



Prisoners' Legal Services

A Project of the Westcoast Prison Justice Society

August 17, 2020

VIA EMAIL

Anne Kelly, Commissioner
Correctional Service Canada
340 Laurier Avenue West
Ottawa, Ontario K1A 0P9

Dear Ms. Kelly:

RE: Shane Yukich – staff misconduct, denial of legal counsel and inappropriate use of conditions under the BC *Mental Health Act*

I am writing to raise urgent concerns regarding Shane Yukich, who has been in the Structured Intervention Unit (“SIU”) at Kent Institution (“Kent”) since June 24, 2020. We understand this is his fourth placement in the last approximately three months.

Mr. Yukich has been diagnosed with treatment-resistant schizophrenia and has a long history of hospitalizations for mental health concerns, including delusions (paranoia) and auditory hallucinations.¹ He has been subject to long-term isolation, both at mainstream institutions and CSC treatment centres.

We have brought Mr. Yukich’s circumstances to your attention on multiple recent occasions, including the persistent obstruction of Mr. Yukich’s right to counsel and procedural fairness, but have received no response or resolution.

We are now even more concerned for Mr. Yukich’s wellbeing after hearing from another prisoner also housed in the SIU that officers purposefully antagonize and abuse Mr. Yukich. We write to urge you to immediately convene an investigation under s. 20 of the *Corrections and Conditional Release Act* and address Mr. Yukich’s conditions of confinement without delay.

¹ Psychological Risk Assessment, July 28, 2020.

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Staff misconduct and abuse

Recently, PLS has received reports that officers in the SIU take advantage of Mr. Yukich's mental health disabilities to harass and mistreat him. A prisoner reported overhearing one officer telling another he only spoke to Mr. Yukich in Punjabi in order to confuse him.

A prisoner also reported hearing Mr. Yukich asking officers for legal calls, and that officers would respond by telling him to put in request forms, which Mr. Yukich would say he had done repeatedly. This report came contemporaneous to PLS having placed three call-back requests for Mr. Yukich via fax between August 5 and 13, 2020. We have not heard from him since August 4, 2020.

A witness also reported that Kent Institution failed to provide for Mr. Yukich's feces smeared cell to be cleaned for multiple days, and reported hearing Mr. Yukich repeatedly screaming for help while in isolation in his SIU cell.

Mr. Yukich (who has a history of suicide attempts and self-harm) has also reported to PLS he believes correctional officers want to antagonize him to the point that he kills himself. He also reports he believes the assault against him that led to his SIU placement was facilitated by correctional officers.

Mr. Yukich's diagnosis of schizophrenia and CSC's descriptions of him as delusional and paranoid mean that his reporting of mistreatment may be easily dismissed. This makes him extraordinarily vulnerable to abuse.

Inappropriate use of the Mental Health Act and conditions of solitary confinement

We are also extremely troubled to learn that Mr. Yukich is certified under the BC *Mental Health Act* and is at Kent on "extended leave" — a provision normally used to allow psychiatric hospital patients to reside in the community while remaining certified.

Leave is provided for under s. 37 of the BC *Mental Health Act*, which specifies that: "if the director considers that leave would benefit a patient detained in the designated facility, the director may release the patient on leave from the designated facility providing appropriate support exists in the community to meet the conditions of the leave." Similarly, the BC Ministry of Health's "Guide to the Mental Health Act" explains that leave "should have anticipated therapeutic value for the involuntary patient," and that "[e]xtended leave is intended to be a

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client-centred therapeutic intervention” that should be used to “optimize an involuntary patient’s potential for community living.”²

In this case, leave is being used to house Mr. Yukich in an even *more* restrictive and *less* supportive environment than a mental health facility. It is hard to imagine how placement at a maximum security institution or in an SIU could be to the benefit of Mr. Yukich.

Mr. Yukich advises that he spends virtually all day isolated in his cell with nothing to do. He explains he spends most of the day pacing back and forth, which is what he has been doing to occupy his time for years. He has no TV or radio. He reports his family has sent him a penitentiary package, but that the Warden is not permitting him to have it as long as he is in the SIU. Mr. Yukich further advises that he has very limited contact with health and mental health care in the SIU. He explains they generally speak to him through the hatch in his door, which makes it very difficult to hear and is not confidential. He reports he is supposed to receive physical therapy but this has not been occurring. Mr. Yukich describes extremely restrictive conditions, including being escorted in body shackles by what he estimated was 12 officers just to go to yard. He reports being given cold showers.

Mr. Yukich’s conditions constitute solitary confinement, which is well-known to cause serious psychological harm, even for people *without* preexisting mental health disabilities. Despite this, CSC documents indicate Kent mental health staff have “no concerns” with his continued placement in the SIU.³ It is also very concerning that, given Mr. Yukich’s reporting about his isolation, his conditions have not to our knowledge triggered an Independent External Decision Maker review under s. 37.83 of the *Corrections and Conditional Release Act* (“CCRA”).

Denial of procedural fairness rights and right to counsel

Mr. Yukich’s circumstances are unacceptable and demonstrate that without adequate external oversight, abuse of vulnerable prisoners runs rampant.

As we have written to you, Mr. Yukich has been denied his right to counsel and procedural fairness throughout his time in the SIU. PLS has been raising this issue with respect to Mr. Yukich since May 2020, but Kent has repeatedly declined to share Mr. Yukich’s SIU documents, the dates of his SIU reviews, or the deadlines for making submissions. This is despite Mr. Yukich’s mental health disabilities *and*, according to his reporting, his own repeated requests to CSC for our assistance.

² See <https://www.health.gov.bc.ca/library/publications/year/2005/MentalHealthGuide.pdf>, pp. 27 and 29.

³ See Correctional Plan Update – SIU, July 30, 2020.

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This situation occurs after many months of Kent obstructing prisoners' right to counsel generally, including by cancelling our segregation clinic – which was designed to identify and remedy situations just like Mr. Yukich's.

Requested investigation and accommodation

We do not have faith that Kent will meaningfully investigate or address these concerns, and we request you immediately initiate an investigation under s. 20 of the CCRA into Mr. Yukich's circumstances and the broader issues they raise around prisoner abuse and interference with the right to counsel at Kent Institution.

We ask that staff found to be abusing Mr. Yukich or denying his rights to legal counsel be disciplined and prevented from working with prisoners with mental disabilities. We also ask that a review be conducted of leadership within CSC that allows these abuses to continue.

We further submit that Mr. Yukich should be returned to RTC immediately for the short-term, and be provided adequate daily meaningful human contact and activities. In the long-term, CSC should pursue an exchange of services agreement with the Forensic Psychiatric Hospital in Coquitlam, BC, which specializes in prisoners with profiles like Mr. Yukich's, under s. 29 of the CCRA. The Correctional Investigator of Canada has recommended that patients with serious mental health needs should be transferred to the care of external psychiatric facilities, and CSC must provide the resources to make this possible.

It is clear that CSC does not have the will or resources to provide Mr. Yukich with appropriate treatment for his disabilities, and we submit he must be housed somewhere that does, where his human rights and dignity will also be respected.

We kindly request a meaningful response to this correspondence in a timely fashion.

Yours truly,

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Jennifer Metcalfe
Executive Director

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- c: Dr. Colin Cameron, National Senior Psychiatrist, Correctional Service Canada (via email)
Alain Tousignant, Senior Deputy Commissioner, Correctional Service Canada (via email)
Jennifer Wheatley, Assistant Commissioner, Health Services, Correctional Service Canada (via email)
Senator Kim Pate (via email)
Dr. Ivan Zinger, Correctional Investigator of Canada (via email)
Alan Hilton, Independent External Decision Maker (via email)
Isha Khan, Senior Independent External Decision Maker (via email)
Dr. Anthony Doob, Chair, Structured Intervention Unit Implementation Advisory Panel / Professor Emeritus, Centre for Criminology and Sociolegal Studies, University of Toronto (via email)
Denis Boucher, Regional Deputy Commissioner, Correctional Service Canada (via email)
Marie Cossette, Warden, Kent Institution (via email)