

Illegal strip search brings \$10K award

Female inmate's rights ignored in body cavity search
Prison staff ruled negligent in how they got consent

A Toronto woman who murdered her grandmother has been awarded \$10,000 in damages after being subjected to an illegal body cavity search as an inmate at the Grand Valley women's prison in Kitchener.

Prison staff arranged to have Tracy Curry transported to a hospital and searched for drugs without obtaining her valid consent and were negligent in the way they treated her, Justice Michel Beaudry of the Federal Court of Canada said in a ruling released this week.

Grand Valley institution is one five smaller, regional prisons set up in the aftermath of a notorious 1994 strip search of female inmates at the former Prison for Women in Kingston.

Ten years ago, in an exhaustive report into that incident, then-Justice Louise Arbour slammed the federal correctional service generally for its disregard for the rule of law and said its approach to body cavity searches was perhaps the most disturbing example of the lack of respect for individual rights inside prisons.

The searches are to be performed only after staff submit a written request to the warden and only with the consent of the person to be searched, she said.

In his decision this week, Beaudry said Curry also had the right to first speak to a lawyer. The prison's claim that its staff were under no obligation to inform Curry of her right to counsel is "downright unreasonable," he said.

"A cavity search is one of the most invasive and humiliating procedures a human being can be subjected to, and everyone should have the right to seek legal advice before consenting to it," Beaudry said.

John Hill, Curry's lawyer, said the decision suggests the federal correctional service "has learned very little" since Arbour's report.

However, things seem to be improving since the arrival of a new warden at Grand Valley last year, he said.

Curry, formerly Tracy Pegg, pleaded guilty in 1996 to second-degree murder and was sentenced to life imprisonment with no parole for 10 years. She suffocated her 82-year-old grandmother, Alma Smith, with a pillow.

Pegg, who had been using drugs and alcohol at the time, has a 12-year-old daughter and has married while in prison.

The body cavity search took place after Curry, 31, returned to Grand Valley after spending three days in a halfway house in October 2003 and met up with Skipper, the prison's drug-sniffing dog.

When the canine behaved as though she was smuggling drugs, Curry was strip-searched and kept in a supervised area for several hours. She protested and no drugs were found.

She later signed a form consenting to pelvic x-rays and body cavity searches, which were performed at St. Mary's Hospital. The doctor who performed the search concluded there were no concealed drugs.

Curry said correctional officers told her if she consented to the search at the hospital, she could avoid being placed indefinitely in a "dry cell," a prison room with no plumbing, where staff would check her excrement for drugs. It was the only reason she agreed to the search, she said.

However, after returning to the prison from the hospital, she was subjected to another search by Skipper, who again indicated she was smuggling drugs. She was strip-searched and placed in a dry-cell overnight. No drugs were ever found.

Beaudry believed Curry's testimony over that of two correctional officers.

Her consent to the x-ray and body cavity search was obtained "under inducement," he said.

Curry said she was given a chance to speak to a lawyer only after waking up the next morning in the cell.

One correctional officer's log book confirms this, Beaudry said.

It's "baffling" how prison staff could think that she smuggled drugs while under escort between the hospital and prison, Beaudry added, calling the decision to subject Curry to another dog search upon entering the prison an "overzealous and rigid adherence to procedure" which "defied logic."

Hill said the ruling means that prison staff have to "start using some common sense" and stop "immediately jumping to the conclusion that a person is guilty."

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