Case Name:

R. v. Aziga

Between
Her Majesty the Queen, Respondent, and
Johnson Aziga, Applicant

[2008] O.J. No. 3052

78 W.C.B. (2d) 410

Court File No. 07/1122

Ontario Superior Court of Justice

T.R. Lofchik J.

Heard: June 18-20 and July 2, 3, 22 and 23, 2008.
Judgment: August 5, 2008.

(62 paras.)

Criminal law -- Constitutional issues -- Canadian Charter of Rights and Freedoms -- Legal rights -- Protection against cruel and unusual punishment -- Application by Aziga for a determination that the conditions of his pre-trial detention violated his right to be free from cruel and unusual punishment dismissed -- Aziga's medical isolation was necessary to protect others -- Also, Aziga received appropriate medical care and remained in reasonable health -- Furthermore, the staff of the correctional facility consistently attempted to facilitate Aziga's trial preparation -- Therefore, Aziga failed to establish that his detention conditions were so excessive as to constitute cruel and unusual treatment or punishment -- Canadian Charter of Rights and Freedoms, 1982, s. 12.

Criminal law -- Prison administration -- Conditions and treatment -- Application by Aziga for a determination that the conditions of his pre-trial detention violated his right to be free from cruel and unusual punishment dismissed -- Aziga's medical isolation was necessary to protect others -- Also, Aziga received appropriate medical care and remained in reasonable health -- Furthermore, the staff of the correctional facility consistently attempted to facilitate Aziga's trial preparation -- Therefore, Aziga failed to establish that his detention conditions were so excessive as to constitute cruel and unusual treatment or punishment -- Canadian Charter of Rights and Freedoms, 1982, s. 12.

Application by Aziga for a determination that the conditions of his pre-trial detention violated his right to be free from cruel and unusual punishment. Aziga was charged with two counts of first degree murder and 11 counts of aggravated sexual assault after having unprotected sex with several women without disclosing his HIV-positive status. Aziga was placed in custody in a maximum security provincial remand facility to await his trial. During his admission process, Aziga formally requested protective custody and expressly acknowledged that certain benefits and privileges normally available to the general population would potentially not be available to him. Subsequently, Aziga was placed in protective custody and remained there by his own choice. After two altercations in which Aziga intentionally bit another inmate, he was placed in close confinement. Aziga took the position that the conditions of his detention and a lack of proper medical treatment constituted a violation of his rights under section 12 of the Charter.

HELD: Application dismissed. While Aziga's altercations were not disproportionately excessive, his medical isolation was a necessary precaution in order to protect others. Also, the altercations and issues arose from interpersonal conflicts rather than any stigmatization resulting from his HIV status. In addition, Aziga received reasonable and appropriate medical care and remained in reasonable health. Furthermore, the staff of the correctional facility consistently attempted to facilitate Aziga's access to disclosure and his trial preparation. Therefore, Aziga failed to establish that his detention conditions were so excessive as to constitute cruel and unusual treatment or punishment.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, R.S.C. 1985, App. II, No. 44, Schedule B, s. 12

Criminal Code of Canada, R.S.C. 1985, c. C-46, s. 522

Counsel:

Timothy K. Power and Karen A. Shea, for the Respondent.

Michael T. Doi, for Attorney General of Ontario.

Jinan Kubursi, for Ministry of Community Safety and Correctional Services.

Davies Bagambiire and Selwyn **Pieters,** for the Applicant.

REASONS FOR JUDGMENT

1 **T.R. LOFCHIK J.**:-- The Applicant Johnson Aziga is charged with two counts of first degree murder in connection with the deaths of two women who died of AIDS related complications after allegedly having unprotected sex with him. He also stands charged with 11 counts of aggravated sexual assault after allegedly failing to disclose his HIV positive status to his sexual partners, of whom 7 became HIV positive. The offences involved a total of 11 named complainants and are alleged to have been committed between June 1, 2000 and August 30, 2003.

2 On or about August 30, 2003, the Applicant was arrested and placed in custody at Hamilton-Wentworth Detention Centre, a maximum security provincial remand facility operated by the

Ministry of Community Safety and Correctional Services of Ontario, where he is currently detained and awaiting his criminal trial.

3 In this application the Applicant is asserting that the conditions of his pre-trial detention violate his right to be free from cruel and unusual treatment and punishment, contrary to Section 12 of the *Canadian Charter of Rights and Freedoms* (the "Charter"). More specifically the Applicant asserts a violation under Section 12 rights based on conditions of detention and lack of proper medical treatment.

4 The Applicant has raised a litany of complainants relating to his detention at the Hamilton-Wentworth Detention Centre. Basically they related to his treatment at the Detention Centre and the healthcare he has received.

5 He has alleged lengthy periods of segregation confinement and alleges that he has been stigmatized by both other inmates and staff as a result of his HIV status and the charges which he faces.

6 The medical issues relate to having been double celled with an inmate the accused alleges had full blown AIDS, missed medical appointments, lack of proper vitamins, missed medication and care recently given with respect to a skin rash from which the accused suffered.

FACTS

7 The Hamilton-Wentworth Detention Centre is a maximum security provincial detention centre located in the City of Hamilton. The institution provides custody for up to 402 adult males. Most inmates are housed in "double bunked" cells (i.e. rooms each featuring two bunks mounted on the wall, a toilet and sink unit and a window to the outside with each room having dimensions of approximately 8 feet by 10 feet). There are also dormitory units (i.e. featuring 12 bunks and several dining table type configurations in a open concept setting with a shower and washroom area), the segregation unit (i.e. featuring 12 "single bunked" cells), and a special needs unit (i.e. featuring 10 single bunked special needs cells).

8 The Applicant has spent the majority of his time as a remanded inmate (i.e. a person in custody awaiting the disposition of his criminal charges) at the Hamilton-Wentworth Detention Centre since his admission to custody on August 16, 2003. Since his criminal charges are before this court in Hamilton, an operational decision was made to primarily house the Applicant at the Hamilton-Wentworth Detention Centre to facilitate his access to court and to counsel. As well, the Applicant resided in the Hamilton community prior to his admission to custody.

9 Upon his admission to the Hamilton-Wentworth Detention Centre on August 31, 2003 the Applicant made request for a protective custody placement because of the nature and seriousness of his criminal charges that placed him at risk if housed in the general population.

10 During the admission process, the Applicant signed a "protective custody decision" form to formally request a protective custody placement within the institution, and on the form expressly acknowledged his understanding that: "(A) some benefits, privileges and programs normally given to general population inmates may not be available to me for practical reasons, the details of which have been explained to me; (B) present and future classification decisions may be affected by my protective custody placement; and (C) my protective custody placement may be reviewed at a later date".

11 Aside the Applicant's initial request for protective custody, and his subsequent statements affirming his desire to continue to be housed in a protective custody unit, Deputy Superintendent

Beecroft a Senior Corrections Official at the Hamilton-Wentworth Detention Centre, testified that the Applicant's placement in protective custody was appropriate from a corrections management perspective given the nature and seriousness of his criminal charges, the sexual nature of the alleged offences (that can often lead to issues with being accepted by other inmates in the general population) and the media coverage of his case.

12 In the result the Applicant was assigned to protective custody which remains his current inmate classification at the Hamilton-Wentworth Detention Centre. Generally protective custody units share the same basic physical layout and daily routine as a general population unit (i.e. protective custody inmates generally congregate in a central room during the day and at night return to their adjoining cells where they are bunked, usually with two inmates assigned to each cell). Access to the day rooms and the degree to which inmates associate with their peers depends on the circumstances of each particular unit at any given time.

13 Within several days of his admission and placement in a protective custody unit at the Hamilton-Wentworth Detention Centre (indicated as unit 3B on his housing location history), the Applicant was reassigned to a "special living unit" (unit 2B on his housing location history) to better ensure his ongoing safety after operational concerns arose with respect to his placement in the protective custody unit. The decision to transfer the Applicant was justified as a measure to best ensure his safety. At the time and subsequently in January 2004 and thereafter, the 2B Special Living Unit housed inmates in protective custody who, for various reasons, had experienced difficulty functioning in the regular protective custody unit. For that reason, 2B inmates did not access the day room as an integrated unit, but instead were allowed the day room for shorter periods of time throughout the day in small numbers based on operational assessment by the correctional staff. This structured routine offered a more stable and controlled environment to better protect the Applicant.

14 In or around September 2005, the Applicant was transferred briefly to Brantford jail. This transfer was intended to place him a different institution where he would be less likely to be known by other inmates and therefore better able to integrate himself in a safer and less restrictive environment. After a brief period of approximately one month, the Applicant returned to Hamilton-Wentworth Detention Centre.

15 In or around January 2006 the Applicant was transferred to Elgin-Middlesex Detention Centre for several months, again for the purpose of placing him in a different inmate community with less media coverage of his criminal matter. It was hoped that the Applicant would have a lower profile and therefore have a better opportunity to integrate himself within the normal protective custody inmate population at Elgin-Middlesex Detention Centre.

16 On September 5, 2006, the Applicant returned to Hamilton-Wentworth Detention Centre and was placed in the segregation unit (unit 2A on his housing location history) for approximately one week before being transferred to a protective custody unit (unit 3C on his housing location history) where he has remained since that time.

17 While it is open to the Applicant to ask to be removed from protective custody and to be placed in the general population, he potentially faces a greater risk of injury if he does so. To date the Applicant has elected to remain in protective custody.

18 The Applicant has never applied to the Superior Court of Justice for judicial interim release pursuant to Section 522 of the Criminal Code of Canada.

19 From time to time, the Applicant was single housed (i.e. without a cell mate) in a protective custody cell. On occasion this occurred when it was operationally determined that no other compatible inmates could share the cell with him. As such, the Applicant was not assigned a cell mate for safety reasons. In other instances, correctional staff accommodated the Applicant's request for a single cell (e.g. for privacy in order to review court materials).

20 The Applicant has focused on two physical altercations in asserting his Section 12 Charter challenge to his conditions of detention. In both incidents, the Applicant intentionally and purposely bit another inmate. On both occasions, concern was expressed with respect to the possibility of an HIV transmission to other inmates.

21 It was argued on behalf of the Applicant, that even though he was not the aggressor in both of these altercations, he was disciplined by way of close confinement as a result of his involvement in the altercation. This was explained by detention centre officials as necessary in order to maintain a zero tolerance policy with respect to physical altercations in the institution so that it is common for both participants in any altercation to be disciplined. This reflects an operational safety policy that is intended to promote a non-violent environment and protect inmates and staff within the institution.

22 On December 26, 2007, following the second altercation where the Applicant bit another inmate a healthcare unit physician ordered the Applicant to be medically isolated and placed in close confinement. The physician advised operational staff in writing that the Applicant was medically isolated and not permitted out in the day area with other inmates. Dr. Grewal, a physician at the Detention Centre testified that this medical isolation was a necessary and appropriate public health measure to protect others and avoid the spread of HIV. It was Dr. Grewal's evidence that the Applicant's practice of biting others constituted "a new - let's say weapon or way of hurting people".

23 In these proceedings, the Applicant made further reference to several other altercations with other inmates for which he was sanctioned after admitting to inmate misconduct during the institution's investigation and adjudication process for each incident.

24 On several occasions, the Applicant was sanctioned with periods of close confinement after findings were made that he had committed inmate misconduct. He served these periods of close confinement in a special living unit. Although inmates on close confinement are generally confined to their cells for most of the day (apart from periods for fresh air, lunch, showers, using the telephone and abbreviated day room time, cumulatively encompassing approximately one hour), they are able to converse with their unit peers and thereby interact with them throughout the day and retain their privileges and personal belongings.

25 On April 23, 2004, the Applicant was sanctioned with 10 days of segregation and loss of all privileges for being in possession of a weapon (i.e. a sharpened piece of plastic or "shank"). He served only an abbreviated 8 day period in the segregation unit and then returned to his special living unit on full day room privileges. He served his period of segregation in unit 2A which features an isolated and rigid restructured inmate environment in a separate part of the institution. Inmates placed in segregation lose privileges such as access to personal property, which is not the case for close confinement. For this reason time spent in segregation is viewed as being "very, very different" from close confinement time in a living unit.

26 So far as his medical condition is concerned, on August 31, 2003, the Applicant advised the healthcare unit staff of the Hamilton-Wentworth Detention Centre during his admission health as-

sessment that he had been living with HIV since 1996. He advised that he felt well and was HIV asymptomatic.

27 At the time of his admission to custody on August 31, 2003, the Applicant reportedly refused to take a medication to treat his HIV. Approximately 17 months later, on or about January 28, 2005 he agreed to begin taking antiretroviral ("ARV") medications to treat his HIV and instructed Dr. Grewal to commence a course of therapy. ARV therapy does not provide a cure but extends life expectancy and quality of life and also restores and preserves the immune system, and helps those living with HIV to resist other infections and stay well much longer than they otherwise would without treatment.

28 Dr. Grewal testified that by delaying his ARV therapy, the Applicant may have compromised his treatment outcome.

29 To date, the Applicant continues to remain asymptomatic of HIV, and is in reasonable overall health. He has remained medically stable throughout the course of his detention. He does not at present have any critical or acute medical concerns.

LAW

30 The Applicant bears the general onus to establish an infringement of the Charter. In bringing the challenge, he bears both the burden of proof on the evidence and the ultimate burden of persuasion with respect to the alleged Charter infringement.

Andrews v. Law Society of B.C., [1989] 1 S.C.R. 143 at 153 and 178.

R. v. Kutynec (1991), 7 O.R. (3d) 277 (C.A.) at 283.

Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429 at para. 66.

31 Section 12 of the Charter provides: "everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

32 The threshold for breach of Section 12 of the Charter is high and the Applicant's onus of proving a Section 12 violation is a rigorous one. Treatment will be "cruel and unusual" in the sense contemplated under Section 12 of the Charter only if it is grossly disproportionate. It will not be enough if treatment was merely disproportionate or excessive. Instead the question is whether the prescribed treatment is "so excessive as to outrage our standards of decency."

Charkaoui v. Canada (C.I.), [2007] 1 S.C.R. 350, 2007 SCC 9 at paras. 95-96.

R. v. Smith, [1987] 1 S.C.R. 1045 at paras. 53-54.

R. v. Wiles, [2005] 3 S.C.R. 895 at para. 4.

R. v. Morrisey, [2000] 2 S.C.R. 90 at para. 26.

33 The Supreme Court of Canada has recognized that the detention context of a correctional facility is crucial in considering the nature and extent of an inmates Charter interests, and has held that these interests are necessarily informed by the inmate's institutional setting.

Weatherall v. Canada (Attorney General), [1993] 2 S.C.R. 872 at 877.

Solosky v. R., [1980] 1 S.C.R. 821 at 838-839.

34 It is recognized that the courts ought to be extremely careful not to unnecessarily interfere with the administration of detention facilities such as the Hamilton-Wentworth Detention Centre where the Applicant is currently held. Unless there has been a manifest violation of a constitutionally guaranteed right, prevailing jurisprudence indicates that it is not generally open to the courts to question or second guess the judgment of institutional officials. Prison administrators should be accorded a wide range of deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and maintain institutional security.

Maltbey v. Saskatchewan (A.G.), [1982] S.J. No. 871 (Q.B.) at paras. 20 and 41; appeal denied (1984), 10 D.L.R. (4th) 745 (Sask. CA).

Almrei v. Canada (A.G.), [2003] O.J. No. 5198 (S.C.J.) at para. 18.

35 The weight of authority reveals that courts have been very reluctant to intervene in the administration of correctional and detention facilities when conditions of detention are challenged under the Charter. Although conditions of detention may have caused an individual hardship, they have not been found to meet the stringent threshold required for a violation of Section 12 of the Charter in the following cases:

R. v. Olson (1987), 62 O.R. (2d) 321 (C.A.) at 333-336, aff'd [1989] 1 S.C.R. 296, when it was held that long-term segregation does not constitute cruel and unusual punishment.

> "I think it fair to say that the same tests applicable with respect to punishment are applicable with respect to treatment.
>
> The question then comes down to whether or not the continued confinement of an appellant of the appellant in administrative or protective segregation at Kingston Penitentiary is treatment that is so excessive as to outrage standards of decency.
>
> I think most right thinking people would agree that segregation from the general population in a prison is in the circumstances specified in the regulations necessary and acceptable."

Soenen v. Edmonton Remand Centre, [1983] A.J. No. 709 (Q.B.) paras. 27, 29-41 - prison policies and conditions do not constitute cruel and unusual punishment.

Everingham v. Ontario (1993), 100 D.L.R. (4th) 199 (Gen. Div.) - opening of mail by correctional officials not a violation of the inmates Charter rights.

Olson v. Canada, (1990), 39 F.T.R. 77 (T.D.) - restriction on phone calls not a violation of inmates Charter rights.

McArthur v. Regina Correction Centre (1990), 56 C.C.C. (3d) 151 (Q.B.) at 154-157 - involuntary segregation not a Section 12 Charter violation.

R. v. Chan, [2005] A.J. No. 1118 (Q.B.) at para. 205 - time in remand not violating Section 12 of the Charter.

R. v. Sanchez, [1996] O.J. No. 7 (C.A.) - conditions of detention not violating Section 12 of the Charter.

36 It is crucial for the Applicant to support his challenge with a proper evidentiary record which is necessary and essential to a proper consideration of a Charter issue. Charter decisions should not be and must not be made in a factual vacuum. To attempt to do so would trivialize the Charter and inevitably result in ill considered opinions. Charter decisions cannot be based upon the unsupported hypotheses of enthusiastic counsel.

McKay v. Manitoba, [1989] 2 S.C.R. 357 at paras. 8 and 9.

37 In balancing a private interest in solicitor client privilege and "the public interest in maintaining the security of a penal institution "that scale must come down in favour of the public safety interest. The opening of solicitor client mail and even reading if necessary is an acceptable limitation on this privilege if the interference is "no greater than is essential to the maintenance of security and rehabilitation of the inmate."

Canada v. Solosky, [1980] 1 S.C.R. 821 at 840.

38 The opening of an inmate's solicitor client mail for security reasons in the corrections context does not violate an inmate's Section 12 Charter rights.

Everingham v. Ontario (1993), 100 D.L.R. (4th) 199 (Gen. Div.).

Henry v. Canada, [1987] F.C.J. No. 307 (F.C.T.D.).

ANALYSIS

39 Some inmates who request and who require protection from other inmates may be assessed as being unsuitable for placement within the general population at the Hamilton-Wentworth Detention Centre. In those instances, the inmate is assigned a protective custody classification and housed with other inmates with similar needs in a protective custody unit that features a higher level of monitoring and supervision which affords a higher level of safety.

40 Since September 12, 2006 when the Applicant was placed in the 3C housing unit, Operational Manager Serpa regularly observed and interacted with the Applicant. Based on this, and drawing on his 30 years of corrections experience Mr. Serpa found that the Applicant was generally well integrated in the unit. He also determined that the various altercations between the applicant and the other inmates (i.e. those raised by the Applicant in these court proceedings) simply were not

related to any stigmatization over his HIV status but instead were the result of interpersonal conflicts and behavioural issues that normally arise between inmates. Having regard to the duration of the Applicant's remand custody, Mr. Serpa testified that his altercations with others were "not disproportionately excessive". I accept this assessment of the Applicant's situation.

41 I find that given his HIV positive status, the Applicant's decision to intentionally and purposely bite another inmate in at least two altercations gave rise to a medical risk of HIV transmission. The rationale for medical isolation was explained to the Applicant by correctional staff around the time the order was made and did not entail a loss of privileges for the Applicant apart from the aspect of being confined to his cell. On January 11, 2008 a healthcare unit physician assessed the Applicant for the purpose of reviewing his earlier medical isolation order. During his medical assessment the Applicant failed to provide an assurance that he would not bite again. Instead he confirmed that he was a biting risk and thereby posed a risk of HIV transmission. In the circumstances the medical isolation order was maintained and the Applicant continued to be placed in close confinement. In Dr. Grewal's professional opinion the clinical decision to maintain the Applicant's medical isolation was a reasonable and necessary precaution to protect others and I agree with this assessment.

42 Ultimately upon medical staff being satisfied that the Applicant no longer posed a biting risk, he was directed to be removed from medical close confinement.

43 As previously mentioned, the Applicant admitted each of the inmate misconduct incidents for which he was sanctioned. Notably, the Applicant did not avail himself of the opportunity to review or otherwise make formal objection to the inmate misconduct findings or sanctions despite being aware of the avenues of legal recourse to do so.

44 I am satisfied that the various altercations or issues between the Applicant or other inmates did not result from any stigmatization due to his HIV status either by correctional staff or inmates but instead resulted from interpersonal conflicts that can generally arise between inmates. The Applicant is now generally well integrated in his living unit and no recent incidents have occurred.

45 I am satisfied through the evidence of Dr. Grewal that the Applicant has received extensive medical care and treatment throughout his incarceration at the Hamilton-Wentworth Detention Centre. The Applicant regularly availed himself of medical services that are available to inmates and has shown a clear ability and aptitude to access medical care services. The Applicant has been provided with reasonable and appropriate medical care and treatment. I accept Dr. Grewal's evidence that the Applicant has received reasonable and appropriate medical care during his stay at the institutional that is comparable, if not better in some respects, to the medical care that is generally available to the community at large.

46 The Applicant has not led any medical expert evidence whatsoever in connection with the several healthcare related matters raised in bringing his Section 12 Charter challenge.

47 I am satisfied that the Applicant's health was not compromised because he shared his cell with inmate S.J. (or any other inmate) with HIV/AIDS. I accept the evidence that it is medically improbable that the Applicant's health could ever have been compromised simply because he shared his cell with S.J. It should be noted that while it is not clear from his affidavit, the Applicant shared the cell with the inmate S.J. for one night only. I accept Dr. Grewal's evidence that the inmate S.J. did not require any special accommodation for medical reasons at the time.

48 The Applicant makes some particular assertions in relation to the manner in which documents subject to solicitor client privilege have been handled by institution staff. The Ministry has a policy addressing the handling and management of disclosure material received by inmates which provides that inmates shall be permitted to examine disclosure matters in a manner that is controlled but that provides full and private access to these materials. I am satisfied that institution staff have made efforts to accommodate the Applicant's request with respect to accessing his disclosure and accessing his counsel.

49 The Applicant makes a non-particularized assertion that his doctor patient confidentially was breached by the manner in which correctional staff provided his escort to a specialist medical appointment. Given that the Applicant remains in custody when attending any medical appointments outside the institution, correctional officers must accompany him to any medical appointments for the purpose of maintaining his custody in accordance with Ministry policy.

50 I am satisfied that correctional staff have made efforts to address requests that the Applicant has made to facilitate access to counsel, to make phone calls, and photocopy documents. I have in the course of these proceedings directed that given his impending trial, the Applicant be single celled whenever possible and given as much access as possible to his materials and to his counsel with a view to preparation for trial. I understand that my directions are being followed.

51 As set out above, in certain instances the Applicant was found to have committed (and/or admitted to) an act of inmate misconduct for which he was sanctioned with of close confinement. Incidents for which the Applicant was found guilty of misconduct and sanctioned for his misbehaviour cannot possibly form the basis of a Section 12 Charter challenge. This hearing is not an appropriate forum for the Applicant to seek to overturn any earlier inmate disciplinary findings given the Ministry statutory review process for inmate misconduct matters which the Applicant has not followed.

52 In respect of the Applicant's time spent in close custody detention as a sanction for inmate misconduct, the courts generally have rejected the suggestion that this form of detention per se violates Section 12 of the Charter. The judiciary has been reluctant to second guess administrative decisions made by institutional officials of this nature, which reflect their special knowledge and expertise with matters relating to institutional safety and security.

McArthur v. Regina Regional Centre (1990), 56 C.C.C. (3d) 151.

R. v. Olson (1987), 62 O.R. (2d) 321 (C.A.) at 333-336.

53 Similarly, the decision by a physician at the institution to place the Applicant in close confinement for medical isolation purposes (i.e. to contain the risk of HIV transmission) after he bit another inmate during an altercation on December 24, 2007 warrants strong judicial deference given the physician's expertise in dealing with medical and public health issues in the institutional setting.

54 Based on the evidence before me I am satisfied that the concerns expressed by the Applicant with respect to his health and medical care received during his detention have little merit.

55 I am satisfied as a result of the evidence of Dr. Grewal in these proceedings that the Applicant has received reasonable and appropriate medical care and treatment that has been comparable, if not better in some respects to medical care that is generally available to the community at large. The Applicant has remained in reasonable health throughout his detention and continues to be med-

ically stable. Accordingly, I find that the medical care and treatment provided to the Applicant cannot constitute a violation of Section 12 of the Charter.

56 It has been argued on behalf of the Applicant that he has a right to a single cell in order to review his disclosure material that, he has been denied access to his legal documents and some "legal research" was lost. Hamilton-Wentworth Detention Centre has a current capacity of 402 inmates housed primarily in double bunked cells and dormitories. The evidence indicates that approximately 70 percent of these inmates are in remand awaiting trial. All inmates awaiting trial have the same right to review documentary disclosure. I am satisfied that it is impossible for each inmate to have private room or cell to do this. Nevertheless, efforts have been consistently made to allow the Applicant to access his disclosure material and I understand that pursuant to my direction he will be single celled whenever possible in order to facilitate preparation for trial.

57 The Applicant has failed to demonstrate any breach of Section 12 of the Charter with regard to his solicitor client relationship. On the contrary, evidence shows that the Hamilton-Wentworth Centre staff have consistently attempted to assist the Applicant and facilitate his access to disclosure and preparation for trial. Even though some legal research may have be "lost", I would not consider an inadvertent misplacing of documents when attempting to assist an inmate to constitute grossly excessive treatment resulting in a Section 12 Charter violation.

58 In several instances the Applicant is seeking to support his Section 12 Charter claim by relying in part on events that occurred several years ago and now being asserted, it would appear, for the first time. As a result the ability of the authorities to respond to these allegations has been prejudiced and, as well, in most instances whatever behaviour occurred has been corrected or has ceased so that at the current time it cannot form a basis for a Section 12 Charter challenge.

59 Throughout his affidavit sworn May 24, 2008, the Applicant makes bald assertions that his conditions of detention constitute cruel and unusual punishment without providing admissible evidence for these aspects of his challenge that could even remotely support a claim under Section 12 of the Charter. Many of his allegations are simply accusatory in nature and are devoid of particulars as to effectively be incapable of meaningful understanding or response. His affidavit also expresses controversial opinions that are highly speculative or contentious and seemingly unconnected to any specific evidence that is capable of properly establishing or corroborating the allegation being made. Accordingly the Applicant lacks a proper or sufficient evidentiary record to support his Section 12 challenge.

60 I am satisfied that on the evidence before the court, the Applicant has simply failed to show that the detention conditions under which he is being held are so excessive as to constitute cruel and usual treatment or punishment.

61 Detention facilities are not nice places for nice people. They are institutions for confinement of people either charged with or convicted of crimes. The Applicant is not being "punished" but simply suffering from what appear to be the inevitable inconveniences of the operation and administration of a large detention centre. His situation may not be comfortable and it may be considerably aggravated by the length of his stay but I have found in an earlier application that the delay in this case was not caused by an infringement of the Applicant's constitutional rights.

62 When all the evidence is considered either individually or cumulatively it cannot be said to "outrage" the standards of decency in the community consciousness. Accordingly this application fails to meet the test for a Section 12 Charter violation. The application is dismissed.

T.R. LOFCHIK J.

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