

FITNESS AND NCR ASSESSMENTS: GAPS AND BEST PRACTICES

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Agenda

1. What do we know?
2. Case Study: Soleiman Faqiri
3. Fitness & NCR Assessments
4. Best Practices
5. The Challenge
6. Group Discussion and Q&A

WHAT DO WE KNOW?

True or False

- Every accused who is Ordered to undergo a Fitness Assessment will be admitted to a Forensic Psychiatric Hospital during the assessment. True or False?



True or False

- An accused who is not in custody and is ordered to undergo a Not Criminally Responsible (NCR) Assessment can remain out of custody during the assessment period.
- True or False?



True or False

The province of Ontario has a uniform system for addressing Fitness and Not Criminally Responsible (NCR) Orders.

True or False ?



OBJECTIVES

Objectives

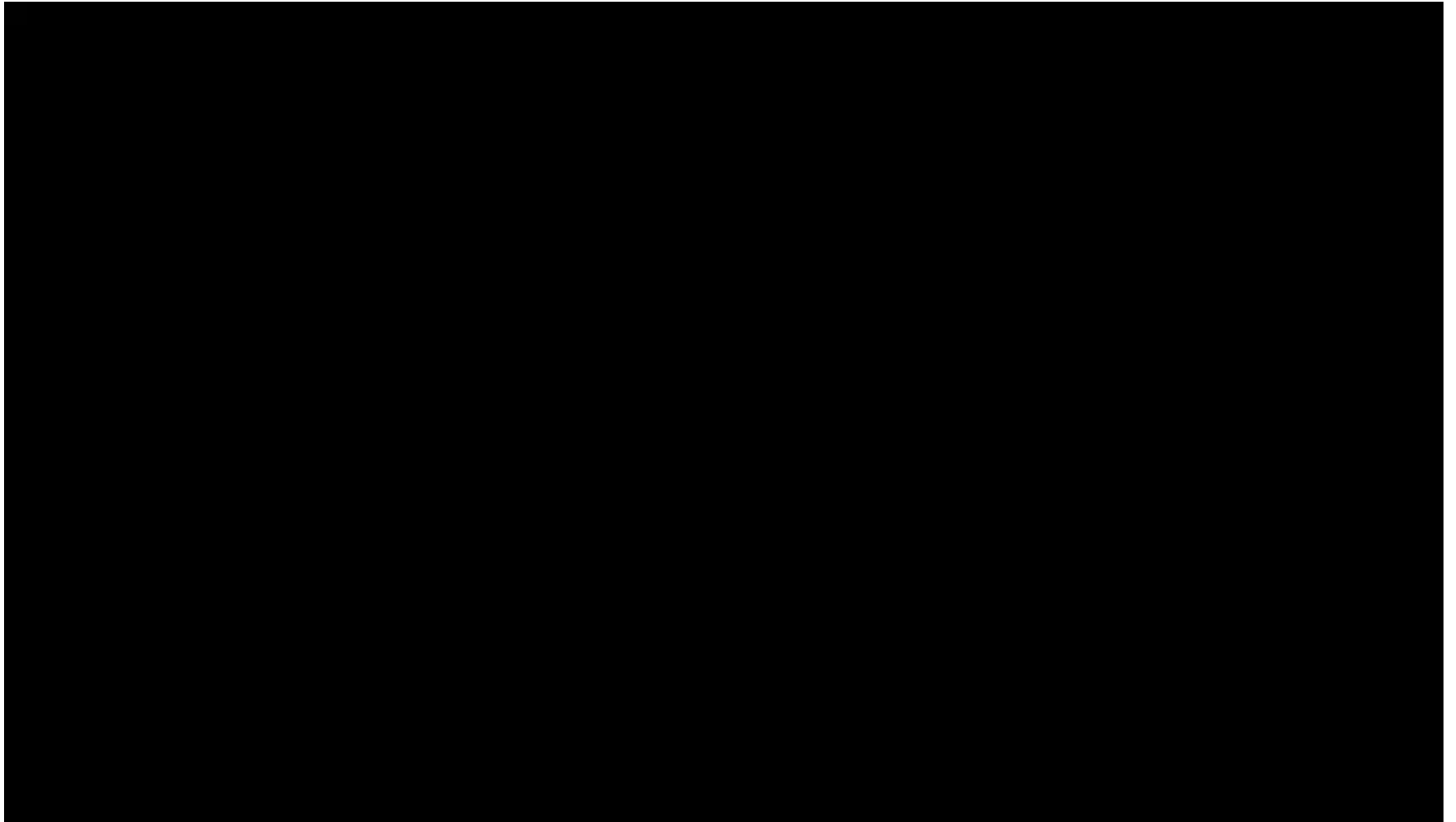
- Raise awareness of the gaps in Fitness and NCR Assessments
- Highlight some recent cases and promote further discussion
- Discuss some possible alternative strategies to more effectively address the needs of individuals who require Fitness and NCR assessments
- Spark change through a concrete “Challenge”



CASE STUDY: SOLEIMAN FAQIRI



Soleiman Faqiri: Case Study



Review of the Faqiri Case

- On Dec. 4, 2016 Faqiri was charged with:
 - 2 counts of aggravated assault
 - 1 count of assault
 - 1 count of uttering threats of death and bodily harm.
- A Fitness Assessment was ordered on December 12th
- Faqiri was remanded to C.E.C.C. for the assessment

Review of the Faqiri Case, cont'd

- Faqiri died in his cell on Dec 15th, 2016.

Just prior to this death, between 10 and 20 prison guards had entered his cell

- Faqiri was 30 years old
- He had been diagnosed with paranoid schizophrenia
- The charges against Faqiri were withdrawn on Dec. 19th

FITNESS ASSESSMENT

What is a Fitness Assessment?

- May be ordered if a Court has reasonable grounds to believe it is necessary to determine whether the accused is unfit to stand trial
- “Unfit to Stand Trial” is defined in s. 2 of the *Criminal Code* as the inability, due to a mental disorder, to:
 - understand the nature or object of the proceedings; or
 - understand the possible consequences; or
 - communicate with counsel

How is a Fitness Order Made?

- Individual is charged with criminal offence(s)
- Defence Lawyer cannot receive instructions from his/her client
- Lawyer contacts Mental Health Court Support Worker (at the Courthouse)
- MH Court Support Worker contacts the Forensic Unit of the Hospital to make appointment for the Assessment
- Defence Lawyer asks Judge for the Order



Comparison of Fitness Assessments

Facility	Custodial Status	Process
Ontario Shores (Durham Region)	Held at Detention Centre	First done by video. If video is not successful, the individual waits in jail until a forensic bed becomes available.
Waypoint (Penetang)	Held at Detention Centre	All FA's are done in custody. The individual is held in custody until a forensic bed is available.
Centre for Addiction and Mental Health (CAMH)	Held at Detention Centre	Psychiatrist comes to courthouse everyday to assess in person and face to face.

Issues

- Individuals refusing to undergo the assessment via video (due to paranoia or other causes)
- Individuals being held in custody longer than custodial eligibility due to a lack of available forensic beds
- Lack of sufficient Mental Health training for Corrections Staff (only 4 hours for correctional staff at C.E.C.C.)
- Over-reliance on segregation

NOT CRIMINALLY RESPONSIBLE (NCR) ASSESSMENTS

What is an NCR Assessment?

- May be ordered if a Court has reasonable grounds to believe that at the time the accused committed the offences, she did not appreciate the nature and quality of her actions
- Based on the long-standing principle that no one who commits an offence while suffering a mental disorder can be convicted
- Assessment period is for a minimum of 30 days

How is an NCR Order Sought?

- Individual is charged with criminal offence(s)
- Either Crown or Defence alert the Judge that they are seeking an NCR Order

How an NCR Order is Sought, cont'd

- Lawyer contacts Mental Health Court Support Worker (at the Courthouse)
- MH Court Support Worker contacts the Forensic Unit of the Hospital to arrange for a bed at the Hospital
- Counsel asks Judge for the Order
- If granted, Individual is remanded to the Hospital for the Assessment

HERMAN®

by Jim Unger



8-16

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“Now, now. ... What’s all this I hear about you not wanting to come into my nice hospital.”

Comparison of NCR Assessments

Facility	Custodial Status	Process
Ontario Shores (Durham Region)	If an individual is in custody, they remain in custody.	Individuals who are out of custody on bail have to return to custody for their 30 day NCR assessment.
Waypoint (Penetang)	If an individual is in custody, they remain in custody.	Individuals who are out of custody on bail have to return to custody for their 30 day assessment.
Centre for Addiction and Mental Health (CAMH)	If an individual is in custody, they remain in custody.	Individuals who are out of custody can do an out of custody NCR assessment.

Issues

- Not enough forensic beds and subsequent wait times (delay)
- Inconsistent processes between regions and ensuing confusion, especially for Defence counsel
- Out of custody individuals are required to return to custody for the assessment which is a minimum of 30 days in some jurisdictions
- Jail not the best place for a severely mentally ill individual who is stabilized in the community

BEST PRACTICES

Suggested Best Practices

- Development of a consistent provincial process for all forensic assessments in Ontario, that provides for out of custody assessments when appropriate
- Eliminating the use of segregation during assessments, especially as a tool to supervise individuals with mental health issues
- Increased Mental Health training for corrections staff

THE CHALLENGE



THE CHALLENGE

- HSJCC to advocate at the provincial level for the development of a consistent process for all forensic assessments in Ontario
- Ideally would include out of custody assessments in appropriate cases
- Ideally would formalize protocols for cases where the initial video assessment is unsuccessful

WHERE DO WE GO FROM
HERE?

Suggested Starting Points

The 2013 *Jahn* Settlement

Lessons learned in the Solomein Faqiri Case

The Saper Report

JAHN v. MSCS



Christina Jahn

- In 2011 and 2012, Christina Jahn spent all of her jail time (210 days) in segregation
- She experienced brutal and humiliating treatment because of her gender and her mental health
- She filed a Human Rights Complaint against the Ministry of Safety and Correctional Services (MSCS)

Jahn Settlement

- In 2013, the parties reached a landmark settlement agreement
- It included a wide range of public interest remedies to address the use of segregation

Terms of the Settlement

- Some of the results of the Settlement include:
 - Gender-based mental health screening for all prisoners upon admission
 - Prohibition of the use of disciplinary or administrative segregation for any prisoner with mental health disabilities
 - Requirement that MCSCS provide all prisoners in segregation with a Segregation Handout

OHCR Action

- Since the *Jahn* Settlement, in 2013, 11 people have died in segregation in Ontario, including Soleiman Faqiri
- In September 2017, the OHRC announced that it is suing MSCS for failing to honour the terms of the *Jahn* Settlement
- “This is a matter of life or death” -OHRC Chief Commissioner Renu Mandhane

SOLEIMAN FAQIRI

Soleiman Faqiri

- In July 2017 the Coroner released its Report in this case
- Hopefully this case will draw increased attention to the plight of mentally ill individuals in our jails

THE SAPER REVIEW



Segregation in Ontario

Independent Review of Ontario Corrections

March 2017

Saper Review

- Independent process ordered by the Ontario Government (MSCS) in October 2016
- **Initial mandate**
 - provide advice and recommendations on immediate steps to reduce the use of segregation
- **Secondary mandate**
 - provide a report on:
 - ✓ Further segregation reform
 - ✓ Broad reforms to adult corrections in general
- Work with the ministry to develop an implementation plan

CALL TO ACTION

What Can We Do?

Read the *Jahn* Settlement, the Coroner's Report in the Faqiri Case, and the Saper Review

Advocate at Regional HSJCC Committees to support the Provincial HSJCC in pursuing our Challenge

Request that the Provincial HSJCC work with the government to achieve our Challenge:

Our Challenge

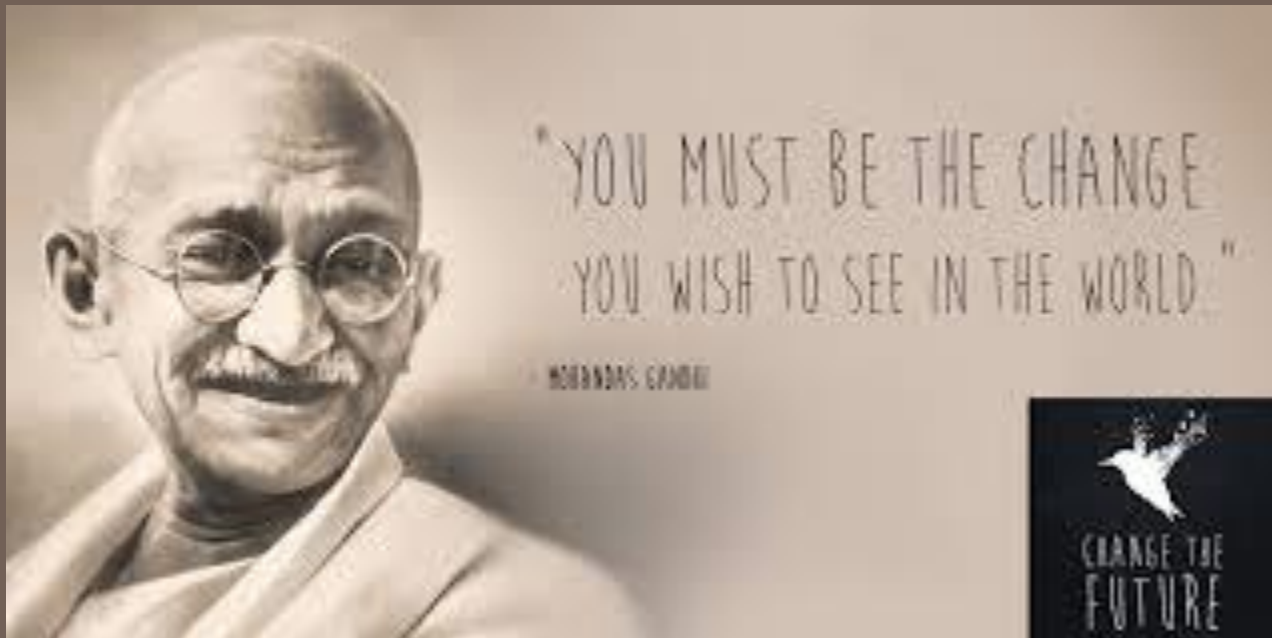
**Create
a consistent process
for all forensic assessments
in Ontario**



Our Challenge Re-Stated

**Can We Do Better?
(Yes!!)**





"YOU MUST BE THE CHANGE
YOU WISH TO SEE IN THE WORLD."

MAHATMA GANDHI



CHANGE THE
FUTURE

DISCUSSION AND Q&A

