

File number: T-981-23

FEDERAL COURT

BETWEEN:

NATHANIEL MOLL

FILED	FEDERAL COURT COUR FÉDÉRALE	DEPOSE
	MAR 29 2023	
	SORAYA PREMJI	
	VANCOUVER, BC	

Applicant

AND:

MISSION INSTITUTION (CORRECTIONAL SERVICE CANADA)

Respondents

**NOTICE OF APPLICATION FOR *HABEAS CORPUS* BY WAY OF JUDICIAL
REVIEW WITH *CERTIORARI* IN-AID AND AN INTER-LOCUTORY INJUNCTION
FOR NON-TREATMENT OF MEDICAL DISABILITY BY CORRECTIONAL
SERVICE CANADA**

TO THE RESPONDENT(S)

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court in Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (tel. 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

MAR 29 2023

(Date) _____
ORIGINAL SIGNED BY
SORAYA PREMJI
Issued by: A SIGNÉ L'ORIGINAL
(Registry Officer)

Address of local office: _____

Pacific Center, 3rd Floor
701 West Georgia Street
Post Office Box 10065
Vancouver, British Columbia
V7Y 1B6

Centre Pacific, 3^{ème} étage
701, rue Georgia ouest
C.P. 10065
Vancouver (Columbia-Britannique)
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TO: Correctional Service Canada, Shawn Huish (Warden)
Mission Institution
PO BOX 60
Mission, BC
V2V 4L8

Application For Habeas Corpus with certiorari in-aid and an interlocutory injunction, by way of Judicial Review in respect of the CSC.

The decision being reviewed is the ongoing denial of medical treatment, which is continuous. The decision being reviewed is the OFFENDER FINAL GRIEVANCE RESPONSE received by the applicant on March 25th, 2023, Final Grievance Response V50R00039124, V50R00040031. The decision appears to have been rendered by Manjeet Sethi, Acting Assistant Commissioner, Health Services on 2022-12-16. Denied relief from grievance system as remedy of heat pad and follow up to ENT still not done. I am not being taken to get adequate healthcare, as CCRA s. 85 to 89, says, I am to be treated medically and CSC is to provide adequate healthcare by registered healthcare professionals. I am being denied a hearing aid to mask tinnitus and follow up with ENT for pain in my ears.

The applicant makes application for: an interlocutory injunction pursuant to section 18.1/18.2 of the *Federal Court Act of Canada*, for an order for me to be sent to see an Otolaryngologist (Ear Nose and Throat specialist, ENT) at the hospital or in the community, promptly, without delay. To be given treatment by Dentist and provided a hearing aid, and other such treatment as outlined by Dr. Tsai, ENT¹. Under rule 317 of the Federal Court Rules to be provided with all documentation in the tribunal's (CSC) possession.

The grounds for the application are:

¹ Exhibit 1: Dr. Tsai assessment report of December 12, 2022 visit

1. That I am an incarcerated prisoner without counsel for this matter at this time; and
2. That I am suffering severe debilitating pain in ears and ringing; pain down left side of neck and this is left untreated by Correctional Service of Canada Healthcare Department (CSC). CSC Healthcare ignores my request to follow up with Otolaryngologist (ENT) until a hearing aid is given and I see the Dentist, which could take years. He is told an appointment has been made, yet no ENT follow up appointment has been made.
3. According to *Geary v. Alberta (Edmonton Remand Centre)* **2004 ABOB 19** para[35][37][41][44] the prisoner must be taken to the hospital, or to an ENT immediately for evaluation. The continued deliberate indifference to serious medical needs causes harm and “unnecessary and wanton infliction of pain”.
4. According to *Geary(Supra)*, the rights of detainee’s to medical treatment while incarcerated are serious issues. Medical treatment or inadequacy there of constitutes “cruel and unusual”.
5. My *Charter* s.12 rights have thus been violated and he needs to be taken forthwith to a doctor outside of the prison for assessment and treatment of ear infection which started January 15, 2021 and has continued to this day.
6. I will suffer irreparable harm if interlocutory relief is not granted. Attached request by inmate for medical attention are falsely marked as “assessed” by Health staff or awaiting physician. This “assessment” is done purely by looking me in eyes and no other assessment is performed. Many of the substantive issues relayed by the CSC in their final level grievance response (FLGR) are written by nurses without any inspection of my ear.
7. Only one time was I assessed by IP who prescribed nasal spray and anti-histamines, which only made ear infection worse. This is a common prescription at Bowden as most inmates are sniffing drugs and are congested from crushing and sniffing pills. This assessment was made without visually inspecting me. A Nurse Practitioner (NP) assessed me and diagnosed TMJ as most inmates chew nicotine gum and this is also a common diagnosis. The applicant does not sniff pills or chew Nicorette gum. The NP recommended referral to ENT. Confirmation of ENT Doctor or time to see doctor has not been made. Nurses confirmed that my ear was red and ear drum was red on many occasions.
8. In February, the applicant saw an audiologist. The audiologist confirmed hearing loss on left side, could not comment on ear pains or neck/ear canal/Eustachian tube dysfunction as audiologist is a hearing aid salesman and not a doctor. The applicant pleaded with the audiologist to send him to the hospital. The audiologist could not make any recommendation as he is not qualified.
9. Attached to the affidavit are several requests which have had inadequate responses or no treatment given. I am given only Tylenol and Diclofenac for pain and to reduce the inflammation. I need a heat pad to quell this ear ache.
10. The public interest in ensuring medical issues are resolved is high, not unlike Russian Kremlin Critics whom were eventually treated outside of the prison in Russia.

11. The CSC grievance procedure is inadequate to address medical concerns in a timely fashion, per *May v. Ferndale*, the grievance procedure inadequately delays and stymies justice, and the end result decision does not state that the corrective action is to be treated or to be given a heat pad. The CSC still has not provided me the ability to purchase a heatpad.

12. According to *Chaoullie v. Quebec (Attorney General)* **2005 1 SCR 791** para[60], s.7 of the *Charter* is violated where the delay in medical treatment seriously and profoundly affects persons psychological integrity. Applicant's psychology is vastly affected. The applicant's psychological integrity is vastly affected and cannot read a book or sit in a quiet room without extreme psychological discomfort due to ringing and pain brought on from untreated pain and tinnitus.

13. I suffer from medical discrimination under the *Charter* s.(15), Cruel and Unusual (s. 12) punishment for the continuation of non-treatment and requests damages to be awarded under s.(24), asks for 300\$ per day from January 15, 2021 or until proper care is provided, further treatment of infection in ears.

Final Level Grievance Response - Discrimination on the Basis of Medical Disability

14. The Regional Director of Health Services (RDHS) - Prairie region - determined that my allegations, if proven, would not meet the definition of discrimination. There is a confirmation I am diagnosed with Eustachian Tube Dysfunction and Tinnitus. National level now determines that if proven my allegations would meet the definition of discrimination.

15. This is still clearly discrimination on the grounds that I am part of an identifiable group who is being treated differently. These are also grounds for which I am being discriminated against.

16. I was referred once at Bowden Institution by Institutional Physician (IP) to an Otolaryngologist (ENT). The NP did not at any time refer me to ENT and seek to send me to another ENT when the original did not want to see me. A heating pad has NOT been ordered, I was NOT allowed to purchase one, I had NOT received any confirmation from staff that I could order it. A simple heat pad would alleviate my pain and help me to not take medications which are very hard on my body. A heat pad is a medical treatment for which people have been using for centuries to cure ear aches. An electric blanket, purchased at my expense, is very reasonable and does not violate fire codes, as per the Fire Safety Manual 2020 provided by the CSC to its staff, inmates are allowed a small heater in their cells.

Response to Substantive Concerns Relating To My Access to Medical Care Categorized by Date

<p>January 22, 2021</p>	<p>By prescribing me nasal spray and Reactine, it only made the symptoms worse. I conveyed this to the Institutional Physician (IP), but as he is a prison doctor, seeing patients who sniff pills and drugs up their nose constantly, he was not able to discern a severe viral infection without puss from stuffy nose allergies (drug sniffers).</p>
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January 27, 2021	I was reminded to submit an inmate request (IR) if my symptoms worsened. I have submitted countless request forms as my symptoms continue to worsen as time goes on. Throughout the dates there are countless measures of my ear and tympanic membranes being red in color. I have endlessly complained of pain in my ears and ringing. This is severe lack of treatment and leads to severe psychological suffering as well as physical suffering, which were not mandated as part of my sentence. I am not imprisoned to be tortured by various physical maladies which remain untreated.
January 29, 2021	One urologist notes psychosomatic component to cysts in my prostate in 2015 and now I'm disbelieved for my prison sentence going on since 2018? This is clearly denial of medical treatment.
February 13, March 3 2021	I did not want pain medication. Mild swelling of the left cheek and jaw was observed. This is not accurate, it is under my jaw, not involving my jaw, I do not have some kind of Temporomandibular Joint (TMJ) issues which relate to ringing in my ears and pain in my neck and ear. This is an inaccurate finding by the Nurse Practitioner (NP) as most of her patients are chewing Nicorette gum all day. The finding of TMJ is wholly faulty.
April 1, 2021	Here it is specified clearly in the final level response by CSC at National HQ, Ottawa, that there was no treatment/plan further to what was outlined. I asked to meet with Mental Health (MH) repeatedly over the 2 years I have been suffering from this affliction.
May 21, 2021	The ENT refused to see me in the community, ENT, - this is Discrimination on prohibited ground of identifiable group.
June 9, 2021	Ear is still an issue. No treatment was given at this time. The NP re-submitted referral for which never occurred over the next year while I was incarcerated in Bowden Institution, until transfer to Grande Cache on June 4, 2022. Criteria for medical imaging was met and my ear is demonstrating problems. I have asymmetric hearing loss and my ear canal and tympanic membranes are red on occasions when examined, and swollen as noted by RN Feb 13, 2021, (Jan 21, 2021, March 1, 2021, and multiple other times, most of the time the NP/IP did not even bother to look in my ears when I saw them at Bowden Institution). ENT consult recommended treating the hearing loss which include a hearing aid with masking capability.
June 14, 2021	Audiogram taken shows hearing loss pronounced in left ear. Asymmetric hearing loss is present
July 15, 2021	No hearing pad was authorized. I have not been allowed to order one and I still have not been permitted to order a hearing pad here at Mission Institution.
September 2, 2021	No follow-up by ENT scheduled
September 3, 2021	See complaint against Dr. Dahliwal wherein he states that the Institution is to treat me and refer me to see another ENT, as he did not want to see me.
September 10, 2021	Denial of treatment
September 27, 2021	At the time I was told that I would meet with MH specialists three times a month, this promise never materialized and I did not see a MH professional for months after this. I was never called by them and IR's went ignored.

October 2, 2021	No ENT was scheduled for re-referral
November 25, 2021	I was seen by the NP, then RN planned for NP to review my request? See NP then the RN recommends to see the NP again? This is farcical and a demonstration of clear denial of medical treatment. Cycling someone through an never ending bevy of nurses is NOT medical care. This is a denial of medical treatment within Canada's Prison system.
February 1, 2022	No re-referral made, no new referral made. ENT's available in Calgary, 100's of them no effort made to have me treated. I could have been sent for referral to any major city centre in Alberta.
March 25, 2022	Red ear drum noted, ongoing denial of medical treatment. No ENT referral made.
August 30, 2022	Redness still in ear, need to see ENT to treat
September 17, 022	left ear tube fell out in October, 2021, NOT recently.
June 2022	Care is delayed and continues to aggravate my symptoms. No ENT seen.
October 16, 2022	Spoke to IP on October 27, 2022, said did not want to recommend heat pad and go down "slippery slope" of treating pain with a heat pad, worried about administration at the prison, not the health of the prisoner.
October 27, 2022	Denial of medical treatment continues with no heat pad provided and the IP at my current institution of Mission, saying that heat is not a viable medical treatment now, when the Chief of Health Services (CHS) approved my electric blanket/ heat pad at Bowden Institution. Clearly not based on reality where heat has been used to treat aches and pains for centuries. They state that the "purchase of a heating pad had been authorized by the CHS at Bowden institution". However I am still not allowed to have one.

17. I am supposed to be able to buy a heat pad/Electric Blanket, I have not been given this ability, and I am denied the right to buy the heat pad, as I have restarted this complaint here at Mission Institution.²

18. IR to the Assistant Warden of Operations (AWO) at Mission Institution has been denied at the Operations Management (OMT) board for allowing me to purchase a heat pad even though they are approved devices according to fire safety manual, 2020, published by CSC, as heaters are approved in cells. My "specific concerns with regard to obtaining a heating pad are **upheld.**" (Emphasis in original). I should be allowed to purchase a heat pad, however the CSC is not adhering to their own policy and procedures which have been followed.³ This is a never ending cycle of grievance which I receive no relief from.

19. The final grievance response does not meet the review standard of *Vavilov*, where an applicant's life, liberty, are to be assessed. The decision is inadequate and lacks clarity and depth for the reasoning as to why there has been no hearing aid provided and no heat

² Page 14 of Final Level Grievance Response

³ Page 15 of Final Level Grievance Response

pad. In fact it states that I have been provided a heat pad. The reasoning that no Doctor has prescribed or recommended a hearing aid is faulty as all ENT's have recommended a hearing aid, as documented by Dr. Tsai's report from December 2022, Exhibit 1.

20. The applicant will suffer irreparable harm if interlocutory relief is not granted. The applicant requests that they be released from prison immediately due to Cruel and Unusual, (*Charter* s. 12) treatment, or be provided an electric blanket/heat pad immediately.

21. According to *Canada (Minister of Citizenship and Immigration) v. Vavilov* **2019 SCC 65** para[98] deference should be shown where the decision is transparent and intelligible. The decision at the final level was not. I have not received a heating pad and I have to follow this same grievance procedure again, leading to continued denial of medical treatment for disability.

22. Flaws must be central or significant. The burden is on the challenger to prove the decision is unreasonable on a balance of probabilities.⁴ It is reasonable that the flaws in the decision, such namely as not providing me an electric blanket/heat pad and not granting hearing aid, not sending me for follow up to ENT, are so significant and central that they must be reviewed and decided a new.

23. The decision by CSC will not upheld by the Court if it relies on an unreasonable chain of analysis or some fundamental gap. The decision's "fundamental gap" is that the determination of the definition of discrimination was not applied and thus the decision is unreasonable. Deference to original decision maker is shown when intelligible and transparent justification for decision, there is no intelligible and transparent justification. Policy allows me to order an electric blanket/heat pad, as Fire Safety Manual specifies heaters are allowed in cells, and a hearing aid should be provided per recommendations received from multiple ENT's, first consulted by NP in Bowden over the phone, MRI imaging of my head should be done, samples taken of the fluid in my ears and tested for virological/bacterial agents, further follow up with ENT for treatment, and if that ENT recommends to see another ENT, to further follow up with medical treatment.

24. Where rationale for essential element of decision not in the reasons, the decision will fail standard of justification, transparency, and intelligibility. This essential element of the decision, the finding of discrimination, is missing and thus the decision fails the standard. A reasonable decision is based on internally coherent reasoning and justified on legal and factual constraints. The reasoning is only consistent based on the policy which the IH chose to abide by, not the policy which grants medical treatment based on medical discrimination.⁵

25. According to the *Corrections and Conditional Release Act CCRA*, s. 86(1), I am to be provided with essential health care and reasonable access to non-essential

⁴ *Canada (Minister of Citizenship and Immigration) v. Vavilov* **2019 SCC 65** para[100]

⁵ *Vavilov* para[96][98][99][100]

healthcare. The CSC is not adhering to its statutorily mandated duties to provide me with essential healthcare and reasonable access to non-essential healthcare.

26. There are two kinds of unreasonable decision: 1. failure of rationality internal to reasoning process; 2. untenable with legal/factual constraints of issue. This decision falls into the latter category as the factual legal constraints of the Laws and regulations guarding the decision maker's responsibility have not been followed. Reasons that “simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion” will fail and are no substitute for fact, analysis, inference and judgement.

27. The decision is untenable with legal/factual constraints of the issue as I am being denied medical treatment for my medical disability. The decision itself fails to find that I am being discriminated against. This issue needs to be decided *de-novo* and the judiciary substitute its decision for that of the tribunal as there is no remedy to send the decision back to the original decision maker who will only find in its own favour as it is not a fair, expert procedure for effectively dealing with complaints, per *May v. Ferndale*.

28. The CSC grievance procedure has been inadequate to address inmate concerns in a timely fashion, per *May v. Ferndale*⁶, the grievance procedure inadequately delays and stymies justice. The grievance procedure is clearly inadequate and non-comprehensive, as it has taken 2 years to reach this point, all the time my medical disability remains untreated.

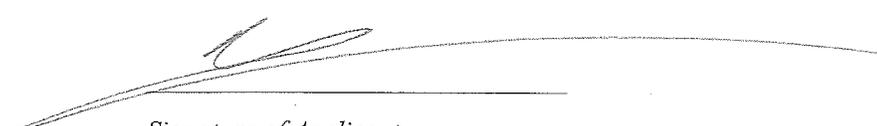
This application will be supported by the following material: Commissioners Directives (CD's), *Corrections and Conditional Release Act* (CCRA), Federal Court Rules, *Federal Court of Canada Act*, *The Canadian Charter of Rights and Freedoms* s.7, 12, 15. Authorities mentioned, multiple request forms to Healthcare at Bowden and additional material provided by the Respondent including any records as required or requested through *certiorari*.

The applicant requests Correctional Service Canada to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Correctional Service Canada to the applicant and to the Registry:

CSC to send all healthcare records from January 10th to present day, all relevant documents pertaining to healthcare of inmate and medical disability of “Eustachian tube dysfunction” which has been ongoing since January 15th, 2021 to present. That a decision to send applicant to hospital immediately be made, or a timely appointment (within the week) be made and the applicant goes to see an ENT, that the applicant have proper medical assessments done to determine Eustachian tube dysfunction and ear ache, ringing problems whether thyroid, auto-immune, bacterial/viral related or any other possibility to be assessed and treated. To be brought for follow-up exam to ENT Dr. after initial assessment by ENT is made. To be given whatever proper medication or treatment recommendation is made that is needed to treat medical disability. To be authorized to have an electric blanket/small heat pad to apply heat to the ear.

⁶ *May v. Ferndale Institution* **2005 3 SCR 809**

DATED at Mission, BC this 26th day of March, 2023


Signature of Applicant

The Applicant's Name and Address is:

Nathaniel Moll, FPS #845336F
Mission Federal Prison
PO Box 60, Mission, BC, V2V 4L8

I HEREBY CERTIFY that the above document is a true copy of
the original ~~(issue)~~ out of / filed in the Court on the _____

day of MAR 29 2023 A.D. 20 _____

Dated this _____ day of MAY 09 2023 20 _____


SORAYA PREMJI
REGISTRY OFFICER
AGENTE DU GREFFE