

Ontario government sued for putting youth in solitary confinement

Seeking an end to solitary confinement for juvenile criminals, lawyers filed a class-action lawsuit Wednesday against the Ontario government, saying the practice is always cruel and harmful.

The \$125-million lawsuit is the latest in a growing legal fight against the practice of segregation in Canada. It alleges that youth-justice centres regularly violate Ontario policies meant to limit the use and duration of solitary, and advocates to give youths access to legal help to stay out of segregation. It also says children as young as 12 are being placed in solitary.

Solitary “will always fly in the face of the purpose of youth justice, which is to rehabilitate children,” James Sayce, a Toronto lawyer who is involved in the lawsuit, said in an interview.

The lawsuit was filed in the name of John Doe, who was incarcerated at the Genest Detention Centre for Youth in London. The suit says he was regularly subjected to long periods of solitary confinement. It does not say how long, when or at what age he was incarcerated. (It also does not say what the teenager was convicted of, or give his current age or any details about him, and Mr. Sayce cited youth-justice confidentiality laws in declining to elaborate.)

A report in August from Irwin Elman, the Provincial Advocate for Children and Youth, found that 164 young people in Ontario were placed in solitary (known as “secure isolation” in Ontario) for longer than 24 hours; 38 were for longer than 72 hours and 13 lasted more than five days. In rare cases, youths spent more than 15 days in the isolated cells.

A spokesperson for the Ministry of Children and Youth Services, which oversees youth detention centres, said that the department’s top priority is “the safety and well-being of all who work and reside in youth justice facilities,” and that the use of secure isolation in youth facilities is declining. The spokesperson said the department would not comment directly on the allegations raised in the lawsuit, saying that it would be inappropriate to comment on a matter that may come before a court. She also said that, since 2003, youth crime has dropped 46 per cent and custody admissions have fallen 72 per cent.

The case follows a lawsuit brought in January by the B.C. Civil Liberties Association and the John Howard Society alleging that the federal government’s use of solitary confinement leads to the deaths of prisoners, discriminates against mentally ill and aboriginal inmates and is unconstitutional. Mr. Sayce filed a separate class-action lawsuit in Ontario in July, saying the federal use of solitary violates the rights of the mentally ill. The federal government has kept the practice in widespread use, with some changes in response to the 2007 death of Ashley Smith, who at age 19 had spent nearly a year in solitary before dying from self-inflicted strangulation.

Under Ontario law, solitary is to be used only when a youth is expected to cause imminent property damage or serious harm to another person, and when no less restrictive means of restraint is available. Once the crisis is over, the confinement in solitary is to end. Maximum stay for those under 16 is set at eight hours in a day, or 24 hours in a week; those over 16 can be held for three days straight, or longer if a provincial director approves. And the youths must be advised of their right to talk to the Provincial Advocate or a lawyer when placed in solitary.

The class-action lawsuit claims that the government regularly violates those rules – youths are placed in solitary when they are no threat to others or to property; they remain in solitary long after crises pass; those under 16 are regularly held more than eight hours a day or 24 hours a week; and youths are not advised of their right to legal assistance when in solitary.

“Time passes more slowly for children, and solitary confinement impacts brain structure, development and long-term function,” the lawsuit says, citing the United Nations’ 1990 rules for incarcerated juveniles and a 2011 report from the UN’s Special Rapporteur on torture, both of which bar the use of solitary confinement for youth.

Last year, the Rikers Island prison complex in New York City – the second-largest prison in the United States – announced it was banning solitary confinement for juvenile inmates.

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