of such confinement increased. This breakdown included increasing depression, apathy, anxiety, sleep disturbances, impaired cognitive functioning and hallucinations during small group winter confinement in the Antarctic.

The effect on social relationships is especially troubling and dangerous; there is a progressive impoverishment of social relationships, increasing irritability, interpersonal tension, hostility and paranoia, at times leading to overt violence among members of the group. The fact that these individuals were confined in small groups rather than alone was not found to prevent these disturbances; indeed, one of the central pathogenic factors

cited in this literature has been the interpersonal tension and hostility generated by small group confinement

Studies on reintegration into the home environment after Antarctic living found that even one year after reintegration there were persisting problems and symptoms, including sleep disturbances, cognitive slowing, emotional withdrawal, resentment of authority, indecisiveness and poor communication.

The military (submarines) and NASA (space flight) have likewise been concerned about the social and psychological effects of small group confinement. In a review article<sup>5</sup> partly based upon his own research, Dr. Nick Kanas described land-based simulation studies in which men spent between 2 and 12 weeks under conditions of isolation, confinement, and monotony. Psychological problems developed, including sleep problems, decreased motivation, fatigue, psychosomatic symptoms, anxiety, and depression. Distortions of the sense of time, derealization experiences and hallucinations were also described, as were obsessional preoccupations with one's body sensations and the fear that something was seriously wrong with their health.

Growing interpersonal tensions and hostility among confined subjects were noted to be very common, as was increasing hostility towards authority figures overseeing the confinement. There was evidence that the hostility towards those outside the confinement may have served as a displacement to prevent intra-group hostility from

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<sup>5</sup> Kanas, N., (1984) *Psychological and Interpersonal Issues in Space*, American Journal of Psychiatry 144, No. 6; 703-709.

reaching dangerous proportions. In situations where two individuals were confined together, issues of territoriality and dominance became of particular concern.

It was found that the lack of any areas of privacy (which could be achieved, e.g. with separate spaces created by fabric doors) increased interpersonal hostility and territoriality. Among small groups confined together, scapegoating also occurred – one individual becoming the object of hostility and derision by the others. Individuals who experienced such scapegoating developed serious psychiatric difficulties, including depression with crying outbursts, despondency, aimless behavior, and even hallucinations.

Lastly, follow-up studies revealed that some of these difficulties, including depression and impaired social relationships, persisted after release from confinement.

### **3. Discussion and Conclusions.**

Prison lockdowns will predictably result in psychiatric harm typical of the harm experienced by inmates in solitary confinement; this harm is described above in Section IV of this report, and is further detailed in my American Journal of Psychiatry and my Washington University articles. Moreover, in significant respects, the conditions of small group confinement prevailing in Lockdown situations create conditions and deprivations that are actually more severe than those experienced by individuals who are confined in solitary.

The studies and experiments regarding Arctic and Antarctic stations, submarines, and space travel are significant as well because in those studies, subjects were generally preselected as being likely to be more tolerant of such conditions of environmental stimulation. Prisoners, on the other hand, are generally on the other end of that spectrum. They have high incidences of emotional volatility, mental illness, substance abuse, and cognitive impairment – all conditions that would predispose them to have especially severe reactions to situations of solitary or small group confinement.

Signed this 2<sup>nd</sup> day of March, 2017



Stuart Grassian, M.D.

**Sources.**

- Grassian, S. (1983) *Psychopathological Effects of Solitary Confinement*. American Journal of Psychiatry, 140:11; 1450-1454.  
And articles cited therein.
- Grassian, S. (2006) *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. Journal of Law & Policy; 325-383.  
And articles cited therein.
- Kanas, N., (1984) *Psychological and Interpersonal Issues in Space*, American Journal of Psychiatry 144, No. 6; 703-709.
- Mears, D, Bales, W. (2009) *Supermax incarceration and recidivism*. Criminology, 47(4) 1131-1166.

## APPENDIX "A"

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 stgrassian@gmail.com

Born: June 29, 1946

## **EDUCATION, TRAINING, FACULTY POSITIONS.**

1963-1967	Harvard Club Scholar, Harvard University, Cambridge, MA
1967	B.A. Cum Laude, Harvard University, Cambridge, MA
1967-1969	NIMH Fellow in Sociology, Brandeis University, Waltham, MA
1969	M.A., Sociology, Brandeis University, Waltham, MA
1970	NSF Fellow in Psychiatry, Bellevue Hospital, NY
1973	M.D., New York University School of Medicine, NY
1973-1974	Intern (Medicine), New York University Medical Center, NY
1974-1977	Resident in Psychiatry, Beth Israel Hospital, Boston, MA. Teaching Fellow in Psychiatry, Harvard Medical School.
1977-2003	Clinical Instructor in Psychiatry, Harvard Medical School.
1978-1980	Assistant Clinical Professor of Psychiatry, Tufts University School of Medicine.
1982-1986	Suffolk University Law School; J.D. 1986; Daniel Fern Award.
1986	Bar Examination completed; entry into Massachusetts Bar. (remain on "retired" status through present.)

## **LICENSURE.**

1974-	Massachusetts Medical License #37749.
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## **BOARD CERTIFICATIONS**

1979	Diplomate, American Board of Psychiatry and Neurology (ABPN) in Psychiatry.
1994	Diplomate Certification, ABPN, Added Qualifications in Addiction Psychiatry.
1996	Diplomate Certification, ABPN, Added Qualifications in Forensic Psychiatry

## **MAJOR PROFESSIONAL ACTIVITIES**

1977 -	Private practice in Psychiatry: Cambridge, MA (1977-1979), Chestnut Hill, MA (1979- ), Stoneham, MA (1980-2003)
1977-1978	Clinical Director, Inpatient Service, Dorchester Mental Health Center, Boston, MA
1978-1980	Director, Inpatient Service, WestRosPark Mental Health Center,

Boston, MA  
 1979-1983 Medical Staff, Lecturer, Glover Memorial Hospital, Needham, MA  
 1980-1994 Attending Psychiatrist, Adult & Adolescent Inpatient Services, New England Memorial Hospital, Stoneham, MA  
 1980-1983 Director, Adult & Adolescent Inpatient Services, Department of Psychiatry, New England Memorial Hospital, Stoneham, MA  
 1983-1994 Attending Psychiatrist, Addictions Treatment Unit, New England Memorial Hospital, Stoneham, MA  
 1987-1993 Supervising Psychiatrist, Outpatient Department, New England Memorial Hospital, Stoneham, MA  
 1992-1994 Psychiatric Director, Partnership Recovery Center, Melrose-Wakefield Hospital, Melrose, MA (Day treatment program for Addiction rehabilitation)

### CONSULTATIONS, AFFILIATIONS, BOARD MEMBERSHIPS

1979- Massachusetts Correctional Legal Services. (Psychiatric Effects of Solitary Confinement, Psychiatric Effects of Strip Search Procedures)  
 1980- Massachusetts Civil Liberties Union. (Psychiatric Effects of Strip Search Procedures, Psychiatric Effects of Solitary Confinement)  
 1993-4 Massachusetts Department of Corrections, Stress Management Unit. (Occupational Stress among Correctional Staff)  
 1993-4 Board of Trustees, New England Memorial Hospital, Stoneham, MA.  
 1995 Consultation to Psychiatric Expert/Special Master; Madrid v Gomez Federal District Court, Northern District, CA #C-90-3094TEH. (Psychiatric Effects of Solitary Confinement)  
 1995- Consultant to Massachusetts Professional Recovery Committee, and to Substance Abuse Rehabilitation Program of the Massachusetts Board of Registration in Nursing. (Addictive Disorders, Impaired professionals)  
 1997 Botech Corporation, Cambridge, MA. (Effects of Solitary Confinement)  
 1998 Psychiatric Expert in Compliance Monitoring; Eng v Coombe Federal Dist. Ct, W.D.NY, CIV #80-385-S. (Effects of Solitary Confinement, mental health care provided)  
 2000-2 The Desisto School, Lenox MA  
 2001- Consultant, Florida Department of Corrections. (Solitary Confinement and Mental Health Issues in Florida State Prisons.)  
 2001- 2 Board of Advisors, Correctional Association of New York, (Mental Health Issues in New York State Prisons).  
 2002-4 Board of Directors, Massachusetts 9/11 Fund.  
 2002-4 American Boyschoir School, Princeton, NJ.  
 2002-3 Poly Prep School, Brooklyn, NY.  
 2009. U.S. Department of Defense, Office of Military Commissions. Effects of Confinement on Guantanamo Detainees, Arlington, Va.,  
 2010 Texas ACLU. Expert in K.C. v. Townsend, challenging conditions in state's adolescent female detention facility.

- 2012- Advisory Committee. New York State Commission on Quality of Care and Advocacy for Persons with Disabilities) . (Since renamed as – New York Justice Commission.
- 2013- U.S. Dept. of Justice (US DOJ) – Conditions of confinement, mental health care in Pennsylvania’s Prison System.
- 2013- Kentucky Children’s Law Center and U.S. Dept of Justice – Conditions of confinement, mental health care in Ohio’s Juvenile Justice System.
- 2015- New York ACLU – Solitary Confinement, Mental Health Issues at Rikers.
- 2015- Texas ACLU et al. – Solitary Confinement, Mental Health Issues in Texas.
- 2015- John Jay College of Criminal; Justice, New York – Administrative Segregation.
- 2015- US DOJ – National Institute of Justice – Working Group on Administrative Segregation.

### **PROFESSIONAL SOCIETY/COMMITTEE/STAFF MEMBERSHIPS**

- 1974-2003. Member, American Psychiatric Association & Massachusetts Psychiatric Society  
Committee Memberships.  
Inpatient Psychiatry Committee (1981-1984)  
Private Practice Committee (1992-1995)  
Chair, Presidents Task Force on Managed Care (1993-1994)  
Steering Committee, Managed Care Retreat (1993-1994)
- 1974-1977 Resident in Psychiatry, Beth Israel Hospital, Boston, MA.  
Clinical Fellow in Psychiatry, Harvard Medical School.
- 1977-2003 Courtesy Staff, Beth Israel Hospital, Boston, MA  
Assistant in Psychiatry (1977-1991)  
Associate in Psychiatry (1991-2003)  
Clinical Instructor in Psychiatry, Harvard Medical School.
- 1980-1999 Active Staff, Boston Regional Medical Center, Stoneham, MA  
Committee Memberships  
Credentials Committee (1986-1990)  
Chair, Bylaws Committee (1987-1990)  
Medical Staff Executive Committee (1989-1992)  
Chief of Staff (1990-1992)  
Board of Trustees (1990-1992)
- 1992-2012 Active/Courtesy Staff, Melrose-Wakefield Hospital, Melrose, MA
- 1993-2000 Psychiatric Network of Massachusetts  
Committee Memberships  
Steering Committee (1993-1994)  
Chairman, Board of Directors (1994-1995)

### **AWARDS**

- 2005. National Alliance for the Mentally Ill (NAMI). Exemplary Psychiatrist Award,

Presented at Annual Meeting, American Psychiatric Association, May 2005.

## TEACHING APPOINTMENTS, PRESENTATIONS

- 1967 Teaching Fellow, Harvard Graduate School of Education,  
Cambridge, MA
- 1967-1969 Teaching Fellow, Department of Sociology, Brandeis University,  
Waltham, MA
- 1973 Clinical Fellow in Psychiatry, New York University Medical Center,  
New York, NY
- 1974-1977 Clinical Fellow in Psychiatry, Harvard Medical School, Boston, MA
- 1975-1976 Consultant and Lecturer, Human Resources Institute, Brookline, MA
- 1977-2003 Clinical Instructor, Department of Psychiatry, Harvard Medical  
School, Boston, MA
- 1978-80 Assistant Clinical Professor, Department of Psychiatry, Tufts  
University Medical Center, Boston, MA
- 1987 Faculty, Third International Conference on Restricted  
Environmental Stimulation, New York, NY: "Effect of REST In  
Solitary Confinement and Psychiatric Seclusion"
- 1987 Guest Lecturer, Suffolk University School of Law, Boston, MA:  
"Commitability and the Right to Refuse Treatment"
- 1988 Faculty, 32nd Institute on Hospital and Community Psychiatry, Boston, MA
- 1990 Massachusetts Bar Association Symposium, Boston, MA.  
"Drugs and Alcohol on Campus"
- 1992 Faculty, American Academy of Psychiatry and Law, Boston, MA:  
"Effects of Childhood Sexual Abuse"
- 1993 Faculty, Massachusetts Department of Corrections Stress Unit,  
Statewide Seminar, MA: "Stress Awareness for Managers"
- 1993 Massachusetts Continuing Legal Education Seminar, Boston, MA:  
"Psychiatric Effects of Physical and Sexual Assault"
- 1994 Massachusetts Academy of Trial Attorneys Seminar, Boston, MA:  
"Psychiatric Evaluation of Victims of Violent Crime"
- 1994 Beth Israel Hospital/Harvard Medical School, Boston, MA:  
"Psychiatric Consequences of Solitary Confinement; "Effects of Sensory  
Deprivation and Social Isolation in a Vulnerable Population"
- 1994 Massachusetts Medical Society, Committee on Managed Care,  
Waltham, MA: "Ethics of Managed Care"
- 1994 Prison Psychiatric Group, Albany, NY: "Criminality and Mental  
Illness, Revisited: Disorders of Volition". (Lecture sponsored  
by Pfizer Pharmaceuticals)
- 1995 Suffolk University Advanced Legal Studies, Boston, MA: "Sexual  
Abuse: Memory, Truth and Proof"
- 1995 Massachusetts Association of Trial Attorneys Seminar, Boston, MA:

- “Premises Liability/Negligent Security: Psychiatric Testimony and the Role of the Psychiatric Expert”
- 1996 New England Society for the Study of Dissociation, McLean Hospital, Belmont, MA: “Impact of Forensic Issues on Treating Victims of Violence”
- 1996 Harvard Medical School, Children’s Hospital Family Violence Seminar, Boston, MA: “Trauma and Memory”
- 1996 Trauma and Memory: An International Research Conference, Durham, NH: “Factors Distinguishing True and False Memory of Childhood Sexual Abuse”
- 1996 Trauma and Memory: An International Research Conference, Durham, NH: “Memory of Sexual Abuse by a Parish Priest”
- 1997 Correctional Association of New York, NY: “Psychiatric Effects of Solitary Confinement”.
- 1998 Massachusetts Board of Registration in Medicine and Northeastern University Conference, Substance Abuse and The Licensed Professional, Boston, MA: “Addictions and Compulsions: Disorders of Volition”
- 2000 Human Rights Watch and American Civil Liberties Union Foundation Conference. Washington. D.C. “Super-Maximum Security Confinement in the United States.”
- 2003 Capital Habeas Unit Training Conference of the Defender Services Division of the United States Courts, San Antonio, TX. (death row confinement and its effects on post-conviction appeal process.)
- 2003 NAACP Legal Defense Fund Conference, Airlie, VA. - mental health issues and solitary confinement of prisoners.
- 2005 Vera Institute. National Commission on Safety and Abuse in Prisons. Newark, NJ July 2005. Effects of Isolation.
2005. NAACP Legal Defense Fund, Airlie Conference, Va. July 2005. “Volunteers’ in Death Row”.
- 2006 University of California at Davis, Symposium - The Neurobiology of Torture. “What is Known about the Neurobiological Effects of Solitary Confinement.”
- 2009 Keynote Address. Nova Scotia Barristers’ Society. “Psychiatric Effects of Solitary Confinement”.
- 2010 “Psychiatric Effects of Solitary Confinement”. Presentation at Virginia Bar Association Meeting, Richmond, VA.
- 2010 Harvard Prisoners Legal Assistance Project. Invited lecture regarding psychiatric effects of confinement and impact on advocacy.
- 2010 Discussant, Annual Meeting of American Psychological Association, San Diego, CA. The Colorado Study - “One Year Longitudinal Study of the Psychological Effects of Administrative Segregation.”
- 2012 Civil Rights Committee, New York State Bar Association. “Psychiatric Effects of Solitary Confinement”.
- 2012 Columbia University, “Incarceration and Isolation: A Workshop”. Joint Meeting with the Liman Public Interest Program at Yale Law School, and the Lowenstein International Human Rights Clinic at Yale Law School
- 2013- National Religious Coalition Against Torture, – consultant, panelist, etc. regarding solitary confinement and mental health issues in prison.
- 2016 American Correctional Association conference: “Pathways to Reform”.

## MEDIA, PUBLIC AFFAIRS PRESENTATIONS

- 1988 NBC-TV, Today Show "Small Group Confinement of Female Political Prisoners at the Federal Penitentiary in Lexington, KY"
- 1990 NPR-TV, News Interview Program: "Psychiatric Effects of Small Group Confinement"
- 1990 PBS-TV, Point of View "Through the Wire", Documentary regarding women confined for politically motivated crimes
- 1991 WBZ-TV, Boston, MA: Channel 4 Nightly News "Statute of Limitations on Cases of Childhood Sexual Abuse"
- 1992 Boston Globe, New York Times, etc.: "Effects of Childhood Sexual Abuse by a Catholic Priest"
- 1992 Boston Globe, New York Times, San Francisco Chronicle, Los Angeles Times, etc.: "Psychiatric Effects of Solitary Confinement"
- 1993 New England Cable News, Newton, MA: Commentator regarding insanity defense in Kenneth Sequin trial
- 1993 Massachusetts House of Representatives, Judiciary Committee testimony: Proposed change in Statute of Limitations in cases of childhood sexual abuse
- 1993 CBS-TV, 60 Minutes "Pelican Bay – Psychiatric Effects of Solitary Confinement in California's High-Tech Maximum Security Prison"
- 1993 New England Cable News, Newton, MA: News Night "False Memory and Recovered Memory of Childhood Sexual Abuse"
- 1993 WCVB-TV, Boston, MA: Chronicle "Sentencing of Father Porter – The Effect on the Victims"
- 1994 WHDH-TV, Boston, MA: Boston Common "False Memory Syndrome".
- 1994 FOX-TV, Boston, MA: At Issue "Psychiatric Effects of Solitary Confinement"
- 1996 New England Cable News, Newton, MA: News Night "The Insanity Defense"
- 1998 ABC-TV, Nightline with Ted Koppel; Primetime Live "Crime and Punishment"
- 1998 WBZ-TV, Boston, MA: Channel 4 Nightly News "Perpetrators of Sexual Abuse: Dangers to the Community"
- 1999 ABC-TV, 20/20 "Effects of Solitary Confinement"
- 2003 Discovery Channel. "Mohammed Atta: Profile of a Terrorist".
- 2003 Invited Testimony, Joint Legislative Hearing, New York State Assembly, New York City, November 2003. "Disciplinary Confinement and Treatment of Prison Inmates with Serious Mental Illness."
- 2004 Invited Testimony, Massachusetts State Legislature. Joint Committee on Public Safety. "The Cost of Corrections".
- 2010 Invited Testimony, Maine State Legislature: "Solitary Confinement in Maine."
- 2010 National Geographic Television: Explorer: "Solitary Confinement".
- 2011 National Religious Campaign Against Torture. "Solitary Confinement".
- 2013 Rock Center with Brian Williams. "Juveniles in Adult Prisons" with Ted Koppel.

(Due to the extensive public interest in the issue of solitary confinement, I have also provided interviews and contributions to a number articles in various newspapers, magazines, and radio and television news reports and documentaries; I have not been able to keep up a catalogue of

these, though they certainly include The Boston Globe, The New York Times, The Los Angeles Times, The San Francisco Chronicle, The Denver Post, The Christian Science Monitor, New Yorker Magazine, and National Public Radio, as well as others.

## MAJOR INTERESTS IN FORENSIC PSYCHIATRY

### 1. Psychiatric Effects of Solitary Confinement

I have had extensive experience in evaluating the psychiatric effects of stringent conditions of confinement and the mental health care afforded inmates and detained juveniles so confined. I have served as an expert in a number of both individual and class-action lawsuits addressing these issues. My observations and conclusions regarding the psychiatric effects of such confinement have been cited in a number of federal court decisions, for example: *Davenport v. DeRobertis*, 844 F.2d 1310 (7th Cir. 1988), *Coleman v. Wilson* 912 F.Supp.1282 (E.D.Cal, 1995), affirmed in 2011 by the U.S. Supreme Court *sub. nom. Brown v. Plata*, and *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995)

I prepared a written declaration for *Madrid* describing the medical literature and historical experience concerning the psychiatric effects of restricted and isolated conditions of confinement as well as of other conditions of restricted environmental and social stimulation, and subsequently prepared the general (non-institution specific) and non-redacted (non-inmate specific) portions of that declaration into a general statement, which I have entitled *Psychiatric Effects of Solitary Confinement*, 22 Wash. University Journal of Law and Policy, (2006). It describes the extensive body of literature, including clinical and experimental literature, regarding the effects of decreased environmental and social stimulation, and more specifically, observations concerning the effects of segregated confinement on prisoners.

I have given lectures and seminars regarding these issue. Although I do not have a complete list of those lectures and seminars, they include, but are not limited to, lectures at Harvard Medical School-Beth Israel Hospital, Boston, at meetings of the Nova Scotia, Virginia and New York State Bar Associations, The Office of Military Commissions of the U.S. Department of Defense, The Federal Capital Defenders Habeas Unit and The Correctional Association of New York, as well as invited testimony before state legislative hearings in New York, Massachusetts and Maine. In addition, I was recently appointed as a consultant to the Psychiatric Correctional Advisory Committee of the New York State Commission on Quality of Care and Advocacy for People with Disabilities (more recently renamed The New York State Justice Commission.)

I have been retained as an expert in class-action lawsuits regarding these issues in Massachusetts (2), New York (3), California (2), Kentucky, Michigan, New Jersey, Ohio (2), Texas and Florida, as well as individual cases in other states, including California, Connecticut, Florida, Georgia, Maine, Massachusetts, New Mexico, New York, Oregon, Pennsylvania, Texas, Virginia and the State of Washington. I have been retained and consulted by a variety of public advocacy groups, including The United States Department of Justice (DOJ), The Legal Aid Society of New York, Prisoner's Legal Services of New York and of Massachusetts, the Center for Constitutional

Rights, The Massachusetts Civil Liberties Union, the National Prison Project of the American Civil Liberties Union, and the Department of Corrections of the State of Florida. I was a psychiatric expert for the DOJ in its evaluation of the Pennsylvania prison system, and had a similar role in Ohio regarding juvenile facilities.

Since the tragic events of September 11, 2001, I have also been consulted regarding the confinement of a number of individuals who were deemed to be “enemy combatants” and/or were either charged with or convicted of conspiring against the United States. These include individuals who were confined in Guantánamo, in the Navy Brig in Charleston, S.C., in the Federal ADX prison in Florence, Colorado and in the SeaTac facility in Seattle, Washington, as well as in federal detention centers in New York City and Miami, Florida. Decisions in some of those cases, and my published findings, have been cited in Federal Appellate decisions, and have also generated significant national media interest.

Issues have included: mental illness among inmates so confined and psychiatric decompensation as a result of such confinement; adequacy of mental health evaluation, monitoring and treatment; effect on ability to assist in inmate’s own legal defense (both pretrial and postconviction); “volunteering” for execution; impact on inmate’s ability to cooperate with government in debriefing and testifying. Additionally, I have been consulted in a number of cases involving detention (at Guantanamo, Charleston S.C. Naval Brig, and various Federal Detention Centers) of accused terrorists.

The 1983 American Journal of Psychiatry article listed below described the paradigmatic neuropsychiatric syndrome associated with solitary confinement. A more extensive review of the literature, including clinical and experimental literature concerning the effects of decreased environmental and social stimulation, as well as specifically, observations concerning the effects of segregated confinement on prisoners, is contained in the 2006 Washington University article listed below.

Peer-Reviewed Medical Publications:

“Psychopathological Effects of Solitary Confinement”, Am J Psychiatry 140:11, 1983.

“Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement”, Intl J Law & Psychiatry 8:49, 1986.

Law Journals:

“Psychiatric Effects of Solitary Confinement”, Washington Univ. Journal of Law & Policy Vol 22: pp. 325-383, 2007.

Book Chapter:

“Neuropsychiatric Effects of Solitary Confinement” in Ojeda, ed., The Trauma of Psychological Torture, Praeger, Westport Conn., 2008.

On-Line Publications:

“‘Fatal Flaws’ in the Colorado Solitary Confinement Study”. In Solitary Watch; Posted November 15, 2010

## **2. Trauma, Including Strip Search Procedures, Sexual and Physical Assault**

Psychiatric expert in a number of strip search cases in Federal and Massachusetts state courts. Testimony in Boston's Federal District was cited by the Federal Appeals Court in affirming damages verdict in *Cole v Snow*. Consulted in settlement of three class action suits.

Psychiatric expert in cases of rape, sexual and physical assault. Substantial experience in evaluating the effects of childhood sexual abuse, and the processing over time of memories of that abuse. Evaluated approximately 100 victims of childhood sexual abuse, including many of the plaintiffs in the clergy sex abuse scandals in Massachusetts. Consulted to private schools around such issues.

### **Research and Presentations:**

Principal Investigator, Beth Israel Hospital, Department of Psychiatry, Boston, MA.  
 "Psychiatric and Addictive Problems in Survivors of Childhood Sexual Abuse Perpetrated by Father Porter."  
 "Vicissitudes of Memory of Childhood Trauma".

With Joseph De Rivera, Ph.D.: "Recovery of Memory of Childhood Sexual Abuse and Creation of False Memories; Can These Processes be Distinguished?"

Presented at various for above, including International Conference at University of New Hampshire, and Seminar at Suffolk University Law School.

## **3. Addictive Disorders.**

Testimony in a number of criminal and civil cases. My testimony in a highly publicized Texas Federal Court case, *In re, Cockrum*, helped to establish that an individual who was otherwise highly competent, was not competent to act in his own behalf in appealing his murder conviction, as a result of an underlying addictive disorder and suicidal compulsion.

## **4. Civil Rights Issues**

Expert in a number of cases regarding racial and sexual harassment in employment and housing situations, including cases brought by Civil Rights Division of the United States Department of Justice, and by Greater Boston Legal Services, and in strip search procedures by law enforcement and prison personnel.

## APPENDIX "B"

## Washington University Journal of Law & Policy

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Volume 22 *Access to Justice: The Social Responsibility of Lawyers* | *Prison Reform: Commission on Safety and Abuse in America's Prisons*

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2006

# Psychiatric Effects of Solitary Confinement

Stuart Grassian

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# Psychiatric Effects of Solitary Confinement<sup>†</sup>

Stuart Grassian<sup>\*</sup>

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<sup>†</sup> This article was prepared from a statement given to the Commission on Safety and Abuse in America's Prisons. As the article is an overview of the psychiatric effects of confinement throughout history it is not fully footnoted

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## PREFACE

Dr. Grassian is a Board Certified Psychiatrist who was on the faculty of the Harvard Medical School for over twenty-five years. He has had extensive experience in evaluating the psychiatric effects of solitary confinement, and in the course of his professional involvement, has been involved as an expert regarding the psychiatric impact of federal and state segregation and disciplinary units in many settings. His observations and conclusions regarding this issue have been cited in a number of federal court decisions. The following statement is largely a redacted, non-institution and non-inmate specific, version of a declaration which was submitted in September 1993 in *Madrid v. Gomez*.<sup>1</sup> To enhance the readability of this statement, much of the supporting medical literature is described in the appendices to the statement.

## I. OVERVIEW

Solitary confinement—that is the confinement of a prisoner alone in a cell for all, or nearly all, of the day with minimal environmental stimulation and minimal opportunity for social interaction—can cause severe psychiatric harm. It has indeed long been known that severe restriction of environmental and social stimulation has a profoundly deleterious effect on mental functioning; this issue has been a major concern for many groups of patients including, for example, patients in intensive care units, spinal patients immobilized by the need for prolonged traction, and patients with impairment of

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1. 889 F. Supp. 1146 (N.D. Cal. 1995), *rev'd and remanded*, 150 F.3d 1030 (9th Cir. 1998).

their sensory apparatus (such as eye-patched or hearing-impaired patients). This issue has also been a very significant concern in military situations, polar and submarine expeditions, and in preparations for space travel.

The United States was actually the world leader in introducing prolonged incarceration, and solitary confinement, as a means of dealing with criminal behavior. The “penitentiary system” began in the United States, first in Philadelphia, in the early nineteenth century, a product of a spirit of great social optimism about the possibility of rehabilitation of individuals with socially deviant behavior.<sup>2</sup> The Americans were quite proud of their “penitentiary system” and they invited and encouraged important visitors from abroad to observe them.<sup>3</sup> This system, originally labeled as the “Philadelphia System,” involved almost an exclusive reliance upon solitary confinement as a means of incarceration and also became the predominant mode of incarceration, both for post conviction and also for pretrial detainees, in the several European prison systems which emulated the American model.<sup>4</sup>

The results were, in fact, catastrophic. The incidence of mental disturbances among prisoners so detained, and the severity of such disturbances, was so great that the system fell into disfavor and was ultimately abandoned. During this process a major body of clinical literature developed which documented the psychiatric disturbances created by such stringent conditions of confinement.<sup>5</sup>

The paradigmatic psychiatric disturbance was an agitated confusional state which, in more severe cases, had the characteristics of a florid delirium, characterized by severe confusional, paranoid, and hallucinatory features, and also by intense agitation and random, impulsive, often self-directed violence. Such disturbances were often

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2. An excellent history of the Philadelphia System is found in NORMAN JOHNSTON ET AL., *EASTERN STATE PENITENTIARY: CRUCIBLE OF GOOD INTENTIONS* (1994).

3. See DAVID ROTHMAN, *THE DISCOVERY OF THE ASYLUM* 81 (1971); see also GUSTAVE DE BEAUMONT & ALEXIS DE TOCQUEVILLE, *ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND ITS APPLICATION IN FRANCE*, [http://www.law.du.edu/sterling/Content/ALH/Tocqueville\\_Pen.pdf](http://www.law.du.edu/sterling/Content/ALH/Tocqueville_Pen.pdf); CHARLES DICKENS, *AMERICAN NOTES AND PICTURES FROM ITALY* (Leonee Ormond ed., Everymans Library 1997) (1842).

4. ROTHMAN, *supra* note 3, at 96–101.

5. See Appendix D (describing this literature).

observed in individuals who had no prior history of any mental illness. In addition, solitary confinement often resulted in severe exacerbation of a previously existing mental condition. Even among inmates who did not develop overt psychiatric illness as a result of solitary confinement, such confinement almost inevitably imposed significant psychological pain during the period of isolated confinement and often significantly impaired the inmate's capacity to adapt successfully to the broader prison environment.

It is both tragic and highly disturbing that the lessons of the nineteenth century experience with solitary confinement are today being so completely ignored by those responsible for addressing the housing and the mental health needs in the prison setting. For, indeed, the psychiatric harm caused by solitary confinement had become exceedingly apparent well over one hundred years ago. Indeed, by 1890, with *In re Medley*,<sup>6</sup> the United States Supreme Court explicitly recognized the massive psychiatric harm caused by solitary confinement:

This matter of solitary confinement is not . . . a mere unimportant regulation as to the safe-keeping of the prisoner . . . .

. . . [E]xperience [with the penitentiary system of solitary confinement] demonstrated that there were serious objections to it. A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.<sup>7</sup>

The consequences of the Supreme Court's holding were quite dramatic for Mr. Medley. Mr. Medley had been convicted of having murdered his wife. Under the Colorado statute in force at the time of the murder he would have been executed after about one additional

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6. 134 U.S. 160 (1890).

7. *Id.* at 167–68.

month of incarceration in the county jail. But in the interim between Mr. Medley's crime and his trial the Colorado legislature had passed a new statute which called for the convicted murderer to be, instead, incarcerated in solitary confinement in the state prison during the month prior to his execution.<sup>8</sup> Unhappily, when the legislature passed the new law it simultaneously rescinded the older law without allowing for a bridging clause which would have allowed for Mr. Medley's sentencing under the older statute.<sup>9</sup>

Mr. Medley appealed his sentencing under the new statute, arguing that punishment under this new law was so substantially more burdensome than punishment under the old law as to render its application to him *ex post facto*.<sup>10</sup> The Supreme Court agreed with him, even though it simultaneously recognized that if Mr. Medley was not sentenced under the new law, he could not be sentenced at all.<sup>11</sup> Despite this, the Court held that this additional punishment of one month of solitary confinement was simply too egregious to ignore; the Court declared Mr. Medley a free man, and ordered his release from prison.<sup>12</sup>

Dramatic concerns about the profound psychiatric effects of solitary confinement have continued into the twentieth century, both in the medical literature and in the news. The alarm raised about the "brain washing" of political prisoners of the Soviet Union and of Communist China—and especially of American prisoners of war during the Korean War—gave rise to a major body of medical and scientific literature concerning the effects of sensory deprivation and social isolation, including a substantial body of experimental research.<sup>13</sup>

This literature, as well as my own observations, has demonstrated that, deprived of a sufficient level of environmental and social stimulation, individuals will soon become incapable of maintaining an adequate state of alertness and attention to the environment.

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8. *Id.* at 162–63.

9. *Id.* at 166.

10. *Id.* at 162.

11. *Id.* at 166.

12. *Id.* at 174.

13. THE MANIPULATION OF HUMAN BEHAVIOR 2–3, 35 (Albert D. Biderman & Herbert Zimmer eds., 1961).

Indeed, even a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium.

This fact is not surprising. Most individuals have at one time or another experienced, at least briefly, the effects of intense monotony and inadequate environmental stimulation. After even a relatively brief period of time in such a situation an individual is likely to descend into a mental torpor or “fog,” in which alertness, attention, and concentration all become impaired. In such a state, after a time, the individual becomes increasingly incapable of processing external stimuli, and often becomes “hyperresponsive” to such stimulation. For example, a sudden noise or the flashing of a light jars the individual from his stupor and becomes intensely unpleasant. Over time the very absence of stimulation causes whatever stimulation is available to become noxious and irritating. Individuals in such a stupor tend to avoid any stimulation, and withdraw progressively into themselves and their own mental fog.

An adequate state of responsiveness to the environment requires both the ability to achieve and maintain an attentional set and the ability to shift attention. The impairment of alertness and concentration in solitary confinement leads to two related abnormalities: the inability to focus, and the inability to shift attention. The inability to focus (to achieve and maintain attention) is experienced as a kind of dissociative stupor—a mental “fog” in which the individual cannot focus attention, and cannot, for example, grasp or recall when he attempts to read or to think.

The inability to shift attention results in a kind of “tunnel vision” in which the individual’s attention becomes stuck, almost always on something intensely unpleasant, and in which he cannot stop thinking about that matter; instead, he becomes obsessively fixated upon it. These obsessional preoccupations are especially troubling. Individuals in solitary confinement easily become preoccupied with some thought, some perceived slight or irritation, some sound or smell coming from a neighboring cell, or, perhaps most commonly, by some bodily sensation. Tortured by it, such individuals are unable to stop dwelling on it. In solitary confinement ordinary stimuli become intensely unpleasant and small irritations become maddening. Individuals in such confinement brood upon normally

unimportant stimuli and minor irritations become the focus of increasing agitation and paranoia. I have examined countless individuals in solitary confinement who have become obsessively preoccupied with some minor, almost imperceptible bodily sensation, a sensation which grows over time into a worry, and finally into an all-consuming, life-threatening illness.

Individuals experiencing such environmental restriction find it difficult to maintain a normal pattern of daytime alertness and nighttime sleep. They often find themselves incapable of resisting their bed during the day—incapable of resisting the paralyzing effect of their stupor—and yet incapable of any restful sleep at night. The lack of meaningful activity is further compounded by the effect of continual exposure to artificial light and diminished opportunity to experience natural daylight. And the individual's difficulty in maintaining a normal day-night sleep cycle is often far worsened by constant intrusions on nighttime dark and quiet, such as steel doors slamming shut, flashlights shining in their face, and so forth.

There are substantial differences in the effects of solitary confinement upon different individuals. Those most severely affected are often individuals with evidence of subtle neurological or attention deficit disorder, or with some other vulnerability. These individuals suffer from states of florid psychotic delirium, marked by severe hallucinatory confusion, disorientation, and even incoherence, and by intense agitation and paranoia. These psychotic disturbances often have a dissociative character, and individuals so affected often do not recall events which occurred during the course of the confusional psychosis. Generally, individuals with more stable personalities and greater ability to modulate their emotional expression and behavior and individuals with stronger cognitive functioning are less severely affected. However, all of these individuals will still experience a degree of stupor, difficulties with thinking and concentration, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli (especially noxious stimuli).

Moreover, although many of the acute symptoms suffered by these inmates are likely to subside upon termination of solitary confinement, many—including some who did not become overtly psychiatrically ill during their confinement in solitary—will likely suffer permanent harm as a result of such confinement. This harm is

most commonly manifested by a continued intolerance of social interaction, a handicap which often prevents the inmate from successfully readjusting to the broader social environment of general population in prison and, perhaps more significantly, often severely impairs the inmate's capacity to reintegrate into the broader community upon release from imprisonment.

Many inmates housed in such stringent conditions are extremely fearful of acknowledging the psychological harm or stress they are experiencing as a result of such confinement. This reluctance of inmates in solitary confinement is a response to the perception that such confinement is an overt attempt by authorities to "break them down" psychologically, and in my experience, tends to be more severe when the inmate experiences the stringencies of his confinement as being the product of an arbitrary exercise of power, rather than the fair result of an inherently reasonable process. Furthermore, in solitary confinement settings, mental health screening interviews are often conducted at the cell front, rather than in a private setting, and inmates are generally quite reluctant to disclose psychological distress in the context of such an interview since such conversation would inevitably be heard by other inmates in adjacent cells, exposing them to possible stigma and humiliation in front of their fellow inmates.

## II. SOLITARY CONFINEMENT CAN CAUSE SEVERE PSYCHIATRIC HARM

### *A. Solitary Confinement Can Cause a Specific Psychiatric Syndrome*

During the course of my involvement as an expert I have had the opportunity to evaluate the psychiatric effects of solitary confinement in well over two hundred prisoners in various state and federal penitentiaries. I have observed that, for many of the inmates so housed, incarceration in solitary caused either severe exacerbation or recurrence of preexisting illness, or the appearance of an acute mental illness in individuals who had previously been free of any such illness.

I became aware of the particular toxicity of solitary confinement when I first had the opportunity to evaluate prisoners in solitary

confinement as a result of my involvement in a class action lawsuit in Massachusetts, which challenged conditions in solitary confinement at the maximum security state penitentiary in Walpole, Massachusetts.<sup>14</sup> The clinical observations I made in the course of my involvement in that lawsuit, coupled with my research into the medical literature concerning this issue, have formed the basis of two articles I have since published on this topic in peer-reviewed journals.<sup>15</sup> My subsequent professional experience has included observations of similar phenomena in many other solitary confinement settings.

When I initially agreed to evaluate the Walpole prisoners I had not yet reviewed the literature on the psychiatric effects of solitary confinement and I was somewhat skeptical; I expected that inmates would feign illness and exaggerate whatever psychiatric symptomatology they suffered. I discovered, however, something very different. Contrary to my expectations, the prisoners appeared to be extremely defensive about the psychiatric problems they were suffering in Special Housing Unit (SHU); they tended to rationalize away their symptoms, avoid talking about them, or deny or distort their existence all in an apparent effort to minimize the significance of their reactions to isolation. Numerous interviews began with statements such as "solitary doesn't bother me" or "some of the guys can't take it—not me," or even with the mention of a symptom and a simultaneous denial of its significance: "As soon as I got in I started cutting my wrists. I figured it was the only way to get out of here."

As these interviews progressed the facile accounts gave way to descriptions of experiences that were very worrisome. For example, one inmate was unable to describe the events of the several days surrounding his wrist-slashing, nor could he describe his thoughts or feelings at the time. Similarly, the prisoner who said he could "take it" eventually came to describe panic, fears of suffocation, and paranoid distortions which he suffered while in isolation. Moreover,

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14. *Libby v. Comm'r of Corr.*, 432 N.E.2d 486 (Mass. 1982).

15. See Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 INT'L J.L. & PSYCHIATRY 49 (1986); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450 (1983).

the specific psychiatric symptoms reported were strikingly consistent among the inmates:

1. The Specific Psychiatric Syndrome Associated with Solitary Confinement

- a. Hyperresponsivity to External Stimuli: More than half the prisoners reported a progressive inability to tolerate ordinary stimuli. For example, "You get sensitive to noise, the plumbing system. Someone in the tier above me pushes the button on the faucet . . . It's too loud, gets on your nerves. I can't stand it. I start to holler."

- b. Perceptual Distortions, Illusions, and Hallucinations: Almost a third of the prisoners described hearing voices, often in whispers and often saying frightening things to them. There were also reports of noises taking on increasing meaning and frightening significance. For example, "I hear noises, can't identify them—starts to sound like sticks beating men, but I'm pretty sure no one is being beaten . . . I'm not sure." These perceptual changes at times became more complex and personalized:

They come by with four trays; the first has big pancakes. I think I am going to get them. Then someone comes up and gives me tiny ones—they get real small, like silver dollars. I seem to see movements, real fast motions in front of me. Then seems like they are doing things behind your back, can't quite see them. Did someone just hit me? I dwell on it for hours.

- c. Panic Attacks: Well over half the inmates interviewed described severe panic attacks while in SHU.

- d. Difficulties with Thinking, Concentration, and Memory: Many reported symptoms of difficulty in concentration and memory. One prisoner described his experience, "I can't concentrate, can't read . . . Your mind's narcotized. Sometimes I can't grasp words in my mind that I know. Get stuck, have to think of another word. Memory's going. You feel like you are losing something you might not get back." In some cases this problem was far more severe, leading to acute psychotic, confusional states. One prisoner had slashed his wrists during such a state and his confusion and disorientation had actually been noted in his medical record.

e. **Intrusive Obsessional Thoughts: Emergence of Primitive Aggressive Ruminations:** Almost half the prisoners reported the emergence of primitive aggressive fantasies of revenge, torture, and mutilation of the prison guards. In each case the fantasies were described as entirely unwelcome, frightening, and uncontrollable. For example, one prisoner recounted

I try to sleep sixteen hours a day, block out my thoughts; muscles tense, think of torturing and killing the guards; lasts a couple of hours. I can't stop it. Bothers me. Have to keep control. This makes me think I'm flipping my mind . . . I get panicky, thoughts come back—pictured throwing a guard in lime—eats away at his skin, his flesh—torture him—try to block it out, but I can't.

f. **Overt Paranoia:** Almost half the prisoners interviewed reported paranoid and persecutory fears. Some of these persecutory fears were short of overt psychotic disorganization. For example, one prisoner recalled “sometimes I get paranoid—think they meant something else. Like a remark about Italians. Dwell on it for hours. Get frantic. Like when they push buttons on the sink. Think they did it just to annoy me.” In other cases this paranoia deteriorated into overt psychosis:

Spaced out. Hear singing, people's voices, ‘Cut your wrists and go to Bridgewater and the Celtics are playing tonight.’ I doubt myself. Is it real? . . . I suspect they are putting drugs in my food, they are putting drugs in my cell . . . The Reverend, the priest, even you, you're all in cahoots in the Scared Straight Program.

g. **Problems with Impulse Control:** Slightly less than half of the prisoners reported episodes of loss of impulse control with random violence: “I snap off the handle over absolutely nothing. Have torn up mail and pictures, throw things around. Try to control it. Know it only hurts myself.” Several of these prisoners reported impulsive self-mutilation: “I cut my wrists many times in isolation. Now it seems crazy. But every time I did it, I wasn't thinking—lost control—cut myself without knowing what I was doing.”

## 2. This Syndrome has the Characteristics of an Acute Organic Brain Syndrome—A Delirium

Clearly, these symptoms were very dramatic. Moreover, they appeared to form a discreet syndrome—that is, a constellation of symptoms occurring together and with a characteristic course over time, thus suggestive of a discreet illness. Moreover, this syndrome was strikingly unique; some of the symptoms described above are found in virtually no other psychiatric illness. The characteristic acute dissociative, confusional psychoses are a rare phenomenon in psychiatry. Similarly, cases of random, impulsive violence in the context of such confusional state is exceedingly rare. But the most unique symptoms in this cluster are the striking and dramatically extensive perceptual disturbances experienced by the isolated person. Indeed, these disturbances are almost pathognomonic of the syndrome, meaning they are symptoms virtually found nowhere else. For example, loss of perceptual constancy (objects becoming larger and smaller, seeming to “melt” or change form, sounds becoming louder and softer, etc.) is very rare and, when found, is far more commonly associated with neurological illness (especially seizure disorders and brain tumors affecting sensory integration areas of the brain) than with primary psychiatric illness.<sup>16</sup>

In addition, functional psychiatric illness very rarely presents with such severe and florid perceptual distortions, illusions, and hallucinations simultaneously affecting multiple perceptual modalities—auditory, visual, olfactory, tactile, and kinesthetic.<sup>17</sup>

Similarly, hyperresponsivity to external stimuli with a dysesthetic (subjectively painful) response to such stimuli, is likewise rare. In fact, it is exceedingly rare; so rare that appearance of this symptom also might suggest an organic brain dysfunction etiology.<sup>18</sup>

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16. When seen in primary psychiatric illness, it is basically only seen in especially severe, insidious, early onset schizophrenia—the kind of schizophrenic illness which has always been thought to clinically “feel” like a fundamentally biological/neurologic disease.

17. In fact, in the more common psychotic illnesses such as schizophrenia and psychotic depression, auditory hallucinations are by far the most common type; visual hallucinations come a distant second; and hallucinations in all other modalities are actually very uncommon. Moreover, combined modality hallucinations (other than the combination of auditory with visual) are exceedingly rare.

18. This symptom is similar, for example, to the experience many people have during a

Thus, the fact that all of these quite unusual symptoms ran together in the same syndrome was itself a clear confirmation of the distinct nature of this syndrome. While this syndrome is strikingly atypical for the functional psychiatric illnesses, it is quite characteristic of an acute organic brain syndrome: delirium, a syndrome characterized by a decreased level of alertness and EEG abnormalities; by the same perceptual and cognitive disturbances, fearfulness, paranoia, and agitation; and random, impulsive, and self-destructive behavior which I observed in the Walpole population.

Moreover, delirium is a syndrome which is known to result from the type of conditions, including restricted environmental stimulation, which are characteristic of solitary confinement. Even the EEG abnormalities characteristic of delirium have been observed in individuals exposed to conditions of sensory deprivation. By now the potentially catastrophic effects of restricted environmental stimulation have been the subject of a voluminous medical literature; annual international symposia are being held on the subject, and the issue has even found its way into the popular media. The literature is summarized in the appendices to this statement.

*B. The Historical Experience with Solitary Confinement: The  
Nineteenth Century Experience*

1. The Origin of the American Penitentiary: The Nineteenth  
Century German Experience

Preindustrial societies had often not made any fundamental distinction between deviant behavior seen as the product of "criminal intent" as opposed to behavior seen as stemming from "mental illness."<sup>19</sup> For such societies, deviant behavior—whatever its origins—was a social evil that was deeply feared and cruelly punished.

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febrile illness of finding any touching of their body exceedingly unpleasant, or the inability of a patient with a headache to tolerate an even ordinary volume of sound, or the inability of some pregnant women to tolerate even ordinary smells without becoming nauseated.

19. ROTHMAN, *supra* note 3, at 4–5, 62–65.

In Colonial America the Salem witch trials were but one example of a continuing tendency to equate “lunacy” with “demonic possession” and, ultimately, with “evil.”<sup>20</sup> Deviant behavior was naturally feared and hated; the instinctive response was to punish it cruelly, lock it away, banish it, or kill its perpetrator. Thus, in Colonial America generally, the social response to deviant behavior was relatively simple: the protection of the larger society was paramount, while the distinction between “illness” and “evil” was far less critical. Indeed, the social response to deviance largely stemmed from the severe puritanical belief in innate human evil that deserved violent retaliation such as whipping, pillories, stockades, brandings, and, ultimately, the gallows. At times, when there was a more “humane” response to persons viewed as suffering from lunacy this response consisted simply of keeping the individual caged under lock and key, often for the rest of his life.

But in the early nineteenth century, a surge of great social optimism swept over America, and along with this grew a belief in the possibility of social reform, perhaps an overly optimistic faith in the possibility of rehabilitation of persons whose behavior was deviant.<sup>21</sup> Not coincidentally, this spirit gave rise virtually simultaneously to two great social reform movements in the United States: the development of large mental hospitals and the construction of the first large penitentiaries.

Both of these institutions were founded upon a similar premise—namely, that psychological and social deviance was largely a result of the evils and stresses of “modern society,” and both held a fundamental belief that healing would naturally occur if the deviant individual was removed from the evils of the larger society, and thus enabled to know his own true nature.<sup>22</sup>

In the case of the mental hospital this belief gave rise to the concept of a healing, pastoral, therapeutic community.<sup>23</sup> But, in the case of the penitentiary, an additional safeguard was obviously

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20. GEORGE IVES, A HISTORY OF PENAL METHODS: CRIMINALS, WITCHES, LUNATICS 58–59, 68–73 (reprint 1970) (1914).

21. ROTHMAN, *supra* note 3, at 57–58, 79.

22. *Id.* at 82.

23. *Id.* at 133.

required: the inmates clearly had to be protected, not only from the evil influences of the broader society, but also from the evil influences of each other.<sup>24</sup> The proper approach thus appeared to be to give each inmate the opportunity to live a life alone, like a penitent monk in his own monastic cell.

Thus, the earliest American penitentiaries were, generally, systems of rigid solitary confinement.<sup>25</sup> Extravagant attention was paid to the design of these institutions, to ensure the absolute and total isolation of the offender from any evil and corrupting influences.<sup>26</sup> The Philadelphia Prison, completed in 1829, was particularly conscientious in this regard:

The arrangements . . . guaranteed that convicts would avoid all contamination and follow a path to reform. Inmates remained in solitary cells for eating, sleeping, and working . . . . No precaution against contamination was excessive. Officials placed hoods over the head of a new prisoner when marching him to his cell so he would not see or be seen by other inmates.

. . . Thrown upon his own innate sentiments, with no evil example to lead him astray, . . . the criminal would start his rehabilitation. Then, after a period of total isolation, without companions, books, or tools, . . . [h]e would return to the community cured of vice and idleness, to take his place as a responsible citizen.<sup>27</sup>

The American penitentiary, and the Philadelphia System, became world-famous; no important visitor to the United States neglected to tour its penitentiaries and to bring back their principles for emulation in Europe. Some such as Alexis de Tocqueville of France and Nicholas Julius from Prussia came specifically for that purpose.<sup>28</sup> Tocqueville wrote of the utter, "perfect" desolation of the American

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24. *Id.* at 83.

25. *Id.*

26. *Id.* at 82–83.

27. *Id.* at 85–86.

28. *Id.* at 81.

penitentiary, of the “profound silence” within its “vast walls,” likening it to the silence of death.<sup>29</sup>

## 2. Psychological Effects of Severe Isolation

The openness with which these institutions were held up to public scrutiny led in time to open concern about the psychological effects of such confinement. During a tour of the United States in 1842, Charles Dickens wrote with pathos of the Philadelphia Prison:

The system here is rigid, strict, and hopeless solitary confinement. . . . Over the head and face of every prisoner who comes into the melancholy house, a black hood is drawn, and in this dark shroud, . . . he is led to the cell from which he never again comes forth, until his whole term of imprisonment has expired. He is a man buried alive . . . . dead to everything but torturing anxieties and horrible despair.

. . . .

The first man I saw . . . answered . . . always with a strange kind of pause . . . . He gazed about him and in the act of doing so fell into a strange stare as if he had forgotten something.

In another cell was a German, . . . a more dejected, broken-hearted, wretched creature, it would be difficult to imagine. . . .

There was a sailor . . . . [w]hy does he stare at his hands and pick the flesh open, upon the fingers, and raise his eyes for an instant . . . to those bare walls . . . ?<sup>30</sup>

American concern about the effects of rigid solitary confinement began as early as the 1830s.<sup>31</sup> Statistical comparisons began to be made between the Philadelphia system and its chief competitor: the Auburn system prevailing in New York State at the Auburn and Sing-Sing penitentiaries.<sup>32</sup> The latter system also utilized solitary

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29. *Id.* at 97.

30. P. Herbert Liederman, *Man Alone: Sensory Deprivation and Behavioral Change*, 8 CORRECTIONAL PSYCHIATRY & J. SOC. THERAPY 64, 66 (1962).

31. ROTHMAN, *supra* note 3, at 87–88.

32. *Id.* at 88.

confinement, but less rigidly; inmates left their cells to work together in workshops and exercise in a common courtyard, although here, too, absolute and strict silence was maintained at all times.<sup>33</sup> Statistical comparisons began to generate evidence that “[i]t was unnatural . . . to leave men in solitary, day after day, year after year; indeed, it was so unnatural that it bred insanity.”<sup>34</sup> The Philadelphia Prison system appeared to have a higher incidence not only of insanity but also of physical disease and death than its New York State system counterpart.<sup>35</sup>

Meanwhile, the American system had been emulated in many major European prisons, such as at Halle, Germany.<sup>36</sup> Although the Americans had been the world leaders in instituting rigid solitary confinement in their penitentiary system, German clinicians eventually assumed the task of documenting its demise. Between 1854 and 1909, thirty-seven articles appeared in German scientific journals on the subject of psychotic disturbances among prisoners, summarizing years of work and hundreds of cases. A major review of this literature was published in 1912.<sup>37</sup> A summary and synthesis of this rather large body of work appears as an appendix to this article.<sup>38</sup>

But it should be noted that interest in the problem was not purely academic; psychotic disturbances among prisoners were of such frequency in these prisons that they attracted administrative as well as clinical concern, and great effort was made to explain this disturbing incidence. Thus, the literature covered a variety of issues: speculation, for example, on the “moral degeneracy” of the prison population; comparison of the psychopathology of those who committed “crimes of passion” with those who committed “crimes against property”; or documentation of the incidence of the major diagnostic categories of the time (for example, “circular insanity,” “alcoholic psychoses,” epilepsy, and general paresis) among the prison population.

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33. *Id.* at 95, 97.

34. *Id.* at 87.

35. *Id.* at 87–88.

36. See PAUL NITSCHKE & KARL WILMANN, *THE HISTORY OF THE PRISON PSYCHOSES* (Francis M. Barnes, Jr. & Bernard Glueck trans., 1912).

37. See *id.*

38. See Appendix B.

However, multiple reports based on careful clinical observation suggested that a substantial majority of these prison psychoses were direct reactions to the conditions of imprisonment itself. Gradually, a clinically distinguishable syndrome of acute reactive prison psychoses began to be defined. Different variables were considered in attempting to explain the etiology of these reactive prison psychoses, including long versus short durations of imprisonment, or imprisonment of those already convicted versus imprisonment while awaiting trial. However, the most consistent factor described, reported in over half the total literature, was solitary confinement.

*C. The Twentieth Century Experience: Prisoners of War, "Brain Washing," and Experimental Research*

1. Prisoners of War and "Brain Washing"

Unfortunately, other than some anecdotal reports, there was little discussion of the psychological effects of solitary confinement in the medical literature during the first half of the twentieth century. Undoubtedly, this was in part a consequence of the disastrous earlier experience with such confinement. As statistical evidence accumulated during the nineteenth century that solitary confinement produced a very disturbing incidence of insanity, physical disease, and death the system fell into disrepute and, with this, it had changed from an open, optimistic experiment in social reform into a hidden, secretive place of punishment and control.

Its devastating psychological impact, however, did not change, a fact which became suddenly and very painfully evident in the 1950s as the American public began hearing the frightening and dramatic reports of "brain washing" of American prisoners of war in Korea—reports that alterations in the sensory environment were being intentionally imposed upon these prisoners in a seemingly Orwellian attempt to profoundly disrupt their psychological equilibrium.<sup>39</sup>

By the 1950s, reports had already appeared of major psychiatric disturbances among survivors of prolonged solitary confinement in

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39. Lawrence E. Hinkle, Jr., *The Physiological State of the Interrogation Subject as It Affects Brain Function*, in *THE MANIPULATION OF HUMAN BEHAVIOR*, *supra* note 13, at 35.

war,<sup>40</sup> but during the decade of the Korean War major attention was riveted on the occurrence of these disturbances not only in war but in a variety of other settings as well. In 1956 the Group for the Advancement of Psychiatry (GAP) held a symposium, "Factors Used to Increase the Susceptibility of Individuals to Forceful Indoctrination," to study methods used by the Chinese and Russian Communists to "indoctrinate" and "break the will" of political prisoners and prisoners of war.<sup>41</sup> Dr. Milton Meltzer, former Chief Medical Officer at Alcatraz Federal Penitentiary, contributed his observations of psychiatric disturbances among prisoners exposed to punitive solitary confinement at Alcatraz.<sup>42</sup> These prisoners were rarely confined for periods beyond one week.<sup>43</sup> Despite this, Dr. Meltzer described acute psychotic breakdowns among prisoners so confined; his descriptions closely paralleled the observations at Walpole:

The motor effects ranged from occasional tense pacing, restlessness and sense of inner tension with noise making, yelling, banging and assaultiveness at one extreme, to a kind of regressed, dissociated, withdrawn, hypnoid and reverie-like state at the other. . . .

. . . [T]he sense of self, the ego and ego boundary phenomena are profoundly affected by the isolation.<sup>44</sup>

In the same symposium Dr. John Lilly of the National Institute of Mental Health noted that despite the importance of other factors which tended to "weaken personalities and make them more susceptible to [forced indoctrination]"—such as semi-starvation, physical pain and injury, and sleep deprivation—social and sensory isolation was still the central pathogenic factor in such confinement.<sup>45</sup>

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40. See, e.g., CHRISTOPHER BURNEY, SOLITARY CONFINEMENT (1952).

41. See GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, FACTORS USED TO INCREASE THE SUSCEPTIBILITY OF INDIVIDUALS TO FORCEFUL INDOCTRINATION (1956).

42. *Id.* at 96–103.

43. *Id.* at 98.

44. *Id.*

45. *Id.* at 89.

## 2. Experimental Research on Sensory Deprivation

An experimental model was therefore designed to study the effect of such sensory deprivation; this research, conducted during the 1950s and early 1960s, primarily at Harvard and McGill University Medical Centers, was in fact funded in large part by the United States government—and especially by the Department of Defense and the Central Intelligence Agency. This research is described in an appendix to this article.<sup>46</sup> Its relevant conclusions can, however, be described relatively briefly:

In these studies subjects were placed in a situation designed for maximum reduction perceptually informative external stimuli (light-proof, sound-proof rooms; cardboard tubes surrounding the arms and hands to reduce proprioceptive and tactile sensation; and so on).<sup>47</sup> The research revealed that characteristic symptoms generally developed in such settings. These symptoms included perceptual distortions and illusions in multiple spheres (visual, auditory, tactile, olfactory); vivid fantasies, often accompanied by strikingly vivid hallucinations in multiple spheres; derealization experiences; and hyperresponsivity to external stimuli. What was also clear, however, was that while some subjects tolerated such experiences well, many did not, and characteristic syndromes were observed, including the above symptoms and cognitive impairment; massive free-floating anxiety; extreme motor restlessness; emergence of primitive aggressive fantasies which were often accompanied by fearful hallucinations; and a decreased capacity to maintain an observing, reality-testing ego function. In some cases an overt psychosis supervened with persecutory delusions and, in other cases, a marked dissociative, catatonic-like stupor (delirium) with mutism developed. EEG recordings confirmed the presence of abnormalities typical of stupor and delirium.

These findings clearly demonstrated that this experimental model did reproduce the findings in the non-experimental situations,

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46. See Appendix C.

47. See, e.g., CHARLES A. BROWNFIELD, *ISOLATION: CLINICAL AND EXPERIMENTAL APPROACHES* (1965); *SENSORY DEPRIVATION: A SYMPOSIUM HELD AT HARVARD MEDICAL SCHOOL* (Philip Solomon et al. eds., 1961) [hereinafter *SENSORY DEPRIVATION—HARVARD*].

including the findings among prisoners of war held in solitary confinement.

*D. Factors Effecting Response to Sensory Restriction and Solitary Confinement*

Much of the subsequent research in this area attempted to delineate variables which might explain these differing outcomes. These variables can be divided into two categories: i) differences among various conditions of perceptual deprivation, and ii) differences in preexisting personality functioning among individuals experiencing such conditions.

1. Differing Conditions of Isolation

One of the factors that was commonly cited in the research was the intensity and duration of the sensory deprivation. More severe sensory restriction, the presence of noxious stimulation, and longer duration of the sensory deprivation experience have all been associated with an increased risk of adverse psychiatric consequences.

In my experience, conditions experienced by inmates in various prison solitary confinement settings generally bear some similarities (a cell of roughly fifty to eighty square feet; approximately twenty-two and one-half hours per day locked in the cell; about one hour per day of yard exercise, five out of the seven days each week), in other respects the conditions are fairly variable. For example, some cells have barred doors, which allow better ventilation, sound transmission, and visual connection with the outside environment than do mesh steel doors; solid steel doors are the most restrictive—especially when they are either hinged or slide shut with almost no air gap from the wall. Moreover, administrative conditions regarding the amount and circumstances of visitation, the availability of reading material and television, and so forth are all factors which vary from institution to institution, and even from time to time within a given institution.

## 2. The Perceived Intent of the Isolation Experience

In addition to the factors described above, another critical factor in determining the effect of isolation appears to be the perceived intent of the isolation. Experimental research has demonstrated that an individual who receives clues which cause him to experience the isolation situation as potentially threatening is far more likely to develop adverse psychiatric reactions to the isolation experience.<sup>48</sup> Conversely, if the subject has reason to believe the situation is likely to be benign he will be far more likely to tolerate or even enjoy it.<sup>49</sup> Among the latter group of subjects who tolerated isolation well, many reported pleasant or at least non-threatening visual imagery, fantasy, and hallucinatory experiences.<sup>50</sup> "His mind may begin to wander, engage in daydreams, slip off into hypnogogic reveries with their attendant vivid pictorial images . . . he may be quietly having sexual or other pleasurable thoughts."<sup>51</sup>

This finding is perhaps not surprising. It appears that sensory restriction produces perceptual disturbances and illusions which are analogous to those produced by hallucinogenic drugs, and clearly, while there are some individuals who could be said to have volunteered to undergo such hallucinatory, psychotic-like experiences it must be almost uniformly terrifying to be forced to undergo an experience similar to that induced by hallucinogenic drugs.

## 3. Individual Differences in Response

Many studies have demonstrated that there is great variability among individuals in regard to their capacity to tolerate a given condition of sensory restriction. This variability helps to provide further insight into the nature of the toxic effect of such isolation conditions, and provides striking corroboration of the fact that such

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48. See Nancy A. Wright & David S. Abbey, *Perceptual Deprivation Tolerance and Adequacy of Defenses*, 20 PERCEPTUAL & MOTOR SKILLS 35 (1965).

49. Leo Goldberger, *Experimental Isolation: An Overview*, 122 AM. J. PSYCHIATRY 774, 777 (1966).

50. *Id.*

51. *Id.*

deprivation of environmental stimulation, especially when of prolonged duration, is toxic to brain functioning and causes symptoms characteristic of stupor and delirium.

Generally, individuals with mature, healthy personality functioning and of at least average intelligence are most able to tolerate the regressive pull and perceptual intrusions of such isolation situations. On the other hand, individuals with primitive or psychopathic functioning or borderline cognitive capacities, impulse-ridden individuals, and individuals whose internal emotional life is chaotic or fearful are especially at risk for severe psychopathologic reactions to such isolation.<sup>52</sup>

Moreover, there is clear evidence that, in a situation of restricted environmental stimulation, preexisting central nervous system dysfunction is a major predisposing factor to the development of adverse psychiatric reactions and of overt delirium. For example, in one study of patients suffering visual deprivation following eye surgery (eye-patched patients), those patients with preexisting central nervous system dysfunction were found to be at especially high risk to develop symptoms of delirium.<sup>53</sup> Further, the presence of a preexisting personality disorder or impairment of psychosocial functioning was associated with increased risk of incapacitating fearfulness, paranoia, agitation, and irrational aggression toward staff.<sup>54</sup>

In addition, individuals may at times be exposed to situations which cause impairment of central nervous system functioning. Such situations—especially if they impair the individual's state of alertness (for example, sleep deprivation, abnormal sleep-wake cycles, or the use of sedating medication) will substantially increase the individual's vulnerability to the development of delirium. Delirium among post-surgical patients and the so-called "ICU psychoses" are examples of this phenomenon.<sup>55</sup> One of the characteristic difficulties

52. See Appendix C (describing these studies in more detail).

53. Eugene Ziskind, *Isolation Stress in Medical and Mental Illness*, 168 J. AM. MED. ASS'N 1427, 1428 (1958).

54. Hillel Klein & Rafael Moses, *Psychological Reaction to Sensory Deprivation in Patients with Ablatio Retinae*, 24 PSYCHOTHERAPY & PSYCHOSOMATICS 41, 49-51 (1974). A more extensive review of this literature is contained in Appendix A to this declaration.

55. Appendix A discusses this issue in more detail.

experienced by inmates in solitary confinement is abnormal sleep-wake cycles and impaired sleep.

a. Findings at Pelican Bay State Prison

These findings received further corroboration in my observations of inmates at Pelican Bay State Prison, California. In 1991–1992, as part of my participation in *Madrid v. Gomez*—a class-action lawsuit challenging conditions at Pelican Bay State Prison, a new “supermax” facility in California<sup>56</sup>—I evaluated forty-nine inmates housed in the SHU at the institution and prepared a lengthy report to the federal court of my findings.<sup>57</sup> Many of the inmates I evaluated there suffered severe psychiatric disturbances while housed in Pelican Bay SHU, either springing up *de novo* while so incarcerated or representing a recurrence or severe exacerbation of preexisting illness. Of the forty-nine inmates I evaluated, at least seventeen were actively psychotic and/or acutely suicidal and urgently in need of acute hospital treatment, and twenty-three others suffered serious psychopathological reactions to solitary confinement, including (in several cases) periods of psychotic disorganization.

The clinical data at Pelican Bay also added striking corroboration to the conclusion that the severe and prolonged restriction of environmental stimulation in solitary confinement is toxic to brain functioning. The data demonstrated that the most severe, florid psychiatric illnesses resulting from solitary confinement tend to be suffered by those individuals with preexisting brain dysfunction. As noted before, I have observed a high incidence of preexisting central nervous system dysfunction among the inmates I evaluated in solitary confinement settings. This was also the case at Pelican Bay, and statistical analysis of the Pelican Bay data quite dramatically demonstrated that inmates with such preexisting vulnerability were the most likely to develop overt confusional, agitated, hallucinatory psychoses as a result of SHU confinement.

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56. *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), *rev'd and remanded*, 150 F.3d 1030 (9th Cir. 1998).

57. Much of the literature review and historical material in the present declaration is taken from my *Madrid* declaration.

### b. Attention Deficit and Antisocial Personality Disorders

In addition, research regarding Attention Deficit Hyperactivity Disorder and Antisocial Personality Disorder demonstrated that these conditions are similarly associated with a particular inability to tolerate restricted environmental stimulation. There is increasing evidence that childhood impulsivity and Attention Deficit Hyperactivity Disorder bear some relationship to Antisocial Personality Disorder, in that both are characterized by impulsivity and stimulation-seeking behavior, and both involve biologically based abnormalities in central nervous system functioning. Moreover, the clinical literature demonstrates that individuals with Antisocial Personality Disorder are especially intolerant of restricted environmental stimulation. For example, the psychopathic individual has been characterized as pathologically "stimulation seeking," "impulsive," and "unable to tolerate routine and boredom."<sup>58</sup>

Given the exigencies of conducting clinical observations of inmates in solitary confinement it is not surprising that little systematic attempt has been made to elucidate the underlying psychological characteristics of those most at risk for developing severe psychopathological reactions to such isolation. However, among the clinical reports on Ganster's Syndrome, a related condition, in non-prison populations are several studies of patients in psychiatric hospitals.<sup>59</sup> These patients were, of course, available for extensive psychological assessment and observation, and these reports described the majority of these patients as suffering long-standing hysterical character disorders, having problems with severe impulsivity, childhood truancy, and antisocial behavior patterns.<sup>60</sup>

Thus, the medical literature demonstrates that individuals whose internal emotional life is chaotic and impulse-ridden and individuals with central nervous system dysfunction may be especially prone to

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58. Herbert C. Quay, *Psychopathic Personality as Pathological Stimulation-Seeking*, 122 AM. J. PSYCHIATRY 180, 180 (1965). Appendix B contains a more detailed discussion.

59. See, e.g., Merle R. Ingraham & David M. Moriarty, *A Contribution to the Understanding of the Ganster Syndrome*, 8 COMPREHENSIVE PSYCHIATRY 35 (1967); Rupert H. May et al., *The Ganster Syndrome: A Report of Three Cases*, 130 J. NERVOUS & MENTAL DISEASES 331 (1960).

60. May et al., *supra* note 59, at 331-36.

psychopathologic reactions to restricted environmental stimulation in a variety of settings. Yet, among the prison population, it is quite likely that these are the very individuals who are especially prone to committing infractions that result in stricter incarceration, including severe isolation and solitary confinement.

c. *Langley v. Coughlin*<sup>61</sup>

In the late 1980s I interviewed and reviewed the medical records of several dozen inmates confined in maximum security prisons in New York State, including a large group of women incarcerated at the maximum security women's prison for the state of New York at Bedford Hills. During the process of these evaluations it became clear that a very high percentage of these women had a history of serious emotional or organic mental difficulties. Many had severe cognitive limitations, were highly emotionally labile, impulse ridden, and prone to psychotic disorganization. In many cases the infraction which led to their original incarceration was an act which had been committed impulsively and chaotically. Under the stress of imprisonment these inmates became even more unable to conform their behavior to the requirements of their situation.

Inevitably, this resulted in their being sentenced to terms in the SHU, and once in the SHU their subsequent course was often a nightmare. Many became grossly disorganized and psychotic, smearing themselves with feces, mumbling and screaming incoherently all day and night, some even descending to the horror of eating parts of their own bodies.

The resulting lawsuit was ultimately settled by consent decree. The settlement provided injunctive relief as well as monetary damages both for the mentally ill inmates whose emotional condition had deteriorated during their incarceration in the SHU, and also for the non-mentally ill women who had been subjected to the bedlam of mental illness created in their SHU environment. The injunctive relief required the prison to begin to reframe the meaning it gave to

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61. There are two companion cases: *Langley v. Coughlin*, 715 F. Supp. 522 (S.D.N.Y. 1989); and *Langley v. Coughlin*, 709 F. Supp. 482 (S.D.N.Y. 1989), *aff'd*, 888 F.2d 252 (2d Cir. 1989).

behavioral disturbances which they had previously responded to by further SHU time.<sup>62</sup> Under the settlement the prison began to actively consider whether such disturbances were the result of organic personality disturbances, affective or impulse disorders, or even of schizophreniform illness. The result of these changes was apparently quite dramatic.

Many of the prisoners who had been in SHU began to be treated in a residential psychiatric unit within the prison. This unit had previously refused to treat such inmates, claiming that their security needs were greater than could be handled. When pressed to provide services as a result of the settlement not only did the unit discover that it was able to provide those services, but moreover discovered that the custodial and security needs of these inmates dramatically decreased when their behavioral disturbances were framed as psychiatric problems rather than as a security issue. Thus, as a result of the settlement of the lawsuit, all parties to the suit benefited—prisoners and the officers of the correctional facility alike. I followed the result of the litigation in my capacity as an expert member of the settlement.

d. Effects on Psychologically More Resilient Inmates:

*Baraldini v. Meese*<sup>63</sup> and *Hameed v. Coughlin*<sup>64</sup>

In 1988 in the course of my involvement in *Baraldini v. Meese*, a class-action challenging the confinement of a small group of women in a subterranean security housing unit at the Federal Penitentiary in Lexington, Kentucky, I had the opportunity to interview several women who were in confinement in this facility. These women had been convicted of having committed politically motivated crimes, were all highly educated, and had a history of relatively strong psychological functioning prior to their confinement. None of these women developed the florid confusional psychosis described earlier in this affidavit, yet each of them demonstrated significant

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62. *Langley*, 709 F. Supp. 482.

63. 691 F. Supp. 432 (D.D.C. 1988), *rev'd sub nom.*, *Baraldini v. Thornburgh*, 884 F.2d 615 (D.C. Cir. 1989).

64. 57 F.3d 217 (2d Cir. 1995).

psychopathological reactions to their prolonged confinement in a setting of severe environmental and social isolation. These included perceptual disturbances, free-floating anxiety, and panic attacks. These inmates also uniformly described severe difficulties in thinking, concentration, and memory; for example, one inmate reported that she was able to perform tasks requiring some mental effort—such as reading or writing—only for about the first three hours of the morning after she awoke; by then, her mind had become so slowed down, so much “in a fog,” that she was entirely unable to maintain any meaningful attention or expend any meaningful mental effort.

I have since evaluated a number of individuals who evidenced strong psychological adjustment prior to imprisonment. For example, in 1993 I evaluated Bashir Hameed, an inmate who had been incarcerated in the SHU at Shawangunk Correctional Facility and who had brought suit concerning his incarceration there. As I described in my testimony in that case, Mr. Hameed is an individual who evidences strong prior psychological adjustment and no prior psychiatric history, yet became significantly ill as a result of his SHU confinement.

#### *E. Long Term Effects of Solitary and Small Group Confinement*

Long-term studies of veterans of prisoner of war camps, and of kidnapping and hostage situations have demonstrated that while many of the acute symptoms I outlined above tend to subside after release from confinement, there are also long-term effects which may persist for decades.<sup>65</sup> These not only include persistent symptoms of post traumatic stress (such as flashbacks, chronic hypervigilance, and a pervasive sense of hopelessness), but also lasting personality changes—especially including a continuing pattern of intolerance of social interaction, leaving the individual socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction.<sup>66</sup>

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65. See LAWRENCE E. HINKLE, JR. & HAROLD G. WOLFF, COMMUNIST INTERROGATION AND INDOCTRINATION OF “ENEMIES OF THE STATES” (1956).

66. This literature is reviewed in Appendix D to this declaration.

In addition, from time to time I have had the opportunity to evaluate individuals who had been incarcerated in solitary confinement several years previously. I have found the same pattern of personality change described above: these individuals had become strikingly socially impoverished and experienced intense irritation with social interaction, patterns dramatically different from their functioning prior to solitary confinement.

### III. CONCLUSIONS

The restriction of environmental stimulation and social isolation associated with confinement in solitary are strikingly toxic to mental functioning, producing a stuporous condition associated with perceptual and cognitive impairment and affective disturbances. In more severe cases, inmates so confined have developed florid delirium—a confusional psychosis with intense agitation, fearfulness, and disorganization. But even those inmate who are more psychologically resilient inevitably suffer severe psychological pain as a result of such confinement, especially when the confinement is prolonged, and especially when the individual experiences this confinement as being the product of an arbitrary exercise of power and intimidation. Moreover, the harm caused by such confinement may result in prolonged or permanent psychiatric disability, including impairments which may seriously reduce the inmate's capacity to reintegrate into the broader community upon release from prison.

Many of the prisoners who are housed in long-term solitary confinement are undoubtedly a danger to the community and a danger to the corrections officers charged with their custody. But for many they are a danger not because they are coldly ruthless, but because they are volatile, impulse-ridden, and internally disorganized.

As noted earlier in this statement, modern societies made a fundamental moral division between socially deviant behavior that was seen as a product of evil intent, and such behavior that was seen as a product of illness. Yet this bifurcation has never been as simple as might at first glance appear. Socially deviant behavior can in fact be described along a spectrum of intent. At one end are those whose behavior is entirely “instrumental”—ruthless, carefully planned, and

rational; at the other are individuals whose socially deviant behavior is the product of unchecked emotional impulse, internal chaos, and often of psychiatric or neurological illness.

It is a great irony that as one passes through the levels of incarceration—from the minimum to the moderate to the maximum security institutions, and then to the solitary confinement section of these institutions—one does not pass deeper and deeper into a subpopulation of the most ruthlessly calculating criminals. Instead, ironically and tragically, one comes full circle back to those who are emotionally fragile and, often, severely mentally ill. The laws and practices that have established and perpetuated this tragedy deeply offend any sense of common human decency.

## APPENDIX A:

REPORTS OF PSYCHIATRIC DISTURBANCES IN OTHER CONDITIONS OF  
RESTRICTED ENVIRONMENTAL STIMULATION

The psychopathologic syndrome which I have described in the body of this article is found in other settings besides isolation in civil prisons. Some of these settings involve small group, rather than solitary isolation, and the studies have demonstrated that isolated groups comprising two individuals may be the most pathogenic of all. These studies also suggest that those individuals with below average intelligence and poor psychosocial adjustment prior to isolation developed more severe psychiatric difficulties during isolation. In some studies, such disturbances persisted at a one year follow-up after reentry.

## I. AVIATION

One particular study, by Bennett, has described psychiatric disturbances among pilots of the British Royal Air Force who had been exposed in-flight to periods of restricted auditory and visual stimulation.<sup>67</sup> All of the groups he described became significantly anxious; many suffered full-blown panic attacks, and many experienced unusual sensations which they were very reluctant to describe. The most severely disturbed groups refused to expose themselves further to the isolation conditions of these flights. At all levels of impairment, however, anxiety was common (both panic and free-floating anxiety). Pilots reported anxiety symptoms such as feeling "hot and tense and powerless" and "nervous and afraid."<sup>68</sup> Feelings of derealization, feelings of detachment from reality, and perceptual distortions were described. Some of these perceptual distortions were dangerous—such as having the impression that the aircraft was turning when it was not—and resulted in serious errors in

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67. A.M. Hastin Bennett, *Sensory Deprivation in Aviation*, in SENSORY DEPRIVATION—HARVARD, *supra* note 47, at 161–73.

68. *Id.* at 164.

judgment like making the aircraft spiral dangerously downward after attempting to “correct” for what was incorrectly perceived as a turning aircraft.

Another study described strikingly similar symptoms among United States Navy pilots exposed to periods of in-flight isolation.<sup>69</sup> Among pilots who flew alone at high altitude (meaning in a situation of monotonous visual and sensory stimulation) and flying with a minimum of pilot activity, over one third experienced frightening feelings of unreality and became severely anxious.<sup>70</sup>

## II. SMALL GROUP CONFINEMENT

Many studies—both anecdotal and experimental—have been made of individuals confined together in small groups. Groups thus described have ranged in size from two to approximately sixty individuals, the larger groups include reports of men isolated on a Pacific island, in submarines, and on Antarctic expeditions.<sup>71</sup> The most consistent finding was of dramatically increased levels of hostility, interpersonal conflict, and paranoia.<sup>72</sup> Individuals exposed to such conditions also tend to become irrationally territorial, staking out “areas of exclusive or special use, [and] acting with hostility to trespasses by others.”<sup>73</sup>

Confined groups comprising just two individuals may be the most pathogenic of all, associated with especially high rates of mutual paranoia and violent hostility. Admiral Byrd believed it to be extremely unsafe to staff an Antarctic base unit with just two men:

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69. Brant Clark & Ashton Graybiel, *The Break-off Phenomenon*, 28 J. AVIATION MED. 121 (1957).

70. *Id.* at 122.

71. See Seward Smith, *Studies of Small Groups in Confinement*, in SENSORY DEPRIVATION: FIFTEEN YEARS OF RESEARCH 374–76 (John Peter Zubek ed., 1969) [hereinafter SENSORY DEPRIVATION: FIFTEEN YEARS]. For articles reporting effects in arctic environments, see Jeanette J. Cochrane & S.J.J. Freeman, *Working in Arctic and Sub-Arctic Conditions: Mental Health Issues*, 34 CAN. J. PSYCHIATRY 884 (1989); Eric Gunderson & Paul D. Nelson, *Adaptation of Small Groups to Extreme Environments*, AEROSPACE MED., Dec. 1963, at 1111; Charles S. Mullin & H.J.M. Connery, *Psychological Study at an Antarctic IGY Station*, 10 U.S. ARMED FORCES MED. J. 290 (1959).

72. Smith, *supra* note 71, at 377.

73. *Id.* at 380.

[I]t doesn't take two men long to find each other out. . . . [T]he time comes . . . when even his [campmate's] unformed thoughts can be anticipated, his pet ideas become a meaningless drivel, and the way he blows out a pressure lamp or drops his boots on the floor or eats his food becomes a rasping annoyance. . . . Men who have lived in the Canadian bush know well what happens to trappers paired off this way . . . .

. . . During my first winter at Little America I walked for hours with a man who was on the verge of murder or suicide over imaginary persecutions by another man who had been his devoted friend.<sup>74</sup>

### III. POLAR HABITATION

Psychiatric disturbances have been described in Arctic and Antarctic inhabitants (explorers, researchers, and their support staff), spending varying periods in winter isolation. In these regions, winters last for up to nine months with weather conditions so cold (-100°F) that leaving the confines of the indoors is dangerous.<sup>75</sup> Typically, teams of work groups have fewer than fifty members who spend up to two years working in small quarters.<sup>76</sup> Small group isolation conditions at these stations have been compared to life in prisons by at least one researcher: "[T]he isolation imposed by the harsh environment [of the Antarctic] is rarely experienced outside penal conditions."<sup>77</sup>

A review of the literature on the psychological adjustment to Antarctic living described a staff wintering over at a British Antarctic station; those of the staff who adjusted best tended to be socially mature, intelligent, reserved, and trusting individuals.<sup>78</sup> Similarly,

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74. *Id.* at 381.

75. Gunderson & Nelson, *supra* note 71, at 1111.

76. *Id.*

77. Robert J. Biersner & Robert Hogan, *Personality Correlates of Adjustment in Isolated Work Groups*, 18 J. RESEARCH IN PERSONALITY 491, 491 (1989).

78. See Esther D. Rothblum, *Psychological Factors in the Antarctic*, 124 J. PSYCH. 253 (1990).

French, United States, and Australian studies revealed that intelligence and previous social adjustment predicted a decreased risk for psychiatric disturbance among workers at Antarctic stations.<sup>79</sup> On the other hand, lack of respect for authority and aggression were important markers for poor isolation adjustment.<sup>80</sup>

Similarly, another study correlated outcome measures with psychological testing obtained prior to work station assignment.<sup>81</sup> These researchers found specifically that persons with antisocial and psychotic tendencies were poor risks for efficient functioning in conditions of isolation.<sup>82</sup>

As a result of these disturbing findings among Antarctic workers, systematic efforts have been made to provide psychological screening of potential station employees and to ameliorate the isolation conditions prevailing in such stations.<sup>83</sup> Despite these efforts, significant psychiatric disturbances have continued to be observed.<sup>84</sup> The fact that these individuals were confined in small groups rather than alone was not found to prevent these disturbances; indeed, one of the central pathogenic factors cited in this literature has been the interpersonal tension and hostility generated by small group confinement.<sup>85</sup>

Studies have described a "winter-over syndrome" including progressively worsening depression, hostility, sleep disturbance, impaired cognitive functioning, and paranoia during small group winter confinement in the Antarctic.<sup>86</sup> Strikingly similar findings were reported by the United States Navy Medical Neuropsychiatric Research Unit, which found high incidences of sleep disturbance, depression, anxiety, aggression, somatic complaints, and a

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79. *Id.* at 256; see also Smith, *supra* note 71, at 393–95.

80. Mullin & Connery, *supra* note 71, at 292.

81. See Morgan W. Wright et al., *Personality Factors in the Selection of Civilians for Isolated Northern Stations*, 8 CAN. PSYCHOLOGIST 23 (1967).

82. *Id.* at 29.

83. Cochrane & Freeman, *supra* note 71, at 889.

84. K. Natani & J. Shurley, *Sociopsychological Aspects of a Winter Vigil at South Pole Station*, in HUMAN ADAPTABILITY TO ANTARCTIC CONDITIONS 89–114 (Eugene Gunderson ed., Am. Geophysical Union 1974).

85. See Biersner & Hogan, *supra* note 77, at 491–96.

86. See, e.g., R. Strange & W. Klein, *Emotional and Social Adjustment of Recent Winter-Over in Isolated Antarctic Stations*, 7 ANTARCTIC BIBLIOGRAPHY 229 (1974).

progressive impoverishment of social relationships as the winter progressed.<sup>87</sup> Psychiatric problems worsened as the length of time in this confinement increased; in one study of a group of Japanese winter-stationed in the Antarctic, periodic psychological testing revealed increasing levels of anxiety and depression as the winter progressed.<sup>88</sup> Similar findings have been described among a group of Americans stationed in the Antarctic.<sup>89</sup>

A review of the literature on the psychological adjustment to Arctic life described a syndrome which parallels the Antarctic literature: sleep disturbances, apathy, irritability, cognitive dysfunction, hallucinations, depression, and anxiety were widely reported as a result of the small group isolation endured by inhabitants.<sup>90</sup> They also reported “depression, irritability, [and] easily provoked anger which may escalate into dramatic and florid acting out and, not surprisingly, a breakdown in relationships with other members of the group. . . . [I]nsomnia, pallor, loss of appetite, loss of interest, psychomotor retardation, paranoid ideation, [and] nonspecific hallucinations of light flashes and sudden movements [were also experienced].”<sup>91</sup> Even when Arctic workers were adequately preselected by psychological screening, trained, and supported sleep difficulties, apathy, and irritability persisted.

Studies on reintegration into the home environment after Antarctic living found persisting problems and symptoms including sleep disturbances, cognitive slowing, emotional withdrawal, resentment of authority, indecisiveness, and poor communication even one year after reintegration.<sup>92</sup>

Robert J. Biersner and Robert Hogan summarized the findings related to personality variables in the Arctic and Antarctic workers: “Individuals with high needs for novelty and new sensations, . . . who are emotionally unstable, or who are unconcerned with social

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87. See E.K. Eric Gunderson, *Emotional Symptoms in Extremely Isolated Groups*, 9 ARCHIVES GEN. PSYCHIATRY 362 (1963); Gunderson & Nelson, *supra* note 71, at 1111–15.

88. Rothblum, *supra* note 78, at 253–73.

89. Gunderson & Nelson, *supra* note 71, at 1114.

90. See Cochrane & Freeman, *supra* note 71, at 889.

91. *Id.* at 887.

92. Rothblum, *supra* note 78, at 267.

approval seem unsuited for . . . such environments . . . . The opposite [traits are found in] those who adjust well.”<sup>93</sup>

#### IV. EXPLORERS: SOLO VOYAGES

Anecdotal reports of shipwrecked sailors and individuals accomplishing long solo sea voyages have generally described “disturbances in attention and in organization of thought, labile and extreme affect, hallucinations and delusions.”<sup>94</sup> Dramatic anecdotal reports have appeared from time to time. Some of these were summarized in a review article by Dr. Philip Solomon, one of the lead scientists in the Harvard Medical School/Boston City Hospital group:

Christine Ritter in her very sensitive document *A Woman in the Polar Night*, reported that at times she saw a monster . . . [and] experienced depersonalization to the extent that she thought she and her companions were dissolving in moonlight ‘as though it were eating us up’ . . . The Spitzbergen hunters use the term ran (strangeness) to describe these experiences . . . .<sup>95</sup>

Tales of the sea have provided many accounts of hallucinatory phenomena. John Slocum sailed alone around the world . . . [In the South Atlantic] he suddenly saw a man, who at first he thought to be a pirate, take over the tiller . . . .

Walter Gibson, a soldier in the British Indian Army, was on a ship torpedoed in the Indian Ocean by the Japanese in World War II . . . . [The shipwrecked survivors] reported that “all of us at various stages in that first week became a prey to hallucinations” . . . [As the weeks passed] the feeling of comradeship disappeared and the men began to find themselves “watching our fellows covertly and suspiciously.”<sup>96</sup>

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93. Biersner & Hogan, *supra* note 77, at 495.

94. Peter Suedfeld, *Introduction and Historical Background*, in SENSORY DEPRIVATION: FIFTEEN YEARS, *supra* note 71, at 7.

95. Philip Solomon et al., *Sensory Deprivation: A Review*, 114 AM. J. PSYCHIATRY 357, 357–58 (1957).

96. *Id.*

Murder, suicide, and cannibalism followed as social controls dissolved.<sup>97</sup>

## V. MEDICAL CONDITIONS

### *A. Eye Patched Patients*

Restricted environmental stimulation conditions also occur post-operatively and in certain medical conditions. In a study of one hundred American patients with macular degeneration of the retina, a high percentage of such patients experienced disturbing visual hallucinations.<sup>98</sup> Those patients who were relatively cognitively limited, those who were socially isolated, and those with simultaneous sensory impairment in another modality (for example, hearing-impaired patients) fared worst.<sup>99</sup> But other factors, including the presence of concomitant medical illness, did not appear to affect the incidence of hallucinations.<sup>100</sup>

In an especially relevant study of eye patched patients, it was determined that psychologically well-adjusted patients (as assessed prior to surgery) tended not to develop visual hallucinations during the period when their eyes were patched, whereas those suffering preexisting personality disturbances did tend to develop such hallucinations.<sup>101</sup> Among those patients who did develop hallucinations, almost half developed complex hallucinations involving human figures and with content suggesting serious preoccupations with themes of depression and anxiety.<sup>102</sup> Moreover, among those patients who had both preexisting personality disturbances and difficulty with their premorbid psychosocial adjustment, eye patching produced severe psychiatric symptomatology, including: paranoid thoughts about being poisoned, physically harmed or attacked; psychomotor agitation; interpersonal

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97. *Id.*

98. See Suzanne Holroyd et al., *Visual Hallucinations in Patients with Macular Degeneration*, 149 AM. J. PSYCHIATRY 1701, 1703 (1992).

99. *Id.* at 1703-04.

100. *Id.*

101. Klein & Moses, *supra* note 54, at 49.

102. *Id.*

aggressiveness; inability to comply with staff directives; fearful visual hallucinations; and incapacitating anxiety.<sup>103</sup> In this most disturbed group, symptoms had not remitted when observed one week after their eye patches were removed.<sup>104</sup>

Other studies have also found patients to suffer from perceptual distortions, thinking disturbances, and mood changes following the visual deprivation that is part of postoperative recovery in eye surgery.<sup>105</sup> Furthermore, it was noted that “[i]n patients with . . . brain damage, there were also delirioid symptoms, e.g., confusion, disorientation, memory impairment, vivid hallucinations [and disorganized] hyperkinetic activity . . . .”<sup>106</sup> Finally, in C. Wesley Jackson’s extensive literature review of hospitalized eye patched patients, psychiatric disturbance was commonly found.<sup>107</sup> These patients suffered from unusual emotional, cognitive, and sensory-perceptual disturbances similar to those previously described.

### *B. Poliomyelitis*

Polio patients confined to tank-type respirators have become psychotic as a direct result of such confinement; moreover, they became more ill, with more florid hallucinations and delusions, at night when sensory input was diminished.<sup>108</sup> The same florid hallucinatory, delusional psychosis has been found in other patients similarly confined in tank respirators.<sup>109</sup>

### *C. Cardiac Patients*

Patients with decompensated heart disease are at times placed on very strict bed rest; some of these patients have developed acute

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103. *Id.* at 50.

104. *Id.*

105. See, e.g., Eugene Ziskind et al., *Observations on Mental Symptoms in Eye Patched Patients: Hypnagogic Symptoms in Sensory Deprivation*, 116 AM. J. PSYCHIATRY 893 (1960); Ziskind, *supra* note 53.

106. Ziskind et al., *supra* note 105, at 894.

107. See C. Wesley Jackson, Jr., *Clinical Sensory Deprivation: A Review of Hospitalized Eye-Surgery Patients*, in SENSORY DEPRIVATION: FIFTEEN YEARS, *supra* note 71, at 337–43.

108. Solomon et al., *supra* note 95, at 361.

109. *Id.* at 362.

confusional, paranoid, hallucinatory psychoses, especially at night during periods of decreased sensory input.

Studies of postoperative open heart surgery patients who were bed confined—their visual stimulation restricted to looking up at a white-tiled hospital room ceiling—revealed a high rate of disordered thinking, visual and auditory hallucinations, and disorientation.<sup>110</sup> There is an extremely disturbing incidence of psychosis following open heart surgery, ranging in various studies from 14% to 30%.<sup>111</sup> Upon recovery these patients described their postoperative environment as a major pathogenic factor in producing their psychiatric illness.<sup>112</sup> Perceptual disturbances and emotional lability, as well as paranoia, depression, and obsessive-compulsive reactions to the restrictive postoperative environment have been documented in other studies as well.<sup>113</sup>

#### *D. Hearing-Impaired Individuals*

Another condition of restricted environmental stimulation leading to psychiatric disturbance involves the hearing impaired. Studies of the deaf consistently find significantly higher rates of paranoia in these individuals.<sup>114</sup> High rates of paranoia have been reported in both the developmentally hearing impaired as well as those who

110. See, e.g., N. Egerton & J.H. Kay, *Psychological Disturbances Associated with Open Heart Surgery*, 110 BRIT. J. PSYCHIATRY 433 (1964); Donald S. Kornfeld et al., *Psychiatric Complications of Open-Heart Surgery*, 273 NEW ENG. J. MED. 287 (1965); Herbert R. Lazarus & Jerome H. Hagens, *Prevention of Psychosis Following Open-Heart Surgery*, 124 AM. J. PSYCHIATRY 1190 (1968); Larkin M. Wilson, *Intensive Care Delirium*, 130 ARCHIVES INTERNAL MED. 225 (1972).

111. Robert E. Lee & Patricia A. Ball, *Some Thoughts on the Psychology of the Coronary Care Unit Patient*, 75 AM. J. NURSING 1498, 1501 (1975).

112. Kornfeld et al., *supra* note 110, at 290.

113. See, e.g., Rosemary Ellis, *Unusual Sensory and Thought Disturbances After Cardiac Surgery*, 72 AM. J. NURSING 2021 (1972); Alvin G. Goldstein, *Hallucinatory Experience: A Personal Account*, 85 J. ABNORMAL PSYCHOL. 423 (1976); Linda Reckhow Thomson, *Sensory Deprivation: A Personal Experience*, 73 AM. J. NURSING 266 (1973); Lee & Ball, *supra* note 111.

114. See, e.g., Kenneth Z. Altshuler, *Studies of the Deaf: Relevance to Psychiatric Theory*, 127 AM. J. PSYCHIATRY 1521 (1971); F. Houston & A.B. Royse, *Relationship Between Deafness and Psychotic Illness*, 100 J. MENTAL SCI. 990 (1954).

became deaf in later life. Experimentally induced deafness in psychiatrically unimpaired adults also produced paranoia.<sup>115</sup>

#### *E. Other Medical Patients*

Disorientation and delusional psychoses have also been reported among immobilized orthopedic patients and in patients postsurgically bed-confined. Nursing researchers have studied this phenomenon and have concluded that frightening hallucinatory experiences “are probably far more widespread than has been suspected.”<sup>116</sup>

### VI. OCCUPATIONAL SITUATIONS

Researchers reported in the *New England Journal of Medicine* on a study of fifty long-distance truck drivers; of these, thirty experienced vivid visual hallucinations and some became disoriented as if in a dream.<sup>117</sup>

### VII. ANIMAL STUDIES

As noted in the body of this article, many prisoners confined in solitary become intolerant of normal levels of environmental (especially social) stimulation. These reports receive experimental confirmation in laboratory research on animals. Such research demonstrates that sensory deprivation produces an intolerance to normal levels of environmental stimulation; animals exposed to sensory deprivation conditions became overly aroused—“hyperexcitable”—when exposed to normal levels of environmental stimulation, often resulting in severe behavioral disturbances.<sup>118</sup>

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115. See Phil G. Zimbardo et al., *Induced Hearing Deficit Generates Experimental Paranoia*, 212 *SCI.* 1529, 1529–31 (1981).

116. Florence S. Downs, *Bed Rest and Sensory Disturbances*, 74 *AM. J. NURSING* 434, 438 (1974).

117. Ross A. McFarland & Ronald C. Moore, *Human Factors in Highway Safety*, 256 *NEW ENG. J. MED.* 792, 797 (1957).

118. See Austin H. Riesen, *Excessive Arousal Effects of Stimulation After Early Sensory Deprivation*, in *SENSORY DEPRIVATION—HARVARD*, *supra* note 47, at 35–36.

One study produced agitation in mice and rats after a few days of isolation, a report which corroborated previous studies with rats.<sup>119</sup> Others have also found isolation-induced aggressive behavior in mice (such as biting attacks).<sup>120</sup> Further, social isolation has been demonstrated to produce profound and lasting psychological effects in primates. Researchers have noted that over four hundred published investigations of the effects of social isolation on primates show such deleterious effects as self-mutilation and disturbances in perception and learning.<sup>121</sup> They found that in adult rhesus monkeys even brief periods of social isolation produce compromised cognitive processing.<sup>122</sup> Others have produced symptoms of depression in rhesus monkeys by confining them for thirty days.<sup>123</sup> They concluded that solitary “confinement produced greater destructive behavioral effects in less time and with fewer individual differences among subjects than did total social isolation, previously [demonstrated to be] the most powerful technique for producing psychopathological behavior among monkey subjects.”<sup>124</sup> Induced depression through confinement has been reported in both young and mature monkeys.<sup>125</sup> Finally, isolation-produced fear in dogs has been clearly demonstrated.<sup>126</sup>

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119. See T.C. Barnes, *Isolation Stress in Rats and Mice as a Neuropharmacological Test*, 18 FED’N PROC. 365 (1959).

120. Kinzo Matsumoto et al., *Desipramine Enhances Isolation-Induced Aggressive Behavior in Mice*, 39 PHARMACOLOGY BIOCHEMISTRY & BEHAV. 167, 168 (1991).

121. See David A. Washburn & Duane M. Rumbaugh, *Impaired Performance from Brief Social Isolation of Rhesus Monkeys*, 105 J. COMP. PSYCHOL. 145 (1991).

122. *Id.* at 145.

123. William T. McKinney et al., *Depression in Primates*, 127 AM. J. PSYCHIATRY 1313, 1316 (1971).

124. *Id.* at 1317.

125. See Harry F. Harlow & Steven J. Suomi, *Induced Depression in Monkeys*, 12 BEHAV. BIOLOGY 273 (1974).

126. See W.R. Thompson & R. Melzack, *Early Environment*, 194 SCI. AM. 38 (1956).

## APPENDIX B:

THE NINETEENTH CENTURY GERMAN EXPERIENCE WITH SOLITARY  
CONFINEMENT

Between 1854 and 1909 thirty-seven articles appeared in the German medical literature on the subject of psychotic disturbances among prisoners, summarizing years of work and many hundreds of cases. A major review of this literature was published in 1912.<sup>127</sup> Solitary confinement was the single most important factor identified in the etiology of these psychotic illnesses.

Indeed, the first report on the subject of prison psychoses was that of Delbruck, chief physician of the prison at Halle, in which the frequency of mental disturbances was at last so great that it attracted the attention of the authorities.<sup>128</sup> Delbruck's report concluded that prolonged absolute isolation has a very injurious effect on the body and mind and that it seems to predispose inmates to hallucinations and advised the immediate termination of solitary confinement.<sup>129</sup>

In 1863 Gutsch reported on eighty-four cases of psychosis stemming from solitary confinement and described vivid hallucinations and persecutory delusions, apprehensiveness, psychomotor excitation, sudden onset of the syndrome, and rapid recovery upon termination of solitary confinement.<sup>130</sup> Many of these individuals developed "suicidal and maniacal outbreaks."<sup>131</sup>

In 1871, in a report on fifteen cases of acute reactive psychoses, some of which apparently occurred within hours of incarceration in solitary, Reich described hallucinosis and persecutory delusions in addition to severe anxiety leading to motor excitement—"[t]he patient becomes noisy, screams, runs aimlessly about, destroys and ruins everything that comes in his way."<sup>132</sup> He also described an acute confusional state accompanying these symptoms, sudden

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127. See NITSCHIE & WILMANN, *supra* note 36.

128. *Id.* at 1.

129. *Id.* at 2.

130. *Id.* at 8.

131. *Id.*

132. *Id.* at 31.

cessation of symptoms, recovery, and subsequent amnesia for the events of the psychosis.<sup>133</sup>

In a statistical summary, Knecht reported in 1891 on the diagnostic assessment of 186 inmates at the “insane department” of the prison at Waldheim and concluded that over half of the total inmates in this department were there due to reactive manifestations to solitary confinement.<sup>134</sup> The majority of these inmates became insane within two years of confinement in solitary.<sup>135</sup>

In 1884 Sommer reported on 111 cases describing an acute, reactive, hallucinatory, anxious, confusional state associated with solitary confinement, emphasizing the “excited outbursts” and “vicious assaults” of these patients.<sup>136</sup> His patients’ illness began with difficulty in concentration and hyperresponsivity to minor “inexplicable” external stimuli. These “elementary disturbances of the sensorium (i.e., the five senses)” were seen as leading to “elementary hallucinations” which became more numerous, eventually including auditory, visual, and olfactory hallucinations and eventually becoming incorporated with fearful persecutory delusions.<sup>137</sup>

In 1889 Kirn described 129 cases of psychosis among the inmates at the county jail at Freiburg, concluding that in fifty of those cases, “solitary confinement can be definitely considered as the etiological factor, (and these) show a certain characteristic stamp” including persecutory delusions and hallucinations in multiple spheres (auditory, visual olfactory, tactile).<sup>138</sup> He also noted that these symptoms often precipitated at night:

[T]he patient is suddenly surprised at night by hallucinatory experiences which bring on an anxious excitement. These manifestations become constant from now on, in many cases occurring only at night, in others also in the daytime. Attentive patients not infrequently hear at first a humming and buzzing

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133. *Id.* at 32–33.

134. *Id.*

135. *Id.* at 17.

136. *Id.* at 12, 16.

137. *Id.* at 12–16.

138. *Id.* at 21.

in their ears, unpleasant noises and inarticulate sounds which they cannot understand until finally they hear well differentiated sounds and distinct words and sentences. . . .

. . . The visual hallucinations are very vivid.<sup>139</sup>

In 1888 Moeli contributed a description of “vorbereiden”—also known as “the symptom of approximate answers.”<sup>140</sup> Ten years later Ganser contributed to the literature the elucidation of a syndrome which included Moeli’s symptom.<sup>141</sup> As Arieti points out, Ganser’s Syndrome became well known—indeed, almost a codification of the whole body of literature on the prison psychoses.<sup>142</sup> Ganser provided a comprehensive and well-elucidated synthesis of symptoms, most of which had been previously described elsewhere. The syndrome he described included (in addition to vorbereiden) vivid visual and auditory hallucinations, a distinct clouding of consciousness, sudden cessation of symptoms “as from a dream,” and “a more or less complete amnesia for the events during the period of clouded consciousness.”<sup>143</sup> Ganser’s most original description was of “hysterical stigmata” within the syndrome, including conversion symptoms, especially total analgesia.<sup>144</sup>

Some of the German authors failed to note whether the inmates they were describing were housed in solitary confinement and, unfortunately, Ganser was one of these, stating only that his were prisoners awaiting trial. However, Langard, in 1901, also reporting on observations of accused prisoners awaiting trial, described an acute violent hallucinatory confusion with persecutory delusions and

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139. *Id.* at 23–24.

140. Vorbereiden is a rather remarkable symptom of deranged and confused thought processes in which the individual’s response to a question suggests that he grasped the gist of the question, and his answer is clearly relevant to the question, and related to the obvious correct answer, yet it still oddly manages to be incorrect. An example would be: Q: “How many colors are there in the flag of the United States?” A: “Four”. Q: “What are they?” A: “Yellow”.

141. Ganser, Ueber Einen Eigenartigen Hysterischen Dämmerzustand, 30 ARCHIV FÜR PSYCHIATRIE UND NERVENKRANKHEITEN [ARCH PSYCH. & NERVENK.] 633 (1898) (F.R.G.).

142. AMERICAN HANDBOOK OF PSYCHIATRY 710–12 (Gerald Caplan ed., 2d ed. 1974).

143. *Id.*

144. *Id.*

specifically stated that this syndrome occurred exclusively among those who awaited trial in solitary confinement.<sup>145</sup>

Also in 1901 Raecke similarly reported on prisoners awaiting trial and described the full syndrome described by Ganser, including *vorbereiden*; he specifically condemned solitary confinement as responsible for the syndrome.<sup>146</sup> He described his cases as beginning with apathy, progressing to “inability to concentrate, a feeling of incapacity to think,” and even catatonic features, including negativism, stupor, and mutism.<sup>147</sup>

In another report, written the same year, Skliar reported on sixty case histories of which he identified twenty-one as acute prison psychoses caused by solitary confinement.<sup>148</sup> While *vorbereiden* was not noted, most of the other symptoms described by Ganser and Raecke were, including massive anxiety and fearful auditory and visual hallucinations; in severe cases, hallucinations of smell, taste, and “general sensation” as well as persecutory delusions, senseless agitation and violence, confusion, and disorientation.<sup>149</sup> The psychosis developed rapidly, at times within hours of incarceration in solitary confinement.<sup>150</sup> Catatonic symptomatology was also noted.<sup>151</sup>

The German literature reported only on prisoners who suffered gross psychotic symptomatology, some of whom were observed in hospitals or “insane departments” of prisons; thus, these reports generally described only syndromal expressions that rose to the level of overt psychosis. The German reports do, however, powerfully demonstrate the existence of a particular, clinically distinguishable psychiatric syndrome associated with solitary confinement. These multiple reports described a syndrome which included:

1. Massive free-floating anxiety.
2. “Disturbances of the Sensorium,” including—

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145. NITSCHKE & WILMANN, *supra* note 36, at 32.

146. *Id.* at 34.

147. *Id.* at 33–35.

148. *Id.* at 40.

149. *Id.* at 41.

150. *Id.*

151. *Id.*

- a. hyperresponsivity to external stimuli; and
  - b. vivid hallucinations in multiple spheres (including auditory, visual, olfactory, gustatory, and tactile modalities); in some reports, these began as simple “elementary” hallucinations and progressed to complex, formed hallucinations.
3. Persecutory delusions, often incorporating coexistent complex hallucinations.
  4. Acute confusional states. In some reports these were seen as beginning with simple inattention and difficulty in concentration. In others, the onset was described as sudden. The confusional state and disorientation was in several reports described as resembling a dissociative, dreamlike state, at times involving features of a catatonic stupor, including negativism and mutism; and, upon recovery, leaving a residual amnesia for the events of the confusional state. Ganser and others observed hysterical conversion symptoms during this confusional state.
  5. Vorbereiden: This was an infrequent finding, mostly described in conjunction with a confusional, hallucinatory state.
  6. Motor excitement, often associated with sudden, violent destructive outbursts.
  7. Characteristic course of the illness:
    - a. onset was described by some authors as sudden, by others as heralded by a progression beginning with sensory disturbances and/or inattention and difficulty in concentration; and
    - b. in many cases, rapid subsidence of acute symptoms upon termination of solitary confinement.

The German reports were generally based upon prisoners who had been hospitalized because of their psychotic illness. In contrast, the population reported upon in the Walpole study was not preselected by overt psychiatric status. Despite this, all of the major symptoms

reported by the German clinicians were observed in the Walpole population, except for *vorbereiden* and hysterical conversion symptoms. In addition, less severe forms of the isolation syndrome were observed in the Walpole population, including:

- Perceptual distortions and loss of perceptual constancy, in some cases without hallucinations.
- Ideas of reference and paranoid ideation short of overt delusions.
- Emergence of primitive aggressive fantasies which remained ego-dystonic and with reality-testing preserved.
- Disturbances of memory and attention short of overt disorientation and confusional state.
- Derealization experiences without massive dissociative regression.

Since Ganser's report has become the twentieth century's clearest memory of a much vaster body of literature, it is also of interest to review the literature describing observations of Ganser's Syndrome in non-prison populations. Several of these reports have been studies of patients in psychiatric hospitals suffering from this syndrome. Since these patients were hospitalized, it was possible to obtain more extensive evaluation and testing of their status. Several reports described a majority of the patients studied as suffering long standing hysterical conversion symptoms; impulsivity, childhood truancy, and antisocial behavior were also commonly described.<sup>152</sup> These findings suggest also that antisocial behavior patterns and psychopathic personality disorder may bear a close relationship to primitive hysterical personality disorder, a relationship which has been described by other authors as well.<sup>153</sup>

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152. See, e.g., Ingraham & Moriarty, *supra* note 59; May et al., *supra* note 59; Milo Tyndel, *Some Aspects of the Ganser State*, 102 J. MENTAL SCI. 324 (1956); Herbert Weiner & Alex Braiman, *The Ganser Syndrome*, 111 AM. J. PSYCHIATRY 767 (1955).

153. See ROBERT A. WOODRUFF, JR. ET AL., *PSYCHIATRIC DIAGNOSIS* (1974).

## APPENDIX C:

EXPERIMENTAL RESEARCH ON THE PSYCHIATRIC EFFECT OF  
PROFOUND SENSORY DEPRIVATION: FACTORS INFLUENCING  
VULNERABILITY TO PSYCHIATRIC HARM

As noted in the body of this article, laboratory research has demonstrated that experimentally induced sensory deprivation has major psychological effects and can precipitate severe psychiatric illness. Much of the research in this area attempted to delineate factors in addition to the duration and intensity of sensory restriction which might account for these differing outcomes. The factors which have been elucidated include two which are especially relevant to this discussion and may help to explain the particular malignancy of sensory deprivation in solitary confinement: expectation and individual response.

## I. THE INFLUENCE OF EXPECTATION

Research has suggested that a subject's reaction to participation in a sensory deprivation experiment could be profoundly manipulated by external cues imposed by the experimenter:

[These] dramatic effects could be a function of the demand characteristics of the experimental situation. . . .

There is evidence . . . that preparing a subject for probable hallucinations significantly affects the frequency of hallucinations. . . . [S]uch devices as "panic buttons" in experiments are in a sense eloquent "instructions." The use of such a device increases the subject's expectation that something intolerable may occur, and, with it, the likelihood of a bad experience.<sup>154</sup>

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154. Martin T. Orne & Karl E. Scheibe, *The Contribution of Nondeprivation Factors in the Production of Sensory Deprivation Effects: The Psychology of the "Panic Button,"* 68 J. ABNORMAL & SOC. PSYCHOL. 3, 4 (1964) (citations omitted).

In the experiment, the researchers exposed two groups of subjects to identical conditions of sensory deprivation. The experimental group's introduction to the experiment included the presence of a medical "Emergency Tray," and instructions about a "Panic Button." As predicted, the experimental group became significantly more symptomatic in measures of cognitive impairment and restlessness, and also more symptomatic in every other measure—including perceptual aberrations, anxiety, and spatial disorientation.<sup>155</sup>

In a related manner, prisoners in solitary confinement generally view such confinement as threatening and punitive, and often as a deliberate attempt to make them "crack up" or "break my spirit." In light of this, it is not surprising that the only recent report suggesting no major ill effect of solitary confinement utilized prisoners who volunteered to spend four days in solitary confinement.<sup>156</sup>

## II. INDIVIDUAL DIFFERENCES IN RESPONSE

Several authors have directed attention to the fact that within a given experimental format, massive differences in response can be observed among individual subjects. Often subjects who tolerated the experimental situation well reported pleasant, or at least non-threatening, visual imagery, fantasy, and hallucinatory experiences. The individual's mind may begin to wander, engage in daydreams, slip off into hypnogogic reveries with their attendant vivid pictorial images. The individual may be quietly having sexual and other pleasurable thoughts.<sup>157</sup>

On the other hand,

Another subject in the same situation may deal with it in quite another manner. He may soon complain of all manner of things: the bed is causing him a backache, his mind is a blank . . . . [He also complains of] intense boredom, tenseness,

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155. *Id.* at 3–12.

156. See Richard H. Walters et al., *Effects of Solitary Confinement on Prisoners*, 119 AM. J. PSYCHIATRY 771 (1963).

157. Wright et al., *supra* note 81, at 36.

depressive feelings or of having unpleasant thoughts or picture-like images that disturb him.<sup>158</sup>

In response to these concerns about the incidence of psychopathological reactions to sensory deprivation, an important thrust of the experimentation in this area has been, by prescreening, to select as subjects only those persons demonstrating, by some measure, psychological strength and capacity to tolerate regression. The theoretical premise of such work has been:

[I]n the sensory deprivation experiments, it is the ego's autonomy from the drives that is predominately involved . . . . Differences in drive-discharge thresholds, phantasy [sic] and daydream capacity, capacity for what [is] . . . termed "regression in the service of the ego" are other theoretically relevant structural dimensions accounting for differences in isolation behavior.<sup>159</sup>

These ideas have been subjected to experimental verification, which has corroborated that some individuals tolerate such isolation better than others. For example, two researchers, using the Rohrshach Test for prescreening, concluded that the Rohrshach manifestations of an individual's defense and control mechanisms appear to be a reliable measure for predicting whether an individual will be effective in controlling the drive-dominated responses that might emerge during the individual's period of reduced sensory stimulation.<sup>160</sup>

Anecdotal reports in a similar vein appear from time to time in the literature. A subject of one study became panicky during sensory deprivation and stated he had been diagnosed "borderline psychotic."<sup>161</sup> Curtis and Zuckerman report on a psychotic paranoid reaction in one subject who suffered delusions for several days afterward, and severe anxiety and depression lasting several weeks;

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158. Leo Goldberger, *Experimental Isolation: An Overview*, 122 AM. J. PSYCHIATRY 774, 777 (1966).

159. *Id.* at 778 (footnotes omitted).

160. Wright et al., *supra* note 81, at 37.

161. Sanford J. Freedman & Milton Greenblatt, *Studies in Human Isolation II: Hallucinations and Other Cognitive Findings*, 11 U.S. ARMED FORCES MED. J. 1479, 1486 (1960).

personality test prescreening had suggested poor adjustment, hostility, lack of insight, and insecurity in interpersonal relationships.<sup>162</sup>

Others prescreened forty-three subjects and identified seven as suffering "personality deviations." Two of these subjects, who were diagnosed as borderline, developed frightening, aggressive fantasies, paranoia, and difficulty in reality testing; one of them prematurely terminated the experiment. Two others were diagnosed as psychopathic; both forced the premature termination of the experiment by disruptive behavior.<sup>163</sup>

Others, using interview techniques and formal psychological test data, studied the effects of two to six days of sensory deprivation on hospitalized psychiatric patients. Among the previously non-psychotic patients they studied, two developed overt paranoid psychoses during the experiment, ultimately necessitating electroshock treatment. These particular individuals appeared to have been unable to tolerate the emergence of aggressive fantasies and images during the sensory deprivation experience.<sup>164</sup>

#### *A. Effects of Sensory Deprivation on Antisocial Personality Disorder*

##### *1. Aversive Conditioning*

Individuals with psychopathic personality disorder are probably among the least tolerant of sensory deprivation. One researcher has described the essential core of psychopathic pathology as a pathological inability to tolerate restricted environmental stimulation:

The psychopath is almost universally characterized as [pathologically stimulus seeking and] highly impulsive . . . . He is unable to tolerate routine and boredom. . . . [H]is outbursts frequently appear to be motivated by little more than a need for thrills and excitement. . . .

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162. George C. Curtis & Marvin Zuckerman, *A Psychopathological Reaction Precipitated by Sensory Deprivation*, 125 AM. J. PSYCHIATRY 255, 256 (1968).

163. See Henry U. Grunebaum et al., *Sensory Deprivation and Personality*, 116 AM. J. PSYCHIATRY 878 (1960).

164. See H. Azima & Fern J. Cramer, *Effects of Partial Perceptual Isolation in Mentally Disturbed Individuals*, 17 DISEASES NERVOUS SYS. 117 (1956).

It is the impulsivity and lack of even minimal tolerance for sameness which appear to be the primary and distinctive features of the disorder.<sup>165</sup>

He goes on to argue that psychopathic individuals may chronically exist in a state of relative stimulus deprivation: “[H]ighly impulsive, psychopathic behavior [may be seen] in terms of stimulation-seeking pathology. If decreased reactivity and/or rapid adaptation [to environmental stimuli] do produce in these persons an affective state of unpleasantness close to that produced by severe sensory deprivation or monotony in the normal individual . . . .”<sup>166</sup>

He argues that behavioral impulsivity in such individuals may be an effort at coping with this condition of relative sensory deprivation which they experience: “It may be possible . . . to view much of the impulsivity of the psychopath, his need to create excitement and adventure, his thrill-seeking behavior, and his inability to tolerate routine and boredom as a manifestation of an inordinate need for increases or changes in the pattern of stimulation.”<sup>167</sup>

A later study, directly comparing psychopathic inmates with non-psychopathic controls, corroborated these findings. The psychopathic inmates scored significantly higher on measures of boredom susceptibility and of impulsivity. The authors concluded that psychopaths are pathologically stimulation seeking and incapable of tolerating isolation conditions.<sup>168</sup>

Others, in a large scale study of criminal offenders suffering from mental illness, noted that the prevalence of severe mental illness is higher among incarcerated offenders than among the general population; and that, compared with non-mentally ill inmates, the mentally ill inmates were more likely to be housed in solitary. Moreover many of these mentally ill inmates suffered from a combination of psychiatric disorders predisposing them to both psychotic breakdown and to extreme impulsivity (often including

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165. Quay, *supra* note 58, at 80.

166. *Id.* at 182.

167. *Id.* at 181.

168. See Timothy D. Emmons & Warren W. Webb, *Subjective Correlates to Emotional Responsivity and Stimulation Seeking in Psychopaths, Normals, and Acting-Out Neurotics*, 42 J. CONSULTING & CLINICAL PSYCHOL. 620 (1974).

substance abuse). Such individuals tended to be highly impulsive, lacking in internal controls, and tended to engage in self-abusive and self-destructive behavior in the prison setting, and especially so when housed in solitary.<sup>169</sup>

Many of the inmates placed in solitary confinement are thus likely to be among the least capable of tolerating the experience, and among the most likely to suffer behavioral deterioration as a consequence of such confinement. Solitary confinement has at times been rationalized as being a form of “aversive conditioning,” intended to extinguish negative inmate behaviors. Yet this assertion ignores many of the most basic tenets of any behavior modification treatment, and would in any case clearly violate the ethical guidelines governing the use of aversive conditioning:

a. Ethical Considerations

First of all, since aversive conditioning—the use of punishment as a means of inducing behavior change—is inherently suspect ethically and creates an inherent risk of harm, very clear outcome variables have to be articulated and systematically measured over time. As a result of these serial measurements, there must be clear evidence that the undesirable behavior is in fact lessening in frequency and intensity. Such measurement will also identify those patients for whom such aversive conditioning is actually harmful, allowing these individuals to be removed from the aversive treatment protocol. Were such measurements done in the prison setting, staff would inevitably be required to acknowledge the behavioral deterioration which many inmates were suffering as a result of placement in solitary, and in such cases, ethical considerations would have required transferring the inmate out of such confinement.

b. SHU Incarceration is not Aversive Conditioning

SHU incarceration does not meet criteria for aversive conditioning. Indeed, any behavior modification scheme must define and describe very explicitly two variables:

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169. Curtis & Zuckerman, *supra* note 162, at 271–72.

(i) The behavior being changed:

Behavior researchers have learned that in order for a subject to benefit from aversive (or any other form of) conditioning, the behavior at issue must be a single, very clearly defined behavior. When multiple behaviors are responded to by the same reinforcer or punishment, learning and behavior change does not occur. Thus, placement in SHU, which is “punishment” for a host of different behaviors, is simply not being used in a manner consistent with an intent of behavior modification; there is inadequate linkage of any specific behavior to this “punishment.”

(ii) The “punishment”:

Moreover, SHU confinement is quite clearly not “punishment.” To be effective, a “punishment” must be very closely linked in time to the targeted behavior, and for learning to occur, there must be repeated opportunities to experience this close link between the target behavior and the punishment. Thus, the “punishment” must be brief and immediate. For example, a mild but painful electric shock or a sudden very loud noise would be ideal punishments in aversive conditioning.

Occasionally “time outs,” the brief use of a seclusion room to quickly control disruptive behavior, are used as part of an aversive conditioning program. But when this technique is employed, it is used very quickly and for a very brief period of time—in order for the “time out” to work as a behavior modifier, there must be very clear alternative behaviors which, when manifested, will immediately end the “time out.”

For any behavior modification scheme to work then, there must always be an exquisitely close relationship between behavior and response. Indeterminate or prolonged sentencing to solitary simply has nothing to do with aversive conditioning.

## APPENDIX D:

REPORTS OF THE LONG-TERM EFFECTS OF SOLITARY CONFINEMENT  
IN FORMER POLITICAL PRISONERS AND IN PRISONERS OF WAR:  
SOLITARY CONFINEMENT AS A MEANS OF "BRAIN WASHING" AND  
"INDOCTRINATING"

Although concerns about the psychiatric effects of solitary confinement among prisoners of war were raised in the medical literature at least as early as post-World War II, this issue reached massive public exposure only after the fearful news of "brain washing" among American prisoners of war in Korea. As is well known, the 1950's were an era of tremendous fear of Communism and of the attempts by communist states to "indoctrinate" people into their ideology. As noted in the body of this article, in the 1950s the United States Department of Defense and the Central Intelligence Agency sponsored a great deal of research on these issues. The results of extensive research done for the Department of Defense were subsequently published.<sup>170</sup> The paper documented interrogation techniques of the Soviet KGB in regard to the incarceration of political prisoners, and the Chinese communists' imprisonment of American prisoners of war in Korea.

The report indicated that the KGB operated detention prisons, many of which were "modern . . . well built and spotlessly clean . . . [with] attached medical facilities and rooms for the care of sick detainees. An exercise yard is a standard facility."<sup>171</sup> Incarceration in these prisons is almost universally in solitary confinement, in a cell approximately ten feet by six feet in size.<sup>172</sup> "An almost invariable feature of the management of any important suspect under detention is a period of total isolation in a detention cell."<sup>173</sup>

This isolation was seen as a central feature of the imprisonment: "The effects upon prisoners of the regimen in the isolation cell are

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170. HINKLE & WOLFF, *supra* note 65.

171. *Id.* at 125.

172. *Id.*

173. *Id.* at 126.

striking. . . . A major aspect of this prison experience is isolation. . . . [In the cells] [h]is internal as well as external life is disrupted” and “he develops a predictable group of symptoms, which might almost be called ‘disease syndrome.’”<sup>174</sup>

This syndrome develops over time:

He becomes increasingly anxious and restless, and his sleep is disturbed. . . .

The period of anxiety, hyperactivity, and apparent adjustment to the isolation routine usually continues from one to three weeks. As it continues, the prisoner becomes increasingly dejected and dependent. He gradually gives up all spontaneous activity within his cell and ceases to care about personal appearance and actions. Finally, he sits and stares with a vacant expression, perhaps endlessly twisting a button on his coat. He allows himself to become dirty and disheveled. . . . He goes through the motions of his prison routine automatically, as if he were in a daze. . . . Ultimately he seems to lose many of the restraints of ordinary behavior. He may soil himself. He weeps; he mutters . . . . It usually takes from four to six weeks to produce this phenomenon in a newly imprisoned man.<sup>175</sup>

Addressing the emotional impact on prisoners of such confinement, the report noted that:

His sleep is disturbed by nightmares. Ultimately he may reach a state of depression in which he ceases to care about his personal appearance and behavior and pays little attention to his surroundings. In this state the prisoner may have illusory experiences. A distant sound in the corridor sounds like someone calling his name. The rattle of a footstep may be interpreted as a key in the lock opening the cell.

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174. *Id.* at 127.

175. *Id.* at 128.

Some prisoners may become delirious and have visual hallucinations.<sup>176</sup>

However, the report also notes that each individual may respond differently: Not all men who first experience total isolation react in precisely this manner. In some, these symptoms are less conspicuous. In others, dejection and utter despondence set in earlier, or later. Still others, and especially those with pre-existing personality disturbances, may become frankly psychotic.<sup>177</sup>

The authors of this report note that the procedures in the Chinese detention camps are somewhat more complex. Prisoners there underwent an initial period of isolation similar to that found in the Soviet prisons.<sup>178</sup> In the second phase, however they were housed in extremely tight quarters within "group cells" comprising approximately eight prisoners.<sup>179</sup> Under the tensions and hostilities created in this environment, brutality of prisoners by other prisoners was almost inevitable and was, according to the authors, apparently an intended result of this "group cell" confinement.<sup>180</sup>

There are many long-term studies of American prisoners of war; unfortunately, the factor of solitary confinement has not generally been separated out in these studies. However, one relatively recent study of Korean prisoners of war described long-term effects including interpersonal withdrawal and suspiciousness, confusion, chronic depression, and apathy toward environmental stimuli. Irritability, restlessness, cognitive impairment, and psychosomatic ailments were extremely common in the group, most of whom had suffered periods of incarceration in solitary confinement at the hands of the Chinese. This report also included a case report of one individual exposed to harsh conditions of solitary confinement for more than sixteen months; thirty years after release, he continued suffering sleep disturbances, nightmares, fearfulness, interpersonal suspicion and withdrawal, severe anxiety, and severe depression. These former prisoners also had psychosomatic ailments including

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176. *Id.*

177. *Id.* at 129.

178. *Id.* at 153.

179. *Id.* at 156.

180. *Id.* at 159.

gastrointestinal disturbances, chronic headaches, and obsessive ruminations. They tended to become confused and thus cognitively impaired and were emotionally volatile and explosive.<sup>181</sup>

In former prisoners of war in the Korean conflict, approximately forty years after their release from confinement, solitary confinement was cited as one of the severe stressors in this group. These former prisoners demonstrated persistent anxiety, psychosomatic ailments, suspiciousness, confusion, and depression. They tended to be estranged and detached from social interaction, suffered from obsessional ruminations, and tended to become confused and cognitively impaired, suffering memory and concentration difficulties which affected their cognitive performance on formal testing.<sup>182</sup>

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181. See Patricia B. Sutker et al., *Cognitive Deficits and Psychopathology Among Former Prisoners of War and Combat Veterans of the Korean Conflict*, 148 AM. J. PSYCHIATRY 67 (1991).

182. *Id.* at 68.

## APPENDIX "C"

## Psychopathological Effects of Solitary Confinement

Stuart Grassian, M.D.

# Psychopathological Effects of Solitary Confinement

Stuart Grassian, M.D.

*Psychopathological reactions to solitary confinement were extensively described by nineteenth-century German clinicians. In the United States there have been several legal challenges to the use of solitary confinement, based on allegations that it may have serious psychiatric consequences. The recent medical literature on this subject has been scarce. The author describes psychiatric symptoms that appeared in 14 inmates exposed to periods of increased social isolation and sensory restriction in solitary confinement and asserts that these symptoms form a major, clinically distinguishable psychiatric syndrome.*

(Am J Psychiatry 140:1450-1454, 1983)

There have been several legal challenges to the use of solitary confinement in the United States penal system based on allegations that such confinement can cause serious psychopathological reactions (1-3). The present article describes clinical observations of 14 prisoner plaintiffs in a lawsuit alleging that the conditions they were exposed to in solitary confinement were violations of Eighth Amendment protection against "cruel and unusual punishment."

## REVIEW OF THE LITERATURE

Despite the obvious legal and humanitarian importance of this issue, there has been a scarcity of recent medical literature on the subject beyond a flurry of theoretical interest generated by concerns about "brainwashing" of American prisoners of war in Korea and the experimentation on profound sensory deprivation precipitated by those concerns (4-8). In the recent literature, reports of clinical observations of prisoners in solitary confinement have been virtually nonexistent. However, with the exception of the only

experimental study in the literature (9), these reports (10-12) have indicated psychopathological effects. One report noted "restlessness, yelling, banging and assaultiveness" in some prisoners and in others "a kind of regressed, dissociated, withdrawn hypnoid state" (10). Another report cited two cases of reactive psychosis marked by initial agitation and behavioral dyscontrol, leading to a hallucinatory, incoherent, confusional state (11).

There was, however, extensive interest in the problem of psychopathological syndromes among prisoners in late nineteenth- and early twentieth-century Europe. During that period, solitary confinement was extensively used in both Europe (13) and the United States (14); in many prisons it was the exclusive mode of incarceration. Indeed, the American penitentiary became world famous; important visitors journeyed to the United States specifically to observe this system and bring it back to Europe for emulation. Perhaps the best known of these visits, that of Alexis de Tocqueville, gave rise to a classic study of American social institutions (15).

This enchantment with solitary confinement was relatively short-lived, however. As early as the 1830s statistical evidence began to indicate an increased incidence of physical morbidity and mortality, as well as of insanity, among prisoners exposed to especially rigid forms of solitary confinement (14, p. 87). The system's openness to public scrutiny brought forth vivid descriptions of the effects of such confinement. Charles Darwin, for example, observed inmates "dead to everything but torturing anxieties and horrible despair. . . . The first man . . . answered . . . with a strange kind of pause . . . [he] fell into a strange stare as if he had forgotten something. . . . [Of another] Why does he stare at his hands and pick the flesh open, . . . and raise his eyes for an instant . . . to those bare walls? (8, p. 66). By 1890, the United States Supreme Court entered an opinion explicitly condemning solitary confinement on psychiatric grounds, indicating that "a considerable number of prisoners . . . fell into a semi-fatuous condition . . . and others became violently insane" (1).

In the United States, unfortunately, these experiences did not give rise to a body of clinical literature. However, in Germany, whose penal system had emulated the American model, major clinical concern developed about the incidence of psychotic disturbances among prisoners. Between 1854 and 1909, 37 articles on this subject appeared in German journals,

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collectively describing hundreds of cases of psychoses that were deemed to be reactive to the conditions of imprisonment. A review of this literature appeared in 1912 (13) and will be only summarized here.

The literature described a hallucinatory, paranoid, confusional psychosis in which characteristic symptoms included 1) extremely vivid hallucinations in multiple sensory modalities, including the visual, auditory, tactile, and olfactory; 2) dissociative features, including sudden recovery "as from a dream," with subsequent amnesia for the events of the psychosis; 3) agitation and "motor excitement" with aimless violence; and 4) delusions, usually described as persecutory. Onset was often described as sudden and, in some reports, as precipitating at night. In other cases, initial manifestations included "humming and buzzing, unpleasant noises and inarticulate sounds [leading to] hallucinations." Rarer, only occasionally noted symptoms included *Vorbereiden* ("the symptom of approximate answers," usually associated with Ganser [16], although described as well by others) and hysterical conversion symptoms.

Of this large body of literature, only Ganser's contribution (16) remains well-known, and Ganser failed to comment on the form of imprisonment to which his prisoner subjects were exposed. However, in more than half the total body of literature, solitary forms of confinement were specifically cited as responsible for precipitating the psychosis, and rapid recovery was often noted when the prisoner's solitary confinement was terminated.

#### CIRCUMSTANCES OF THE CLINICAL OBSERVATIONS

The present observations developed as a consequence of a court order mandating psychiatric evaluation of 15 inmates at the Massachusetts Correctional Institution at Walpole, all of whom were plaintiffs in a class action suit against the Department of Corrections that alleged violations of Eighth Amendment protection against "cruel and unusual punishment" because of the conditions to which the prisoners were exposed in solitary confinement.

The correctional institution at Walpole is the maximum security state prison for the Commonwealth of Massachusetts. It is divided into 13 cell blocks. Block 10 is reserved for solitary confinement and is divided into four tiers, each housing 15 cells approximately 1.8 m × 2.7 m in size, each cell containing an open toilet and sink, a steel bed, and a small, fixed steel table and stool. The cells in the lower tiers have double doors. The inner door is barred; the outer door is solid steel except for a small Plexiglas window. There are no other windows in the cells; each cell has one 60-watt light bulb to provide light.

While these structural features have remained constant, administrative decisions have determined other features of the confinement. Until August 20, 1979, the outer steel doors were left open, permitting natural

light and air to enter the cell and permitting inmates to speak with other inmates in adjoining cells; on August 20 the steel doors were closed on the cells of all inmates in isolation. At the same time, correctional officers removed personal belongings from these cells, including radios, television sets, and all reading materials except a Bible.

Suit was brought not against the conditions in Block 10 generally but specifically against the conditions prevailing in the lower tiers since August 20, 1979. Of the 15 plaintiffs in the suit, 14 were interviewed; the 15th was no longer in Block 10 at the time of the interviews and was not available. All of the plaintiffs were men, and their mean age was 28 years (range, 22–38 years). Median duration of confinement in isolation was 2 months (range, 11 days to 10 months). Each prisoner was interviewed for approximately one-half hour by one of two psychiatrists, with the exception of one prisoner who, because of concern over his clinical state, was seen twice over a 3-week period. History was obtained of incarcerations, previous experience with solitary confinement, and previous and current psychiatric symptoms and treatment. Due to the pressure of time, we made no active attempt to cover other areas of a full clinical history, e.g., assessment of object relations, defenses, and family history.

In the interviews, conducted in an open-ended manner, careful attention was paid so that suggesting possible symptoms was avoided. The circumstances of the interviews, however, were clearly seen by the prisoners and guards as adversarial. Access to the prisoners for the interviews was obtained only through court order; all prisoners interviewed were informed of the purpose of the interviews and told that data from them might be used in court testimony. In addition, there were several guards stationed just outside the interview room, prompting several prisoners to resort to whispering as a means of avoiding being overheard.

#### FINDINGS

It might be expected that the adversarial circumstances of the interviews would have biased the prisoners' reports in the direction of exaggeration of whatever symptoms they might have experienced. Such was not the case. In fact, contrary to expectation, the prisoners appeared to mobilize multiple defensive operations—rationalization, avoidance, denial, distortion, and repression—in an effort to minimize the quality of their reactions to isolation. The interviewer was required, therefore, actively to encourage disclosure of information, to provide reassurance, and persistently to confront and explore gaps in the reported accounts. Numerous interviews began with statements such as "Solitary doesn't bother me" or "Some of the guys can't take it—not me," or even with the mention of a symptom and simultaneous denial of its significance: "As soon as I got in, I started cutting my wrists. I figured it was the only way to get out of here." As the

interviews progressed, these facile, superficial accounts gave way to descriptions of experiences that were troublesome. For example, one inmate was unable to describe the events of the several days surrounding his wrist slashing, nor could he describe his thoughts or feelings at the time. His overt anxiety increased markedly upon questioning, and only after some time was he able to describe an apparent acute confusional state, panic, and subsequent partial amnesia for those events. Similarly, the prisoner who said he could "take it" eventually came to describe panic, fears of suffocation, and paranoid distortions while he had been in isolation.

Indeed, the general pattern was for inmates initially to downplay reactions to the solitary confinement situation, then, after being carefully questioned, to become overtly anxious and, frequently, overtly reluctant to elaborate on significant details. Upon confrontation, several inmates acknowledged the reasons for their reluctance. They feared that the guards would discover their primitive fantasies of revenge or that the guards were waiting to see a weakness that they could exploit to make the inmate "crack up." Furthermore, in several cases, the inmate's dread was that he was in fact going insane.

The specific psychiatric symptoms reported were strikingly consistent among the inmates.

### *Perceptual Changes*

*Generalized hyperresponsivity to external stimuli.* This symptom was most commonly associated with dysesthetic responses to certain stimuli (11 prisoners). Instances of this included "You get sensitive to noise—the plumbing system. Someone in the tier above me pushes the button on the faucet, the water rushes through the pipes—it's too loud, gets on your nerves. I can't stand it—I start to holler. Are they doing it on purpose?" "Everything gets exaggerated. After a while, you can't stand it. Meals—I used to eat everything they served. Now I can't stand the smells—the meat—the only thing I can stand to eat is the bread." "What really freaks me out is when a bee gets into the cell—such a small thing." "Difficult to breathe, stale, awful smell from the toilets—the stench starts to feel unbearable." All 11 inmates denied ever having experienced such symptoms except during confinement in isolation.

*Perceptual distortions, hallucinations, and derealization experiences.* These symptoms were experienced by seven prisoners and are grouped together because under the peculiar circumstances of solitary confinement there were often inadequate means to distinguish them. Thus, experiences described by five of these seven prisoners included hearing voices—often in whispers, often saying frightening things to them—but usually the prisoners had no means by which to corroborate what they thought they heard; for example, "I hear sounds—guards saying, 'They're going to cut it [his nerve-damaged leg] off.' I'm not sure. Did

they say it, or is it my imagination?" If they did say it, the prisoner is suffering from derealization; if they said something else, or something not directed at him, he is suffering a (paranoid) perceptual distortion; if they said nothing, he is having a hallucination. There is no independent corroboration. Another inmate described the dilemma poignantly: "I overhear the guards talking. Did they say that? Yes? No? It gets confusing. I tried to check it out with — [the prisoner in the adjoining cell]; sometimes he hears something and I don't. I know one of us is crazy, but which one? Am I losing my mind?"

There were, in addition, two reports of noises taking on increasing meaning and frightening significance; for example, "I hear noises, can't identify them—starts to sound like sticks beating men. But I'm pretty sure no one is being beaten. . . . I'm not sure."

Perceptual illusions with loss of perceptual constancy were more readily identifiable in the visual sphere (three cases), and there were reports such as "The cell walls start wavering," and "Melting, everything in the cell starts moving; everything gets darker, you feel you are losing your vision."

In one of the prisoners the illusions became more complex and personalized: "They come by [for breakfast] with four trays; the first has big pancakes—I think I'm going to get them. Then someone comes up and gives me tiny ones—they get real small, like silver dollars. I seem to see movements—real fast motions in front of me. Then seems like they're doing things behind your back—can't quite see them. Did someone just hit me? I dwell on it for hours." This prisoner also described overt, frightening, visual hallucinations: "There's a guard in my cell; he's holding a noose." He acknowledged having experienced perceptual distortion with psychedelic drug abuse. Otherwise, all seven inmates denied ever experiencing perceptual symptoms like those they described, except during confinement in isolation.

### *Affective Disturbances*

Ten prisoners described massive free-floating anxiety during their incarceration in solitary, accompanied in eight cases by recurrent acute episodes of tachycardia, diaphoresis, shortness of breath, panic, tremulousness, and dread of impending death. One prisoner reported "shortness of breath a lot. My heart pumps real fast. I feel like I don't get enough oxygen. Get frantic." Another said, "I start to feel dizzy. I can't breathe," and another, "I start to dwell on things—too many roaches—get scared one might get into my ear. Start to feel hot—extreme heat—then I can barely breathe, start sweating, heart races, can't sit still, shaking, get a headache—real bad."

Of these 10 prisoners, three had experienced acute anxiety reactions prior to confinement in isolation, and they reported intensification of symptoms. The other seven denied any previous history of such symptoms.

### *Difficulties With Thinking, Concentration, and Memory*

Of the eight inmates who mentioned these symptoms, four reported acute confusional states with subsequent partial amnesia for events during the episode. There was, again, a problem with independent corroboration of these symptoms, especially important because the prisoners were only vaguely aware of what had happened to them. However, one prisoner slashed his wrists during such a state, and thus his confusion and disorientation were noted in the prison medical record.

One prisoner's description particularly suggested dissociative features with mutism: "I went to a standstill psychologically once—lapse of memory. I didn't talk for 15 days. I couldn't hear clearly. You can't see—you're blind—block everything out—disoriented, awareness is very bad. Did someone say he's coming out of it? I think what I'm saying is true—not sure. I think I was drooling—a complete standstill."

Four others reported milder symptoms of difficulty in concentration and memory; for example, "I can't concentrate, can't read. . . . Your mind's narcotized . . . sometimes can't grasp words in my mind that I know. Get stuck, have to think of another word. Memory is going. You feel you are losing something you might not get back."

Several described attempts they made to focus their concentration by self-discipline: "Got to try to concentrate. Remember list of the presidents. Memorize the states, capitals, five boroughs, seven continents, nine planets."

### *Disturbances of Thought Content*

*Emergence of primitive, ego-dystonic fantasies.* Six prisoners reported the emergence of primitive aggressive fantasies of revenge, torture, and mutilation of the prison guards. In each case, the fantasies were described as ego-dystonic, frightening, and uncontrollable; for example, "I try to sleep 16 hours a day, block out my thoughts—muscles tense—think of torturing and killing the guards—lasts a couple of hours. I can't stop it. Bothers me. Have to keep control. This makes me think I'm slipping my mind. Lay in bed too much—scare yourself with thoughts in bed. I get panicky—thoughts come back—picture throwing a guard in lime—eats away at his skin, his flesh—torture him. Try to block it out, but I can't."

*Ideas of reference, paranoia.* Six prisoners reported ideas of reference associated with persecutory fears; e.g., "Sometimes get paranoid—think they meant something else. Like a remark about Italians. Dwell on it for hours. Get frantic. Like when they push the buttons on the sink. Think they did it just to annoy me." The prisoner's reality testing in this instance was especially shaky: "Spaced out. Hear singing, people's voices—'Cut your wrists and go to Bridgewater and the Celtics are playing tonight.' I doubt myself—is it

real? . . . I suspected they're putting drugs in my cell. . . . the reverend, the priest—even you—you're all in cahoots in the Sacred Straight program. Drive them crazy."

### *Problems With Impulse Control*

Five prisoners reported episodes of lack of impulse control with random violence. One prisoner said, "I snap off the handle over absolutely nothing. Have torn up mail and pictures, throw things around. Try to control it. Know it only hurts myself." Three of these prisoners reported impulsive self-mutilation; for example, "I cut my wrists—cut myself many times when in isolation. Now, it seems crazy. But every time I did it, I wasn't thinking—lost control—cut myself without knowing what I was doing."

### *Rapid Subsidence of Symptoms on Termination of Isolation*

The legal statute in Massachusetts requires relief from isolation status with closed solid steel doors for at least 24 hours each 15 days. Certain prisoners had additional periods of relief for medical consultation and, in one case (peroneal nerve injury), hospitalization.

All prisoners interviewed reported a very rapid (usually within the first few hours) diminution of their symptoms during periods of relief. No correlation was apparent between severity of symptoms and the time required for them to subside.

## DISCUSSION

The observations reported here suggest that rigidly imposed solitary confinement may have substantial psychopathological effects and that these effects may form a clinically distinguishable syndrome. The full syndrome described here has not been previously reported in the recent medical literature, although there have been observations consistent with those that I have reported.

The present observations are, however, strikingly consistent with earlier German reports. The German literature reported only on prisoners who suffered gross psychotic symptoms, some of whom were observed in hospitals or "insane departments" of prisons. The Walpole population, on the other hand, was not preselected by overt psychiatric status. Despite this, all of the major symptoms reported by the German clinicians, except *Vorbereiden* and hysterical conversion symptoms, were observed in the Walpole population. In addition, less severe forms of this solitary confinement syndrome were observed in the Walpole population, including 1) sensory disturbances: perceptual distortions and loss of perceptual constancy, in some cases without hallucinations; 2) ideas of reference and paranoid ideation short of overt delusions; 3) emer-

gence of primitive aggressive fantasies, which remained ego-dystonic and with reality-testing preserved; 4) disturbances of memory and attention short of overt disorientation and confusional state; and 5) derealization experiences without massive dissociative regression.

The observations at Walpole also suggest that solitary confinement cannot be viewed as a single entity. The effects of solitary confinement situations vary substantially with the rigidity of the sensory and social isolation imposed.

## CONCLUSIONS

The present observations, coupled with those in the earlier German literature, suggest strongly that the use of solitary confinement carries major psychiatric risks. I have not attempted in this paper to define or classify this psychopathological syndrome, but, as mentioned earlier, there have been speculations in the literature linking solitary confinement with the formal experiments on profound sensory deprivation. A review of this literature and an elaboration of the variables that may explain the particular pathogenicity of rigidly imposed solitary confinement will be presented in another paper.

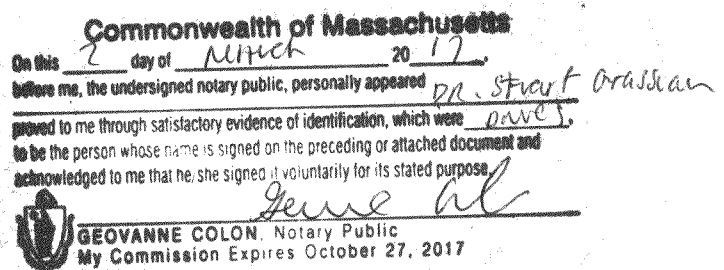
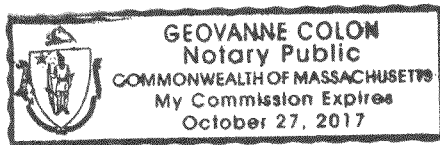
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This is Exhibit "B" referred to in the  
Affidavit of Dr. Stuart Grassian  
sworn before me, this 2<sup>nd</sup> day of March, 2017.

*Gene AL*

Commissioner for Taking Affidavits



Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF ONTARIO**

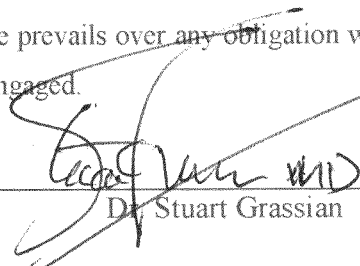
Defendant

Proceeding under the *Class Proceedings Act*, 1992

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is Dr. Stuart Grassian I live at the Village of Chestnut Hill, City of Newton in the State of Massachusetts.
2. I have been engaged by or on behalf of Koskie Minsky LLP to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

March 2, 2017

  
\_\_\_\_\_  
Dr. Stuart Grassian

Raymond Lapple et al.

and

Her Majesty the Queen in Right of the  
Province of Ontario

Plaintiffs

Defendant

Court File No.: CV-16-558633-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto  
Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF DR. STUART GRASSIAN**  
**(SWORN MARCH 2, 2017)**

**KOSKIE MINSKY LLP**

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Lawyers for the Plaintiffs

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**  
Defendant

Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF DAVID ROSENFELD**

I, **DAVID ROSENFELD**, of the City of Toronto, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am a partner at Koskie Minsky LLP, one of the law firms in the counsel team for the proposed representative plaintiff in this action, and as such have knowledge of the matters hereinafter deposed, except where stated to be on information and belief, in which case I disclose the source of my information. I believe these facts to be true.
2. I have acted as counsel in over a dozen class actions in the areas of regulatory negligence, institutional abuse, securities, and product liability. For example, I was counsel in *Dolmage v HMQ*, an institutional abuse class action against the Province of Ontario on behalf of persons with disabilities, *Anderson v Canada*, a residential school abuse class action in Newfoundland against the Government of Canada, and *Smith v Inco*, an environmental class action on behalf of residents of Port Colborne, among others. The *Anderson v. Canada* class

action settled after four months of the common issues trial. The *Smith v. Inco* class action involved a three month common issues trial. *Dolmage v. HMQ* settled on the first day of what was scheduled to be a three month common issues trial. I swear this affidavit in support of the plaintiffs' motion for certification.

**A. THE STATEMENT OF CLAIM**

3. The Statement of Claim in this action asserts that Her Majesty the Queen in Right of the Province of Ontario (the "**Crown**") was negligent, breached its fiduciary duty, and violated the *Canadian Charter of Rights and Freedoms* (the "**Charter**") in respect of staffing-related lockdowns that the defendant imposes on prisoners in these institutions. Attached hereto as **Exhibit "A"** is a copy of the Statement of Claim.

**B. CLASS DEFINITION**

4. The proposed class definition is:

All current and former prisoners of correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**") since December 10, 2002 who are or were remanded, except the Excluded Persons; and,

All current and former prisoners of the Correctional Institutions since December 10, 2002 who are or were serving a sentence at a Correctional Institution or who have violated parole and are or were imprisoned at a Correctional Institution as a result, except the Excluded Persons; and

"**Excluded Persons**" are all prisoners detained by the Canadian Border Services Agency in accordance with the *Immigration and Refugee Act*, S.C. 2001, c. 27 and all prisoners of Elgin-Middlesex Detention Centre (solely with respect to their incarceration at Elgin-Middlesex Detention Centre).

## **C. COMMON ISSUES**

5. The plaintiff proposes the following common issues for determination:

- (1) By its operation or management of the Correctional Institutions, did the defendant breach a duty of care it owed to the class to protect them from actionable physical or psychological harm?
- (2) By its operation or management of the Correctional Institutions, did the defendant breach a fiduciary duty owed to the class to protect them from actionable physical or psychological harm?
- (3) By its operation or management of the Correctional Institutions, did Ontario breach the life, liberty and security of the person interest of the Class under section 7 of the *Canadian Charter of Rights and Freedoms*?
- (4) If the answer to common issue (3) is yes, were Ontario's actions arbitrary or resulting in grossly disproportionate effects and therefore impacted the life, liberty and security of the person in a manner contrary to the interests of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*?
- (5) Did the actions of Ontario constitute arbitrary imprisonment or detention under section 9 of the *Canadian Charter of Rights and Freedoms*?
- (6) Did the actions of Ontario constitute cruel and unusual punishment under section 12 of the *Canadian Charter of Rights and Freedoms*?
- (7) If the answer to common issue (3), (4), (5) or (6) is "yes", were the defendant's actions saved by section 1 of the *Canadian Charter of Rights and Freedoms*, and if so, to what extent and for what time period?
- (8) If the answer to common issue (3), (4), (5), or (6) is "yes", and the answer to common issue (7) is "no", do those breaches make damages an appropriate and just remedy under section 24 of the *Canadian Charter of Rights and Freedoms*?
- (9) If the answer to any of common issues (1), (2), or (8) is "yes", can the court make an aggregate assessment of damages suffered by all class members as part of the common issues trial, and if so, in what amount?
- (10) Does the defendant's conduct justify an award of punitive damages?
- (11) If the answer to common issues (10) is "yes", what amount of punitive damages ought to be awarded against the defendant?

## **D. PREFERABLE PROCEDURE**

6. To prosecute regulatory negligence, breach of fiduciary duty and Charter class actions such as this one on an individual basis is difficult, time consuming and expensive. Experts must

be retained. The documentary evidence will likely be extensive and time consuming to collect and review. Given our experience in other class actions, there may be thousands, if not tens of thousands, of relevant documents. As a result, this action will be very expensive to litigate. For many class members, for whom I assume are of average or below average means, the costs of pursuing an action on an individual basis may be prohibitive and uneconomical, thereby reducing access to justice and insulating the Crown from the claims made in this action. In addition, the Class Proceedings Fund has agreed to provide financial support to this class action for legal disbursements and to indemnify the plaintiffs for costs that may be awarded against them. Without this financial support and adverse costs indemnity, it is unlikely that the plaintiffs could have advanced this action.

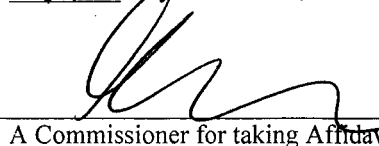
**E. LITIGATION PLAN**

7. The proposed litigation plan sets out a workable method of advancing the proceedings on behalf of the class members. The litigation plan is subject to review and ongoing modification by this Honourable Court, as well as input from the Crown. Attached hereto as **Exhibit "B"** is a copy of the proposed litigation plan.

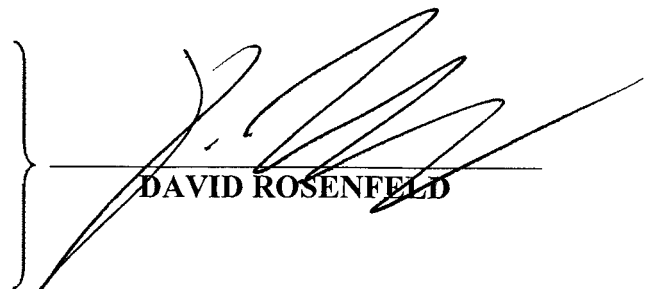
8. I swear this affidavit in support of the plaintiff's motion for certification and for no improper purpose.

SWORN BEFORE ME at the City of Toronto this

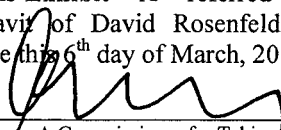
6th day of March, 2017

  
A Commissioner for taking Affidavits (or as may be)

G. Myers

  
DAVID ROSENFELD

This is **Exhibit "A"** referred to in the  
affidavit of David Rosenfeld, sworn  
before this 6<sup>th</sup> day of March, 2017



A Commissioner for Taking Affidavits

CV-16-558633-00CF

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO

PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: August 15, 2016

Issued by 

Local registrar

Address of court office 393 University Avenue  
Toronto, ON

TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF ONTARIO**  
Crown Law Office – Civil Law  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, ON M5G 2K1  
Tel.: (416) 325-8535  
Fax: (416) 326-4181

## CLAIM

1. The plaintiffs claim:
  - (a) an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs for the class;
  - (b) a declaration that the defendant breached its fiduciary and common law duties to the plaintiffs and the class and violated the class' rights and freedoms set out in sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to the funding, operation, management, administration, supervision and control of the Correctional Institutions, as defined herein;
  - (c) a declaration that the defendant is liable to the plaintiffs and the class for the damages caused by its breach of fiduciary duty, negligence, and its violation of the class' rights and freedoms set out in sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to the funding, staffing, operation, management, administration, supervision and control of the Correctional Institutions, as defined herein;
  - (d) damages for negligence, breach of fiduciary duty, and violation of the class' rights and freedoms set out in sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* in accordance with section 24(1) of the *Canadian Charter of Rights and Freedoms* in the amount of \$1 billion, or such other sum as this Honourable Court may find appropriate;
  - (e) punitive damages of \$250 million, or such other sum as this Honourable Court may find appropriate;
  - (f) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1995, c. C. 43, as amended;
  - (g) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;
  - (h) pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
  - (i) such further and other relief as to this Honourable Court may seem just and appropriate in all the circumstances.

**A. OVERVIEW**

2. The conditions for prisoners at Ontario's Correctional Institutions are deplorable.
3. One particularly inhumane feature of the Correctional Institutions is the chronic staffing-related lockdowns that the defendant imposes on prisoners in these institutions. These staffing-related lockdowns and the severe, continuing damage they cause to prisoners in the Correctional Institutions form the basis of this action.
4. A staffing-related "lockdown" of a Correctional Institution occurs when prisoners are locked in their cells due to shortages of prison staff. Staffing related lockdowns have become a common feature of Ontario's Correctional Institutions.
5. During lockdown, prisoners are locked in small cells for hours, days, or weeks on end. Prisoners are subject to particularly harsh conditions, including deprivation of access to fresh air, showers, medical care, phone calls and legal counsel, often for many days at a time.
6. Lockdowns cause tremendous harm to an already vulnerable group. During lockdowns, prisoners suffer from a deprivation of healthcare, privacy, dignity, security, and hygiene that violate even the basic standards applicable to prisoners in the Correctional Institutions. They violate the basic human rights of the prisoners, including their rights and freedoms under sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms*.
7. These conditions and their severe, detrimental impact on prisoners persist due to the Crown's negligence and breach of fiduciary duty in failing to appropriately staff the Correctional Institutions. The Crown has had knowledge of lockdowns and their severely detrimental effects on prisoners for many years, and it is entirely within the Crown's power and control to appropriately staff the Correctional Institutions in a manner that would eliminate lockdowns caused by staff shortages. However, despite its knowledge, the Crown has not taken any or sufficient action to ameliorate this problem, and has caused irreparable and continuing harm to the class.

## B. THE PLAINTIFF AND THE CLASS

8. The plaintiff, Raymond Lapple, is a resident of Stouffville, Ontario. As described further below, he was incarcerated in Maplehurst Correctional Complex.

9. The plaintiff, Jerome Campbell, is a resident of Toronto, Ontario. As described further below, he is currently incarcerated in Toronto South Detention Centre.

10. The plaintiff, Samir Abdelgadir, is a resident of Hamilton, Ontario. As described further below, he was incarcerated in Maplehurst Correctional Complex.

11. The plaintiff, Gregory Smith, is a resident of Toronto, Ontario. As described further below, he is currently incarcerated in Toronto South Detention Centre.

12. The plaintiffs claim on behalf of themselves and on behalf of the following class:

All current and former prisoners of correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**") since December 10, 2002 who are or were remanded, except the Excluded Persons; and,

All current and former prisoners of the Correctional Institutions since December 10, 2002 who are or were serving a sentence at a Correctional Institution or who have violated parole and are or were imprisoned at a Correctional Institution as a result, except the Excluded Persons; and

"Excluded Persons" are all prisoners detained by the Canadian Border Services Agency in accordance with the *Immigration and Refugee Act*, S.C. 2001, c. 27 and all prisoners of Elgin-Middlesex Detention Centre (solely with respect to their incarceration at Elgin-Middlesex Detention Centre).

## C. THE DEFENDANT AND ITS RESPONSIBILITY FOR THE CORRECTIONAL INSTITUTIONS

13. The defendant, Her Majesty the Queen in right of the Province of Ontario (the "**Crown**") is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27, and the amendments thereto.

14. The Correctional Institutions operate under the auspices of the Ministry of Community Safety and Correctional Services (the "**Ministry**"). The Ministry establishes, maintains, operates, and monitors the Correctional Institutions.

15. The Correctional Institutions are or were correctional institutions pursuant to the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22. In accordance with the *Ministry of Correctional Services Act*, the Crown is responsible for:

- (a) supervising the detention of the class members;
- (b) creating an environment in which prisoners may be effectively and properly rehabilitated;
- (c) providing for the custody of class members;
- (d) establishing, maintaining and operating the Correctional Institutions;
- (e) the provision of adequate medical treatment; and
- (f) the provision of adequate psychiatric treatment.

16. In accordance with *Ministry of Correctional Services Act*, R.R.O. 1990, Reg. 778, the superintendent of a correctional institution is responsible for:

- (a) the management of the institution;
- (b) the care, health, safety and custody of inmates;
- (c) administering the institution; and
- (d) issuing to the employees of the institution such directions as may be necessary to fulfil the responsibilities of a superintendent.

17. The Correctional Institutions are located across Ontario. At all material times, the Crown, through and with its agents, servants and employees, owned and was responsible for the operation, funding and supervision of the Correctional Institutions. The Correctional Institutions are under the sole jurisdiction and control of, and were operated by, the Crown. The Crown retains and authorizes servants, agents, representatives and employees to operate the Correctional Institutions and gives instructions to such servants, agents, representatives and employees as to the manner in which the Correctional Institutions are to function and operate. The Ministry or its agents also discipline and terminate employees that staff the Correctional Institutions.

18. At all material times, it was within the control of the Ministry to appropriately staff the Correctional Institutions to eliminate lockdowns caused by staffing shortages. The Ministry has knowledge of the number of people required to staff the Correctional Institutions so as to operate without staffing-related lockdowns and it was within their control to ensure that sufficient staff was available. The Crown failed to fulfill its duties.

**D. CONDITIONS AT THE CORRECTIONAL INSTITUTIONS**

19. The Correctional Institutions house prisoners who are remanded, who have violated parole, and who are serving sentences of up to two years less a day.

20. Remanded prisoners are prisoners who have been charged with crimes but have not been convicted. Prisoners on remand can spend weeks, months and even years in the Correctional Institutions awaiting trials or other proceedings. Many remanded prisoners will be found not guilty of their crimes, but will still have experienced abhorrent conditions at the Correctional Institutions. All remanded prisoners are innocent until proven guilty at trial, but are nevertheless unduly punished as a result of the sub-standard conditions of confinement at the Correctional Institutions.

21. Prisoners in the Correctional Institutions are entitled to spend time outside of their cells. During this time, prisoners are entitled to visit with lawyers, obtain appropriate health care including visits with doctors, and have visits with their families. Prisoners are entitled to regular access to showers and other means to ensure personal hygiene in the Correctional Institutions. They are required to be provided access to a yard in which they may get fresh air and exercise. Prisoners are also entitled to certain programs, including spiritual or religious programming. Finally, prisoners will also have access to a television, to read newspapers or other reading material, and may make phone calls.

22. None of the above entitlements are available to prisoners during lockdown. During lockdowns, prisoners must remain locked in their cells.

23. The Correctional Institutions have policies which define and spell out the circumstances when the Correctional Institution must be locked down, including the minimum necessary staffing level.

24. Lockdowns may be caused by staff absences. Where a Correctional Institution does not have enough staff, the Correctional Institution will be locked down.

25. The vast majority of lockdowns at the Correctional Institutions are caused by staffing absences.

26. Lockdowns create egregious conditions for prisoners. During lockdowns, the impact to prisoners includes, *inter alia*:

- (a) being locked down in a cell limits prisoners from speaking or meeting with lawyers;
- (b) lawyers' visits may be cancelled thereby prejudicing prisoners' ability to have a full defence;
- (c) being locked down prevents prisoners from accessing showers and other facilities to maintain basic hygiene;
- (d) there is no or infrequent laundry service during lockdowns, and clean clothes and sheets are not available to prisoners;
- (e) family visits are cancelled or are very limited during lockdowns;
- (f) access to medication is not consistent or non-existent;
- (g) medical appointments are cancelled, and there is a higher rate of prisoners' ailments;
- (h) prisoners are required to clean their own cells, but during lockdowns there are delays in getting cleaning supplies to the prisoners and in getting laundry done, resulting in unhygienic conditions;
- (i) being locked down in a cell limits prisoners from getting in touch with family;
- (j) there is no prisoner programming running during lockdowns;
- (k) there is considerable and increased noise and banging on cell walls and other items during lockdowns, and it is difficult to sleep;

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- (l) lockdowns cause violence between prisoners during the short periods between lockdowns, because prisoners forcefully vie for limited amenities such as telephones, not knowing when they will be available next;
- (m) there are an increased number of fights among prisoners as conditions worsen from lockdown;
- (n) during lockdown, there is no stimuli for prisoners, and as a result, lockdowns have a severely detrimental effect on the mental health of prisoners;
- (o) prisoners must spend extended periods of time in uncomfortably close proximity to their cell mates;
- (p) there is not enough light in prison cells;
- (q) meals are delayed during lockdowns;
- (r) prisoners' ability to maintain social and familial ties is curtailed;
- (s) there is no access to reading materials;
- (t) religious programs are denied during lockdowns; and
- (u) there is no opportunity to exercise, and prisoners cannot get any fresh air.

27. The conditions of detention during lockdowns resemble segregation or solitary confinement. In some ways they are worse. The inmate is confined with another inmate not of his or her choosing. The periods of confinement for up to 24 hours a day are entirely unpredictable to the prisoner, both as to timing and length, which adds to their suffering.

28. During lockdown, the minimum standards for prisoners' are curtailed, often for days or weeks on end. These conditions contribute to an unsafe, unhealthy and dangerous environment for prisoners and violate their basic rights and freedoms.

**E. THE PLAINTIFFS' EXPERIENCES AT THE CORRECTIONAL INSTITUTIONS**

29. Raymond Lapple was charged and remanded into custody at Maplehurst Correctional Complex on May 30, 2009. He was a prisoner at Maplehurst Correctional Complex ("Maplehurst") from that time until February 20, 2013, when he was sentenced and transferred to a federal correctional institution.

30. While incarcerated at Maplehurst, Lapple experienced egregious conditions and suffered the debilitating consequences of protracted lockdowns at this institution.

31. At Maplehurst, Lapple resided in a 6 foot by 9 foot cell double bunked with another prisoner. The cell also contained a toilet.

32. During lockdown, Lapple was required to remain in this cell for extended periods of time. Yard access was cancelled and there was no fresh air. His family visits and lawyer appointments were cancelled and there were no phone privileges. During lockdown, Lapple's personal hygiene suffered. There were no showers available during this time, and he was forced to remain in an unclean state for days.

33. Samir Abdelgadir was charged and remanded into custody at Maplehurst on June 9, 2011. He was a prisoner at Maplehurst from that time until November 3, 2015, when he was released following a determination that he was not guilty of the criminal charges against him.

34. While Abdelgadir was at Maplehurst, staffing related lockdowns were frequent and lengthy. During lockdowns, showers were not permitted and his personal hygiene suffered. In addition, his family visits and lawyer appointments were cancelled. As a result of lockdowns, Abdelgadir was prevented from engaging in customary congregational prayer on Fridays in accordance with his Muslim faith. The mental distress caused by the lockdowns contributed to many physical altercations between Abdelgadir and his cell mates.

35. As a result of the lockdowns, Abdelgadir now suffers from depression and anxiety. He takes Cipralex to help with this condition.

36. Jerome Campbell has been incarcerated in Toronto South Detention Centre since March 1, 2016, awaiting trial. He has been in lockdown approximately 75% of the time due to understaffing at the Toronto South Detention Centre. As a result of staffing-related lockdowns, Mr. Campbell's personal hygiene has suffered. For example, he was once prevented from showering for 10 straight days. Ordinarily, Mr. Campbell is only able to shower every 3 days. Mr. Campbell has had to repeatedly cancel visits with his family and lawyer and has gone weeks at a time without visiting with his 4 year old daughter. Mr. Campbell has gone weeks without going outside and his mental health has suffered significantly as a result of the constant lockdowns.

37. Gregory Smith has been incarcerated in Toronto South Detention Centre since October 1, 2015 and has been serving his sentence there since his conviction on July 25, 2016. During this time, the facility has been frequently locked down.

38. Lockdowns have had significant negative effects on Mr. Smith's health and well-being. During lockdowns, Mr. Smith cannot use the telephone to contact his daughter and parents, and lockdowns have prevented Mr. Smith from meeting in person with his lawyer and family members. Mr. Smith cannot shower during lockdowns, and he often goes days or weeks without showering in these circumstances. During lockdowns, he is not able to keep his cell clean or have his clothing laundered. Lockdowns also prevent Mr. Smith from accessing reading material, such as novels and magazines.

39. Mr. Smith is a diabetic, and lockdowns exacerbate the physical effects of his diabetes. For example, as a result of lockdowns, the pain he suffers in his feet caused by his diabetes is significantly increased. In addition, lockdowns have caused Mr. Smith's mental health to suffer, causing him anxiety and mental distress.

40. Finally, as a result of lockdowns, Mr. Smith is prevented from engaging in customary congregate prayer on Fridays in accordance with his Muslim faith.

41. For Mr. Lapple, Mr. Abdelgadir, Mr. Campbell, Mr. Smith, and the class members, the lockdowns they experienced in the Correctional Institutions were traumatic events that has had a lasting psychological impact on their lives.

**F. KNOWLEDGE OF THE CROWN**

42. The Crown has known about lockdowns caused by staff shortages at the Correctional Institutions and the deleterious effects of lockdowns on prisoners in the Correctional Institutions for many years. Notwithstanding this knowledge, the Crown has failed to take steps to ameliorate or correct the problem.

43. Through its operation of the Correctional Institutions and its employment of correctional officers at the Correctional Institutions, the Crown had direct knowledge of the lockdowns and their consequences on prisoners. The Crown was aware of the minimum staffing levels required to operate the prisons without staffing related lockdowns and knew that these levels were not met. The Crown was aware of repeated, chronic lockdowns and the need for additional staff and better operating systems and failed to act.

44. Lockdowns caused by staffing shortages have also repeatedly been identified and condemned in judicial decisions for many years, and at least as early as 2002. Justices of Ontario courts have repeatedly identified the unacceptable frequency of lockdowns and the abhorrent conditions thereby inflicted upon prisoners. Lockdowns have been found to be oppressive and an unacceptable form of pre-sentence punishment.

45. Similarly, the 2008 Annual Report of the Office of the Auditor General of Ontario identified staffing related lockdowns as a problem at the Correctional Institutions that result in cancellations of health and rehabilitative programs for inmates. Numerous recommendations were made to appropriately staff the Correctional Institutions which have not been complied with by the Crown.

46. Lockdowns at the Correctional Institutions caused by understaffing was also identified as a major concern in the Ontario Ombudsman's June 2013 report entitled "The Code". The Ombudsman reported that staffing related lockdowns restrict prisoners' activities, and prisoners become increasingly frustrated, agitated, and more likely to engage in violent activity.

47. However, notwithstanding its knowledge of these problems, the Crown has refused to take any action.

## G. CAUSES OF ACTION

### (a) Negligence

48. At all material times, the Crown owed duties to the plaintiffs and to the class members that include, but are not limited to, a non-delegable duty to protect the physical and mental health and well-being of prisoners and to maintain minimum standards at the Correctional Institutions.

49. The harm suffered by the plaintiffs and the class was a reasonably foreseeable consequence of the Crown's acts and omissions. The Crown was the guardian of all prisoners. The legislation governing the relationship between the Crown and prisoners informs the duty of care owed by the Crown to the prisoners. At all material times, the actions of the Crown had a direct impact on the class members. The Crown is responsible for providing or causing to provide facilities, policies, standards and programs appropriate for the care and custody of prisoners. In such circumstances, the risk of harm of the nature contemplated in this action is reasonably foreseeable.

50. The *Ministry of Correctional Services Act* states that the Crown must supervise the detention of prisoners. The Crown's duties as set out in section 5 of the *Ministry of Correctional Services Act* include:

- (a) the provision of custody of persons awaiting trial or convicted of offences;
- (b) the establishment, maintenance and operation of correctional institutions; and
- (c) the provision of programs and facilities designed to assist in the rehabilitation of prisoners.

51. Similarly, in accordance with *Ministry of Correctional Services Act*, R.R.O. 1990, Reg. 778, the superintendent of a correctional institution is responsible for the care, health, safety and custody of inmates.

52. The express words of the statute itself also establish a special, close, and direct relationship between the Crown and prisoners.

53. Finally, there was a direct and proximate relationship and specific interaction between each of the plaintiffs and the class members and the Crown, including but not limited to:

- (a) the daily interaction between class members and the Crown or its agents;
- (b) the close and direct supervisory relationship between the Crown and the class members;
- (c) the class' complete reliance on the Crown to satisfy their basic needs, including the necessities of life, safety and comfort; and,
- (d) the Crown's maintenance of prisoner files.

54. The plaintiffs also plead and rely on the international norms, treaties and standards which inform the Crown's standard of care, including but not limited to:

- (a) the Minimum Rules for the Treatment of Prisoners promulgated by the United Nations;
- (b) the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules); and
- (c) the Standard on Treatment of Prisoners in the Criminal Justice Section Standards of the American Bar Association.

55. The reasonable standard of care expected in the circumstances required the Crown:

- (a) to appropriately staff the Correctional Institutions;
- (b) to employ a sufficient number of staff to ensure that there were no lockdowns at the Correctional Institutions caused by understaffing;
- (c) to have in place appropriate policies and procedures to ensure that at all material times, the Correctional Institutions operated in manner such that the basic rights of prisoners were not denied;
- (d) to have in place appropriate policies and procedures to ensure that at all material times, the Correctional Institutions were reasonably safe for prisoners;

- (e) to follow such policies and procedures at all material times;
- (f) to ensure access to adequate and appropriate medical and health services;
- (g) to ensure access to legal representation and advice;
- (h) to ensure the ability of the class members to maintain social and familial ties;
- (i) to ensure conditions of detention which ensure the maintenance of order and the safety and protection from violence;
- (j) to ensure access to programs, activities and services, including but not limited to educational, vocational, remedial, moral, spiritual, social, health and exercise;
- (k) to ensure access to reading materials;
- (l) to ensure appropriate sanitary requirements, including lighting, heating, ventilation and cleanliness;
- (m) to ensure access to clean clothing and bedding;
- (n) to ensure appropriate hygiene requirements, including regular access to showers;
- (o) to put in place a mechanism to collect information and monitor the impact of lockdowns on class members;
- (p) to respond adequately to complaints or recommendations which were made concerning lockdowns; and
- (q) to safeguard the physical and emotional needs of prisoners.

56. The Crown knew or ought to have known of its duties described herein as a result of its unique position and expertise in caring for prisoners.

57. The Crown breached the standard of care, on a class-wide systematic basis, in the following respects:

- (a) failing to have appropriate staffing levels at the Correctional Institutions;
- (b) failing to employ a sufficient number of staff to ensure that there were no lockdowns at the Correctional Institutions caused by understaffing;

- (c) failing to follow or to have in place appropriate policies and procedures to ensure that at all material times, the Correctional Institutions operated in manner such that the basic rights of prisoners were not denied;
- (d) failing to follow or to have in place appropriate policies and procedures to ensure that at all material times, the Correctional Institutions were reasonably safe for prisoners;
- (e) failing to ensure access to adequate and appropriate medical and health services;
- (f) failing to ensure prisoners' access to legal representation and advice;
- (g) failing to ensure the ability of the class members to maintain social and familial ties;
- (h) failing to ensure conditions of detention which ensure the maintenance of order and the safety and protection from violence;
- (i) failing to ensure access to programs, activities and services, including but not limited to educational, vocational, remedial, spiritual, social, health and exercise;
- (j) failing to ensure access to reading materials;
- (k) failing to ensure appropriate sanitary requirements, including lighting, heating, ventilation and cleanliness;
- (l) failing to ensure access to clean clothing and bedding;
- (m) failing to ensure access to appropriate hygiene requirements, including showers;
- (n) detracting from the ability of prisoners to maintain good mental and physical health;
- (o) failing to put in place a mechanism to collect information and monitor the impact of lockdowns on class members;
- (p) failing to respond adequately, or at all, to complaints or recommendations which were made concerning lockdowns; and
- (q) failing to safeguard the physical and emotional needs of prisoners.

58. These failures were systemic in nature and occurred across all of the Correctional Institutions.

59. The Crown's breaches caused damages to the plaintiffs and the class, as described below.

**(b) Fiduciary Duty Owed by the Crown to the Class**

60. The Crown owed all prisoners of the Correctional Institutions, as individuals in its sole care and control, a fiduciary duty that included a duty to care for and protect them and to act in their best interests at all material times, as particularized further below.

61. The Crown established, operated, financed, supervised and controlled the Correctional Institutions during the Class Period.

62. The prisoners' care was subject to the unilateral exercise of the Crown's power and discretion and the prisoners were in a vulnerable position.

63. By virtue of the relationship between the prisoners and the Crown, being one of trust, reliance and dependency, the Crown owed a fiduciary obligation to ensure that the prisoners were treated respectfully, fairly, and safely, to act in the best interests of those individuals, to maintain appropriate standards during their care, and to protect them from harm.

64. The prisoners had a reasonable expectation that the Crown would act in their best interests with respect to their physical and mental healthcare and wellbeing given the assumption of responsibility for the care of prisoners, by virtue of:

- (a) the unilateral assumption of responsibility for the care of the class members by the Crown;
- (b) the historic duties of the Crown to prisoners;
- (c) the involvement of the Crown in establishing the Correctional Institutions;
- (d) the dependence of the class members on the Crown;
- (e) the vulnerability of the class members as a result of their incarceration at the Correctional Institutions; and

- (f) the involuntary nature of the relationship between the class members and the Crown.

65. Given the circumstances of the relationship between the Crown and the class members, including but not limited to the statutory obligations, authority and control over the class members, the Crown undertook to act in the best interests of the class members and to act in accordance with the duty of loyalty imposed on the Crown.

66. The Crown was solely responsible for, among other things:

- (a) the implementation of the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, any other statutes relating to prisoners and all regulations promulgated under these statutes and their predecessors during the class period;
- (b) the protection of the health, safety and well-being of prisoners during the class period and the maintenance of the minimum standards set out herein;
- (c) the management, operation, administration, ownership, financing, inspection and auditing of the Correctional Institutions during the class period;
- (d) decisions, procedures, regulations promulgated, operations and actions taken by the Ministry, their employees, servants, officers and agents and their predecessors during the class period;
- (e) the care and supervision of, and the provision of the necessities of life to, all class members while they were incarcerated in the Provincial Institutions during the class period; and
- (f) the inspection and supervision of the Correctional Institutions and all activities that took place therein during the class period and for full record keeping with respect to the conditions at these prisons and all activities that took place therein during the class period.

67. The Class members were entitled to rely and did rely on the Crown to their detriment to fulfill their fiduciary obligations. The Crown breached its fiduciary duties to the plaintiffs and the class. The particulars of the breach include:

- (a) failing to ensure that the Correctional Institutions were properly staffed at all material times;

- (b) allowing for staffing levels to fall so low that the Correctional Institutions would be subject to lockdowns and could not operate in a reasonable manner;
- (c) failing to take a proper and good faith interest in the operation of the Correctional Institutions and supervision of the class members, despite its role in respect of the prisoners under its responsibility;
- (d) allowing for lengthy and frequent lockdowns to occur in the Correctional Institutions;
- (e) failing to ensure that the prisoners had proper access to health care, lawyers' visits, family visits, showers, fresh air and exercise, stimuli, and programming;
- (f) failure to recognize and document deterioration in the physical and mental condition of class members as a result of lockdowns and to take all reasonable steps to ensure these conditions are addressed;
- (g) putting its own interests ahead of the interests of prisoners by attempting to save money through understaffing the Correctional Institutions;
- (h) failing to provide adequate financial resources or support to properly care and provide for class members;
- (i) failing to put in place a mechanism to collect information and monitor the impact of lockdowns on class members;
- (j) failing to respond adequately, or at all, to complaints or recommendations which were made concerning lockdowns; and
- (k) failing to safeguard the physical and psychological needs of prisoners.

68. The Crown knew or ought to have known that as a consequence of its operation, care and control of the Correctional Institutions, the plaintiffs and the class members would suffer damages, as discussed below.

**(c) Breaches of the *Canadian Charter of Rights and Freedoms***

69. The conditions particularized above at paragraphs 26, 57, and 67 violate basic human rights of the class members and, as such, constitute a violation of their rights and freedoms under Sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

70. The conditions under which the prisoners are detained engage the interests of liberty and security of the person. The frequent and lengthy staffing related lockdowns which are unpredictable to prisoners and the consequences of the lockdowns identified herein cause severe detrimental mental and physical effects on inmates. The conditions at the Correctional Institutions and the conduct of the Crown violate the right of the class to life, liberty and security of the person, contrary to section 7 of the *Charter*.

71. Further, the frequent nature of the lockdowns due to staffing inadequacies is arbitrary and is imposed without institutional justification. This constitutes arbitrary restraint or detention and as such constitutes a breach of section 9 of the *Charter*.

72. The frequency, duration, and severity of staffing related lockdowns and the adverse consequences of these lockdowns at the Correctional Institutions during the class period identified herein violate the rights of class members to be held in custody in a humane and safe facility. This treatment is so excessive as to outrage standards of decency and is grossly disproportionate. The frequent and lengthy staffing related lockdowns at the Correctional Institutions constitute cruel, inhumane and degrading treatment or punishment contrary to section 12 of the *Charter*.

73. The frequent and lengthy nature of the lockdowns due to staffing inadequacies is arbitrary and is imposed without institutional justification.

74. In the circumstances, the plaintiffs and the class are entitled to monetary damages pursuant to section 24(1) of the *Charter* for violation of the class members' constitutional rights and freedoms in order to:

- (a) compensate them for their suffering and loss of dignity;
- (b) vindicate their fundamental rights; and
- (c) deter systemic violations of a similar nature.

75. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

## H. DAMAGES SUFFERED BY THE CLASS

76. The Crown knew, or ought to have known, that as a consequence of its operation of the Correctional Institutions, that the plaintiffs and the class members would suffer significant physical and psychological damages as described below.

77. The plaintiffs and the members of the class were traumatized by their experiences arising from their incarceration at the Correctional Institutions. As a result of the negligence, breach of fiduciary duty, and breach of the *Charter* rights of the class, the plaintiffs and the class suffered and continue to suffer damages which include, but are not limited to the following:

- (a) physical and psychological harm;
- (b) exacerbation of psychological illness and the creation of new psychological illnesses;
- (c) exacerbation of physical illness and/or ailments and the creation of new physical illness and/or ailments
- (d) pain and suffering;
- (e) an impaired ability to obtain and sustain employment, resulting either in lost or reduced income and ongoing loss of income;
- (f) a requirement for medical or psychological treatment and counselling;
- (g) an impaired ability to enjoy and participate in recreational, social and employment activities; and
- (h) the loss of general enjoyment of life.

78. At all materials times, the Crown has known, or ought to have known, and continues to know, that ongoing delay in failing to rectify the institutional failures at the Correctional Institutions would continue to aggravate and contribute to the class members' injuries and damages.

79. As a result of the Crown's conduct, class members have required and will continue to require further medical treatment, rehabilitation, counselling and other care.

**I. PUNITIVE DAMAGES**

80. The high handed and callous conduct of the Crown warrants the condemnation of this Honourable Court. The Crown conducted its affairs with wanton and callous disregard for the class members' interests, safety and well-being. In all the circumstances, the Crown breached, and continues to breach, its fiduciary duty, and *Charter* duties owed to the plaintiff and the class members.

81. Over a long period of time, the plaintiffs and the class members were treated in a manner that could foreseeably result in the damages suffered. The substandard conditions to which the plaintiffs and the class members were exposed to grossly violated their rights and severely altered the paths of their lives.

82. In these circumstances, punitive damages are necessary to act as a deterrent to prevent such conduct in the future.

**J. VICARIOUS LIABILITY**

83. The Crown is vicariously liable for the negligence and breaches of fiduciary duties perpetrated upon class members by the Crown's employees, representatives and agents.

84. Notice of this action as provided to the Crown on May 31, 2016.

85. This action is commenced pursuant to the *Class Proceedings Act, 1992*.

86. The trial of the action should take place in the city of Toronto, in the Province of Ontario.

August 15, 2016

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Province of Ontario

Plaintiffs

Defendant

SERVICE OF A COPY

ADMITTED THIS 12th DAY OF August 2014

Crown Law Office (Civil Law)

MINISTRY OF THE ATTORNEY GENERAL

FOR ONTARIO

Per: [Signature]

720 BAY STREET

TORONTO, ONTARIO M7A 2S9

(Law Clerk)

Time 4:08 p.m.

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto  
Proceeding under the *Class Proceedings Act*, 1992

STATEMENT OF CLAIM

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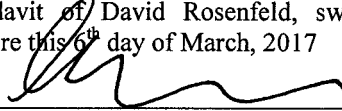
Lawyers for the Plaintiffs

KM-2319691v1

0204

CV-16-558633-00P  
Court File No.:

This is **Exhibit "B"** referred to in the  
affidavit of David Rosenfeld, sworn  
before this 6<sup>th</sup> day of March, 2017



A Commissioner for Taking Affidavits

Court File No.: CV-16-558633-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**RAYMOND LAPPLE, JEROME CAMPBELL, SAMIR ABDELGADIR**  
**and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**PLAINTIFFS' LITIGATION PLAN**

**COMMON ISSUES AND CERTIFICATION MOTION**

1. At the certification motion, the plaintiffs will seek certification of the following common issues:
  - (1) By its operation or management of the Correctional Institutions, did the defendant breach a duty of care it owed to the class to protect them from actionable physical or psychological harm?
  - (2) By its operation or management of the Correctional Institutions, did the defendant breach a fiduciary duty owed to the class to protect them from actionable physical or psychological harm?
  - (3) By its operation or management of the Correctional Institutions, did Ontario breach the life, liberty and security of the person interest of the Class under section 7 of the *Canadian Charter of Rights and Freedoms*?
  - (4) If the answer to common issue (3) is yes, were Ontario's actions arbitrary or resulting in grossly disproportionate effects and therefore impacted the life, liberty and security of the person in a manner contrary to the interests of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*?
  - (5) Did the actions of Ontario constitute arbitrary imprisonment or detention under section 9 of the *Canadian Charter of Rights and Freedoms*?
  - (6) Did the actions of Ontario constitute cruel and unusual punishment under section 12 of the *Canadian Charter of Rights and Freedoms*?

- (7) If the answer to common issue (3), (4), (5) or (6) is "yes", were the defendant's actions saved by section 1 of the *Canadian Charter of Rights and Freedoms*, and if so, to what extent and for what time period?
- (8) If the answer to common issue (3), (4), (5), or (6) is "yes", and the answer to common issue (7) is "no", do those breaches make damages an appropriate and just remedy under section 24 of the *Canadian Charter of Rights and Freedoms*?
- (9) If the answer to any of common issues (1), (2), or (8) is "yes", can the court make an aggregate assessment of damages suffered by all class members as part of the common issues trial, and if so, in what amount?
- (10) Does the defendant's conduct justify an award of punitive damages?
- (11) If the answer to common issues (10) is "yes", what amount of punitive damages ought to be awarded against the defendant?

(the "Common Issues")

## NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

- 2. The plaintiffs request that the Court settle the form and content for notification of the certification of this action, the timing and manner of providing notice of certification, and set out an opt-out date as being **four (4) months** following the date of the issuance of the certification order.
- 3. The plaintiffs request that notice of certification be disseminated as follows:
  - (a) by placing, within forty (40) days after the date of entry of this Order, a newspaper notice in 1/4 of a page size;
  - (b) by the Administrator distributing the Short Form Notice to all offices of the Elizabeth Fry Society, the John Howard Society, and the Aboriginal Legal Services;
  - (c) by posting the notice in conspicuous places within each Correctional Institution, in common areas, making it possible for class members to see it;
  - (d) by posting a notice on class counsels' and the Administrator's (defined below) website;
  - (e) by forwarding the notice to any class member who requests it; and
  - (f) by the Administrator establishing a toll-free telephone support line within Ontario to provide assistance to class members, family, guardians or agency staff, or other persons who make inquiries on their own behalf or on behalf of class members; and,
  - (g) by such other notice as the Court directs.

4. The expense of the notice set out in paragraph 3 above is to be borne by defendant.
5. The plaintiffs ask the Court to order that no person may opt out a person who is mentally incapable, as defined in section 6 or 45 of the *Substitute Decisions Act* without leave of the court after notice to the Office of the Public Guardian and Trustee, as appropriate.
6. The plaintiffs will ask the Court to approve an opt out form to be used by class members wishing to opt out of the class action, which will require the class member to provide sufficient information to establish their membership in the class.
7. Any individual or party to this action may bring application or motion to court to disregard the opt-out of a claimant.
8. The plaintiffs ask that the Court appoint Crawford Class Action Services as Administrator and to organize and receive opt out forms or other written documentation from any class member opting out of the class action. Only written elections to opt out will be accepted and must be delivered to Crawford Class Action Services within the aforementioned deadline.
9. Within sixty (60) days after the expiration of the opt-out period, Crawford Class Action Services will deliver to the Court and the parties an affidavit listing the names of all persons who have opted out of the class action.

## **LITIGATION STEPS PRIOR TO THE DETERMINATION OF THE COMMON ISSUES**

### **Pleadings and Production**

10. The defendant shall serve and file a Statement of Defence within sixty (60) days from the date of Certification Order.
11. The plaintiffs shall have thirty (30) days from service of the defendant's Statement of Defence to serve and file a reply, if any.
12. Within ninety (90) days from the entry of the Certification Order, the parties shall agree upon a timetable for production of documents and examinations, to be approved by court order.

13. The plaintiffs shall apply for such further directions as may be required.

#### **First Case Management Conference (“CMC”)**

14. The plaintiffs propose that the CMC of this action be fixed for hearing within 60 days of the Certification Order to:
- (a) address any issues related to a production and examination timetable between the parties; and
  - (b) set dates for further CMCs as necessary.

#### **Common Issues Trial**

15. The common issues trial will determine the Common Issues at a time and place fixed by the Court, in the City of Toronto.

### **LITIGATION STEPS FOLLOWING THE DETERMINATION OF COMMON ISSUES FAVOURABLE TO THE CLASS**

#### **Notice of Resolution of Common Issues**

16. The plaintiffs request that the Court settle the form and content for notification of the resolution of the Common Issues and the claims and individual issues processes (“**Notice of Resolution**”), the timing and manner of providing the Notice of Resolution (“**Resolution Notice Plan**”) and requiring class members to file claims (“**Claim Forms**”) by a fixed date with a person designated by the Court (the “**Administrator**”).
17. The plaintiffs suggest a similar method of notice be ordered as per paragraph 3, above.

#### **Valuation of Damages**

18. If Common Issues (4), (5), or (6) are resolved in favour of the plaintiffs, the plaintiffs propose the following methods for assessing and distributing damages for the class members as follows:
- (a) aggregate damages to be distributed on a *pro-rata* basis; and/or

- (b) if aggregate damages are not awarded in full, than the remaining damages of individual claimants to be determined in individual assessments in a manner to be determined by the Court.
- (c) if aggregate damages are not awarded in full or in part, than damages of individual claimants to be determined in individual assessments in a manner to be determined by the Court.

### **Distribution of Aggregate Damages**

- 19. If aggregate damages are awarded at the common issues trial, the Plaintiff will bring a motion pursuant to section 24 of the *Class Proceedings Act, 1992* to approve a methodology to distribute the aggregate award of damages among the class members.

### **Resolution of the Individual Issues**

- 20. The plaintiffs are seeking an aggregate assessment of monetary relief as a common issue. If aggregate damages are not awarded, or if the Court concludes that assessments are required in addition to a determination of aggregate damages, it may still be necessary to establish a procedure in accordance with section 25 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, ("*CPA*") to determine the individual damages of Class Members, or any other individual issues as directed by the court.
- 21. Within ninety (90) days of the issuance of the judgment on the common issues, the parties will convene for argument relating to sections 25 of the *CPA* to determine the appropriate process to determine the individual issues, if any.
- 22. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining individual issues. Potential methods include claims processes, references, mini-trials, mediation, arbitration or other means approved by the court pursuant to section 25 of the *Class Proceedings Act, 1992*. At this time, the Plaintiffs intend to propose a method of resolving outstanding individual issues as set out below.

23. The court will be asked to specify procedures and deadlines by which class members shall identify themselves as claimants wishing to make claims for individual compensation.
24. The Plaintiff will ask the court to settle the form and content the Notice of Resolution and to set a date by which class members will be required to file a claim with the Administrator.
25. The Plaintiffs will ask the court to order that the Notice of Resolution be distributed in accordance with the Resolution Notice Plan set out above, except it shall not be mailed to class members who validly opted out of the class action.
26. The Plaintiff anticipates that given the nature of the damages suffered by class members, adjudication of the claims could be resolved through an efficient process which could involve the following steps, and which would be subject to the court's discretion:
  - (a) Each claimant could submit a claim form to a referee appointed by the court (the "Referee"). The claim form shall include supporting documentation and/or expert evidence, as applicable.
  - (b) The Referee shall deliver a copy of the claim form and any supporting documentation and/or expert evidence to the Defendant.
  - (c) The Defendant shall have thirty days following receipt of the claim form and documentation, or such other time period as may be set by the court, in which to file with the Referee a written opposition to all or part of the claim, including responding documentation and/or expert evidence. The written opposition shall state the reasons for the opposition and shall be deemed to constitute their response. The Defendant shall attach all supporting documentation and/or expert evidence, as applicable.
  - (d) On request by either of the parties, the Referee shall determine what if any additional production is required by either party, what examination may be conducted, and whether participation by any other parties is necessary in the process.
  - (e) The Referee shall communicate his/her decisions in writing to the claimant and to the Defendant.
  - (f) The assessment of damages may be in writing or by means of oral hearing, depending on the nature and complexity of the claim and the severity of the alleged damages, in accordance with the court's determination. The availability and manner of appeal procedures will be determined by the court.
  - (g) It may be possible to categorize and value claims in accordance with a grid according to the nature and severity of the damages, as agreed to by the parties or as ordered by the court.

## **MISCELLANEOUS REQUIREMENTS OF THE LITIGATION PLAN**

### **Registration of Potential Class Members**

27. The plaintiffs will develop a confidential web-based registration system as well as a telephone hotline which will permit potential class members to contact class counsel and provide information necessary to assist in the advancement of the action.

### **Review of the Plan**

28. This Litigation Plan may be reconsidered and revised under the continuing case-management authority of the Court after the determination of the common issues or upon application by the parties.

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**RAYMOND LAPPLE, JEROME CAMPBELL SAMIR ABDELGADIR  
and GREGORY SMITH**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF SYLVIA TSE**

I, **SYLVIA TSE**, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am a legal assistant at Koskie Minsky LLP, one of law firms in the counsel team for the proposed representative plaintiff in this action, and as such have knowledge of the matters hereinafter deposed, except where stated to be on information and belief, in which case I disclose the source of my information. I believe these facts to be true.

2. The following documents are attached hereto as Exhibits:

DOCUMENT	EXHIBIT
Community Advisory Boards Description downloaded from < <a href="http://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/CABs.html">http://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/CABs.html</a> >	A.
Community Advisory Board Annual Report, Central East Correctional Centre, March 31, 2015 downloaded from < <a href="http://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/CECC/CAB_CEC C.html">http://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/CECC/CAB_CEC C.html</a> >	B.
Community Advisory Board Annual Report 2015, Central East Correctional Centre, March 31, 2016 downloaded from < <a href="http://www.mcscs.jus.gov.on.ca/english/Corrections/CommunityAdvisoryBoards/CentralEastCorrectionalCentre/CABReport2015CentralEastCorrectionalCentre.html">http://www.mcscs.jus.gov.on.ca/english/Corrections/CommunityAdvisoryBoards/CentralEastCorrectionalCentre/CABReport2015CentralEastCorrectionalCentre.html</a> >	C.
Community Advisory Board Annual Report 2015, Central North Correctional Centre, March 31, 2016 downloaded from < <a href="http://www.mcscs.jus.gov.on.ca/english/Corrections/CommunityAdvisoryBoards/CentralNorthCorrectionalCentre/CABReport2015CentralNorthCorrectionalCentre.html">http://www.mcscs.jus.gov.on.ca/english/Corrections/CommunityAdvisoryBoards/CentralNorthCorrectionalCentre/CABReport2015CentralNorthCorrectionalCentre.html</a> >	D.
Community Advisory Board Annual Report, Central North Correctional Centre, April 24, 2015	E.
Community Advisory Board Annual Report 2015, Toronto South Detention Centre, March 31, 2016 downloaded from < <a href="http://www.mcscs.jus.gov.on.ca/english/Corrections/CommunityAdvisoryBoards/TorontoSouthDetentionCentre/CABReport2015TorontoSouthDetentionCentre.html">http://www.mcscs.jus.gov.on.ca/english/Corrections/CommunityAdvisoryBoards/TorontoSouthDetentionCentre/CABReport2015TorontoSouthDetentionCentre.html</a> >	F.
Community Advisory Board Annual Report, Toronto South Detention Centre, March 31, 2015 downloaded from < <a href="http://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/TSDC/CAB_TSD C.html">http://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/TSDC/CAB_TSD C.html</a> >	G.
Community Advisory Board Annual Report 2015, Ottawa-Carleton Detention Centre, March 23, 2016 downloaded from < <a href="http://www.mcscs.jus.gov.on.ca/english/Corrections/CommunityAdvisoryBoards/OttawaCarletonDetentionCentre/OCDC2015CABReport.html">http://www.mcscs.jus.gov.on.ca/english/Corrections/CommunityAdvisoryBoards/OttawaCarletonDetentionCentre/OCDC2015CABReport.html</a> >	H.

Community Advisory Board Annual Report, Ottawa-Carleton Detention Centre, March 31, 2015 downloaded from < <a href="http://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/EMDC/CAB_OC_DC.html">http://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/EMDC/CAB_OC_DC.html</a> >	I.
Ontario Ombudsman, The Code, Investigation into the Ministry of Community Safety and Correctional Services' response to allegations of excessive use of force against inmates, June 2013	J.
Standing Committee on Prison Conditions in Ontario First Report to the Board: The Superjails in Ontario, John Howard Society, Approved June 10, 2006	K.
2008 Report of the Auditor General, Office of the Auditor General (Excerpt)	L.
Ontario Freedom of Information Request dated June 10, 2016	M.
Ontario Freedom of Information Request response dated December 22, 2016	N.
Ontario Freedom of Information Requests dated June 1, 2016	O.
Ontario Freedom of Information Request response dated November 4, 2016	P.
Ontario Freedom of Information Requests date May 24, 2016	Q.
Ontario Freedom of Information Request response dated August 18, 2016	R.
Ontario Freedom of Information Request response dated January 16, 2017	S.
Alberta Freedom of Information Request dated November 11, 2016	T.
Alberta Freedom of Information Request response dated November 25, 2016	U.
Saskatchewan Freedom of Information Request dated November 11, 2016	V.

Saskatchewan Freedom of Information Request response dated January 6, 2017	W.
Newfoundland and Labrador Freedom of Information Request dated November 11, 2016	X.
Newfoundland and Labrador Freedom of Information Request response dated December 21, 2016	Y.
Nova Scotia Freedom of Information Request dated November 11, 2016	Z.
Nova Scotia Freedom of Information Request response dated January 26, 2017	AA.
Prince Edward Island Freedom of Information Request dated November 11, 2016	BB.
Prince Edward Island Freedom of Information Request response dated November 21, 2016	CC.
Yukon Freedom of Information Request dated November 11, 2016	DD.
Yukon Freedom of Information Request response dated December 13, 2016	EE.
Northwest Territories Freedom of Information Request dated November 11, 2016	FF.
Northwest Territories Freedom of Information Request response dated December 15, 2016	GG.
British Columbia Freedom of Information Request dated November 11, 2016	HH.
British Columbia Freedom of Information Request response dated December 19, 2016	II.
Quebec Freedom of Information Request dated November 11, 2016	JJ.
Quebec Freedom of Information Request response dated February 16, 2017	KK.
New Brunswick Freedom of Information Request dated November 11, 2016	LL.

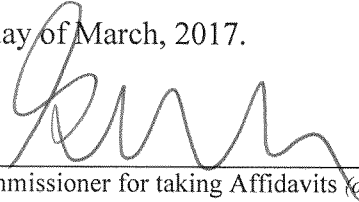
New Brunswick Freedom of Information Request response dated January 10, 2017		MM.
Manitoba Freedom of Information Request dated November 11, 2016		NN.
Manitoba Freedom of Information Request responses dated December 7, 2016 and March 2, 2017		OO.
Nunavut Freedom of Information Request dated November 11, 2016		PP.
Nunavut Freedom of Information Request response dated March 1, 2017		QQ.
<b>Newspaper Article</b>	<b>Correctional Institution</b>	
Patrick White, "Jail sentences reduced for Ontario offenders who endured lockdowns" <i>The Globe and Mail</i> (8 March, 2016) online: < <a href="http://www.theglobeandmail.com/news/national/jail-sentences-reduced-for-ontario-offenders-who-endured-lockdowns/article29095557/">http://www.theglobeandmail.com/news/national/jail-sentences-reduced-for-ontario-offenders-who-endured-lockdowns/article29095557/</a> >	Ontario provincial institutions generally	RR.
Donovan Vincent, "Lockdowns soaring in Ontario jails due to staff shortages", <i>Toronto Star</i> (11 July, 2015) online: < <a href="https://www.thestar.com/news/canada/2015/07/11/lockdowns-soaring-in-ontario-jails-due-to-staff-shortages.html">https://www.thestar.com/news/canada/2015/07/11/lockdowns-soaring-in-ontario-jails-due-to-staff-shortages.html</a> >	Ontario provincial institutions generally	SS.
Donovan Vincent, "Soaring lockdowns in Ontario prisons 'not acceptable,' NDP says", <i>Toronto Star</i> (13 July, 2015) online: < <a href="https://www.thestar.com/news/queenspark/2015/07/13/soaring-lockdowns-in-ontario-prisons-unacceptable-ndp-says.html">https://www.thestar.com/news/queenspark/2015/07/13/soaring-lockdowns-in-ontario-prisons-unacceptable-ndp-says.html</a> >	Ontario provincial institutions generally	TT.
Anna Mehler Paperny, "Ontario's short-staffed jails face chronic lockdowns, staff, inmates say", <i>Global News</i> (8 September 2014) online: < <a href="http://globalnews.ca/news/1545818/ontarios-short-staffed-jails-face-chronic-lockdowns/">http://globalnews.ca/news/1545818/ontarios-short-staffed-jails-face-chronic-lockdowns/</a> >	Ontario provincial institutions generally	UU.

"Jail staff shortage leads to spike in lockdowns in northeastern Ontario", <i>CBC News</i> (21 July, 2015) online: < <a href="http://www.cbc.ca/news/canada/sudbury/jail-staff-shortage-leads-to-spike-in-lockdowns-in-northeastern-ontario-1.3160983">http://www.cbc.ca/news/canada/sudbury/jail-staff-shortage-leads-to-spike-in-lockdowns-in-northeastern-ontario-1.3160983</a> >	Jails in northeastern Ontario	VV.
Michael Robinson, "'Astounding' number of lockdowns at Maplehurst Correctional Complex", <i>Toronto Star</i> (9 January, 2016) online: < <a href="https://www.thestar.com/news/crime/2016/01/09/astounding-number-of-lockdowns-at-maplehurst-correctional-complex.html">https://www.thestar.com/news/crime/2016/01/09/astounding-number-of-lockdowns-at-maplehurst-correctional-complex.html</a> >	Maplehurst Correctional Complex	WW.
Dan Taekema, "Inmates protest against more lockdowns at Toronto South Detention Centre", (10 June, 2016) online: < <a href="https://www.thestar.com/news/gta/2016/06/10/inmates-protest-against-more-lockdowns-at-toronto-south-detention-centre.html">https://www.thestar.com/news/gta/2016/06/10/inmates-protest-against-more-lockdowns-at-toronto-south-detention-centre.html</a> >	Toronto South Detention Centre	XX.
Patrick White, "Inmates at Canada's second-largest jail protest problems with hunger strike", <i>The Globe and Mail</i> (18 November, 2015) online: < <a href="http://www.theglobeandmail.com/news/toronto/inmates-at-canadas-second-largest-jail-protest-problems-with-hunger-strike/article27351267/">http://www.theglobeandmail.com/news/toronto/inmates-at-canadas-second-largest-jail-protest-problems-with-hunger-strike/article27351267/</a> >	Toronto South Detention Centre	YY.
Dan Taekema, "Inmates at Toronto South Detention Centre threaten to resume hunger strike", <i>Toronto Star</i> (23 August, 2015) online: < <a href="https://www.thestar.com/news/gta/2015/08/23/inmates-at-toronto-south-detention-centre-threaten-to-resume-hunger-strike.html">https://www.thestar.com/news/gta/2015/08/23/inmates-at-toronto-south-detention-centre-threaten-to-resume-hunger-strike.html</a> >	Toronto South Detention Centre	ZZ.
Amy Dempsey, "Lockdowns, staff shortages plague Toronto South superjail", <i>Toronto Star</i> (14 June, 2015) online: < <a href="https://www.thestar.com/news/canada/2015/06/14/lockdowns-staff-shortages-plague-toronto-south-superjail.html">https://www.thestar.com/news/canada/2015/06/14/lockdowns-staff-shortages-plague-toronto-south-superjail.html</a> >	Toronto South Detention Centre	AAA.

Anna Mehler Paperny, "Rough justice: Lockdowns skyrocket at short-staffed Ontario jails", <i>Global News</i> online: < <a href="http://globalnews.ca/news/2091102/rough-justice-lockdowns-skyrocket-at-short-staffed-ontario-jails/">http://globalnews.ca/news/2091102/rough-justice-lockdowns-skyrocket-at-short-staffed-ontario-jails/</a> >	Central East Correctional Centre;	BBB.
Andrew Seymour, "Ottawa's troubled jail: a year of shower cells, segregation, and suicides", <i>Ottawa Sun</i> (30 December, 2016) online: < <a href="http://www.ottawasun.com/2016/12/30/ottawa-was-troubled-jail-a-year-of-shower-cells-segregation-and-suicides">http://www.ottawasun.com/2016/12/30/ottawa-was-troubled-jail-a-year-of-shower-cells-segregation-and-suicides</a> >	Ottawa-Carleton Detention Centre	CCC.
Chloé Fedio, "Former OCDC inmates launching lawsuit over 'degrading treatment' lawyer says", <i>CBC News</i> (26 May, 2016) online: < <a href="http://www.cbc.ca/news/canada/ottawa/ottawa-jail-conditions-lawsuit-paul-champ-1.3601276">http://www.cbc.ca/news/canada/ottawa/ottawa-jail-conditions-lawsuit-paul-champ-1.3601276</a> >	Ottawa-Carleton Detention Centre	DDD.
Andrew Seymour, "Ottawa lawyer urges inmates to log their lockdowns, seeks reductions in sentences", <i>Ottawa Citizen</i> (14 March, 2016) online: < <a href="http://ottawacitizen.com/news/local-news/ottawa-lawyer-urges-inmates-to-log-their-lockdowns-seeks-reductions-in-sentences">http://ottawacitizen.com/news/local-news/ottawa-lawyer-urges-inmates-to-log-their-lockdowns-seeks-reductions-in-sentences</a> >	Ottawa-Carleton Detention Centre	EEE.
Barbara Simpson, "Sarnia Jail still experiencing lockdowns due to understaffing, says president of local jail guards' union", <i>The Sarnia Observer</i> (23 March, 2016) online: < <a href="http://www.theobserver.ca/2016/03/23/sarnia-jail-still-experiencing-lockdowns-due-to-understaffing-says-president-of-local-jail-guards-union">http://www.theobserver.ca/2016/03/23/sarnia-jail-still-experiencing-lockdowns-due-to-understaffing-says-president-of-local-jail-guards-union</a> >	Sarnia Jail	FFF.

3. I swear this affidavit in support of the plaintiffs' motion for certification and for no improper purpose.

SWORN BEFORE ME at the City of Toronto this  
2nd day of March, 2017.

  
\_\_\_\_\_  
A Commissioner for taking Affidavits *(or as may be)*  
Garth Myers

  
\_\_\_\_\_  
SYLVIA TSE

RAYMOND LAPPLE ET AL.

Plaintiffs

and

HER MAJESTY THE QUEEN IN  
RIGHT OF THE PROVINCE OF  
ONTARIO

Defendant

Court File No.: CV-16-558633-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*, 1992

**AFFIDAVIT OF SYLVIA TSE**

**KOSKIE MINSKY LLP**

20 Queen Street West  
Suite 900, Box 52  
Toronto ON M5H 3R3

**Kirk M. Baert** LSUC #: 309420

Tel: 416-595-2092 / Fax: 416-204-2889

**Jonathan Ptak** LSUC#: 45773F

Tel: 416-595-2149 / Fax: 416-204-2903

**James Sayce** LSUC#: 58730M

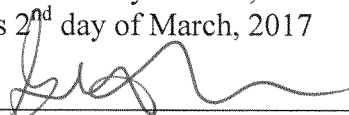
Tel: 416-542-6298 / Fax: 416-204-2809

**Garth Myers** LSUC#: 62307G

Tel: 416-595-2102 / Fax: 416-204-4924

**Lawyers for the Plaintiffs**

This is Exhibit "A" referred to in the  
affidavit of Sylvia Tse, sworn before me,  
this 2<sup>nd</sup> day of March, 2017

A handwritten signature in black ink, appearing to read 'Garth Myers', written over a horizontal line.

A Commission for Taking Affidavits  
Garth Myers

You are here > **Home** > **Corrections** > Community Advisory Boards - Reports

## Community Advisory Boards

Community Advisory Boards (CABs) are mandated to provide advice and recommendations to the ministry and the government on all aspects of the operations of the individual correctional facilities they serve.

Community Advisory Boards are independent bodies that the Ministry of Community Safety and Correctional Services **established to strengthen links between the community and provincial institutions**. These advisory boards consist entirely of volunteers from a variety of professional backgrounds who are appointed by the Minister of Community Safety and Correctional Services from local communities.

There are currently six CABs in operation: Central East Correctional Centre, Central North Correctional Centre, Elgin-Middlesex Detention Centre, Ottawa Carleton Detention Centre, South West Detention Centre and Toronto South Detention Centre. Hamilton Wentworth Detention Centre will have a CAB up and running by the end of 2015.

CAB volunteers increase transparency and accountability within Correctional Services by strengthening the links between correctional facilities and the communities they serve. CABs also bring awareness at the local level of the essential role correctional staff play in keeping our communities safe.

CAB members have a right of access, at any time, to all areas of the institution. CAB members have full and free access to inspect and tour the institution whenever they choose, 24 hours a day, 7 days a week under normal operating conditions.

The CAB also meets with the Superintendent of the institution on a monthly basis and works closely and directly with them to discuss, and resolve issues brought to their attention.

Each CAB is responsible for presenting an annual report to the Minister of Community Safety and Correctional Services. A plain language version of each CAB report is available below.\* All plain language versions have been reviewed and approved by the CAB Chairs.

Also available for review are acknowledgement letters from the Minister of Community Safety and Correctional Services, and detailed response letters to each CAB from the Deputy Minister for Correctional Services.

Please note, the South West Detention Centre CAB was established in April 2015, and is not part of the 2014-15 reporting period.

**Central East Correctional Centre - 2015 Report**

**Central East Correctional Centre - 2014 Report**

**Central North Correctional Centre - 2015 Report**

**Central North Correctional Centre - 2014 Report**

**Elgin-Middlesex Detention Centre - 2015 Report**

**Elgin-Middlesex Detention Centre - 2014 Report**

**Ottawa Carleton Detention Centre - 2015 Report**

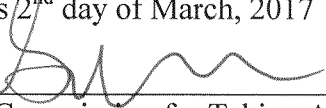
**Ottawa Carleton Detention Centre - 2014 Report**

**Toronto South Detention Centre - 2015 Report**

**Toronto South Detention Centre - 2014 Report**

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This is Exhibit "**B**" referred to in the  
affidavit of Sylvia Tse, sworn before me,  
this 2<sup>nd</sup> day of March, 2017



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A Commission for Taking Affidavits  
Garth Myers

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## **Community Advisory Board Annual Report**

### **Central East Correctional Centre**

Lindsay, Ontario

March 31, 2015

#### **Overview**

The Central East Correctional Centre (CECC) Community Advisory Board (CAB) was established in February 2003. Formerly known as a Board of Monitors, the CECC was Ontario's second CAB.

#### **CECC CAB members**

**Chair:** Ed Lafosse, appointed May 1, 2012, term April 30, 2015

#### **Board Members:**

Chris Ciceri, appointed Aug. 1, 2014, term July 31, 2016

Jean Jones appointed Aug. 2, 2012, term Aug. 1, 2015

Nancy Martin, appointed Aug. 16, 2013, term Aug. 15, 2016

Sandy McNeil, appointed April 1, 2014, term March 31, 2016

#### **Meetings**

The CAB held nine meetings during this reporting period. Due to vacancies on the Board, two of these meetings only had sufficient members for a quorum. The meeting minutes were forwarded to the Minister and Program Advisor on a regular basis. We received two Institutional Count and Incident reports.

#### **Site visits**

With a skeleton board and health complications, the number of institutional visits was reduced to 42 over the year. Employee Relations Committee and Joint Health & Safety Committee meeting minutes are available for review by the CAB when they visit the facility. Binders are kept on a bookshelf in the main administration for easy access.

#### **Number of concerns directed to the minister**

Seven concerns and two congratulatory messages were directed to the minister.

1. A request for revised CAB Terms of Reference, which includes a review of the Annual Report by the minister and comments provided
2. Request for a meeting with the Central North Correctional Centre CAB in Penetanguishene (first made in 2010)
3. Opposition to submitting the proposed Memorandum of Understanding and Risk Management Assessment
4. The high frequency of rotational lockdowns

5. The Board did not receive a response to its concern about who is responsible for construction penalties for stopped and delayed projects
6. The excessive presence of contraband and related inmate assaults
7. Question whether it is worthwhile preparing and submitting an Annual Report when minimal feedback is provided from the minister
8. Welcoming Ms. Sandy O'Neil, the fifth mandatory appointment to the CAB, in May 2014
9. Kudos to the CECC Deputy-Superintendent, Programs on the successful integration of trans inmates into the female unit

## **Observations**

### **The Operation of the Institution**

#### **Outdoor Offender Work Program**

The Outdoor Offender Work Program has been operational since 2009. Approximately 25 inmates participate in this program annually. There are four positions. Projects include various areas of property maintenance and, the collection and removal of garbage. A female inmate was accepted into the program and assisted with property maintenance. Additional opportunities for female inmates to work outdoors are being investigated.

#### **The Volunteer Program**

The Volunteer Program is an extremely important operational component. CECC has enthusiastic volunteers providing excellent support to inmates. We also acknowledge the many agencies and students that provide services to our inmates. Our more than 200 volunteers are acknowledged and celebrated at an annual banquet.

#### **Annual art contest**

An annual art contest for inmates to showcase their talents was discontinued upon the retirement of the Volunteer Co-ordinator. The contest enjoyed great success for five years. A new Volunteer Co-ordinator has significantly expanded programming in various areas.

#### **CAB vacancies**

There are six members required on the CAB. Since August 2010, there continues to be vacant positions on this board. CAB members believe the ministry's lack of action to fill vacancies is indicative of this board's low level of importance.

### **Institution Impact on the Community**

#### **Access to health care professionals**

Along with many other Ontario communities, Lindsay is an under-served area for doctors and nurses. A popular belief among community members is that CECC is recruiting doctors, nurse practitioners and nurses away from the community.

#### **Community involvement**

CECC staff continues to support the community through events such as the Local Food Drive, the United Way and the Rick Morey Memorial Hockey Tournament, which contributes to various charities. The boardroom is available for the local Army Cadet Corps Leadership and First Aid training. CECC staff and the Army Cadet Corps provide mutual support by attending inspection parades and regional training for the Ceremonial Unit, along with other formal events.

### **Administration of the Institution**

#### **Condition of the institution**

All construction projects, including an upgrade to the fire-alarm system, were postponed to accommodate the transfer of federal detainees from the Toronto West Detention Centre. The air quality and ventilation system throughout the entire institution continue to present concerns for staff and inmates. CAB members observed air vents clogged with lint within 24-hours of being replaced by maintenance staff. The ventilation and air quality has also been raised at Health & Safety meetings. The CAB is concerned with the overall cleanliness of the institution.

#### **Contraband**

The offender population is changing with more gangs and more drugs. The prevalence of contraband substances continues to be a serious issue. There is excessive pressure and intimidation on the Work Program inmates to traffic contraband. Random searches and canine searches are regular occurrences.

#### **X-ray equipment**

Staff has expressed their concerns about the ineffective x-ray equipment and lack of training provided.

#### **Pod 3**

Pod 3, Section A is empty. With shared occupancy of cells – possibly through federal discussions – additional sections could be available for intermittent inmates. The CAB is requesting an investigation whether additional sections of Pod 3 can be made available to accommodate intermittent inmates, which will also disrupt trafficking schemes and the circulation of contraband.

#### **Pod 4**

The sentenced offenders in Pod 4 cannot work and are not offered recreation time. A review of this situation is requested.

#### **Staffing**

Staffing resources have been stretched to the limit with consistency and important efficiencies being jeopardized. The shortage of day-shift managers has resulted in additional lockdowns. New recruits were welcomed and have reduced staff pressures.

#### **Telemedicine**

The telemedicine process requires numerous escorts for outside medical appointments and reduces available staff.

### **Offender-on-offender assaults**

The number of offender-on-offender assaults has significantly increased with many being contraband related. The high rate of offender-on-offender assaults continues to be a serious concern.

### **Cost recovery**

The CAB is requesting feedback from the ministry whether all the costs related to federal detainees' care is reimbursed. For example, are the costs of transporting detainees for medical reasons, Canadian Border Services hearings and required escorts, as well as other federal detainee-related costs being reimbursed?

### **The Treatment of inmates**

#### **Worship Centre**

The CAB is pleased that the Worship Centre has a busy schedule with inmates attending various non-denominational services and numerous multi-faith events. The Co-ordinating Chaplain, for example, received comments acknowledging the respectful treatment of the inmates during the religious observance of Ramadan.

CAB members enthusiastically encourage the implementation of the Chaplain's project of streaming funeral services for family members at CECC.

### **Immigration detainees**

Immigration detainees are of some concern since they are housed here on an unclear timeline.

### **Programming**

The Education Department provides a valuable program for the inmates to earn credits towards obtaining their high school diplomas. As well, the inmates earn valuable credits by participating on the Work Board. The department reports; "it is wonderful to see the reaction of inmates when they are told they can earn credits towards their high school diplomas. This creates hopefulness."

The new Volunteer Co-ordinator significantly expanded programming for male and female inmates, including life skills, parenting and basic literacy and numeracy skills JK to grade 8.

The Native Institutional Liaison Officer provides advocacy and special programs for the First Nation and Inuit inmates.

An innovative program of policy development, staff training and awareness development contributed to the successful integration of trans inmates in the female unit.

### **Mental health**

CECC has a number of inmates with mental health challenges. The CAB is concerned over the lack of alternative facilities available for special-needs inmates. A designated section is being planned to accommodate the inmates with mental-health challenges and special needs, who currently reside in segregation and throughout the facility. The inmate population with Alzheimer's and dementia require additional special care. Increased access to mental health professionals is strongly encouraged.

**Personal hygiene**

Issues around the cost of haircuts arose. Detainees would like to have access to hair clippers so they could do each other's hair and save money for more pressing expenses.

**Staff shortages**

Staff shortages have a major impact on the social workers' and addiction counsellors' access to inmates. There are high caseloads subject to numerous time constraints.

**Lockdowns**

Frequent lockdowns negatively impact offenders. As well, inmate programs are cancelled.

**Inmate brews**

There is a concern about the frequency of inmates preparing brews and the harmful consequences.

**Creative expression**

CAB members personally congratulated three female inmates who painted detailed murals in the general purpose rooms of Pods 8 and 9.

**Recommendations**

The following concerns have been identified by Board members and will be closely monitored over the next year:

1. Proactive recruitment of Board applications using an effective screening process and a more efficient approvals process.
2. The lack of feedback from the ministry to the CAB Annual Report.
3. There is an excessive presence and use of contraband in the facility.
4. The number of offender-on-offender assaults related to the institutional tracking of contraband continues to be high.
5. A designated area is required to accommodate inmates with mental-health challenges and special needs, who currently reside in segregation and throughout the facility.
6. The inmate population with Alzheimer's and dementia require additional special care.
7. Lack of success in recruiting a physician results in additional, expensive escorts to the hospitals and medical specialists for health care.
8. Smoking on the premises continues to be problematic.
9. Both the air quality and ventilation systems throughout the entire institution continue to present concerns for the staff and the inmates.
10. Overall cleanliness of the institution remains a concern.

**Ministry of Community Safety  
and Correctional Services**

Office of the Minister

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et des Services correctionnels**

Bureau du ministre

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Toronto ON M7A 1Y6  
Tél.: 416-325-0408  
Télé.: 416-325-6067

October 27, 2015

Ms. Nancy Martin

Community Advisory Board Chair

Central East Correctional Centre

Dear Ms. Martin:

Thank you for your submission of the Community Advisory Board (CAB) 2014 Annual Report for the Central East Correctional Centre (CECC).

The Ministry of Community Safety and Correctional Services' constant focus is on transforming Ontario's correctional system to improve staff and inmate safety, provide effective rehabilitation and reintegration programs, and strengthen inmate mental health supports. Moving forward in these key areas is at the very core of building safer, stronger communities right across our province. We cannot do this without the commitment of individuals such as you and the other dedicated volunteers who make up our Community Advisory Boards. Your local perspective is invaluable to strengthening the links between our correctional facilities and our communities.

I have reviewed your report and appreciate the thoughtful comments you have made about CECC. You will be pleased to know, a new Annual Report process has been implemented in conjunction with the development and submission of the 2014 Annual Report, including a standardized template. With the standardized approach to reporting issues, the ministry is able to review and provide responses in a meaningful way.

Deputy Minister Stephen Rhodes will be responding in detail to each of the valuable recommendations you have made. Please accept my sincere thanks for this report, your work with the Superintendent, and your role in the community. I would also like to take this opportunity to acknowledge the excellent work of the former CAB Chair, the late Ed LaFosse who passed away recently. I want to thank you for stepping up to fill the CAB Chair role following his passing.

Sincerely,

Yasir Naqvi

Minister

**Ministry of Community Safety  
and Correctional Services**

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October 27, 2015

Ms. Nancy Martin

Community Advisory Board Chair

Central East Correctional Centre

Dear Ms. Martin:

Thank you for your submission of the 2013-2014 and 2014 Community Advisory Board (CAB) Annual Reports for the Central East Correctional Centre (CECC). The Annual Reports have been reviewed by ministry staff and several recommended actions have been taken.

As the Honourable Yasir Naqvi, Minister of Community Safety and Correctional Services, noted in his letter to you, the Ministry of Community Safety and Correctional Services' constant focus is on transforming Ontario's correctional system to improve staff and inmate safety, effective rehabilitation and reintegration programs, and strengthening of inmate mental health supports. Moving forward in these key areas is at the very core of building safer, stronger communities right across our province.

I am pleased to provide the following responses and next steps for the recommendations put forward in the CECC Annual Report:

**1. Proactive recruitment of Board applicants using an effective screening process and a more efficient approval process.**

The ministry recognizes the importance and benefit of local community engagement. The CAB plays an important role providing the Minister and ministry with its observations and recommendations. The ministry is currently in the process of expanding CABs into other correctional facilities. A total of seven institutions will have a CAB established by the end of 2015.

It is our goal to appoint new CAB members and fill CAB vacancies in a timely manner. New appointment and reappointment processes are being developed to improve the timeliness in filling vacancies.

**2. The lack of feedback from the Ministry to the CAB Annual Report.**

The Annual Report is important and beneficial in providing the ministry with observations and recommendations on the operation and administration of the institution, the impact of the institution on the local community, and the treatment of inmates.

A new Annual Report process has been implemented in conjunction with the development and submission of the 2014 Annual Report, including a standardized template. With a standardized approach to reporting issues, the ministry is able to review and provide responses in a meaningful way. The new Annual Report process also has clearly established timelines and response protocols.

Additional feedback and updates will continue to be provided by the Advisor, Professional and Shared Services (PSS) through the quarterly CAB Chair teleconferences.

### **3. There is an excessive presence and use of contraband in the facility.**

The ministry has a number of mechanisms and policies and procedures in place to detect the introduction of contraband into provincial institutions. At CECC, the Superintendent reports the presence of contraband has stabilized due to increased searches, enhancement of the CCTV system from analogue to digital, increased use of BOSS chairs, wands and canine units, as well as onsite Kawartha Lakes Police Service (KLPS) personnel. The process of maintaining continuity of evidence has also been enhanced and offenders charged with criminal offences relating to contraband are facing greater prosecutions. A dedicated Search Team and Operational Manager were also implemented in April 2012. These staff work in conjunction with the local Field Intelligence Officer to ensure that searches are completed as required, and that the use of contraband is detected and curtailed.

In addition, an electronic security audit was conducted at CECC in July 2011, for the purpose of upgrading the facility's 10-year-old security systems to meet existing MCSCS standards. One of the priorities identified was to refresh and expand the institution's video surveillance system to a new IP-based system so that all cameras (275+) would have recording capability. The commissioning of the system was completed on April 25, 2013, and included the addition of 17 cameras throughout the facility to reduce blind spots. The cameras have improved viewing and recording capabilities and will be effective in deterring offender misconduct related to contraband, and in assisting the ministry with investigating and charging offenders with both institutional misconducts and criminal offences.

Eight walk-through metal detectors were acquired in 2013 and strategically placed throughout the institution. Whenever offenders are relocated or escorted from their respective living units, they are required to pass through the corresponding metal detector. In addition, the x-ray machine located in the reception area of the institution used to screen public visitors was replaced. Staff trainers were identified and trained and training was provided to staff in April 2015.

### **4. The number of offender-on-offender assaults related to the institutional trafficking of contraband continues to be high.**

As mentioned earlier, the ministry has a number of policies and procedures in place to assist in detecting and deterring contraband and inmate on inmate assaults. The ministry also employs video surveillance systems and CCTV cameras to assist in curtailing contraband and inmate assaults.

**5. A designated area is required to accommodate the inmates with mental-health challenges and special needs, who currently reside in segregation and throughout the institution.**

The ministry is committed to ensuring correctional facilities are responsive to the needs of inmates who suffer from mental illness.

We have initiated a review of the use of segregation in provincial institutions and our segregation policies. The review will include consultation with staff and various stakeholders. It will also examine the best practices of other jurisdictions. The final report will be submitted with findings/recommendations for the ministry's action in December 2015.

At CECC, offenders in segregation continue to be reviewed on a daily basis by Health Care and Chaplaincy and offenders with special needs are assessed on a regular basis by the Social Work Department.

The Psychology Department reviews all reported suicidal offenders, and a psychiatrist is on contract with the facility and visits on a weekly basis. Segregation reviews are held regularly by Operations staff as well. The nurses attend all segregation reviews and are in regular contact/communication with Psychology and Social Work departments.

The ministry has developed training in conjunction with the Centre for Addiction and Mental Health (CAMH) to assist staff in understanding and responding to inmates with mental health challenges. This training will be provided to all frontline correctional staff and managers.

**6. The inmate population with Alzheimer's and dementia require additional special care.**

While the Superintendent at CECC reports that very few offenders fall into this category, he will monitor and ensure that these inmates' needs are being addressed.

**7. Lack of success in recruiting a physician results in additional, expensive escorts to the hospitals and medical specialists for health care.**

A contract for physician services at CECC was finalized on April 21, 2015.

**8. Smoking on the premises continues to be problematic.**

In accordance with the Ontario Government Policy on Smoke-Free Workplaces, smoking is not permitted at correctional institutions. This also includes buildings, yards, courtyards, outbuildings and grounds. The policy also applies to Correctional Services vehicles.

According to the Superintendent at CECC, the institution's standing orders clearly stipulate that smoking is prohibited within the facility's buildings, yards, courtyards, out buildings and in ministry vehicles. The Standing Orders also prohibit the possession of tobacco products within the secure confines of the facility, and specifies that the Smoke-Free Policy applies to all employees, offenders, visitors and all other persons on the premises.

Employees at every level are expected to demonstrate respect, mutual understanding, good judgement and co-operation in meeting the objectives of the ministry's Smoke-Free Workplace Policy. The Employer has posted several "No Smoking" signs throughout the complex and has consistently reinforced the policy at Local Joint Occupational Health & Safety Committee meetings, Local Employee Relations Committee meetings and Management meetings.

**9. Both the air quality and ventilation systems throughout the entire institution continue to present concerns for the staff and the inmates.**

Air quality testing has been conducted on several occasions at CECC, and particulate samples have been taken. Results have indicated that the air quality exceeds all standards, and Ministry of Labour industrial inspectors have also indicated the air quality at CECC is acceptable. Nevertheless, the institution installed Geo Pleat filters (green product) in 2010. These filters have a MERV (minimum efficiency reporting value) rating of 13 and provide a higher than normal rate of filtration.

Additional air filters have been added to inmate dayrooms to enhance the ventilation system, and to increase the life span of our air handling units.

**10. Overall cleanliness of the institution remains a concern.**

CECC has a complement of four housekeeping staff working a six-day schedule. They face daily challenges given the size and demands of the facility. Employees are occasionally brought in on their days off (Fridays/Saturdays) to assist in extra cleaning duties (air vents/diffusers, carpet steam cleaning, etc.) as deemed necessary. Enhanced cleaning is also conducted throughout the facility during flu season in order to minimize the potential for infections. The Superintendent informs me that the overall cleanliness of the facility is improving.

I appreciate the CAB indicating in its Annual Report the many CECC success stories, such as those concerning the volunteer programs and volunteers, the Outdoor Offender Work Program as well as the community support provided by CECC staff to the local food bank, local Army Cadet Corps, and the United Way, and its impact upon the local community. I am also pleased to note the innovative approach CECC has taken towards the successful integration of transgender inmates, as well as the sensitive handling and caring manner of the chaplaincy pilot project of streaming funeral services for family members at CECC.

Thank you for the work that you do and the role you play as volunteer members of the Community Advisory Board. Please be assured that the ministry values your input and recommendations. Your commitment and dedication is admirable and your positive working relationship with management and staff at the CECC is commendable. I am looking forward to your ongoing support as we further with this very important work.

Sincerely,

Stephen Rhodes

Deputy Minister of Correctional Services

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This is Exhibit "C" referred to in the  
affidavit of Sylvia Tse, sworn before me,  
this 2<sup>nd</sup> day of March, 2017



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A Commission for Taking Affidavits  
Garth Myers

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## **Community Advisory Board Annual Report 2015**

### **Central East Correctional Centre**

Lindsay, Ontario

March 31, 2016

#### **Preface**

##### **Legislative Authority**

Ministry of Correctional Services Act, Section 14.1, 2000, c. 40, s. 4.

"The Minister may establish a local monitoring board for a correctional institution, composed of persons appointed by the Minister."

##### **Principal Duties of the Community Advisory Board**

- To satisfy themselves as to the state of the institution premises, the administration of the institution, and the treatment of inmates;
- To develop effective relationships with the Superintendent and share minutes from the Board meetings;
- To inquire into and report back on any matters requested by the minister MCSCS;
- To direct to the attention of the Superintendent any matter they consider expedient to report; and
- To report to the minister any matter which they consider expedient to report, normally achieved through the Annual Report or through exceptional situation reports.

##### **Overview of the Annual Report**

One of the required functions of the Community Advisory Board (CAB) is to develop and submit an Annual Report outlining and describing the Board's activities in the previous year. The Report will also contain observations and recommendations to the Minister, Community Safety and Correctional Services (MCSCS), on aspects of the operation of the institution.

The Annual Report is submitted to the minister, with distribution to the institution superintendent. The Annual Report or excerpts may only be made public with the approval of the minister.

##### **Objectives of the Annual Report**

The purpose of the Annual Report is to highlight the work of the CAB and to identify any areas of concern and/or support for the operation of the institution. The Annual Report should include observations, findings and recommendations, in the following areas:

- Advice to the minister on any aspect of the operation of the institution;
- Any observations communicated to the superintendent regarding the operation of the institution;

- Advice provided to the minister and superintendent regarding a community or citizens' perspective on the operation of the institution;
- Observations communicated to the minister and superintendent, regarding the treatment of inmates in the care of the institution;
- Observations on the state of the institution and the administration of the facility; and
- The establishment of cooperative and supportive relationships with the superintendent, managers, and staff of the institution.

### **Objectives and Goals**

1. Conscientiously communicate operational observations and perceptions regarding the treatment of inmates and detainees with CECC senior management.
2. Request proactive recruitment by the ministry and the appointment of qualified people for the Board vacancies.
3. Enthusiastically support the expansion of mental health services for the inmates.
4. Request new CAB Terms of Reference from the ministry.
5. Purposefully and consistently bring institutional concerns and accolades to the Board meetings for discussion and inclusion in the minutes.
6. Prepare an orientation package specifically for new CECC CAB members.
7. Increase institutional visits and monitoring, as Board vacancies are filled.

### **Community Advisory Board Members**

**Chair:** Ed Lafosse, appointed May 1, 2012, term April 23, 2015 (resignation)  
Nancy Martin, appointed August 1, 2014, term July 31, 2016

#### **Board Members:**

Chris Ciceri, appointed Aug. 1, 2007, term July 31, 2016  
Jean Jones appointed Aug. 1, 2007, term Aug. 1, 2017

Sandy McNeil, appointed April 1, 2014, term Nov. 19, 2015 (resignation)  
Melissa Morrison, appointed July 21, 2015, term July 20, 2018

### **Overview of CAB Activities for 2015**

#### **Number of CAB Meetings: 9**

##### **Summary**

The Board held 8 meetings, with the superintendent or a designate present, and a planning meeting during this reporting period. Due to the Board vacancies, two of these meetings only had a quorum of three members. The meeting minutes were forwarded to the ministry and Program Advisor, Professional Shared Services (PSS), on a regular basis.

#### **Number of Site Visits: 36**

##### **Summary**

The Board's monitoring of operations and fulfilling required responsibilities may have been insufficiently addressed due to the delay in appointing new candidates to fill the two Board vacancies. With a skeleton Board and health complications, the number of institutional visits was 36 this year. As well, challenging labour relations related to contract negotiations curtailed Board meetings and visits in January, February and December.

#### **Monthly Reports provided to the CAB: 3**

- Institutional Count Report
- Incident Report
- At each meeting, the superintendent provides a verbal report regarding staffing changes, labour updates, new initiatives, important issues and incidents of note, with a question and answer opportunity between the members and the superintendent.

#### **Other Information available to the Board**

- Employee Relations Committee and Joint Health & Safety Committee meeting minutes are available for review by the CAB when they visit the facility. Binders are kept on a bookshelf in the main administration office for easy access.

#### **Number of Reports/Concerns that Required Action: 15 described below**

#### **Number of Concerns Directed to the Superintendent: 15 listed in Attachment A, as follows:**

1. CAB members remained very concerned with labour disruptions, labour negotiations and possible strike action.
2. Numerous lockdowns occur due to staffing shortages that negatively impact staff, inmates, programming, family visits, legal meetings and access to regular privileges.
3. Offenders representing themselves in court are a huge drain on time, resources and staff.
4. Extensive delays for reimbursing CAB members' expenses are unacceptable.
5. Members are very concerned with the presence of ceramic knives and the related inmate-on-inmate assaults.
6. A community concern about the link between the presence of drugs in CECC and the increase of drugs and other contraband in the community.
7. Concerns about the recent death of an immigration detainee in the Peterborough hospital, while in police custody.
8. Concerns about the ministry's centralized preparation of communications, with limited local knowledge, regarding the immigration detainee's death in the Peterborough hospital.
9. Delay in the minister making appointments to fill CAB vacancies.
10. Mental health training and other training for correctional staff have been cancelled until after the labour contract is settled.
11. Concern with attempted escape. Structural maintenance completed immediately.
12. Questioning what the repercussions have been related to the fire-suppression system upgrades being on hold until the detainees are transferred to a different facility.

13. Managers have found the extensive reporting requirements, in Men's Segregation, somewhat overwhelming until they become more familiar with the processes.
14. Concerns how labour negotiations are impacting staff and institutional operations. An MOL order was received due to non-compliance with the Safe-Smart training.
15. Movement of inmates for court proceedings was significantly delayed due to labour disruptions.

### **Summary**

Concerns are noted in our Board meeting minutes, which are provided to the ministry and Program Advisor following each Board meeting.

### **Number of Concerns Directed to the Minister: 1**

- Requesting minister make necessary appointments to fill CAB vacancies.

### **Summary**

- The Board requests revised CAB Terms of Reference.
- The Board appreciates an appointment was made to this Board. Ms. Melissa Morrison was welcomed in August.
- There are six members required on the Community Advisory Board. There has not been a full complement of members for the past nine years. As well, leaves of absence due to illness and other issues presented further challenges.
- The Board requests ministry initiative be taken to appoint a full complement to this Board. With this size of correctional facility, not having the required six members puts an undue burden on the current Board members. Two Board appointments are required.
- The Board members appreciate minister Yasir Naqvi's response to our 2014 Annual Report and the detailed feedback received from Deputy Minister Rhodes. Their letters acknowledge the importance of providing the ministry with observations and recommendations on the operation and administration of the institution, the impact on the local community, the treatment of inmates, and our success stories.

## **Presentations and Training**

### **Number of Presentations made to the CAB: 2**

- Deputy-Superintendent Programs
- Records Manager

### **Number of Visitors to CAB Meetings: 1**

- Program Advisor PSS

### **Number of Training Sessions Completed: 2**

- New Member Orientation
- CAB Conference

Kudos to Minister Yasir Naqvi and his MCSCS staff for preparing and presenting the first CAB Conference on October 28, 2015, in the Delta Ottawa City Centre. Also kudos to the moderator, the regional director for the Eastern Region Institutional Services, for providing a very informative day.

At the Conference, the members of the seven CABs appreciated the opportunity to meet, hear presentations and discuss these important topics: update on Provincial Segregation review and consultation, communication with the media, transformation in Corrections, mental health initiatives update, travel claims and Agency requirements, tools and templates for CAB members, and an interesting Q and A wrap-up. As well, informal discussions among members were very interesting. Best practices were shared and new friendships formed.

### **Summary**

- All Board members complete orientation and a CECC Volunteer Training Workshop, in their first appointment year.
- A meeting of the CAB Chairs with Minister Naqvi was held in April for building rapport and expanding best practices. As well, there were two teleconference calls for CAB chairs in 2015.
- The CAB Conference was an effective opportunity to meet other CAB members and the ministry staff for being updated on and discussing the important topics presented. New friendships were made for further consultation. Networking is an important part of CAB membership. Communicating concerns and discovering alternative solutions is very helpful. Exchanging success stories can expand best practices.

### **Observations**

#### **The Operation of the Institution**

- The ministry is expanding mental health initiatives for inmates. Mental health protection has an increased mandate resulting from the Human Rights Tribunal of Ontario settlement and the ten remedies identified, the Jahn Remedies. In September, CECC hired another mental health nurse. As well, in the last week of September, trained staff began using a new mental health screening and assessment process with inmates. The screening tool is used to assess and identify inmates who may have mental health challenges. This tool ensures inmates with mental health concerns are identified as quickly as possible and referred to the appropriate professionals and services. The assessment can identify suicide risk, risk of victimization, prevent decompensation and allay fears. As part of the admission process, health care staff gather information, rate the new inmate's state of mental health and determine the best placement within CECC. Within 24 hours, each identified inmate is seen by the mental health nurse and/or the psychologist and a plan of care is developed.
- Labour negotiations and training disruptions delayed the establishment of the Mental Health Unit until Spring 2016. This special unit will reduce the number of segregation beds used for mental health situations. The approved Mental Health Unit is to have a 'step-down' unit for inmates with mental health challenges providing dayroom programmes and socialization. Compatibility assessments will be done to determine if

inmates can be housed two in a cell. This process will be a direct supervision module with input from staff on the daily care and activities for each inmate.

- The Offender Work Program is an important component of operations. In 2015, 443 sentenced inmates participated in this program, which provides educational credits and work experience for their resumes. General Population inmates work in the kitchen, warehouse, grounds, maintenance, and scrub/A&D. Protective Custody inmates work in the Trilcor Industries marker plant and tailor shop. Projects for the Outside Work Program include property maintenance and collection/removal of garbage.
- There is excessive pressure and intimidation on the Work Program inmates to traffic contraband. The offender population is changing, with more gangs, more drugs and an increasing number of ceramic knives. The financial rewards are an attractive incentive to facilitate trafficking throughout the institution regardless of the increased level of investigations. Random searches and canine searches are regular occurrences.
- The Volunteer Program is an extremely important operational component. CECC has enthusiastic volunteers providing excellent support to the inmates. Also, we appreciate the many agencies and students that provide services to our inmates. CECC staff strive to help inmates be better equipped for success. Our more than 200 volunteers are acknowledged and celebrated at an Annual Banquet.
- Ramadan celebrated from June 18 to July 18 was challenging, with the longest daylight hours. The meals must be served after sunset and before sunrise. Night shift staffing and summer vacations staffing were impacted by Ramadan.
- The Worship Centre provides regular non-denominational services and numerous multi-faith events for the inmates. The inmates welcome the opportunities to participate. The staff escorts for the inmates, to and from the Worship Centre, are commendable with wonderful cooperation offered.
- Due to labour negotiations and an Ontario Public Service Employees Union (OPSEU) refusal to participate in training, the new x-ray equipment in the Screening Area was not operational in 2015.

### **Institution Impact on the Community**

- The community continues to benefit from goods and services contracts. The Other Direct Operating Expenses Annual Budget for the April 1, 2014 – March 31, 2015 fiscal year was \$8.6M (including transfer payments). Approximately 23% of the annual budget was spent on local supplies and services, in the City of Kawartha Lakes. The top expenditures comprising more than 78% of the budget are listed in decreasing order: food costs, health care (which include pharmaceutical drugs and health care service providers), clothing and hygiene products for inmates, building repairs and maintenance. Food costs are the largest expenditure but actually represent a minor expenditure within the local community.
- In April, the Board accepted Chairperson Ed Lafosse's resignation due to health reasons. Ed was an integral part of the Board of Monitors/Community Advisory Board since 2007. A letter and his Community Service Award were delivered to Ed acknowledging his long-term contributions on the CECC Board. The Board expressed condolences to the family on his passing.

- On July 13, 2015, the flags at CECC were at half-staff to pay tribute to our Correctional Officer (CO). His is the 8<sup>th</sup> CO suicide in Canada since January and the 28<sup>th</sup> first responder. The Board expressed condolences to the family.
- As discussed on the website [www.vanmeerfreepress.com](http://www.vanmeerfreepress.com), research into the prevalence of PTSD indicates correctional officers have a higher occurrence rate than any other first responder group (Executive Director and Founder Vince Savoia, Tema Conter Memorial Trust).
- Along with many other Ontario communities, Lindsay is an under-serviced area for doctors and nurses. A popular belief among community members is that CECC is recruiting doctors, nurse practitioners and nurses away from the community. The public may not be aware recruitment for health care workers is also challenging for CECC. The CECC salary scale for health-care professionals is lower than for those employed in hospitals.
- CECC staff continue to support the community through events such as the local food drive, the United Way, and the Rick Morey Memorial Hockey Tournament, which contribute to various charities. The CECC boardroom is available for the local Army Cadet Corps Leadership and First Aid training. CECC staff and the Army Cadet Corps provide mutual support, by attending inspection parades and Regional Training for the Ceremonial Unit and other formal events.
- On February 16, 2015, there was a demonstration at CECC, sponsored by the End Immigration Detention Network, expressing solidarity with the immigration detainees. Kawartha Lakes Police Services were on site.
- The death of an immigration detainee, while in custody in the Peterborough Regional Centre Hospital, created concern and speculation, in Peterborough, due to the limited communication provided by the ministry regarding the management of this sad event.

### **Administration of the Institution**

- CECC is a well-managed facility. When issues arise, effective corrective actions are implemented in a timely manner. Labour relations negotiations have been challenging and significantly impacted operations. Union members want corrections operations recognized as an essential service and obtain a stand-alone agreement with binding arbitration. The primary considerations are maintaining safety and security for everyone. Minister Naqvi stated, "The collective bargaining process over the past year, while essential to getting us to a fair, effective and responsible agreement, has been difficult for everyone causing uncertainty and frustration at times... Our government values our relationship with our Correctional Services staff. And we look forward to strengthening this relationship... by increasing staffing levels, enhancing mental health training and supports, and completing infrastructure upgrades..." OPSEU will be in a legal strike position on January 10, 2016, at 12:01 am.
- With staffing resources stretched to the limit, consistency and important efficiencies are being jeopardized. Rotational lockdowns are very frequent. The superintendent reported, with various staff on temporary assignments, staffing shortages and insufficient day-shift managers, the overtime protocol has quickly been exhausted. Attrition has also decreased the staffing complement. As well, the telemedicine process requires numerous escorts because outside medical appointments become necessary. This further reduces

available staff at CECC. Six new recruits arrived in early December. The Board is encouraged by the ministry's goal to increase CECC staffing in 2016.

- In his response to our 2014 Annual Report, Minister Naqvi reaffirmed the ministry's "constant focus on transforming Ontario's correctional system to improve staff and inmate safety...". The CAB is concerned, for example, that ceramic knives can't be detected by the existing security equipment at CECC. CECC senior administration and this Board are awaiting results of the pilot program at the Toronto South Detention Center using a body scanner in the Admitting/Discharge unit, to conduct inmate body scans for contraband upon admission and the detection of non-metallic objects. In this remand centre, our inmate population is very transient providing multiple opportunities, with high cash incentives, to bring in ceramic knives. This Board strongly recommends obtaining a body scanner is a major priority for CECC.
- The number of offender-on-offender assaults remains a serious concern with many being contraband related. The closure of various correctional centres continues to impact various prison populations, with members from rival gangs in the same Pod and conflicts escalating. As well, the frequency of inmates preparing brews and the harmful consequences remain extremely problematic.
- Kudos to the deputy-superintendent of programs for establishing an innovative program of policy development, staff training and awareness development achieving the successful integration of trans inmates, in the female units.
- The smoke-suppression system upgrades were put on hold, to accommodate the 192 immigration detainees transferred from the Toronto West Detention Center. When space is available in a secure facility, the remaining immigration detainees will be transferred. Then the system upgrades will be done. In 2014, this Board requested a response asking who is responsible for the penalties related to the postponement of the system upgrades. A response was not received. This Board continues to request a response.
- The immigration detainees exclusively occupied a Pod. Ninety-nine of the original detainees remain. The Pod provides accommodations for 198 persons. In November, some detainees were relocated to share each cell. The compressed accommodations provided space for intermittent and overflow inmates, to occupy two units this pod.
- In March, Minister Naqvi announced the ministry is in the process of updating policies and continues efforts to transform the correctional system. This Board is pleased the ministry is revising the segregation practices and developing new guidelines that support mental-health initiatives.

### **The Treatment of Inmates**

- The Educational Department provides a valuable program for the inmates to earn credits for obtaining their high-school diplomas. As well, the inmates earn valuable credits by participating on the Work Board. Being able to obtain education diplomas and gaining work experience can significantly improve the inmates' opportunities in their communities. The Board is impressed with the professionalism, insight and empathy of the teachers providing academic education to our inmates.
- The Volunteer Coordinator has significantly expanded programming. The annual Art Contest for the inmates, which showcases their talents, was reinstated. The contest has enjoyed great success for six years.

- Programs help inmates deal with personal matters and prepare for release. The programs provided for the female inmates are parenting, life skills, story time, meditation and Yoga, artist crafts, cooking, Alcoholics Anonymous (AA), Narcotics Anonymous (NA), basic literacy skills JK to grade 8 (reading/writing/math) and smoking cessation. As well, new programs for male inmates, in sentenced Pods, include parenting, story time, arts & crafts, holiday celebrations and basic literacy skills JK to grade 8 (reading/writing/math).
- The inmates are negatively impacted by staff shortages resulting in frequent lockdowns. There are high caseloads for social workers and addiction counsellors requiring access to the inmates for accommodating serious time constraints. Inmate programs, visits, phone calls, meetings with lawyers, and access to telehealth care are delayed or cancelled until a window of opportunity is available.
- The Board is pleased the Worship Center has a busy schedule, with the inmates attending various non-denominational services and numerous multi-faith events. An immigration detainee is painting a wonderful mural "Creation", which is to be hung on the chapel wall. The mural is a reproduction of his drawing that won first prize in the inmate envelope art competition.
- Streaming funeral services into the Chapel is provided for immediate family inmates, when consent is provided by the family. Temporary Absence Permits can be approved for immediate family inmates to have a private visit in palliative care or at the funeral home, when wearing shackles and accompanied by a correctional officer.
- Native inmates self-identify and have the opportunity to smudge daily. The Native Institutional Liaison Officer (NILO) provides advocacy and special programs for First Nation, Métis and Inuit male and female inmates. There is an Aboriginal library and various First Nations and Inuit newspapers, magazines, books and relevant articles are distributed. She assists clients with their applications for Indian Status, Métis Status and Bill C-3 Status, and other required applications.  
As well, the NILO extensively researches Indian and Northern Affairs and First Nation Membership to discover which First Nation their parents belonged, Adoption Disclosure forms for all provinces to help inmates discover their parents, helps women whose children were adopted open files for their children to connect at age 18 or older, and registers inmates with Service Ontario for access to family members at 18 or older. Extensive NILO programs include very diverse Native and Inuit Teachings, Life Skills programs and individual counselling. The First Nations, Métis and Inuit population fluctuates about 75 inmates at CECC.
- The Coordinating Chaplain received comments acknowledging the respectful treatment of the inmates during the religious observance of Ramadan.
- Prisoner Justice Day was established in 1934 and is on August 10<sup>th</sup>. This day is respectfully acknowledged, with many inmates fasting and not participating in programs. Staff assist with food services, as replacements for the Work Program inmates.
- A CAB member successfully advocated for detainees to have inmate barber services in a Pod and have wall clocks hung in the central hallway for easily knowing prayer times. Kudos to the Deputy-Superintendent for developing the inmate barber process. The Health and Safety Committee approved the placement of hair clippers in most units, to

be used by a designated inmate barber in the multi-purpose room. This barber program successfully started in April, 2015.

### Summary of Concerns and Recommendations

The Board Members will continue to monitor the noted areas of concern over the next year and report outcomes in the minutes. The following concerns have been identified by Board members and will be closely monitored over the next year:

1. In his response to our 2014 Annual Report, Minister Naqvi reaffirmed the ministry's "constant focus on transforming Ontario's correctional system to improve staff and inmate safety..." Safety is being severely jeopardized, when the frequency of inmate-on-inmate violence using ceramic knives is escalating. Ceramic knives can't be detected by the existing security equipment at CECC. CECC senior administration and this Board are awaiting results of the pilot program at the Toronto South Detention Center using the body scanner in the Admitting/Discharge unit, to conduct inmate body scans for contraband upon admission and the detection of non-metallic objects. In this remand centre, our inmate population is very transient providing multiple opportunities, with high financial incentives, to bring in ceramic knives. This Board strongly recommends obtaining a body scanner is a major priority for CECC.
2. Members are extremely concerned OPSEU will be in a legal strike position on January 10, 2016, at 12:01 am. The Superintendent provided assurances appropriate staffing is available and contingency plans will be activated, in the event of a strike.
3. Rotational lockdowns are very frequent due to staffing challenges. Staffing resources have been stretched to the limit, with consistency and important efficiencies being jeopardized. The Superintendent reported, with staffing shortages, attrition and various staff on temporary assignments, the overtime protocol has quickly been exhausted. A few new recruits were welcomed in December. Many new recruits are being redirected to Toronto South Detention Center. We anticipate an increased allocation of COs arriving in 2016.
4. A Board member was concerned about the ministry's centralized preparation of communications, with limited local knowledge, regarding the detainee's death in Peterborough Regional Center while in police custody. Public communication about local issues could be enhanced if a local spokesperson were available to address specific institutional issues
5. The smoke-suppression system upgrades were put on hold, to accommodate the 192 Federal detainees transferred from the Toronto West Detention Center. When space is available in a secure facility, the remaining immigration detainees will be transferred. Then the system upgrades will be done. In 2014, this Board requested a response asking who is responsible for the penalties related to the postponement of the system upgrades. This Board would appreciate a response to this request.  
As well, this Board is requesting information from the ministry whether all the costs related to the detainees' care are being reimbursed by the Federal Government. For example, are the costs of transporting detainees for medical reasons, Canadian Border Services hearing procedures and the required escorts, as well as other detainee-related

costs being fully reimbursed to CECC? We appreciate receiving a response to our queries.

6. CAB monitoring and activities were curtailed due to extensive labour negotiations. When attending various work areas, the Board members were always treated respectfully. The Members listened to labour concerns and responded in a professional matter.
7. Members are grateful the disrespectful long-term practise of extreme delays for CAB expense reimbursements was rectified in October 2015.
8. Members are concerned the mental health training, as well as other training requirements, did not take place due to OPSEU labour negotiation directives. Due to non-participation in training, the new x-ray equipment located in the Screening Area was not operational for 2015.
9. This Board is pleased the ministry is revising the segregation practices and developing new guidelines that support mental-health initiatives.

Submitted:

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Chair, March 31, 2016

**Ministry of Community Safety  
and Correctional Services**

Office of the Minister

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et des Services correctionnels**

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Téléc.: 416-325-6067



May 31, 2016

Ms. Nancy Martin  
Community Advisory Board Chair  
Central East Correctional Centre

Dear Ms. Martin:

Thank you for your submission of the 2015 Community Advisory Board (CAB) Annual Report for Central East Correctional Centre (CECC).

We appreciate the time the CAB has taken to put together such a comprehensive list of recommendations for the ministry based on your observations at the institution over the last year.

I have reviewed your report and appreciate the thoughtful comments you have made about CECC. Associate Deputy Minister Marg Welch will be responding in detail to all of the nine meaningful recommendations you have made.

We are grateful to have such a dedicated group of volunteers that work diligently to help us improve operations and transparency in our institutions. The ministry values your input and will be working on addressing the recommendations from the Annual Report. I look forward to working with the CABs in the coming year, moving this innovative program forward and continuing to engage local communities to a greater degree. Please accept my sincere thanks for your work in this critical role and producing a valuable annual report.

Sincerely,  
Yasir Naqvi  
Minister

c: Ms. Marg Welch  
Associate Deputy Minister of Correctional Services

Ministry of Community Safety and  
Correctional Services

Ministère de la Sécurité communautaire et des  
Services correctionnels

Office of the Associate Deputy Minister  
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August 25, 2016

Ms. Nancy Martin  
Community Advisory Board Chair  
Central East Correctional Centre

Dear Ms. Martin:

Thank you for your submission of the 2015 Community Advisory Board (CAB) Annual Report for the Central East Correctional Centre (CECC). The Annual Report has been reviewed by ministry staff and we are already working on the recommendations outlined in your report.

As the Honourable Yasir Naqvi, former Minister of Community Safety and Correctional Services, noted in his acknowledgement letter to you, the ministry is committed to implementing your recommendations and to the ongoing development of this innovative CAB program.

The transformation of Ontario's correctional system is a top priority. Work is underway to further address capacity pressures, develop additional supports for inmates with mental illness, reform the bail and remand system and review our segregation policies. We will continue to work with all our correctional partners as we move forward with our mandate to transform our correctional system to develop effective and lasting improvements.

I am pleased to provide the following responses and next steps for the recommendations

put forward in the CECC CAB Annual Report.

**Recommendation 1: The CAB strongly recommends obtaining a body scanner due to frequency of inmate-on-inmate violence using ceramic knives.**

The presence of ceramic knives in the institution is a safety and security concern that the ministry takes very seriously. On May 3, 2016, the former minister announced that all institutions will receive full-body scanners which will detect all contraband, including non-metallic contraband, such as ceramic knives, which were undetectable by current security techniques. Ontario is the first jurisdiction in Canada to install full-body scanners in all adult correctional facilities. The CECC is expecting the installation of its full-body scanner on August 10, 2016.

**Recommendation 2: CAB members remained very concerned with labour disruptions, labour negotiations and possible strike action.**

The Ontario Public Service Employee Union and Correctional Services established a labour agreement on January 8, 2016, for a term of three years. The contract eliminates the potential of a future strike for correctional services staff and ensures binding arbitration in future negotiations.

**Recommendation 3: Lockdowns due to staffing challenges**

The ministry recognizes that many institutions across the province require additional staff and we have been working to recruit new correctional officers and provide them with training. Lockdowns occur for a variety of reasons, including staffing shortages which can result from a combination of leaves (vacation, sick or other) as well as having a reduced number of available staff.

Since 2013, 1001 new correctional officers have been deployed to facilities across the province. Hiring remains a priority, which is why over three years, we are hiring 2,000 new correctional officers.

At CECC, the superintendent has been in the process of reviewing the current staffing schedules for both management and staff to find efficiencies that will reduce the number of lockdown hours at the institution.

**Recommendation 4: The CAB is concerned with the centralized preparation of communications specifically regarding a detainee's death at the Peterborough Regional Centre. Public communication about local issues could be enhanced if a local spokesperson were available to address specific institutional issues.**

The incident regarding a detainee's death at the Peterborough Regional Centre is actively under investigation and it would be inappropriate to provide any further comment at this time.

With respect to centralized communications, the ministry's media relations team works closely with the ministry and across government to ensure that current and accurate information is communicated with consideration for institutional security and privacy matters.

The Communications Branch is developing a communications strategy that will aim to raise the profile of CABs internally and externally.

An update on proposed communications activities will be provided at the CAB annual conference later this fall.

**Recommendation 5: (a) Who is responsible for the penalties related to the postponement of the fire suppression system upgrades? (b) The CAB is requesting information from the Ministry whether all the costs related to the detainees' care are being reimbursed by the Federal Government?**

The fire suppression system upgrade project at CECC is currently on hold. Although this project was approved, after the commencement of upgrades, the institution deemed the project insufficient to meet the requirements.

Adjustments are needed to the scope of work to appropriately address system requirements.

The institution is currently operating under a temporary fire certificate. Due to the nature of this project, entire units will need to be cleared in order to complete system upgrades. This project will be re-evaluated in the fall of 2016. While we are not paying penalties, we are maintaining a relationship with the service provider to make the necessary adjustments in order to move forward with the project.

With respect to Part B of the recommendation, the ministry is reimbursed for federal detainees by the federal government on a per diem basis that is revised annually. The current per diem reimbursement rate for federal immigration holds is \$261.52.

**Recommendation 6: CAB monitoring and activities were curtailed due to extensive labour negotiations.**

The ministry understands that the CAB at CECC faced some challenges in fulfilling its duties during the labour negotiations. We appreciate the effort made by the CECC CAB who continued to tour the institution and meet on a regular basis despite ongoing negotiations.

As noted earlier in Recommendation 2, the Ontario Public Service Employee Union and Correctional Services established a labour agreement on January 8, 2016, for a term of three years.

**Recommendation 7: Delay with paying CAB member expenses.**

As discussed at the 2015 CAB Conference, CAB members now submit expense claims, which are approved by the superintendent, directly to the institution. The expense claims are then submitted by the institution for payment resulting in fewer, if any, delays in payment.

**Recommendation 8: Delay of the Mental Health Training due to OPSEU labour negotiation directives.**

During labour negotiations some training activities were temporarily on hold.

However, the ministry in partnership with the Centre for Addiction & Mental Health (CAMH), developed a mental health training program for institutional services staff called the Understanding and Responding to Inmates with Mental Health Challenges.

As of June 30, 2016, 370 CECC staff have received the Understanding and Responding to Inmates with Mental Health Challenges training.

**Recommendation 9: Ongoing updates to the Segregation Policies.**

The ministry is reviewing how segregation is utilized across the provincial correctional system to help guide transformation and identify areas needing change. The five key goals identified for the review of use of segregation in Ontario's correctional institutions are:

1. To ensure clarity around current segregation definitions, policies/practices and to ascertain degree of compliance,
2. To identify areas in policies or procedures that require revisions or enhancement,
3. To ensure thorough consultation with stakeholders on directions considered,
4. To examine staff training around the use of segregation, and
5. To complete a final report of recommendations based on findings, literature and jurisdictional scans.

Segregation should never be utilized lightly. We know that segregation can be emotionally and mentally distressing. Individuals who suffer from mental illness are particularly vulnerable.

Our goal is that segregation is used only as a last resort, when all other options have been exhausted.

We are consulting with mental health professionals, ministry staff, the Ombudsman of Ontario, the Ontario Human Rights Commission and other stakeholders to see how we might better regulate segregation in our facilities. We are also asking members of the public, as well as those with lived experience in Ontario adult correctional facilities, to provide feedback to help inform the review.

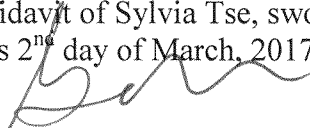
I appreciate the CAB indicating in its Annual Report the many CECC success stories such as the effective integration of Trans inmates in the female unit, the implementation of the new mental health screening tools on site, and the recognition given to the volunteers and the programs they run which provides valuable services to our inmates.

Thank you for all of the hard work that went into the development of your recommendations for the ministry. As volunteer members of the Community Advisory Board, you have gone above and beyond to provide meaningful feedback on the operations at CECC. Please be assured that the ministry values your input and recommendations. The ministry will be working throughout the rest of the year to address as many of your recommendations as possible. I look forward to your ongoing support as we move forward with this very important work.

Sincerely,  
Marg Welch  
Associate Deputy Minister, Correctional Services

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This is Exhibit "**D**" referred to in the  
affidavit of Sylvia Tse, sworn before me,  
this 2<sup>nd</sup> day of March, 2017



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A Commission for Taking Affidavits  
Garth Myers

You are here > **Home** > ... > **Community Advisory Boards** > CAB Report 2015 - Central North Correctional Centre

## **Community Advisory Board Annual Report 2015**

### **Central North Correctional Centre**

Penetanguishene, Ontario

March 31, 2016

#### **Preface**

##### **Legislative Authority**

Ministry of Correctional Services Act, Section 14.1, 2000, c. 40, s. 4.

"The Minister may establish a local monitoring board for a correctional institution, composed of persons appointed by the Minister."

##### **Principal Duties of the Community Advisory Board**

- To satisfy themselves as to the state of the institution premises, the administration of the institution, and the treatment of inmates;
- To develop effective relationships with the superintendent and share minutes from the Board meetings;
- To inquire into and report back on any matters requested by the minister;
- To direct to the attention of the superintendent any matter they consider expedient to report; and
- To report to the minister any matter which they consider expedient to report, normally achieved through the Annual Report or through exceptional situation reports.

##### **Overview of the Annual Report**

One of the required functions of the Community Advisory Board (CAB) is to develop and submit an annual report outlining and describing the Board's activities of the previous year. The report will also contain observations and recommendations to the Minister, Community Safety and Correctional Services (MCSCS), on aspects of the operation of the institution.

The annual report is submitted to the minister, with distribution to the institution superintendent. The annual report or excerpts may only be made public with the approval of the minister.

##### **Objectives of the Annual Report**

The purpose of the annual report is to highlight the work of the CAB and to identify any areas of concern and/or support for the operation of the institution. The annual report should include observations, findings and recommendations in the following areas:

- Advice to the minister on any aspect of the operation of the institution;
- Any observations communicated to the superintendent regarding the operation of the institution;
- Advice provided to the minister and superintendent regarding a community or citizens perspective on the operation of the institution;
- Observations communicated to the minister and superintendent, regarding the treatment of inmates in the care of the institution;
- Observations on the state of the institution and the administration of the facility; and
- The establishment of cooperative and supportive relationships with the superintendent, managers and staff of the institution.

### **Objectives and Goals**

The main objective of the CAB is to see the existing Board vacancy be filled in this fiscal year. With a full complement of board members it allows the CAB to tour Central North Correctional Centre (CNCC) with increased frequency. The goal of the CAB is to increase the number of site visits to facility. This will allow us to provide the higher quantity of accurate, succinct reports for CNCC.

### **Community Advisory Board Members**

**Chair:** Malcolm (Mac) D. McKinnon, appointed April 2 1, 2005, term April 19, 2016

#### **Board Members:**

Robert C. Haley, appointed April 1, 2005, term April 20, 2016

Melanie Marchand, appointed Aug. 2, 2007, term July 31, 2016

Timothy Vaillancourt, appointed Dec. 15, 2010, term Dec. 14, 2016

Michael Gagnon, appointed Aug. 2, 2007, term July 31, 2018

### **Overview of CAB Activities for 2015**

#### **Number of CAB Meetings: 9**

#### **Summary**

The Community Advisory Board (CAB) meets at the Central North Correctional Centre (CNCC) monthly with the exception of July and August. Meeting attendees include the CAB, superintendent and Deputies of Administration, Operations, Programs, Finance and Staff Services. Meetings are operated under the Roberts Rules of Order. CAB members will present their site visit reports and the Senior Administration will discuss their monthly statistics. This is an integral part for the success of the CAB. It allows everyone to be on an even playing field. All questions the members bring to the table are either answered by the senior team immediately at the meeting or they will follow up at a later date. The facility reports are beneficial for CAB members to be updated to the status of the institution.

**Number of Site Visits: 16****Summary**

There were 16 site visits conducted by the members of the CAB. On February 24th, 2015 two CAB members conducted a joint site visit. The facility has allowed our member's unfettered access for tours of the institution regardless of time of day, although security concerns are always the priority. All areas of the institution were toured throughout the year.

Board members raised concerns that many members of facility do not know about the function of the CAB, or who the appointed members are. Board members have had numerous opportunities to engage in conversations with both facility staff and offenders. This communication is vital for members to review operations and access additional information on the institution. Information that is important is annotated in the site visit report and discussed at the next regular CAB meeting. Interactions with staff are vital to get the correctional officers perspective on operations within the facility.

**Monthly Reports provided to the CAB: 54****Number of Reports/Concerns that Required Action: 11****Number of Concerns Directed to the superintendent: 11****Summary**

Mould remediation and duct cleaning needed to be completed in many of the living units throughout facility. Dust and lint like material was found coating the air intakes and covered the upper wall areas. This is affecting the air quality on these living units.

A staff member who had recently transferred to CNCC had commented on the Incident Management System (IMS) procedures that are used at this institution. Part of IMS is to provide standardized terminology for use in various situations. It was stated that calling of the IMS code is different from many of the other provincial institutions. The staff member found the current format confusing.

Overcrowding in the medical unit has been a concern with staff and the CAB. On occasion male offenders are double-bunked or even triple-bunked.

Health care staff have expressed to the CAB that they feel overworked dealing with their patient load and delivery of medications to the living units. Staff vacancies for nursing and mental health providers have been taking longer to fill in this calendar year.

Health care staff expressed a concern about a proposed plan to move nurses on to the living units rather than having them stationed in the medical unit. This was a proposal by the senior team but no definite plan had been instituted at this time.

Overcrowding in the female unit is discussed further in this report.

Staffing levels at CNCC were down again this year. Staffing levels are considerably lower at this institution than other provincial institutions of similar size.

There is a high number of staff that are required to complete community escorts. If there is not sufficient staff for this assignment, staff members may be seconded, leaving some units short of correctional officers. When this occurs, areas are normally locked down to maintain an appropriate level of security. This past year has seen lockdown numbers rise due to staffing, searches and weapons threat assessments. Lockdowns effect the inmate's ability to receive programming, family visitations and regular recreation time. The superintendent has instituted planned lockdown schedules which has been working well. This allows inmates to contact family members to arrange visitation around scheduled lockdown days.

During a tour of community emergency personnel, it was observed that a doorway from the cell area leading to the visitation area was found to be insecure. The CAB was advised that operational training had taken place earlier in the day in that area. CNCC committed to reviewing this concern and report back to the CAB.

During the emergency personnel tour, firefighters noted that sprinkler shutoff valves required a ladder to access in its current locations. Midland Fire Services recommended it would be more advantageous to acquire shutoff valves that can be operated by a chain/pulley mechanism. This would be more efficient and safer to staff.

Staff training had to be rescheduled during labour issues with the Ontario Public Service Employees Union (OPSEU). Staff training personnel had stepped down from their positions. Training will not take place until a collective agreement reached between the employer and the union.

A concern was raised that correctional staff conducting tours at CNCC to members of the public be provided scripting to ensure that messages are presented in a concise, professional manner. This will ensure that the messaging is consistent no matter which staff member is assigned this task.

**Number of Concerns Directed to the Minister: None**

## **Presentations and Training**

**Number of Presentations made to the CAB: 4**

### **Summary**

See notes below

**Number of Training Sessions Completed: Four**

### **Summary**

The CAB received a presentation by two correctional officers on gangs that operated within our institution. This overview covered gang lifestyles, groups operating in the province, tagging, alliances between active gangs and tattoos used by criminal groups. These correctional officers have taken this presentation to local school groups as a crime prevention tool. This has been extremely well received by community stakeholders.

The CAB was given a procedural overview of the Inmate Trust Program at CNCC. This presentation covered how inmate funds were received, credited to and debited from the trust fund for offenders to access items such as snacks from the canteen. It also demonstrated the process involved on returning funds to released offenders.

A presentation was given on the handling of inmate property at the facility. Information included how inmate property is collected, secured and stored at CNCC. Discussions covered the location where personal effects are secured and procedures to provide property to offenders for court appearances or on release.

An in service presentation was provided on responses to a disturbance at CNCC in June. Video tape from the living unit where the disturbance took place captured the entire incident. Senior staff provided commentaries on their roles during this incident. The CAB was able to review the incident in real time with respect to staff deployment, the handling of offenders and a successful outcome to this situation.

## **Observations**

### **The Operation of the Institution**

CNCC is a well-run facility. The superintendent has selected a strong team of Deputies to assist him with the general operations of the institution. The senior management team communicates well with each other ensuring all necessary tasks are completed with a successful outcome. This dynamic synergy between the superintendent, Deputies and the correctional officer's cadre makes this institution a leader within the Ministry of Community Safety and Correctional Services.

Staff have commented to Board members on their confidence with the Senior Administration Team at CNCC. This has certainly been demonstrated with lower than average employee issues than at other institutions of a similar size. There is an excellent relationship with the Senior Team and local OPSEU executive. Through effective communication between these parties many issues are resolved with face-to-face meetings rather than having items being escalated to more formal hearings. This not only reduces manpower resources but it assists in maintaining a higher level of staff morale.

### **Institution Impact on the Community**

CNCC is the largest employer in the Midland-Penetanguishene area after the Waypoint Mental Health Centre. Many of the correctional officers and support staff live in this area. Economic gains to the community is substantial. Staff living in neighbouring communities contribute to the local economy through residential tax contributions. Retail merchants benefit not only from purchases made by staff members but also with the awarding of supply contracts for trade and services to the facility. The administration tries to use as many local services as possible when sourcing out tenders for services. CNCC was listed last year in the top 50 employers in the County of Simcoe.

During the period of the OPSEU labour unrest, many CNCC employees elected to reduce personal spending in the wake of a potential strike. Many larger purchases were deferred in case a strike was called. This impacted negatively on the economic viability of the local retail sector. Since the labour issues were resolved many staff members have now felt more comfortable in pursuing those larger household purchases.

It is common to see correctional officers out in the communities whether on community escorts, travelling to and from work or observed in local stores. The correctional officers and staff always conduct themselves in a professional manner when in the public's eye. Community stakeholders view our correctional officers and staff in high regard. Members of the CAB do not routinely hear negative criticisms about employees at this institution.

CNCC is able to connect with community partners through volunteer based programming. In 2015, 136 community volunteers provided 5869.34 hours to support the offenders at this facility. The scope of programming ranges from Alcoholics Anonymous, Library Services and an exciting pilot project pet therapy service to offenders identified with special needs. A review of this pilot project at the end of 2015 has resulted in a second year at the status of "pilot project" in order to further review and gather statistics and input on the benefit this service provides the offenders. Volunteers through Chaplaincy deliver an Alpha Program, Prayer Circle, Ministry materials delivery cart and worship services provided by volunteer clergy.

Overall, CNCC has had some challenges maintaining volunteers from 2011 to 2014. The volunteer roster had been reduced by 47 individuals. At the end of 2015 there had been a slight increase in volunteers by six individuals or 4.6 per cent from last year. Volunteer hours have also increased slightly by 3.1, per cent. This represents an 8 per cent increase in the actual number of visits to the institution. The total number of visits that volunteers made to CNCC this year is 1682. This shows the number of visits increased by 124 in 2015.

Community work programs (CWP) have allowed offenders to provide services to municipalities like Midland and Penetanguishene. Work crews have been utilized to assist the Park and Recreation Department to enhance the beautification of parks and community gardens. The CWP has also been used to provide snow clearing and other custodial services on CNCC grounds and inside the institution. This has helped to reduce some of the operational costs at CNCC. Grounds maintenance provided by the CWP, for example, enhances the look of the institution with regular grass cutting, flower beds being attended to and parking areas being kept clean. It shows the community that this facility has a sense of pride and commitment.

### **Administration of the Institution**

The CAB is briefed on a monthly basis by the senior management team on the status of operations at CNCC. Situation reports cover operations, finance, programs, staff services and administration. Each Deputy reviews their portfolio, highlighting events or occurrences in their area of responsibility. Monthly statistic sheets are provided to CAB members at the monthly meeting. This allows the CAB to identify spikes in trends within the facility's operations. It also provides a level of transparency between the facility and community

members. If there are questions on the monthly summary by the CAB, the senior management team are present to discuss their reports. This is an important component of the CAB meetings.

The senior management team must be commended for their commitment to providing these detailed summaries. It allows the CAB to get a "snap shot" on the operation of the institution. The CAB receives clear and concise answers to any questions brought up during the meeting. Staff are able to follow up with board members on information that is not available at the time of the monthly meetings. It must also be noted that there is a high level of trust and transparency between the senior management team and all members of the CAB.

The employees of CNCC have discussed on numerous occasions that they respect the senior management team. They recognise their efforts to engage the correctional staff by conducting management tours of the cell areas. These tours allow the management team to meet staff, answer questions and keep the lines of communication open. This is another important role that the management team has implemented at CNCC to enhance the level of transparency.

### **The Treatment of Inmates**

The CAB has had an opportunity to visit this facility at all hours of the day and night. With unfettered access to CNCC, board members have had an opportunity to see staff dealing with inmates on a regular basis. At no time during site visits or observing community escorts, has a concern been brought up with regard to poor treatment of an inmate. Staff interaction with inmates has been professional from the time of admission, during their incarceration and finally their release.

It must be noted as well that while the CAB was observing the video the June 2015 disturbance, all staff members including Institutional Security Teams responded quickly and professionally in order to quell the disturbance without incurring serious injury or damage to the facility. Emergency plans implemented by the management team were adequate to deal with this particular situation.

### **Summary of Concerns and Recommendations**

There have been concerns about accommodation in a female offender unit. In the past year, offender counts have been constantly on the rise. A review of female admissions at this facility averages out to 47 offenders being lodged in a 12-month time period. This is well over the existing capacity of the female unit. In order to cope, female offenders were double-bunked and at times triple-bunked. The female segregation area and two female beds in the medical unit were also utilized to house the general population when counts were high.

Offenders serving intermittent sentences on weekends is a major contributor to high inmate counts. The segregation unit is normally operated at full capacity. Another reason the female segregation area is operated at such a high capacity is that these cells are used to house offenders with mental health issues. The CAB is concerned about the overcrowding of

offenders in the female offender unit. With counts increasing, a contingency plan needs to be formulated to manage this growth. The overcrowding of offenders leads to increased anxiety and frustration which could manifest into increased violence between inmates or staff.

**The CAB recommends that additional space be assigned within the existing infrastructure or building a new separate structure that will accommodate excess female offenders.**

Approximately 30 per cent of offenders incarcerated in Provincial Institutions are identified with having mental health issues. They need to be provided more support in a timely manner. Triage tools are being implemented at the time of admission to identify inmates with mental illness. Currently there are not enough resources, including mental health nurses or correctional officers trained specifically to deal with inmates with psychological issues.

The Ministry has mandated that mental health training be rolled out province wide to all correctional officers. Due to labour issues, that training initiative was delayed because of availability of trained instructors. It is the CABs understanding the training module was to teach correctional officers how to deal with mental health offenders and provide tools to enable correctional staff to de-escalate situations. When this training is delivered it will be seen as a good first step.

**The CAB feels that more in depth education should be provided to staff in units with higher levels of mental health offenders in their custody.**

At a recent meeting, CAB members were discussing the need to continue to educate facility staff of the existence of the CAB and their role at the institution. There is an increased frequency of staff questioning board members on their role and terms of reference during site visits. The superintendent has forwarded internal memorandums to staff about the CAB and its members. It seems that more direct information needs to be passed along to the rank and file members.

**It is recommended that this information should be provided during Correctional Officer Training and Assessment training, and also in more detail when new staff members are oriented at their home institutions where CABs operate.**

One area that concerns the CAB and has been discussed at several meetings, is offenders incarcerated at CNCC who have been diagnosed with serious mental health issues. In these cases, behaviour can escalate to the point where they are constantly attempting suicide, assaulting staff members or acting out in an inappropriate manner. These offenders need to have assessments at schedule 1 mental health facility. While offenders are incarcerated when their mental health capacity diminishes, it appears the current medical staff have difficulty treating them. Mental health resources are limited for individuals with extreme disorders.

**In these situations, could referrals for a Form 1 assessment be made with a mental health facility such as the Waypoint Mental Health Centre, adjacent to CNCC? This would ensure individuals are receiving proper treatment with a wider range of medications, programming and supervision by trained mental health professionals in a hospital setting.**

Media releases to the community are very slow to non-existent especially in the wake of good new stories at CNCC. The current protocol is that the ministry's Communications Branch is tasked to provide new releases to local media outlets. All too often by the time communication personnel vet non-urgent but time sensitive news items, timelines may have expired.

**Not enough good news stories are being disseminated in our local media. For example, CNCC donations to community partners is seldom recognized. Volunteer recognition events are another worthy item that should receive media attention. With increased media exposure, there is an opportunity to showcase positive stories rather than the ever mounting negative stories disseminated about Correctional Services.**

## **Appendix**

### **List of Attachments**

#### **Community Board Minutes: 9**

Submitted March 31 2016

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Malcolm D. McKinnon, Chair

#### **Ministry of Community Safety and Correctional Services**

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Télééc.: 416-325-6067



May 31, 2016

Mr. Malcolm McKinnon  
Community Advisory Board Chair  
Central North Correctional Centre

Dear Mr. McKinnon:

Thank you for your submission of the 2015 Community Advisory Board (CAB) Annual Report for Central North Correctional Centre (CNCC).

We appreciate the time the CAB has taken to put together such a comprehensive list of recommendations for the ministry based on your observations at the institution over the last year.

I have reviewed your report and appreciate the thoughtful comments you have made about CNCC. Associate Deputy Minister Marg Welch will be responding in detail to all of the five meaningful recommendations you have made.

We are grateful to have such a dedicated group of volunteers that work diligently to help us improve operations and transparency in our institutions. The ministry values your input and will be working on addressing the recommendations from the Annual Report. I look forward to working with the CABs in the coming year, moving this innovative program forward and continuing to engage local communities to a greater degree. Please accept my sincere thanks for your work in this critical role and producing a valuable annual report.

Sincerely,  
Yasir Naqvi  
Minister

c: Ms. Marg Welch  
Associate Deputy Minister of Correctional Services

Ministry of Community Safety and  
Correctional Services

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Correctional Services

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August 25, 2016

Mr. Malcolm McKinnon  
Community Advisory Board Chair  
Central North Correctional Centre

Dear Mr. McKinnon:

Thank you for your submission of the 2015 Community Advisory Board (CAB) Annual Report for the Central North Correctional Centre (CNCC). The Annual Report has been reviewed by ministry staff and we are already working on the recommendations outlined in your report.

As the Honourable Yasir Naqvi, former Minister of Community Safety and Correctional Services, noted in his acknowledgement letter to you, the ministry is committed to implementing your recommendations and to the ongoing development of this innovative CAB program.

The transformation of Ontario's correctional system is a top priority. Work is underway to further address capacity pressures, develop additional supports for inmates with mental illness, reform the bail and remand system, and review our segregation policies. We will continue to work with all our correctional partners as we move forward with our mandate to transform our correctional system to develop effective and lasting improvements.

I am pleased to provide the following responses and next steps for the recommendations put forward in the CNCC CAB Annual Report.

**Recommendation 1: The CAB recommends that additional space be assigned within the existing infrastructure or building a new separate structure that will accommodate excess female offenders.**

The ministry continues to assess capacity needs to ensure that beds are available where they are most needed in the province.

CNCC is responsible for female inmates with varying supervision types including but not limited to remand, provincial sentences, police lock-up, immigration holds, and intermittent sentences. On admission, CNCC must ensure that females are classified properly and located in the appropriate units such as general population, protective custody, intermittent units or health care. In addition to these concerns, CNCC must also manage female inmates with mental health concerns such as suicide watches and self-injurious behaviours. CNCC continues to manage the number of female inmates admitted on a daily basis.

There are no plans to expand the female unit at CNCC. However, the ministry is currently investigating ways to meet the unique environmental and programming needs of adult female offenders, including those who require specialized mental health services.

**Recommendation 2: The CAB feels that more in-depth education should be provided to staff in units with higher levels of mental health offenders in their custody.**

The ministry, in partnership with the Centre for Addiction & Mental Health (CAMH), developed a mental health training program for institutional services staff called the Understanding and Responding to Inmates with Mental Health Challenges.

As of July 29, 2016, 352 CNCC staff have received the Understanding and Responding to Inmates with Mental Health Challenges training.

**Recommendation 3: It is recommended that CAB information should be provided during Correctional Officer Training and Assessment (COTA), and also in more detail when new staff members are oriented at their home institutions where CABs operate.**

As CABs are not in place at all institutions, they are not part of the COTA curriculum. Rather, the introduction to CABs form part of the site specific orientation/training. Institutions with CABs will have information on hand which outlines the role and responsibilities of the CABs.

At CNCC, information on the CABs can be found in the institution's standing orders and in the CAB Terms of Reference. As well, CAB pamphlets, posters and a banner are currently being developed in consultation with CAB chairs.

Information on the CABs can also be found online on the ministry's website as well as on the Public Appointment Secretariat website.

**Recommendation 4: Inmates diagnosed with mental health issues: treatment at a mental health facility such as the Waypoint Mental Health Centre, adjacent to CNCC.**

All ministry inmates have access to a variety of services and supports regardless of a diagnosis of a specific mental illness. At CNCC, inmates have access to a multidisciplinary mental health team which includes primary care physicians, psychiatrists, mental health nurses, social workers and counsellors.

Once they have been sentenced, all inmates are assessed at admission to find appropriate facility placement options. Male inmates who have mental health conditions may be placed at the St. Lawrence Valley Correctional and Treatment Centre. If an inmate meets admission criteria, the inmate may be transferred for treatment. As noted in recommendation 1, the ministry is currently investigating ways to meet the unique environmental and programming needs of adult female offenders, including those who require specialized mental health services.

Referrals from CNCC to Waypoint's forensic mental health programs are accepted as per a long-standing agreement between the ministry and the mental health centre, only through the court system or under the jurisdiction of the Ontario Review Board. As part of the transformation of correctional services, the ministry is examining how we currently support inmates with mental illness and is looking to improve and enhance our policies and procedures.

**Recommendation 5: With increased media exposure, there is an opportunity to showcase positive stories rather than the ever mounting negative stories disseminated about Correctional Services.**

The ministry is supportive of media attending events which create good news stories about corrections.

The Communications Branch is developing a communication strategy that will aim to raise the profile of the positive contribution CABs make to the correctional system. An update on proposed communications activities will be provided at the CAB annual conference later this fall.

I appreciate the CAB indicating in its Annual Report the many CNCC success stories such as the impact that CNCC has on the economy in the Midland-Penetanguishene area, the excellent working relationship between senior management team and local union executive and the positive reception by the community on the gang presentation provided by CNCC staff to local school groups as a crime prevention tool.

Thank you for all of the hard work that went into the development of your recommendations for the ministry. As volunteer members of the Community Advisory Board, you have gone above and beyond to provide meaningful feedback on the operations at CNCC. Please be assured that the ministry values your input and recommendations. The ministry will be working throughout the rest of the year to address as many of your recommendations as possible. I look forward to your ongoing support as we move forward with this very important work.

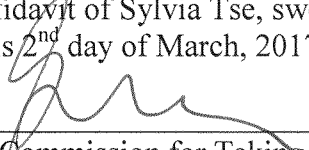
Sincerely,

Marg Welch

Associate Deputy Minister, Correctional Services

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This is Exhibit **"E"** referred to in the  
affidavit of Sylvia Tse, sworn before me,  
this 2<sup>nd</sup> day of March, 2017



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A Commission for Taking Affidavits  
Garth Myers

You are here > **Home** > ... > **Community Advisory Boards** > CAB Report 2014 - Central North Correctional Centre

## Community Advisory Board Annual Report

### Central North Correctional Centre

Penetanguishene, Ontario

April 24, 2015

#### Overview

The Central North Correctional Centre (CNCC) Community Advisory Board (CAB) was established in November 2001. Formerly known as a Board of Monitors, the CNCC was Ontario's inaugural CAB.

#### CNCC CAB members

**Chair:** Malcolm D. McKinnon, appointed April 21, 2005, term April 19, 2016

#### Board Members:

Michael Gagnon appointed Aug. 2, 2007, term July 31, 2015

Robert Haley, appointed April 1, 2005, term April 20, 2016

Melanie Marchand, appointed Aug. 2, 2007, term July 31, 2015

Timothy Vaillancourt, appointed Dec. 15, 2010, term Dec. 14, 2016

Vera Barycky (resigned) , appointed June 24, 2013, term June 23, 2016

#### Meetings

All nine meetings of the CAB were held at the CNCC. Each meeting was held with a quorum of board members. There were no meetings scheduled for the months of July or August. Also in attendance for the meetings were the Superintendent and Deputies for each department, or a delegate that reported on their areas of responsibility. Copies of the meeting minutes, agendas and related materials are filed at the facility for reference and safe keeping.

#### Site visits

CAB members made 10 site visits over the reporting period.

#### Number of concerns that required action directed to the Superintendent

The CAB directed five concerns to the Superintendent:

- Staff reported that they did not have access to a new door added to the Medical Unit. The matter was reviewed and staff now use this portal on a regular basis.
- An inmate advised a CAB member that on his transfer to CNCC, his property including a backpack, wallet, cash and cheque were missing. Staff could not locate his personal effects. The CAB has since been advised that his property was located and the issue successfully resolved.
- CNCC had developed a pilot program to operate an Institutional Security Team to reduce the amount of contraband entering the facility by increasing searches and intelligence gathering. The CAB feels strongly that this initiative should be adopted as a permanent unit.
- An increase in the number of offenders with mental health issues. The health care team at CNCC has developed and instituted a mental health triage tool that is currently being used to classify inmates at risk with mental illness.
- Concern over the excessive cost of community escorts and security for offenders at local health care facilities. Due to the shortage of regular correctional officers, many community escorts have to be tasked as overtime (with part-time staff called in to cover shifts), and CNCC must hire police officers to provide security at the hospital if inmates are admitted for medical treatment.

**Concerns presented directly to the Minister**

There were no concerns presented directly to the Minister.

**Presentations and training**

Five presentations were made to the CAB:

- Use of the Mental Health Referral/Triage Tool
- The President of OPSEU Local 369 outlined his position as a union representative at CNCC
- Overview of programs for Aboriginal inmates
- Training session on the handling of misconducts and adjudication process for offenders
- How serious incidents would be handled at CNCC including, the roles of senior management, Crisis Negotiation Team, Institutional Crisis Intervention Teams at the facility and protocols in the case of a hostage incident

**Observations**

CNCC is a well-run facility. The institution is led by a team of professionals who lead by example. They maintain a high level of service standards, which are expected to be followed throughout the facility. The institution should be proud of their successful practices not only from the ministry but also the community stakeholders. If there are issues that arise within the facility, corrective actions are implemented immediately. Reviews and investigations are initiated at the local level or transferred to the corporate level based on the gravity of the situation.

The CAB is also advised if an investigation has been initiated and the outcome of the review.

It is imperative that the Ministry of Community Safety and Correctional Services improve communication with the CABs. Members are taking their time to perform the duties set out by the terms of reference, and by submitting correspondence to the ministry. Recommendations provided by way of annual reports deserve a response.

**The Operation of the Institution****Communication**

Senior management operate as a cohesive unit that communicates well with each other and shares a combined vision that success can be achieved and maintained. Communication is key to the success of any institution. In addition to daily briefings with the Deputies, and further meetings conducted with Operational Managers, senior management at CNCC regularly tour the institution to meet staff and observe day-to-day operations. These tours have increased the lines of communication between management and frontline correctional staff.

**CAB recruitment**

The CNCC CAB has had a vacancy for six months. In previous years it has taken over one year to find a suitable candidate and fill a vacancy. This impacts the effectiveness of our Board by reducing the number of site visits and thereby, our effectiveness in fulfilling our mandate. It is imperative to have a succession plan established to ensure the CAB continues to function after July 2016, when four members will have completed their respective terms.

**Institution Impact on the Community****Community stakeholders**

The community stakeholders are satisfied with the operation of CNCC. The facility has been able to provide a safe, secure environment for housing and transporting offenders.

**Administration of the Institution****Administrative practices**

The administration at CNCC is based on sound business practices. The CAB is briefed on a monthly basis by the Deputy Superintendent of Finance, and also on significant occurrences or items of interest under their areas of responsibility. This allows the CAB to view the actual operational component of this facility. CAB members are permitted to discuss the information provided, which allows us to fully understand how the administration is handled on a daily basis.

**Staff shortages**

There have been many challenges in managing overtime. This has been a direct result of the understaffing of correctional officers. It appears that other provincial institutions with similar inmate counts have a larger cadre of correctional officers than at CNCC. With this facility having a limited medical unit, there are increased demands for inmate transfers to local hospitals or clinics for treatment. Normally, there is not enough staff to cover off community escorts/security, which forces the facility to use correctional officers on an overtime basis.

**Overcrowding in the female units**

Overcrowding in the female units has been steadily increasing at the institution over the past several months. There is limited space available when female counts exceed 35. This is raising concerns about safety for the inmates and staff. Segregation cells in the female unit have been used for general population offenders. In some circumstances offenders have been asked to double bunk. One instance when inmate counts rise is with the admission of intermittent offenders on the weekends.

**Institution Security Team**

CNCC has been a testing ground for various pilot programs. One successful initiative was the formation of the Institution Security Team, which provides outstanding work within the facility, and has provided help to outside agencies as well. The Institutional Security Team was responsible for decreasing the flow of contraband into the facility. Its success is documented through letters of commendation from many groups including, local police, Ontario Provincial Police and Royal Canadian Mounted Police. The CAB feels that the IST pilot should be adopted as a permanent unit.

**Treatment of Inmates****No reports of abusive treatment**

During site visits, there were no reports of any abusive treatment of inmates. Staff was observed during the performance of their duties and were seen to be interacting with inmates in a professional manner.

**Meals**

Meals are delivered to inmates in a timely manner and various menu options are available for inmates needing dietary accommodations.

**Educational programming**

Educational programming is available to inmates with the option of obtaining an Ontario Secondary School Graduation Diploma.

**Mental health issues**

There have been many discussions about the number of inmates who suffer from various mental health issues. Staff has been vocal about the need to have additional training on how to deal with inmates with mental health concerns.

The CAB has recognized the need for additional training to deal with inmates affected with mental health issues. More specifically, information on how to communicate effectively with these inmates and how to best de-escalate a situation to reduce the potential for use of force measures is requested. With approximately 30 per cent of inmates incarcerated suffering with some form of mental health issues, it is imperative that staff are oriented on dealing with this sort of offender.

### **Community Workers Program**

Thirty-three inmates have had the opportunity to work in the CNCC's Community Workers Program (CWP). During the last 12 months this program has provided over 1900 hours of work to the exterior of the facility and also within the community. The CWP has had the opportunity to interact with community stakeholders along with the general public. The inmates are supervised by a dedicated correctional officer overseeing a team of between two to four inmates.

One new project this year was to assist in the setup for the International Plowing Match in Ivy, Ontario. This was a great opportunity to present the good work of the CNCC in our communities. The inmates are pleased for the opportunity to give back to the public. This is an exceptional program that should be recognized.

### **Consolidated list of recommendations**

1. That an action plan be implemented to fill current vacancies at this institution.
2. Priority should be given to correctional officers who are routinely tasked with handling mental health offenders.
3. More communication between the CABs would be recommended on a go forward basis. This would assist on implementing best practices amongst the Board. This could take the form of conference calls or an annual meeting.

#### **Ministry of Community Safety and Correctional Services**

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Téléc. : 416-325-6067



October 27, 2015

Mr. Malcolm McKinnon

Community Advisory Board Chair

Central North Correctional Centre

Dear Mr. McKinnon:

Thank you for your submission of the Community Advisory Board (CAB) 2014 Annual Report for the Central North Correctional Centre (CNCC).

The Ministry of Community Safety and Correctional Services' constant focus is on transforming Ontario's correctional system to improve staff and inmate safety, provide effective rehabilitation and reintegration programs, and strengthen inmate mental health supports. Moving forward in these key areas is at the very core of building safer, stronger communities right across our province. We cannot do this without the

commitment of individuals such as you and the other dedicated volunteers who make up our Community Advisory Boards. Your local perspective is invaluable to strengthening the links between our correctional facilities and our communities.

I have reviewed your report and appreciate the thoughtful comments you have made about CNCC. You will be pleased to know, a new Annual Report process has been implemented in conjunction with the development and submission of the 2014 Annual Report, including a standardized template. With a standardized approach to reporting issues, the ministry is able to review and provide responses in a meaningful way.

Deputy Minister Stephen Rhodes will be responding in detail to each of the valuable recommendations you have made. Please accept my sincere thanks for this report, your work with the Superintendent, and your role in the community.

Sincerely,

Yasir Naqvi

Minister

**Ministry of Community Safety  
and Correctional Services**

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October 27, 2015

Mr. Malcolm McKinnon

Community Advisory Board Chair

Central North Correctional Centre

Dear Mr. McKinnon:

Thank you for your submission of the Community Advisory Board (CAB) 2013 and 2014 Annual Reports for the Central North Correctional Centre (CNCC). The Annual Reports have been reviewed by ministry staff and several recommended actions have been taken.

As the Honourable Yasir Naqvi, Minister of Community Safety and Correctional Services, noted in his letter to you, the Ministry of Community Safety and Correctional Services' constant focus is on transforming Ontario's correctional system to improve staff and inmate safety, effective rehabilitation and reintegration programs, and strengthening of inmate mental health supports. Moving forward in these key areas is at the very core of building safer, stronger communities right across our province.

I am pleased to provide the following responses and recommended actions to the recommendations put forward in the 2014 CAB Annual Report:

**1. Staff Levels: The CAB is concerned about the approved staffing levels at CNCC.**

The ministry has been actively recruiting correctional officers since March 2013. As a result, a total of 480 recruits have graduated from the Correctional Officer Training and Assessment (COTA) program at the Ontario Correctional Services College (OCSC) and 19 have been assigned to CNCC.

Recruitment is ongoing and we continue to hire and train new staff through the OCSC.

**2. Mental Health Training: The CAB recognizes the need for additional training to deal with inmates affected with mental health issues.**

While CNCC has been supporting education for its staff with the help of the institution psychiatrist, health care team and the Canadian Mental Health Association (CMHA), the ministry has developed training in conjunction with the subject matter experts to assist staff in understanding and responding to inmates with mental health challenges. This training will be provided to all frontline correctional staff and managers.

CNCC currently has a system of triage where inmates with suspected mental health issues are referred to the appropriate clinician for treatment. They have a wing of 16 beds that is used to house offenders with special needs in a supportive environment that is non-punitive. We have introduced a new mental health screening and assessment process for all inmates upon admission, effective late September 2015. The new screening will ensure that inmates with mental health issues are identified as early as possible and referred to the appropriate professional(s) and services. Social workers, mental health nurses, and psychologists received training on the new process on June 24 and 25, 2015.

**3. The Institution Security Team (IST): The CAB feels that this program should be re-established at CNCC as a permanent unit.**

The safety and security of both staff and inmates is a top priority. The ministry has a number of mechanisms, policies and procedures in place to detect and eliminate the introduction of contraband into provincial institutions, including:

- Random searches;
- The Body Orifice Security Scanner (B.O.S.S.) chair;
- Canine units;
- CCTV cameras;
- Dedicated security teams;
- Field Intelligence Officers;
- Walk-through metal detectors;
- Hand-held security wands; and
- X-ray machines.

**4. CAB Recruitment and Appointment Process: The CAB has a concern about the length of time it takes for the processing of new board members.**

The ministry recognizes the importance and benefit of local community engagement. The CAB plays an important role providing the Minister and ministry with their observations and recommendations. The ministry is currently in the process of expanding CABs into other correctional facilities. A total of seven institutions will have a CAB established by the end of 2015.

It is our goal to appoint new CAB members and fill CAB vacancies in a timely manner.

There is currently one vacancy at CNCC. The opportunity was posted on the Public Appointments website on June 3 and closed on June 17. As no applications were received, the opportunity was extended to July 2. As again no applications were received, an advertisement was posted in the local news media. The appointment recruitment process is ongoing.

**5. CAB Communication: More communication between the CABs is recommended on a go forward basis.**

Contact and interaction between CAB members and CAB Chairs is strongly encouraged. This will assist CABs in implementing best practices between the boards, as well as the sharing of information and providing support to new CAB Chairs and newly established CABs.

When the Minister met with the CAB Chairs on April 20, 2015, a number of issues were discussed including communication and interaction between CABs. Quarterly teleconferences for the CAB chairs have been implemented and a first annual meeting of all CAB members is scheduled in Ottawa on October 28, 2015.

**6. Annual Report Feedback: It is imperative that MCSCS improve communication with the CABs. Since 2005 there have been no responses from the ministry to the CAB/BOM on their recommendations and observations at CNCC.**

The Annual Report is important and beneficial in providing the ministry with observations and recommendations on the operation and administration of the institution, the impact of the institution on the local community, and the treatment of inmates.

A new Annual Report process has been implemented in conjunction with the development and submission of the 2014 Annual Reports, including a standardized template. With a standardized approach to reporting issues, the ministry is able to review and provide responses. The new Annual Report process also has clearly established timelines and response protocols.

Additional feedback and updates will also be provided by the Advisor, Professional and Shared Services (PSS) through the quarterly CAB Chair teleconferences.

I appreciate the CAB indicating in its Annual Report the CNCC success stories, such as the Community Worker Program and its impact on the surrounding communities. I am also pleased to see the positive impact CNCC has on the local communities as an employer. The ministry is pleased to be named one of the top 100 employers in the Simcoe County area.

Thank you for the work that you do and the role you play as volunteer members of the Community Advisory Board. Please be assured that the ministry values your input and recommendations. Your commitment and dedication is admirable and your positive working relationship with management and staff at the CNCC is commendable. I am looking forward to your ongoing support as we further this very important work.

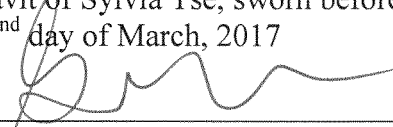
Sincerely,

Stephen Rhodes

Deputy Minister of Correctional Services

---

This is Exhibit **"F"** referred to in the  
affidavit of Sylvia Tse, sworn before me,  
this 2<sup>nd</sup> day of March, 2017



---

A Commission for Taking Affidavits  
Garth Myers

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## **Community Advisory Board Annual Report 2015**

### **Toronto South Detention Centre**

Toronto, Ontario

March 31, 2016

#### **Preface**

##### **Legislative Authority**

Ministry of Correctional Services Act, Section 14.1, 2000, c.40, s.4.

"The Minister may establish a local monitoring board for a correctional institution, composed of persons appointed by the Minister."

##### **Principal Duties of the Community Advisory Board**

- To satisfy themselves as to the state of the institution premises, the administration of the institution, and the treatment of inmates;
- To develop effective relationships with the superintendent and share minutes from the Board meetings;
- To inquire into and report back on any matters requested by the minister;
- To direct to the attention of the superintendent any matter they consider expedient to report; and
- To report to the minister any matter which they consider expedient to report, normally achieved through the Annual Report or through exceptional situation reports.

##### **Overview of the Annual Report**

One of the required functions of the Community Advisory Board (CAB) is to develop and submit an annual report outlining and describing the Board's activities of the previous year. The report will also contain observations and recommendations to the Minister, Community Safety and Correctional Services (MCSCS), on aspects of the operation of the institution.

The annual report is submitted to the minister, with distribution to the institution superintendent. The annual report or excerpts may only be made public with the approval of the minister.

##### **Objectives of the Annual Report**

The purpose of the annual report is to highlight the work of the CAB and to identify any areas of concern and/or support for the operation of the institution. The annual report should include observations, findings and recommendations in the following areas:

- Advice to the minister on any aspect of the operation of the institution;
- Any observations communicated to the superintendent regarding the operation of the institution;

- Advice provided to the minister and superintendent regarding a community or citizens perspective on the operation of the institution;
- Observations communicated to the minister and superintendent, regarding the treatment of inmates in the care of the institution;
- Observations on the state of the institution and the administration of the facility; and
- The establishment of cooperative and supportive relationships with the superintendent, managers and staff of the institution.

### **Objectives and Goals**

- Strengthen the links between the institution and the surrounding community.
- Act as independent observers offering a balanced perspective concerning the care, supervision and programs for offenders.
- Act in an advisory capacity to the minister and provide advice on all aspects of facility operations including: the operation of the institution and the impact on the community; the state of the institution; the administration of the institution; and the treatment of inmates.

### **Community Advisory Board Members**

**Chair:** Dr. Wesley Crichlow, appointed March 17, 2014, term April 20, 2019

#### **Board Members:**

Allison Mentis, appointed April 21, 2014, term April 20, 2019

Douglas Tsoi, appointed March 17, 2014, term March 16, 2016

Levina Kahumba, appointed March 17, 2014, term March 16, 2017

Maureen Helt, appointed March 17, 2014, term March 16, 2019

Nigel Waterman, appointed March 17, 2014, term March 16, 2017

### **Overview of CAB Activities for 2015**

**Number of CAB Meetings:** 7 (plus 1 annual meeting)

#### **Summary**

##### **April 28, 2015**

- CAB provided with Incidents report for March 2015
- Operations, finance, administration, maintenance, staffing, segregation and various commissions (Medical Unit, Mental Health Assessment Unit (MHAU), and Infirmary) issues/stats reported to CAB
- CAB discussed with management on the importance of providing various statistics of centre operations.
  - Program Effectiveness, Statistics & Applied Research (PESAR) staff to do so on request from CAB members
- 2015 CAB report discussion with the Management

- Discussion on Forensic Early Intervention Service (FEIS) and inmates with mental health issues.

### **May 20, 2015**

- Question was raised regarding the chart on reportable incidents and why a death was recorded for an inmate not physically admitted at TSDC. The procedure for reporting death of inmate is governed by the Ministry's policy and procedures manual, specifically an inmate who is never physically in the facility but in the legal custody of the ministry. The provision in the manual is death of inmate in institution custody or death of an inmate on community escort, April 29, 2015 minutes to be amended to indicate "not physically admitted to TSDC".
- Statistics with respect to spike in contraband since last month, which reflects canine unit presence, and increased security activity.

### **Operations**

- Inmate transfers out to other facilities continue
- One unit, 40-beds closed to support staffing of the Medical and MHAU
- 24-beds, half of the Special Handling Unit closed to support staffing of the facility and the planned opening of the Infirmary

### **Finance**

Budget for fiscal year 2015/16 expected by the end of May

### **June 17, 2015**

- CAB provided with Incidents report for May 2015
- Operations, finance, administration, maintenance, staffing, segregation issues/stats reported to CAB members
- Medical Unit and MHAU inmates usage stats provided to CAB members
- CAB informed on Dental unit opening (May 8, 2015) that runs 3 full days a week
- CAB provided with stats on how many inmates have been referred to FEIS
- CAB provided with Jail Screening and Assessment Tool (JSAT) stats
- CAB informed on John Howard Society grand opening of their Reintegration Centre on May 28, 2015
- Presentation by the Deputy Superintendent Treatment & Programs (Acting) regarding the history, principles and benefits of the direct supervision model

### **July and August 2015 – Summer Break**

CAB members were provided with a copy of incidents report for June – July 2015 period that had the following information:

- Operations, finance, administration, maintenance, staffing, and segregation report
- Medical Unit and MHAU inmates usage stats
- FEIS and JSAT stats

### **September 23, 2015**

- CAB provided with Incidents report for August 2015
- Operations, finance, administration, maintenance, staffing, segregation and various commissions (Medical Unit, MHAU, and Infirmary) issues/stats reported to CAB members
- CAB informed of installation of Body Scanner in the Admissions and Discharge unit to detect contraband within TSDC
- CAB informed on the Electronic Security System review that Lobo Consulting is conducting
- CAB informed of Windows Upgrade/Replacement in various towers of TSDC
- CAB provided with FEIS stats.

### **October 28, 2015**

- First annual CAB conference in Ottawa
- All CAB member were in attendance
- Received presentations on a variety of subjects, including segregation, communicating with the media, mental health initiatives, and expense claim guidelines for CAB members.
- Speakers included Deputy Minister Rhodes and Assistant Deputy Minister Arthur
- Opportunity to speak to CAB members from other correctional facilities across Ontario and share observations and best practices.

### **November 25, 2015**

- Discussion regarding previous month's CAB annual conference
- CAB provided with Incidents report for November 2015 (November 1-17, 2015)
- Operations, finance, administration, maintenance, staffing, segregation issues/stats reported to CAB members
- Medical Unit and MHAU inmates usage stats provided to CAB members
- CAB provided with stats on how many inmates have been referred to FEIS
- Presentation by an Operational Manager from TSDC on their experience transitioning from male to female while employed in Correctional Services as well as on initiatives in place to support trans identified inmates and staff.
- CAB discussion regarding dates and times of 2016 meetings

### **(December 2015 – End of Year Break)**

**January 13, 2016** – Postponed due to potential Correctional Services strike action

### **February 3, 2016**

- Labour dispute update: Deputy Superintendents, Staff Sergeants, Sergeants and Managers were on site since January 8, 2016 in anticipation of a potential Correctional Bargaining Unit labour disruption. On January 9, 2016, a settlement agreement was reached between the Employer and the Union.
- On January 11, 2016, a local Normalization of Operations agreement was signed, which included the search of every area that was operated by managers. The searches started on January 11 2016 and ended on January 20, 2016.

- CAB members were provided with reportable Incidents from (November 18, 2015 — January 25, 2016) (\*From manual tracking upon receipt of Incident Report — by two main locations - Toronto Intermittent Centre (TIC) and TSDC Main Building)
- finance, administration, maintenance, staffing, segregation and various commissions
- (Medical Unit, MHAU, and Infirmary) issues/stats reported to CAB
- FEIS stats provided
- End of term for CAB member Douglas Tsoi

### **March 23, 2016**

- CAB held their first meeting in conjunction with the TSDC staff morning meeting. The chair called the meeting to order and welcomed all, explained that the morning
- meeting was a new venture for the CABs, and he was open to suggestions in proceeding with the meeting. It was suggested that the TSDC staff should be allowed to present their report first because they had duties to attend to. The staff proceeded with their briefing.
- A briefing report was reviewed of the morning activities and the agenda that lay ahead for the day. In one briefing, it was noted that there was an incident the day before where an inmate was preparing to take a shower and he was assaulted by other inmate. Both inmates were charged. The new director questioned why the victim was charged. It was agreed that charging the victim is something that should be looked at.
- After the briefing, correctional staff returned to their post and the new director was introduced to the CAB along with the other staff.
- Posting for new CAB member was sent to the metro paper, awaiting feedback on the recruitment process.

### **Number of Site Visits by CAB: 5**

#### **Summary**

May 20, 2015

- Site visit of the medical unit, health care unit and infirmary unit conducted by Maureen and Levina
- The infirmary unit is very well equipped as is the health care unit.
- Explanation provided to CAB members with respect to how the units will operate, the criteria to be admitted as well as issues concerning on-going care if necessary, after inmates are released from the units.
- Explanation provided to CAB members with respect to the type of care provided in the units as well as availability or access to different types of doctors

June 17, 2015

- Site Visit of Mental Health Unit conducted by Maureen, Doug, Levina and Wesley spoke with nurses who said they were satisfied with how the unit works
- Common theme of inmates expressing concern regarding lockdowns and failure to be allowed access to showers

August 22, 2015

- Site Visit of workers unit conducted by Allison and Maureen
- All inmates in this unit are workers in TSDC
- Inmates expressed concerns about lack of clean clothing provided to them on a timely basis. This is an ongoing concern. Staff express concerns that inmates are hoarding laundry yet inmates say they do not get regular clean clothes
- Inmates were concerned about number of lockdowns so that they are denied showers after being on the work shift all day
- There is still quite a divide between those officers who have a much more punitive approach to inmates and those whose approach is more rehabilitative. TSDC needs to get a common ground and common approach as the inconsistency leads to issues in the institution.
- The inmates expressed concern about the fact that the so called privileges are really not a privilege. They say their privilege is a chocolate bar or a bag of chips. They want more or feel they deserve more of a privilege.

February 10, 2016

- Site visit of Kitchen services conducted by Maureen
- Held discussions with inmates on the worker program who were working in the kitchen – they very much enjoy the program however their issue remains the same as when I met with inmates in the workers' unit in August 2015 – there are complaints about not having clean laundry. Correctional officers claim that inmates hoard the laundry but it is not appropriate to deny these workers clean laundry or access to shower
- There are two shifts for the kitchen broken into the morning and afternoon/evening shift.
- Each shift has twelve inmates working side by side with staff to prepare and deliver the food
- Overall the kitchen appears to be very clean and very well run.

**Monthly Reports provided to the CAB:** We were provided with monthly reports during the fiscal year. These reports tracked a variety of inmate activities. These reports were analysed and specific events were intently discussed. The Director and other senior staff often provided some context to the figures and provided answers to the many queries. Please see appendix C for a graph of the data presented.

**Number of Reports/Concerns that Required Action: 2**

**Number of Concerns Directed to the Superintendent: 2**

#### **Summary**

Frequent lock downs  
Inappropriate segregation

**Number of Concerns Directed to the Minister: 0**

#### **Summary**

n/a

## **Presentations and Training**

### **Number of Presentations made to the CAB: 3**

#### **Summary**

June 17, 2015

- Presentation by the Deputy Superintendent, Treatment & Programs (Acting) regarding the history, principles and benefits of the direct supervision model.

October 28, 2015

- Presentations on a variety of subjects, including segregation, communicating with the media, mental health initiatives, and expense claim guidelines for CAB members.

November 25, 2015

- Presentation by an Operational Manager from TSDC on their experience transitioning from male to female while employed in Correctional Services as well as on initiatives in place to support trans identified inmates and staff.

### **Number of Training Sessions Completed: 0**

#### **Summary**

None reported in 2015.

## **Observations**

### **The Operation of the Institution**

TSDC is still not yet operating at full capacity. While it is anticipated that the TSDC will be staffed with approximately 200 more (or so) correctional officers in the next year, if the institution was operating at full capacity the number of correctional officers would need to be greatly increased.

With respect to the hiring of nurses, which has been an issue over the past year, our most recent report from the Director indicated that eight mental health nurses were to be interviewed for three positions.

We have been advised that the institution is running under budget, but this is due to the fact that it is not yet fully staffed.

The CAB is not in a position to adjudge the efficiency of TSDC's operations. However, the CAB has observed during site visits that TSDC appears to be well-run, organized and clean.

There is however always the concern that there are insufficient correctional officers. This is not a problem made within the institution, rather; it is a result of the hiring process. A shortage of correction officers has caused the institution to experience several lockdowns, which is not good for the inmates or the officers.

### **Institution Impact on the Community**

TSDC has been the subject of negative press reports in 2015. These reports were often discussed at our meetings. The TSDC's Director was of the opinion that the media did not disclose the entire truth in many articles, and that her comments, though requested, were rarely taken into consideration in the final article.

Examples of issues raised in media coverage involving TSDC include:

- Hunger strikes
- Insufficient health care for inmates
- Inappropriate use of segregation
- Lockdowns due to staff shortages

The CAB was not in a position to confirm or deny the allegations raised in the articles. However, the CAB is concerned about the quantity and depth of the negative allegations contained in media coverage surrounding TSDC and the CAB feels that this may potentially alienate community members and impact their perception of TSDC.

### **Administration of the Institution**

In 2015, the facility was not operating at full capacity. There have been operational problems due to staff shortages, frequent sick calls from staff and numerous lock-downs occurring most week- ends.

There was also tension in the institution between management and staff during the union negotiations. These tensions resulted in a decline of site visits because CAB members were hesitant to be caught between the two parties.

The facility's mental assessment unit did not become operational until February 2015. There was a death of inmate in February 2015. The inmate committed suicide.

From a CAB observation, it would appear that current staff is operating under strenuous circumstances.

The CAB has observed that TSDC staff has been very helpful in providing information and responding to queries.

### **The Treatment of Inmates**

The CAB observed that a number of lockdowns in 2015 were initiated due to a lack of staff on hand. The CAB learned each day that a considerable percentage of the correctional officers were absent for various reasons, including vacation, leaves of absence and illness.

The CAB is concerned that insufficient staff levels have resulted in numerous lockdowns which results in inmates privileges and rights to showers, phone calls etc. being negatively impacted. CAB has had discussions with the Director regarding these staffing issues.

Lock downs are a major issue with inmates at TSDC. In these situations, they are locked in their cells for hours with food just sliding through slots, no showers and no opportunity to change clothing or make phone calls.

With these frequent lock downs; the inmates become increasingly annoyed and retaliate by assaulting officers.

Also, delayed transportation of inmates from the facility to court are delaying court proceedings. This affects inmates adversely, causing adjournments and re-appearances.

### Summary of Concerns and Recommendations

In 2015, the CAB identified the following concerns:

- Far too many lockdowns
- Need for more correctional officers
- Inordinately long period of time to clear new hires for nursing positions

In light of the above, the CAB makes the following recommendations to the minister:

- It is understood that the minister has authorized the hiring of new correctional officers – to continue to do so
- For the ministry and the TSD to continue to examine ways to avoid the frequency of lockdowns

These recommendations were communicated to the TSDC Director at the CAB meeting on March 23, 2016.

Submitted March 31 2016

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Wesley Crichlow, PhD, Chair

#### Ministry of Community Safety and Correctional Services

Office of the Minister

25 Grosvenor Street  
18<sup>th</sup> Floor  
Toronto ON M7A 1Y6  
Tel: 416-325-0408  
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#### Ministère de la Sécurité communautaire et des Services correctionnels

Bureau du ministre

25, rue Grosvenor  
18<sup>e</sup> étage  
Toronto ON M7A 1Y6  
Tél.: 416-325-0408  
Télé.: 416-325-6067



May 31, 2016

Mr. Wesley Crichlow  
Community Advisory Board Chair  
Toronto South Detention Centre

Dear Mr. Crichlow:

Thank you for your submission of the 2015 Community Advisory Board (CAB) Annual Report for Toronto South Detention Centre (TSDC).

We appreciate the time the CAB has taken to put together such a comprehensive list of recommendations for the ministry based on your observations at the institution over the last year.

I have reviewed your report and appreciate the thoughtful comments you have made about TSDC. Associate Deputy Minister Marg Welch will be responding in detail to all of the five meaningful recommendations you have made.

We are grateful to have such a dedicated group of volunteers that work diligently to help us improve operations and transparency in our institutions. The ministry values your input and will be working on addressing the recommendations from the Annual Report. I look forward to working with the CABs in the coming year, moving this innovative program forward and continuing to engage local communities to a greater degree. Please accept my sincere thanks for your work in this critical role and producing a valuable annual report.

Sincerely,  
Yasir Naqvi  
Minister

c: Ms. Marg Welch  
Associate Deputy Minister of Correctional Services

Ministry of Community Safety and  
Correctional Services

Ministère de la Sécurité communautaire et des  
Services correctionnels

Office of the Associate Deputy Minister  
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August 25, 2016

Mr. Wesley Crichlow  
Community Advisory Board Chair  
Toronto South Detention Centre

Dear Mr. Crichlow:

Thank you for your submission of the 2015 Community Advisory Board (CAB) Annual Report for the Toronto South Detention Centre (TSDC). The Annual Report has been reviewed by ministry staff and we are already working on the recommendations outlined in your report.

As the Honourable Yasir Naqvi, former Minister of Community Safety and Correctional Services, noted in his acknowledgement letter to you, the ministry is committed to implementing your recommendations and to the ongoing development of this innovative CAB program.

The transformation of Ontario's correctional system is a top priority. Work is underway to further address capacity pressures, develop additional supports for inmates with mental illness, reform the bail and remand system and review our segregation policies. We will continue to work with all our correctional partners as we move forward with our mandate to transform our correctional system to develop effective and lasting improvements.

I am pleased to provide the following responses and next steps for the recommendations put forward in the TSDC CAB Annual Report.

**Recommendation #1: Reduce lockdowns**

The ministry recognizes that many institutions across the province require additional staff and we have been working to recruit new correctional officers and provide them with training. Lockdowns occur for a variety of reasons, including staffing shortages which can result from a combination of leaves (vacation, sick or other) as well as having a reduced number of available staff.

An initiative to minimize the number of lockdowns at TSDC is now part of the senior management performance plan. Locally, TSDC has had some difficulty with managing employee attendance which has had an impact on the number and frequency of lockdowns. A Deputy of Staff Services was hired to complete a review of the attendance support management and accommodation program at TSDC. Upon completion of the review, TSDC will work to address the issues identified.

TSDC will also continue to work with recruitment to determine the need for additional Correctional Officers in order to address ongoing attrition as well as to ensure adequate resources on site to maintain staff training requirements.

**Recommendation #2: Hiring of new correctional officers**

Since 2013, 1001 new correctional officers have been deployed to facilities across the province. Hiring remains a priority, which is why over three years, we are hiring 2,000 new correctional officers.

On May 16, 2016, 21 new correctional officers began working at TSDC. In an effort to reduce lockdowns, 25 fixed-term correctional officers became full-time in June 2016. An additional eight correctional officers commenced employment on July 25, 2016 at TSDC.

**Recommendation #3: Long clearance times for nursing positions**

The ministry is required to conduct employee security screening checks in compliance with the OPS Employment Screening Checks Policy.

Public servants appointed to work in ministries with the responsibility for handling and processing highly sensitive documents/information/assets, activities involving contact with or responsibility for vulnerable individuals and providing law enforcement services are required to undergo enhanced security screening before beginning their job duties. Ministry employees, including nurses, fall within this description and are required to undergo screening.

A Vendor of Record for security screening checks has been established and may be used by the Ministry of Community Safety and Correctional Services. Alternatively, other options including Ontario Provincial Police and local police services remain available; however, enhanced security screening checks may take between six and 10 weeks to be complete.

TSDC has completed the recruitment process for nurses and is awaiting security screening results.

### **Conclusion**

I appreciate the CAB indicating in its Annual Report the many TSDC success stories such as the well-equipped infirmary and health care units and the success of the kitchen work program, where inmates express their satisfaction with the program.

Thank you for all of the hard work that went into the development of your recommendations for the ministry. As volunteer members of the Community Advisory Board, you have gone above and beyond to provide meaningful feedback on the operations at TSDC. Please be assured that the ministry values your input and recommendations. The ministry will be working throughout the rest of the year to address as many of your recommendations as possible. I look forward to your ongoing support as we move forward with this very important work.

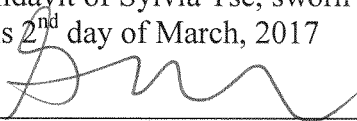
Sincerely,

Marg Welch

Associate Deputy Minister, Correctional Services

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This is Exhibit "G" referred to in the  
affidavit of Sylvia Tse, sworn before me,  
this 2<sup>nd</sup> day of March, 2017

A handwritten signature in dark ink, appearing to be 'Garth Myers', written over a horizontal line.

A Commission for Taking Affidavits  
Garth Myers

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## **Community Advisory Board Annual Report**

### **Toronto South Detention Centre**

Toronto, Ontario

March 31, 2015

#### **Overview**

The Toronto South Detention Centre (TSDC) Community Advisory Board (CAB) and the institution itself are fairly new. At present, the CAB is a work in progress in getting to the "know how's" of the operation. What has been achieved so far would probably not have been possible without the tremendous efforts made by the Director and her team in supporting the CAB.

The collaboration between the CAB, the Director, TSDC management team and staff will improve the CAB's understanding of the operation of the institution, demystify the operation of the CAB and improve CAB members' understanding of the administration of the institution in the months to come.

#### **TSDC CAB members**

**Chair:** Dr. Wesley Crichlow, appointed March 17, 2014, term March 16, 2017

#### **Board Members:**

Alison Mentis, appointed April 21, 2014, term April 20, 2016

Douglas Tsoi, appointed March 17, 2014, term March 16, 2017

Levina Kahumba, appointed March 17, 2014, term March 16, 2017

Maureen Helt, appointed March 17, 2014, term March 16, 2017

Nigel Waterman, appointed March 17, 2014, term March 16, 2017

#### **Meetings**

The CAB met a total of seven times between April 1, 2014 and March 31, 2015. A meeting intended for February 25, 2015 was cancelled due to a scheduling conflict.

#### **Presentations**

The CAB received four presentations during regularly scheduled monthly meetings.

One CAB member was able to attend a direct supervision symposium, hosted by TSDC, on April 8 and 9, 2014. This was Ontario's first direct supervision symposium and included speakers from across Canada and the United States.

#### **Reports and concerns that required action**

The Director presented monthly institutional count and incident reports verbally during the first few CAB meetings. Understanding the benefit of having the reports circulated in advance of the meetings, the CAB chair requested that this practice be adopted going forward. CAB member's institutional visits along with CAB minutes are placed in a binder and kept at the TSDC office for easy access.

There were no reports or concerns that required immediate action.

### **Concerns directed to the Director**

There were five major concerns presented by the CAB to the TSDC Director:

- Issues getting the health care unit up and running.
- The use of segregation beds for mental health patients.
- Availability of statistics.
- Use of force.
- Staff shortages.

### **Concerns presented to the minister**

There were no concerns presented to the minister, except through this report.

### **Observations**

Early into their appointments, CAB members were escorted by senior administrators for their onsite visits, and tours were thorough. Correctional officers, nurses, the food department head all explained in detail their department's role and personal responsibilities in the sphere of operations.

On unannounced site visits, correctional officers escorted CAB members. These officers were unaware of the role of the CAB and were surprised to learn of our existence. CAB members have said that they felt like intruders at the beginning of these tours. When apprised of the CAB role, officers were congratulatory and have insisted that the CAB should be well known to staff and throughout the institution.

### **Forensic Early Intervention Services**

TSDC's Forensic Early Intervention Services (FEIS) commenced its work on January 12, 2015. This is the first unit of its kind in Canada. This project is a collaboration between the Ministry of Community Safety and Correctional Services and the Centre for Addiction and Mental Health (CAMH) and provides early intervention forensic mental health services to inmates on remand, who amongst other things, may be at risk of being found unfit to stand trial.

### **Medical unit**

TSDC's medical unit opened 30 beds on February 27, 2015 and the Mental Health Assessment Unit is slated to open 14 beds the week of March 30, 2015.

### **TSDC management/staff and the CAB**

It would be difficult for the CAB to operate effectively without the knowledge and support of managers, staff and the Director. The challenge faced by the facility administration is a lack of resources and/or staff to provide documents and/or statistics, which the CAB finds problematic

and challenging. A key challenge for the Director in the coming months will be to continue to improve methods of detailed reporting to enable the CAB to understand more, the function and management of the detention centre to provide quality annual reporting.

At present, the CAB is working with the Director to improve both statistical reporting and providing it to the CAB.

### **Health care unit**

There are issues in getting the health care unit up and running, which has provided challenges to staff and inmates. On several occasions, CAB members visited the various units. From discussions with inmates and correctional officers, mostly in the segregation unit, it is apparent that there is a need to get the mental health unit opened. The major issue has been hiring the appropriate number of qualified staff to fill the available positions.

### **Use of segregation beds for mental health patients**

Many of the inmates have behavioural issues secondary to a medical/mental health problem and cannot be accommodated safely in a regular unit.

### **Special needs unit**

The special needs unit is actually a segregation unit but is currently being used for special needs as the new special needs unit is under construction and expected to open in June 2015. One of the biggest issues with the current system is that many of these offenders should probably be in another environment rather than being confined to a small single cell. It does not help their mental health condition and puts a strain on the system. Most importantly, it is not appropriate for the individual. This is a huge problem since mental health hospitals have been closed in the province.

### **Information gathering**

The Director has started to provide CAB members with statistics on the number of incidents reported on a monthly basis, including statistics relating to reportable incidents such as deaths, suicide attempts, self-harm, serious injury, the use of contraband, lockdowns and assaults (inmate-on-inmate and inmate-on-staff). CAB members will be able to monitor these numbers on a monthly basis.

### **Use of force**

There are a number of instances where the use of force has been required. Much of this, and other issues/challenges faced by staff at the institution can be related to staffing. This can create a domino effect – when the institution is short-staffed, the inmates cannot be provided with all of their privileges. In turn, inmates get angry which can lead to the use of force.

### **Staff shortages**

CAB members discussed with the Director the concern about the institution being short-staffed on many occasions. Sometimes there are up to 25 per cent of staff calling in sick on a single day. This seems to be of concern to the management; they are, however, not sure what can be

done. It is apparent that when the institution is short-staffed, inmates must remain on lockdown. This has resulted in inmates being denied access to regular privileges such as showers.

### **Local community events**

TSDC staff participated in a number of local community events over the past year. Here are some of the highlights:

- Direct Supervision Symposium hosted by TSDC; Ontario's first direct supervision symposium. Speakers from across Canada and the US were present to share their experiences with the direct supervision model
- Association of Black Law Enforcers Scholarship Ball
- World Pride Parade
- Summer Solstice Celebration hosted by TSDC
- Group of MCSCS staff ran from Toronto to Ottawa in support of the annual Canadian Police and Peace Officers' Memorial in Ottawa
- Women in Corrections networking sessions
- Fundraising dinner organized by TSDC in partnership with Dicle Islamic Society to provide Christmas holiday dinners for 30 families in Aboriginal communities through the White Buffalo Road Healing Lodge
- An International African Inventors Museum Exhibit held at TSDC to celebrate Black History Month

### **Programming and relationships with the community**

TSDC offers a wide variety of programs for inmates and is always looking for new volunteers to assist with a variety of tasks. The prevalence of inmates with children is remarkable. It is estimated by one CAB member that at least one third of inmates have children, hence the importance of exploring programming options that could allow for greater interaction between inmates, their children and the surrounding community. TSDC provides multiple programs to its inmates to help them deal with personal matters and prepare for release into the community.

### **Recruitment of staff**

TSDC has struggled with recruiting staff over the past year. There is a shortage of staff within the institution and recruiting nurses has been a particular challenge. It is difficult recruiting individuals for healthcare positions in the field of corrections. In addition, the salary scale for nurses at MCSCS is lower than the scale for nurses employed by hospitals. There is nothing that can be done about this given that salary scales are determined through the collective bargaining process. TSDC brought in an HR Assistant to help with recruitment for a six-month period extending into the 2015-16 reporting year.

### **Media coverage**

TSDC was mentioned in major Canadian newspapers on several occasions over the past year. There are concerns that some of the articles relating to the institution contain inaccurate facts. As a result, the public is not getting an accurate picture of the institution.

### **Intermittent Centre**

Over the weekend there are approximately 360 offenders who report to the facility to complete their weekend (intermittent) sentences. It is completed in a very orderly manner, however, offenders can be standing – sometimes in the cold – in a confined environment with many others waiting for intake.

### **Smoking and use of drugs**

During a site visit there was an odor of cigarette smoke in two units. Correctional officers explained it is an ongoing problem with cigarettes and drugs and there are limitations on what officers can do to search for drugs. The chair scanner, for example, cannot detect drugs hidden in the body. Correctional officers agree that more has to be done to stem the flow of drugs in the centre. Another problem is that inmates will smoke when correctional officers are around, and some will condone smoking.

### **Direct and indirect program impact**

It was noted with the direct and indirect supervision method, there was an increase from last year of inmate and officer assaults, along with an increase in mental health issues.

## **Consolidated list of recommendations**

### **Staffing**

1. The ministry needs to support TSDC and other detention centres across Ontario in their struggles to hire and retain health care and social work staff by creating attractive benefits/incentives.
2. The ministry needs to work with TSDC to review staffing requirements in order to minimize and/or avoid lock-downs due to staff absenteeism.
3. A larger number of employees are calling in sick on a regular basis and steps should be taken to determine how to address the situation.
4. The ministry needs to evaluate the impact of the direct and indirect supervision models on staff. There has been an increase in incidents of inmate-on-staff assaults.

### **Inmates with special care needs**

5. The Ministry should work together with the courts to ensure that inmates with mental health and addiction challenges are sent for proper treatment elsewhere, rather than to detention centres such as TSDC.
  - Now that the mental health assessment unit is open, there should be ongoing monitoring of segregation incidents and mental health referrals.
6. Ensure that better treatment and programs are in place for persons with disabilities, HIV and mental health issues.
7. There is the need for continuous monitoring to ensure that the current administrative, punitive and medical reasons for the use of segregation are bias free and that certain groups are not overrepresented in segregation.

### **Contraband and violence**

1. There is the need to develop individualized safety and performance security measures for contraband and violence in each tower/wing or unit.

2. The Ministry needs to explore best practices in combating the increased presence of drugs at TSDC, for example:

- Introducing a zero-tolerance drug policy
- Prosecuting those found with drugs
- Introducing a routine urine drug-testing program
- Offering treatment to those with addiction challenges (refer to Recommendation 5 under Inmates with special needs)

### **Use of force**

Monthly incident updates from TSDC's management indicate an increase in the number of incidents involving use of force. There is a need for the ministry to ensure that:

- Use of force occurs only when necessary
- TSDC staff and management follow ministry policies on use of force
- All use of force incidents are reported and documented as required without withholding any information
- Regular discussions take place surrounding use of force
- TSDC staff are trained on how to use the minimum amount of force necessary in each situation
- Individuals should be better trained on the use of force that is unreasonable or unnecessary.

### **Others**

There is a need to make the Offender Tracking Information System more readily available to CAB members for a better understanding of program participation.

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October 27, 2015

Mr. Wesley Crichlow

Community Advisory Board Chair

Toronto South Detention Centre

Dear Mr. Crichlow:

Thank you for your submission of the Community Advisory Board (CAB) 2014 Annual Report for

the Toronto South Detention Centre (TSDC).

The Ministry of Community Safety and Correctional Services' constant focus is on transforming Ontario's correctional system to improve staff and inmate safety, provide effective rehabilitation and reintegration programs, and strengthen inmate mental health supports. Moving forward in these key areas is at the very core of building safer, stronger communities right across our province. We cannot do this without the commitment of individuals such as you and the other dedicated volunteers who make up our Community Advisory Boards. Your local perspective is invaluable to strengthening the links between our correctional facilities and our communities.

I have reviewed your report and appreciate the thoughtful comments you have made about TSDC. You will be pleased to know that there is a zero tolerance policy for contraband in the institution. The ministry currently has policies and procedures in place to detect and eliminate the introduction of contraband into provincial institutions. In addition to these existing policies and procedures, the TSDC has begun a piloting project regarding the use of the SecurPass body scanner in the Admitting/Discharge unit to conduct inmate body scans for contraband upon admission.

Deputy Minister Stephen Rhodes will be responding in detail to each of the valuable recommendations you have made. Please accept my sincere thanks for this report, your work with the Superintendent, and your role in the community.

Sincerely,

Yasir Naqvi

Minister

**Ministry of Community Safety  
and Correctional Services**

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October 27, 2015

Mr. Wesley Crichlow

Community Advisory Board Chair

Toronto South Detention Centre

Dear Mr. Crichlow:

Thank you for your submission of the Community Advisory Board (CAB) 2014 Annual Report for the Toronto South Detention Centre (TSDC). The Annual Report has been reviewed by ministry staff and several recommended actions have been taken.

As the Honourable Yasir Naqvi, Minister of Community Safety and Correctional Services, noted in his letter to you, the Ministry of Community Safety and Correctional Services' constant focus is on transforming Ontario's correctional system to improve staff and inmate safety, effective rehabilitation and reintegration programs, and strengthening of inmate mental health supports. Moving forward in these key areas is at the very core of building safer, stronger communities right across our province.

I am pleased to provide the following responses and recommended actions to the recommendations put forward in the TSDC Annual Report:

1. **Staffing/Hiring of Staff: It is essential that the staff are carefully selected, properly trained, supervised and supported. The ministry needs to work with TSDC to review staffing requirements in order to minimize and/or avoid lock-downs due to staff absenteeism. The ministry needs to evaluate the impact of the Direct and Indirect Supervision models on staff.**

The safety and security of both staff and inmates is a top priority. Lockdowns do occur to ensure the safety and security of both staff and inmates. Lockdowns occur due to a variety of reasons, including staff shortages, which sometimes result from a combination of vacation leaves, sick leaves and other leaves taking place at the same time. Every effort is made to maintain the regular schedule of visits, programming and other services and when a lockdown is required, partial or individual unit lock downs are always preferred to a facility lockdown.

The ministry has been actively recruiting correctional officers since March 2013 once the moratorium on recruitment was lifted. As a result, a total of 480 recruits have graduated from Correctional Officer Training and Assessment (COTA) program at the Ontario Correctional Services College (OCSC) and 104 have been assigned to TSDC.

Recruitment is ongoing and we continue to hire and train new staff through the OCSC.

Direct supervision has been implemented at TSDC and the South West Detention Centre in Windsor. The direct supervision model encourages positive interaction between staff and inmates by placing correctional officers inside a living unit, enabling inmates to move freely within the unit, eat meals and congregate in a common area. Direct supervision allows correctional officers to build direct relationships with inmates and serve as positive role models while being present to prevent and address negative and threatening inmate behaviour before it escalates. The ministry's Program Effectiveness and Statistical and Applied Research (PESAR) unit will be conducting a review of the available statistics to assess the impact of the direct supervision model.

2. **Inmates with Special Care Needs and Use of Segregation: The ministry should work with the courts to ensure that inmates with mental health and addiction challenges are sent for proper treatment elsewhere, rather than to detention centres such as TSDC. There should be ongoing monitoring of segregation incidents and mental health referrals. Ensure that better treatment and programs are in place for persons with disabilities, HIV and mental health issues. There is the need for continuous monitoring to ensure that the current administrative, punitive and medical reasons for the use of segregation are bias free, and that certain groups are not overrepresented in segregation.**

All ministry institutions have health care staff and medical services available to provide care to inmates within the facility. Partnerships are also maintained for medical services not provided by the institution, and specialized treatment, in the local community.

Since January 2015, TSDC, in collaboration with the Centre for Addiction and Mental Health (CAMH), introduced a new mental health screening and assessment process for all inmates upon admission. The new screening will ensure that inmates with mental health concerns are identified as early as possible and referred to the appropriate professional(s) and services. The assessment tool used as part of the screening process was initiated at all other institutions in late September 2015. Social workers, mental health nurses, and psychologists received training on the new process on June 24 and 25, 2015.

In terms of the Mental Health Assessment Unit at the TSDC, as of March 31, 2015, 14 of the 26 beds in the Mental Health Assessment Unit were open. Inmates are placed in the Mental Health Assessment Unit (MHAU) based on their needs and ongoing assessment. We are continuing to move forward opening additional beds as additional staff are hired and trained.

The ministry has initiated a review of the use of segregation in provincial institutions and our segregation policies. The review will include consultation with staff and various stakeholders. It will also examine the best practices of other jurisdictions. The final report will be submitted with findings/recommendations for the ministry's action in December 2015.

**3. Contraband and Violence: There is the need to develop individualized safety and performance security measures for contraband and violence in each tower/wing or unit. The ministry needs to explore best practices in combating the increased presence of drugs at TSDC.**

The ministry has a number of mechanisms and policies and procedures in place to detect and eliminate the introduction of contraband into provincial institutions. They include:

- Random searches;
- The Body Orifice Security Scanner (B.O.S.S.) chair;
- Canine units;
- CCTV cameras;
- Dedicated security teams;
- Field Intelligence Officers;
- Walk through metal detectors;
- Hand held security wands; and
- X-ray machines.

The ministry has a zero tolerance drug policy. A dedicated ministry Canine Unit was established and activated in March 2013. The Canine Unit is a valuable and additional search resource for provincial correctional institutions and assists with the detection, deterrence and prevention of contraband (e.g., drugs, firearms and ammunition). Security measures and requirements are reviewed and updated on an ongoing basis to reduce and eradicate contraband.

Additionally, on August 31, 2015, TSDC began piloting the use of the SecurPass body scanner in the Admitting/Discharge unit to conduct inmate body scans for contraband upon admission.

Ministry core programming is offered in all provincial institutions. Core Programs are rehabilitative programs that target those criminogenic factors most common among offenders (anger management, substance abuse and criminal thinking) and for two offender groups who pose a threat to public safety (sex offenders and domestic violence offenders).

Ministry volunteer programs include one-on-one counseling and group substance abuse support programs like Alcoholics Anonymous and Narcotics Anonymous.

Institution staff resources such as social workers and rehabilitation officers are available to provide assistance, treatment, and counselling to inmates for a wide range of issues including substance abuse and anger management. The institution health care unit is also available to provide treatment, such as the methadone program or other medical and counselling services to assist inmates with substance abuse issues.

**4. Use of Force: Monthly incident updates from TDSC's management indicate an increase in the number of incidents involving use of force.**

I understand that your board has received additional information from the TSDC Director which helps to explain the increased incidence of reported use of force.

As you know, following an Ombudsman report on the matter in 2013, the ministry made significant reforms to strengthen oversight, investigations and accountability including:

- Restructuring the existing investigations unit to ensure greater transparency and accountability in use of force investigations. The unit is strengthening compliance and accountability and streamlining investigations. Priority investigations, such as investigations of a criminal nature, will be conducted by the police service of jurisdiction, and will be overseen by seconded police officers from the Correctional Services Oversight and Investigations unit. Other investigations and compliance work is being conducted by ministry staff.
- Updating the ministry's use of force investigations policies and oversight to clarify operation expectations and ensure accountability. A Code of Conduct and Professionalism that sets behavioural standards both on and off duty for all correctional staff regardless of rank and has been distributed to employees.
- Establishing risk management teams in all correctional facilities to review investigations to ensure strict compliance with ministry policies.
- Appointing a use-of-force auditor to conduct random reviews of use-of-force incidents to ensure policies are being properly followed.

**5. CAB Access to the Offender Tracking Information System (OTIS): There is the need to make the OTIS system more readily available to CAB members for a better understanding of programme participation.**

OTIS is the system containing inmate personal information and files. Access to OTIS is restricted to ministry employees to ensure the integrity of the system. The Director is providing information on program participation to CAB monthly.

I appreciate the CAB indicating in its Annual Report the many TSDC success stories, including the Direct Supervision Symposium hosted by the TSDC on April 8 and 9, 2014. Speakers from across Canada and the US were present to share their experiences with the direct supervision model.

It is also great to see the participation and support provided by TSDC staff members at many community events such as the Association of Black Law Enforcers Scholarship Ball; the World Pride Parade; the MCSCS staff run from Toronto to Ottawa in support of the annual Canadian Police and Peace Officers' Memorial in Ottawa; Women in Corrections networking sessions; Movember; a fundraising drive organized by TSDC in partnership with Dicle Islamic Society to provide Christmas holiday dinners for 30 families in Aboriginal communities through the White Buffalo Road Healing Lodge; and Black History Month featuring an International African Inventors Museum Exhibit at TSDC.

Thank you for the work that you do and the role you play as volunteer members of the Community Advisory Board. Please be assured that the ministry values your input and recommendations. Your commitment and dedication is admirable and your positive working relationship with management and staff at the TSDC is commendable. I am looking forward to your ongoing support as we further this very important work.

Sincerely,

Stephen Rhodes

Deputy Minister of Correctional Services

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**RAYMOND LAPPLE ET AL.**

Plaintiffs  
and  
HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF ONTARIO  
Defendant

Court File No.: CV-16-558633-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto  
Proceeding under the *Class Proceedings Act, 1992*

**MOTION RECORD**

(Certification Motion returnable December 6, 2017)  
**Volume 1**

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