



MCKENZIE LAKE

LAWYERS

Jury Address by Kevin Egan:

Ladies and Gentlemen of the Jury

On behalf of the family of Martin Tykoliz, especially April Tykoliz his sister who I have the privilege to represent- I want to thank you for your time and attention over the past many weeks. It must have been very difficult for you to listen to the stories of lives ended too soon, of families' hearts broken and of a system that failed to keep 8 men safe.

April has been here as often as she can during the past 6 weeks as she tries also to maintain her own life. She has been waiting for 4 full years for this inquest, her first real chance to find out what happened to Marty.

I also want to thank you for your careful consideration in reaching a verdict today and in making recommendations that may prevent similar deaths in the future.

April knows that we cannot bring Marty back. Our goal - and our hope- is that we don't find other families sitting here soon, hearing the same or similar heartbreaking revelations about their loved ones.

I want to thank as well, our Coroner - Doctor Jhirad who has patiently presided over this inquest. I particularly want to thank Coroner's counsel, Ms. Shea . She had been a great asset to this process. Her conscientious efforts and her late night and early morning emails throughout the past 6 weeks demonstrate her commitment to ensuring the inquest runs correctly and has the desired effect of uncovering the circumstances of the 8 deaths and making recommendations that may prevent a similar death in the future. Ms. Shea has worked tirelessly and closely with the coroner, the police and other counsel in organizing much of the evidence that has been presented to you this week.

I also want to thank the witnesses. It was obvious during the testimony of many of witnesses that the process has been emotionally difficult for them and so I thank them as well for their efforts over the past weeks.

Finally, I want to thank all of the court officials for their professionalism and courtesy while they assisted all of us throughout this lengthy inquest.

Unlike most other participants in this process, I am privately retained. April and the other families of deceased inmates has received no funding for their lawyers or representatives. All other parties have lawyers that are paid for by the government or insurance companies.

Before I subject you to what I have to say, I'm going to quote two much more eloquent men who I kept thinking about as we discussed what seems a modern dilemma: Although their voices are from the past, each had things to say that are as important to remember today as they were when they said them.

Winston Churchill: [House of Commons speech, given while Home Secretary, July 20, 1910] said this:

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.

A calm and dispassionate recognition of the rights of the accused against the state, and even of convicted criminals against the state, a constant heart-searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry all those who have paid their dues in the hard coinage of punishment, tireless efforts towards the discovery of curative and regenerating processes, and an unfaltering faith that there is a treasure, if you can only find it, in the heart of every man these are the symbols which in the treatment of crime and criminals mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue in it."

Churchill also was concerned that sentencing people to jail can lead to greater collateral consequences, loss of employment, breakup of families etc... but chief among them is the fact that it is difficult to re-enter society after serving time in a jail. He said 110 years ago:

"We cannot impose these serious penalties upon individuals unless we make a great effort and a new effort to rehabilitate men who have been in prison and secure their having a chance to resume their places in the ranks of honourable industry."

Sir Edmund Burke, the great Irish philosopher said this around 1790:

öPeople crushed by laws, have no hope but to evade power. If the laws are their enemies, they will be enemies to the law; and those who have most to hope and nothing to lose will always be dangerous.ö

So we've known for well over a century that jails are supposed to rehabilitate, help inmates re-integrate and cultivate a respect for the law, failing which we risk increased disdain and disrespect for the law, if we crush inmates rather than help them.

And what do we see in evidence more than 100 years later ? -- The Hamilton Wentworth Detention Centre - supposedly part of the Ontario "Correctional" Service, but a place where anything but "corrections" takes place.

It's an overcrowded, lawless institution where inmates are warehoused, not helped; where ranges built for 20 men to live, warehouses 72 men; where the meanest, toughest inmates run the range - can brew their own alcohol - can beat up other inmates and take their medications - and can (as Dr. Epelbaum described it) even turn weaker inmates into their "milk cows", depriving them of food and making them vomit up their medications to be consumed by themselves or others to whom they might sell the regurgitated methadone or other drugs.

It's a place where programs and opportunities to exercise like the gym which still stands there, now used only by the guards have been discontinued; where counselling sessions put on by Public Health authorities are cancelled because there is not enough staff on hand to allow the inmates off the range to a meeting room where they might receive help; where the stench of marijuana fills the air and little, if anything, is done about it; where hard drugs, like crack cocaine, heroin and other narcotics are widely available; where "fishing lines" transporting contraband from cell to cell operate like a busy highway and nobody stops it; where powdered methadone can be snorted openly on a table on a range - and nobody in authority seems to notice. And it's where 8 men, who these families here today care about, lost their lives.

All of this certainly does require a huge cultural shift.

Martin Tykoliz was no angel. But he wasn't born to be bad. It's obvious from the emotion his sister April has shown, that, as Churchill predicted, there was a treasure within him. He deserved better.

The panel of doctors we were privileged to hear from last week made it clear: Addiction is a mental health issue. It is not, in itself, an indicator a person is evil.

To a great extent Marty was an author of his own misfortune. He made decisions that ultimately killed him. But, in our submission, the system failed him too.

The inmate population generally can be described as "disenfranchised" and "out of the mainstream". Marty was certainly one of those people - marginalized - and to a great extent a victim of his own mental health/addiction problems.

Marty got in trouble with the law because of his drug addictions. He had become a frequent resident in the HWDC. He might have been described him as "doing life on the installment plan". He was one of the many at HWDC for whom the front door of the jail was a revolving one. It doesn't appear that, for Marty, the goal of "correction" or rehabilitation was ever met despite his frequent incarceration.

Marty asked for help, reaching out in March of 2014 and asking to be put on a methadone program. He was told : "No. We don't do that here." - just like Dr. Lori Regenstreif testified was

the reaction she got when she tried to provide opioid withdrawal treatment to those who needed it.

So what's a man to do when he has a powerful addiction - a craving for a drug and he can't get treatment? He begins to buy into the system that has been allowed to fester under the surface at HWDC - a system of importing and distributing narcotics inside the jail that had become an epidemic. He was crushed by authority, was offered no hope and so became an "enemy" to the law and joined the underground system.

Perhaps it should surprise nobody that putting Marty in jail - at the HWDC - did not lead to his rehabilitation.

We heard about overcrowding at HWDC where "living units" originally designed to house 20 inmates had been converted to increase the jail's "capacity" so now they held 60. These units had additional beds added in each cell; the usage of the space that is now the "dorm" on each pod was discontinued and instead it was converted to warehouse 12 more inmates. "Capacity" was thus increased from 20 to 72, almost quadrupling the pod's population. Sergeant Ducheno testified that there was also a practice of having inmates sleep on the floor when all the beds had been taken.

It should be remembered that a very high number of these additional people also have mental health or addiction problems. They aren't just place holders - they have problems too. So why is there no corresponding increase in correctional officers assigned to supervise and to help all the extra inmates? Warehousing that increased number with no change to the supervision model is a recipe for the type of disaster we are speaking about today. It's a system bound to fail - as, sadly, we have seen.

In a Correctional facility, "Capacity" should mean more than "how many people can I jam into this limited space?". It should mean how many people can be comfortably and appropriately housed given the goals of rehabilitation and recognizing mental health and substance abuse problems and all the other marginalizing or "disenfranchising" factors that the individuals face. I suggest to you that the original design with 20 men per unit, with appropriate living space is the right model - not the one that exists now.

Not surprisingly, Dr. Epelbaum and the panel of doctors last Friday agreed on cross examination that the crowded conditions contribute to further stress on the inmate population and that this might further exacerbate their mental health/addiction disorders and lead inmates to revert to the usage of drugs as a coping mechanism. Some may even take up the use of drugs they never would have touched on the street.

Mr. Ducheno indicated that the jail can't hang out a "no vacancy" sign. They have to take them if the court sends them. Generally, the authority under which a place like HWDC can hold inmates is a Warrant issued by the court, as prescribed by the Criminal Code of Canada. It contains a Command to receive the person into custody. The Command does not just say "receive him or

her into custody", however. The same sentence continues "...and keep that person safely". That, in my submission, is an important piece of the puzzle all too often forgotten about.

Section 5 of the Ministry's enabling legislation also requires the Ministry to create an environment for the inmates where they can rehabilitate and prepare for re-entry into society. That simply does not happen.

The province and the courts need to find other solutions. Therapeutic drug courts, diverting someone who might otherwise be housed at HWDC to community services that actually help is one means by which the population can be reduced and recidivism addressed. Other models of community supervision, house arrest where individuals wear an ankle bracelet, possibly even GPS tracked, to serve their sentences. They can continue to work, live with their families but experience restrictions on their liberty that serves the purpose of sentencing in many - but not all - crimes. It's time to become creative and to move beyond the crime and punishment regime of 100 years ago.

In Marty's case, there were many opportunities to help him. One was in March when he asked to be put on methadone but was denied. Had he been put on the program, he may be here with us today.

On May 4, 2014, Marty and his cohort, Mr. Paul Luutran were known to have a "package" or packages that Luutran had smuggled into the jail. Whether it was inadequate staffing, lack of training, complacency or a combination of the three, the ball was dropped.

Luutran threw some part of the packages to Marty when CO Lee spotted them. She told him to flush whatever he had because she did not have adequate backup to hold and observe him while also taking Luutran off the unit to be searched. Had more staff been available, the story may well have been different. We don't know which of them had the drugs that ultimately killed Marty, but we do know that jail staff knew about the packages and fell short of finding and confiscating them.

For some strange reason, after not finding the drugs, a decision was made to let the 2 men stay together in the same cell on Unit 3B Right #17. On May 5, 2014, they were captured by the video cameras moving freely on the range, snorting drugs off the table quite openly. Had there been eyes on the guys.. either personal direct supervision or someone monitoring the cameras in real time, the behaviour would have been spotted, the drugs confiscated and Marty likely would have avoided death.

Instead, that night, Marty overdosed. He was administered some dosage of Narcan, the amount of which varies in different records from .45 grams to 1 gram to 1.5 grams. Perhaps little hangs on that, other than the fact record keeping was woefully inaccurate.

Marty was taken to the hospital, observed for some time - spent much less time than the Standing Order or Policy suggested he ought to spend at the hospital - and was taken back to the jail to spend the night where no nurse was on duty.

It appears that Marty had drugs with him. They went undetected when he returned to the jail. A search might well have revealed the drugs.

Through that night, he was observed by correctional officers snoring, acting restless, staring vacantly, and speaking gibberish. It so concerned CO John Degner that he reported to his sergeant through the night that Marty should be seen by a nurse. Had a nurse been on duty, Marty could have been seen, his overdose detected and lifesaving Narcan or other methods could have been applied.

Nurse Day arrived at 6:00 but did not see Marty until 6:40 as she prioritized some other duties - getting meds ready for inmates traveling to court that morning. It was unclear what was communicated to her as to what John Degner had reported. If communications were more formalized, she might have been alerted. Had an observation form been available, had it been filled out with the CO's observations of his behaviour, Nurse Day may have had another opportunity to realize the gravity of the situation.

When she finally attended, she took Marty's blood pressure. It was alarmingly low and ought to have triggered administration of Narcan and a trip to the hospital but for some reason it didn't. It may have been lack of training on recognizing the symptoms of overdose. Whatever the reason for not acting, had medical intervention occurred at that point, in all likelihood Marty's life could have been saved.

Nurse Day wrote in the medical log "Will follow up". She later said that a nurse named Will was supposed to follow up. Neither Will nor anyone else followed up. Marty received no more medical attention until after he was found unresponsive at 9:04 that morning. Had the note been clearer; had Nurse Day conveyed the seriousness of Marty's situation to Will; had Will actually followed up, Marty in all likelihood would have survived.

Marty was observed by CO's between 6:40 and 9:04, when breakfast was being delivered. He was snoring very loudly. He didn't wake for breakfast. He remained lying down on a second round to collect the meal trays. Had the CO's been advised to watch Marty, that his blood pressure was low and that loud snoring was an indicator of possible overdose, a code might have been called. He might have been saved.

The fact is, none of those things that one might expect to happen actually happened. Marty was hospitalized. Every effort was made to save his life. Despite those efforts, life support was ultimately withdrawn on May 7, 2014 at 2:05 p.m. .

The treasure that April, and others who knew him, had found in Marty was lost.

Prior to life support being withdrawn, a large quantity of drugs, in different packages were retrieved from Marty's rectal area.

The systemic shortcomings in Marty's case are astounding. Unless the system is fixed deaths are going to keep happening. We know there have been several more overdose deaths at HWDC

subsequent to Marty's, some of which are subjects of this inquest and some of which will be dealt with in some future inquest.

It's our hope that the recommendations suggested to you and those that you may provide of your own accord after listening so attentively and asking such important, probing and insightful questions over the past month and a half will be adopted by those to whom they are directed and that they will make a difference.

In addition to the joint submission on suggested recommendations, I am confident that this jury has noticed other anomalies or problems that ought to be addressed in order to aid in the prevention of similar deaths in the future.

Your mission, should you decide to accept it, is to make recommendations that may prevent similar deaths in the future. There is no evidence in regard to the cost of fixing the problems. Your job is not to weigh any financial concerns. Don't let anyone here today tell you that you must consider the expense of protecting people's lives. That is a job for the politicians.

Of the 30 suggested recommendations I forwarded to the other parties yesterday, most or all have been included in the slate of 47 joint suggested recommendations you have been provided. One recommendation appears to have, inadvertently, not been included. We therefore submit the following additional suggested recommendation for your consideration:

We have heard evidence that, sometimes, drugs and other contraband enter the jail via staff or visitors. While many recommendations focus on increased vigilance at Admissions and Discharge, it makes no sense to close the front door and leave the windows wide open.

We ask that the jury recommend to the Ministry and to the Hamilton Wentworth Detention Centre that consideration be given to ways to prevent staff and other visitors from transporting contraband into the institution, including restrictions on bringing lunches, personal property or other items into the living areas of the detention centre. Random searches of staff and others should also be considered.

Once again, I thank you for your dedication to the duties you have assumed as a jury in this very important case and express my heartfelt hope that any recommendations you make will be treated with the appropriate concern and implemented quickly by the Ministry of Community Safety and Correctional Services so that someone else doesn't die in similar circumstances to Marty Tykoliz.

Thank you.

Kevin Egan
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