

FATHIMA CADER

Cader Law
c/o Centre for Social Innovation
720 Bathurst Street
Toronto ON, M5S 2R4

Tel: 416-318-7815
Fax: 647-689-6486

cader@caderlaw.ca
caderlaw.ca

URGENT

July 30, 2020

Mike Wood, Superintendent (Acting)
Ottawa-Carleton Detention Centre
2244 Innes Road
Gloucester, Ontario K1B 4C4

VIA EMAIL: mike.wood@ontario.ca
& VIA FACSIMILE: **613-824-0732**

Dear Superintendent Wood:

RE: Accommodations for Indigenous Prisoners at OCDC

We are counsel to the Criminalization and Punishment Education Project (“CPEP”) in the above-noted matter.

We and the undersigned write in response to concerns raised by Indigenous prisoners at the Ottawa-Carleton Detention Centre (“OCDC”), detailed below.

If you have legal counsel in this matter, please forward this letter to them and provide us with their contact information.

ABOUT THE CRIMINALIZATION AND PUNISHMENT EDUCATION PROJECT

CPEP is an initiative based out of Carleton University and the University of Ottawa. It brings together professors, students, community members, frontline workers, and those affected by criminalization and punishment to carry out research, public education, and jail oversight.

In 2018, CPEP launched the Jail Accountability & Information Line (the “JAIL Hotline”), which takes calls from people incarcerated at OCDC. It is an active resource for OCDC prisoners, including Indigenous prisoners. In its first year alone, the JAIL Hotline received over 3,400 calls.

OCDC ANNOUNCES COMMITMENT TO RECONCILIATION

Indigenous people make up only 5% of the general population in Canada, but over 30 percent those in federal custody and over a quarter of those in provincial and territorial custody.¹

¹ “Indigenous People in Federal Custody Surpasses 30%: Correctional Investigator Issues Statement and Challenge,” Office of the Correctional Investigator (202), online: <https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx>; “Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada’s Criminal Justice System,” Department of Justice (2017): <https://www.justice.gc.ca/eng/rp-pr/jr/gladue/p2.html>

In 2016, the Ministry of the Solicitor General (the “Ministry”) established the Ottawa-Carleton Detention Centre Task Force (the “Task Force”) to improve the health and safety of OCDC prisoners, among other matters.²

The Task Force recommended that the Ministry “provide increased spiritual/cultural counselling and programming” for Indigenous prisoners.³ In the Task Force’s first progress report, the Ministry expressed its “commit[ment] to reconciliation with Indigenous peoples and to addressing issues facing Indigenous people in all aspects of the justice system.”⁴

In 2017, the Province of Ontario announced OCDC had “increased spiritual/cultural counselling and programming for the diverse [prisoner] population at the OCDC.”⁵

INDIGENOUS PRISONERS CONTINUE TO FACE DISCRIMINATION AT OCDC

Despite the above announcements, incarcerated people who are Indigenous have reported to CPEP that they continue to face significant cultural and spiritual challenges at OCDC. We detail these below.

1. OCDC Fails to Provide Traditional Medicines

The Ministry’s “Correctional Services’ Indigenous Rights” Policy (the “Policy”) provides that prisoners must be provided with essential traditional medicines upon request.⁶ However, Indigenous prisoners report that OCDC staff frequently seize their medicines, including sage, cedar, and sweet grass, during searches of their cells.

As well, OCDC has refused to provide Indigenous prisoners with tobacco, which is a traditional Indigenous medicine. It is used in sacred ceremonies and not for personal consumption.

2. OCDC Desecrates Traditional Medicines

The traditional medicines are stored in small leather bags, also called medicine bags or medicine pouches. They are used in circles, smudges, and sweat lodges, or are worn around the neck, with the purpose of providing comfort, prayer, and guidance.

The Ministry’s Policy states the traditional medicines “will be held in suitable containers to avoid staff directly handling medicines.”⁷ Thus, normally, OCDC staff would provide Indigenous

² “Ottawa-Carleton Detention Centre Task Force,” Ministry of the Solicitor General (2017), online: <http://www.mcscs.jus.gov.on.ca/english/Corrections/OCDCTaskForceReportback.html>

³ “Ottawa-Carleton Detention Centre Task Force Action Plan,” Ministry of the Solicitor General (2017), online: <http://www.mcscs.jus.gov.on.ca/english/Corrections/OttawaCarletonDetentionCentreTaskForce/OCDCTaskForceActionPlan.html>

⁴ “Ottawa-Carleton Detention Centre Task Force Recommendations,” Ministry of the Solicitor General (2016), online: <https://www.mcscs.jus.gov.on.ca/english/Corrections/OttawaCarletonDetentionCentreTaskForce/OCDCTaskForceProgressReport1.html>

⁵ “All Short Term Recommendations Addressed at Ottawa-Carleton Detention Centre,” Province of Ontario (2017), online: <https://news.ontario.ca/mcscs/en/2017/01/all-short-term-recommendations-addressed-at-ottawa-carleton-detention-centre.html>

⁶ “Policies and Guidelines: Indigenous Spirituality,” Ministry of the Solicitor General (2017), online: <https://www.mcscs.jus.gov.on.ca/english/Corrections/Policiesandguidelines/CorrectionsIndigenousSpiritualityPolicy.html>

⁷ “Policies and Guidelines: Indigenous Spirituality,” Ministry of the Solicitor General (2017), online: <https://www.mcscs.jus.gov.on.ca/english/Corrections/Policiesandguidelines/CorrectionsIndigenousSpiritualityPolicy.html>

prisoners with their traditional medicines in leather pouches. Other institutions provide the traditional medicines in see-through containers.

However, Indigenous prisoners report that that OCDC staff have been handling their sacred medicines without bags and with their bare, gloveless hands. This is spiritual desecration.

This also poses significant health and safety concerns, as prisoners are at heightened risk of COVID-19 infection. As the Ontario Superior Court of Justice recently noted about pandemic conditions at OCDC specifically: “prisoners cannot adequately socially isolate, nor wash their hands with frequency in the jail.”⁸

3. OCDC Prohibits Smudging

Smudging is an Indigenous cleansing ceremony, typically involving smoke from sweet grass or sage brush.

The Ministry’s Policy provides about smudging:

Indoor accommodations are to be provided where and when required and can take place in chapels or program rooms. [...] Methods that may be used to minimize smoke when burning medicines indoors include the use of an air/smoke purifier, fans, ventilation and opening of windows.⁹

Contrary to the Policy, OCDC staff have refused to allow Indigenous prisoners to smudge in OCDC’s program room, even though the room has venting and fan capabilities and was used for smudging in the past. As a result, when the weather is inclement and prisoners are not allowed outside, Indigenous prisoners at OCDC are unable to smudge at all.

4. OCDC Prohibits Sweat Lodge and Longhouse Use

OCDC built a sweat lodge and longhouse on its premises in June 2019, but Indigenous prisoners have not had access to the sweat lodge since the summer of 2019.

5. OCDC Cancels Change-of-Season Ceremonies

Change-of-season ceremonies occur on an approximately quarterly basis.

The Ministry’s Policy provides that the feasts associated with these ceremonies can be conducted in penal institutions and must be coordinated by an Indigenous resource person.¹⁰

Despite this policy, OCDC has not allowed Indigenous prisoners to practise a change-of-seasons ceremony since June 21, 2019. The most recent change-of-season ceremony was

⁸ *R. v. Cain*, 2020 ONSC 2018 (CanLII), <http://canlii.ca/t/j65jk>, para 7.

⁹ “Policies and Guidelines: Indigenous Spirituality,” Ministry of the Solicitor General (2017), online: <https://www.mcscs.jus.gov.on.ca/english/Corrections/Policiesandguidelines/CorrectionsIndigenousSpiritualityPolicy.html>

¹⁰ “Policies and Guidelines: Indigenous Spirituality,” Ministry of the Solicitor General (2017), online: <https://www.mcscs.jus.gov.on.ca/english/Corrections/Policiesandguidelines/CorrectionsIndigenousSpiritualityPolicy.html>

scheduled for June 21, 2020. OCDC cancelled this ceremony, on the basis of the blanket assumption that outside food could be contaminated with the COVID-19 virus.

6. OCDC Fails to Provide Interpreters for Inuit Prisoners

Several OCDC prisoners are Inuit, many of whom do not speak English well or at all. We have been informed that OCDC does not provide Inuit translators. These prisoners struggle to understand, speak, and read English. This impairs their ability to understand OCDC rules and regulations, as well as to communicate with prison officials. This renders these prisoners especially vulnerable to OCDC discipline.

7. OCDC Fails to Provide Culturally Appropriate Diet

Food is an integral part of Indigenous knowledges and practices. Several of the Indigenous prisoners are from reserves, where Indigenous diets are typically based around game meat. They experience significant difficulty consuming the meat provided in OCDC's meal trays. Despite this, Indigenous prisoners are denied this traditional diet at OCDC.

8. OCDC Fails to Participate in Discussions About COVID-19 Accommodations

Indigenous prisoners at OCDC recognize the importance of physical distancing, handwashing, and mask-wearing during the pandemic. The conditions of their incarceration (including guards coming in and out of the institution, the ongoing admissions of new prisoners, shared toilets, no masks, etc.) make observing these public health measures difficult and sometimes impossible.

Indigenous prisoners at OCDC also recognize that the pandemic may pose challenges to the typically communal nature of their traditional ceremonies and practices. When making the above-enumerated requests, they have expressed their willingness to consider reasonable modified or alternative spiritual activities during the pandemic.

However, OCDC has refused to discuss alternatives with prisoners. Instead, as described above, OCDC has elected to suspend some Indigenous spiritual programming altogether, such as smudging or change-of-season ceremonies. Indigenous prisoners report feeling demeaned and alienated by OCDC's refusal to even talk with them about accommodations.

INDIGENOUS PRISONERS HAVE A RIGHT TO SPIRITUAL PROGRAMMING

Access to spiritual programming is a right, not a privilege. Courts and governmental bodies have long condemned the challenges Indigenous prisoners are facing at OCDC.

For example, the Supreme Court of Canada has held that the impact of colonization has been devastating for Indigenous communities, with one consequence being the mass incarceration of Indigenous people behind bars.¹¹

¹¹ *R. v. Ipeelee*, 2012 SCC 13 (CanLII), <http://canlii.ca/t/fqg00> at para 60. See also *R. v. Bourdon*, 2018 ONSC 3431 (CanLII), <http://canlii.ca/t/hsgbd>, para 407.

Last year, the Ontario Superior Court of Justice found that the failure to provide Indigenous programming to an Indigenous prisoner contributed to a violation of the *Canadian Charter of Rights and Freedoms*.¹²

The Truth and Reconciliation Commission noted that access to Indigenous cultures and spirituality can contribute to healing for Indigenous prisoners.¹³

The Auditor General has observed that despite making the enhancement of correctional interventions for criminalized Indigenous people a corporate priority, Indigenous prisoners in CSC custody did not have timely access to programming designed to meet their special needs, even though CSC's own research shows that "participation in culturally specific programs and interventions, preferably delivered by Indigenous people, is a major factor contributing to Indigenous [prisoners'] success upon release."¹⁴

OCDC HAS A DUTY TO ACCOMMODATE INDIGENOUS PRISONERS

Canada's criminal statutes stipulate that correctional policies, programs, and practices should be responsive to the unique circumstances and needs of Indigenous people.¹⁵

Ontario's *Human Rights Code* requires OCDC to accommodate Indigenous prisoners' spiritual beliefs up to the point of undue hardship.¹⁶ This duty involves both procedural and substantive elements, with the onus resting on OCDC to establish it has met both elements.

Ensuring Indigenous prisoners have access to spiritual practices is an essential component of OCDC's stated commitment to reconciliation and rehabilitation. Indigenous prisoners at OCDC are experiencing an exacerbated sense of estrangement from culture and community, due to OCDC's ongoing failure to accommodate their spiritual needs.

RESOLUTION

CPEP requests the following rectifications within 2 weeks of this letter:

1. OCDC will provide Indigenous prisoners with tobacco for spiritual use.
2. OCDC will give all traditional Indigenous medicines in medicine bags to Indigenous prisoners without seizing them during searches. OCDC will hold all traditional Indigenous medicines in medicine bags or see-through containers. OCDC staff will not directly handle the medicines with their bare hands.

¹² *R. v. Capay*, 2019 ONSC 535 (CanLII), <http://canlii.ca/t/hx7xk>, para 480-482. See also *R. v. Francis-Simms*, 2017 ONCJ 402 (CanLII), <http://canlii.ca/t/h49f9>, para 48.

¹³ "Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada," Truth and Reconciliation Committee (2015), online: http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf at p.176.


¹⁴ "Report 3—Preparing Indigenous Offenders for Release—Correctional Service Canada," Office of the Auditor General of Canada (2016), online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html

¹⁵ *Corrections and Conditional Release Act*, [SC 1992, c 20](#), section 4(g); *Criminal Code*, [RSC 1985, c C-46](#), section 718.2(e).

¹⁶ [RSO 1990, c H.19](#).

3. OCDC will allow Indigenous prisoners to smudge indoors if the weather is inclement.
4. OCDC will allow both Indigenous prisoners of all genders to use the sweat lodge and longhouse.
5. OCDC will reinstate change-of-season ceremonies.
6. OCDC will provide interpreters for Inuit prisoners.
7. OCDC will provide an alternate diet for Indigenous prisoners from reserves (akin to the alternative diets provided for vegetarian, Muslim, and Jewish prisoners at OCDC). OCDC will work with Indigenous organizations in and around Ottawa to source game meat for said diet.
8. OCDC will ensure guards know and follow all existing laws, policies, guidelines, procedures, and standing orders that protect the rights of Indigenous people who are incarcerated.
9. In implementing the above measures, OCDC will consult with CPEP, Native Inmate Liaison Officers, Indigenous prisoners, and Indigenous organizations to confirm what reasonable measures are necessary to ensure compliance with COVID-19 advice from federal, provincial, and local public health authorities.

Prisoners at OCDC remain committed to working with OCDC in good faith to address these concerns. We look forward to your response.

Sincerely,

Fathima Cader
Barrister and Solicitor

Cc:

1. Criminalization and Punishment Education Project (via email: cpep.action@gmail.com)
2. Suzanne McGurn, Ministry of the Solicitor General (via email: Suzanne.McGurn@ontario.ca)
3. Raj Dhir and Insiya Essajee, Ontario Human Rights Commission (via email: raj.dhir@ohrc.on.ca and Insiya.Essajee@ohrc.on.ca)

Select Individual Signatories:

1. A. Flaminio
2. Beverly Jacobs
3. Chelsea Vowel
4. Chief Don Tom
5. Megan Scribe
6. Pam Palmater

Organizational Signatories:

1. Abolition Convergence Toronto
2. All IN
3. Anti-Carceral Group
4. Anti-Colonial Committee of the Law Union of Ontario
5. ArtReach

6. Asbury Park Transformative Justice Project
7. Atira Women's Resource Society
8. BC Civil Liberties Association
9. Black Internationalist Unions
10. Black Legal Action Centre
11. Books to Prisoners Ottawa
12. Butterfly
13. Canadian Association of Muslim Women in Law (CAMWL)
14. Canadian Federation of Students
15. Canadian HIV/AIDS Legal Network
16. Canadian Lawyers for International Human Rights (CLAIHR)
17. Canadian Prison Law Association
18. Canadian Students for Sensible Drug Policy
19. Canadian Students for Sensible Drug Policy, Ryerson
20. Cap City Cyphers
21. Chinese & Southeast Asian Legal Clinic
22. Coalition Against More Surveillance (Ottawa)
23. Colour of Poverty Colour of Change
24. Congress of Aboriginal Peoples
25. Continuing Education Students' Association of Ryerson
26. Council of Agencies Serving South Asians
27. Council of Elizabeth Fry Societies of Ontario
28. Campaign Against Criminalising Communities (CAMPACC)
29. Carleton University Students' Association
30. Elizabeth Fry Society of Kingston
31. Elizabeth Fry Society of Northeastern Ontario
32. Elizabeth Fry Society of Peterborough
33. Free Lands Free Peoples
34. Global Prison Abolitionist Coalition
35. HAMSMaRT (Hamilton Social Medicine Response Team)
36. HIV & AIDS Legal Clinic Ontario (HALCO)
37. In Our Tongues
38. Jacobs Law
39. Jail Accountability and Information Line
40. LAL INC.
41. Lausan Collective Hong Kong
42. Law Students for Decriminalization & Harm Reduction
43. Law Union of British Columbia
44. Muslim Family Services of Ottawa
45. No More Silence
46. OCASI - Ontario Council of Agencies Serving Immigrants
47. Ontario Coalition Against Poverty
48. Ottawa Sanctuary City Network
49. P4W Memorial Collective
50. Palestinian Youth Movement Toronto
51. Parkdale Community Legal Services, Inc.
52. Pivot Legal Society
53. Prisoners' Legal Services
54. Punjabi Community Health Services
55. Queen's Coalition Against Racial and Ethnic Discrimination
56. Queen's Prison Law Clinic
57. Rittenhouse: A New Vision
58. S.T.A.N.D. for Prison Justice (UBC)
59. Saskatchewan-Manitoba-Alberta Abolition Coalition
60. SKETCH Working Arts
61. Socialist Workers Alliance of Guyana
62. South Asian Legal Clinic of Ontario
63. Stop Racial Profiling Committee of the Law Union of Ontario

64. Sunshine House Inc
65. Termite Collective
66. The Asbury Park Transformative Justice Project
67. The Centre for Justice Exchange
68. The Get REAL Movement Inc.
69. Toronto Harm Reduction Alliance
70. Toronto Prisoners' Rights Project
71. Vancouver Prison Justice Day Committee
72. Women's Wellness Within
73. Yoga Unity
74. YouthSpeak Ottawa