



McGill Centre for Human
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SEMINAR SERIES

DISABILITY, HUMAN RIGHTS AND THE LAW SERIES 2015-2016

Prisons: the New Asylums for People with Disabilities?

November 9, 2015

Moderator: Robert Israel, *Associate Professor*, McGill University, Faculty of Law; *Lawyer*, Shadley Battista Costom; *Founder*, Innocence McGill

Resource Persons: Kim Pate (*Executive Director*, Canadian Association of Elizabeth Fry Societies (CAEFS)); Adelina Iftene (*SSHRC Postdoctoral Research Fellow*, Osgoode Hall Faculty of Law of York University); Chris Chapman (*Assistant Professor of Social Work*, York University)

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Summary of Seminar

The first speaker, **Kim Pate**, kicked off the seminar by speaking of the clear trend in the over-incarceration of indigenous women, especially those with mental illness. In 2003, Human Rights Watch documented the broader issue of the incarceration of the mentally ill and noticed that previous efforts to deinstitutionalize those with mental health issues were being overborne by recent trends to reinstitutionalize this vulnerable population. These trends surged from the criminalization of the mentally ill, and with many psychiatric wards closing across Canada, the mentally ill have been increasingly funneled into the prison system. As a result, the mentally ill have been more likely to be classified as being high-risk, because they are seen as being unpredictable, as posing a risk to the community, and as having difficulty adjusting to an institutional environment. And rather than being provided with therapeutic intervention and medication, these individuals' behavior is instead controlled through the use of segregation and other isolating mechanisms, which Ms. Pate explained either promotes the development of a mental illness, or exacerbates the symptoms of an existent one. In her conclusion, Ms. Pate calls for the end of segregation, not only for those with mental illnesses, but for all prisoners, and for the use of more appropriate health resources in dealing with vulnerable populations in the carceral system.

The second speaker, **Adelina Iftene**, spoke about the incarceration of people with disabilities, especially that of older offenders with both physical and mental disabilities. According to her own research, Ms. Iftene found that over 20% of inmates in federal institutions were over the age of 50, which for her was indicative of a serious and pressing problem. The incarceration of older offenders is related to many problems concerning the rise of offenders with disabilities and terminal and chronic illnesses,

which federal institutions are not equipped to deal with and accommodate. Ms. Iftene's presentation was based on data collected for the purpose of her doctoral research; her sample comprised 200 male inmates, over the age of 50, having both physical and mental illnesses who were housed in seven federal institutions across all levels of security. Ms. Iftene stresses the fact that, unlike women or Aboriginal offenders, who are recognized vulnerable groups, older offenders have not yet received such an acknowledgment. This lack of acknowledgment delays the implementation of solutions for helping to alleviate structural problems associated with the incarceration of an aging population. According to her research, Ms. Iftene found that 53% of her sample (103 out of 197) reported suffering from a physical disability; those who reported suffering from a physical disability also reported a higher number of related issues such as chronic pain, drug abuse, sleeping problems, and psychological and physical abuse. Ms. Iftene also took issue with the management in prisons of those with physical disabilities: facilities lack accessibility for older offenders, medical staff is often unavailable, and there is no notion of "compassionate release" in Canadian law. With respect to mental disabilities, 40% of the sample reported having at least one mental disorder; Ms. Iftene suspected that the prevalence of mental illness in prisons is much higher than reported, given the important stigma and abuse the mentally ill are exposed to. Of those who reported suffering from a mental illness, more than half reported having spent time in segregation and having disciplinary charges imposed on them. According to Ms. Iftene, these findings again reflect poor managerial structures and a lack of medical personnel in federal and provincial institutions. This has led, over the years, to the use of segregation as the main response to mental illness. Ms. Iftene concluded by stating that there are no clear solutions to the incarceration of those with mental and physical disabilities, yet better measures should be implemented to acknowledge and facilitate the management of those with such disabilities.

Chris Chapman, from York University, began by asking how it is permissible to imprison anyone for a long period of time, let alone those suffering from a disability; how can we justify imposing such injustices on these individuals? Mr. Chapman drew a parallel with the historical background in the United States, and the imprisonment of Blacks. Marginalized communities were often incarcerated because social norms made the imprisonment of racialized and colonized people acceptable and desirable. Therefore, incarceration was believed to be a positive, transformative, mechanism for rehabilitating inmates. Yet, through the years, incarceration instead became a tool for violence against those with mental disabilities in asylums; this violence persisted because, normatively, society believed that confinement was necessary for personal transformation. To this effect, Mr. Chapman recommended a focus on the relational aspect of institutionalization: given that interactions and relationships are highly scrutinized and controlled in the carceral environment, the focus should be on increasing accountability for prison staff.