

Judge certifies \$600 million lawsuit for mentally ill inmates

A \$600-million class action lawsuit was certified in an Ontario court this week, opening the door for thousands of prison inmates with diagnosed mental illnesses to seek compensation for their alleged mistreatment in federal jails.

The lawsuit alleges Canada's federal prison agency fails to properly care for mentally ill inmates, relies too much on the "cruel and unusual punishment" of solitary confinement and neglects to adequately train its staff. Superior Court Justice Paul Perrell ruled that the lawsuit should go ahead in a decision released Wednesday.

"It's an incredibly vulnerable population," said James Sayce, a lawyer for the plaintiffs who expects "tens of thousands" of current and former inmates to join the class action against the federal justice ministry.

"It's a group of people who are often ignored by most of society," he said. "They're people who are often subjected to solitary confinement for months and years as a result of their mental and medical conditions."

Chris Brazeau, one of the lead plaintiffs in the suit, said in a statement through his lawyer that he has a "duty" to participate in the class action.

"In my own case, I remember asking myself 'how much more of this can I take?' I must have asked myself 500 times, before I reached my breaking point. I now know what it feels like to want to die. I know what it feels like to have no hope and no options," said Brazeau, 34, who claims to have spent periods of up to a year in solitary confinement during his 12-year sentence at an Edmonton jail.

A spokesperson for the federal justice ministry referred questions on the lawsuit to the Correctional Service of Canada, the agency responsible for running federal prisons.

In an emailed statement, Corrections spokesperson Véronique Rioux said "effective and timely" treatment for inmates with mental illness is a priority for the agency. Front-line staff are trained to "understand the mental health needs of offenders," and \$77 million was "invested" to address the needs of these inmates during the 2015/16 fiscal year, she said.

Rioux added that segregation — the term the government uses for solitary confinement — is a legally-available tool that is used to "manage risk," either to the inmate or staff, and is not a punitive measure. She said there are ongoing reviews of an inmate's placement in solitary confinement, including on their physical and mental health, and that the agency is legally required to remove them from segregation "at the earliest time."

She would not discuss the newly-certified lawsuit, because it "is currently before the courts."

The lawsuit arrives at a time of heightened concern over the use of solitary confinement in provincial and federal jails, particularly when it involves inmates with mental illness. In his mandate letter to the justice minister after he came to power last year, Prime Minister Justin Trudeau called for restricted use of solitary confinement and the improved treatment of mentally ill inmates, as recommended by inquests into the death of Ashley Smith, a 19-year-old who strangled herself in 2007 after more than 1,000 days in segregation.

The B.C. Civil Liberties Association and John Howard Society launched their own lawsuit in 2015, alleging the use of solitary confinement in federal prisons violates prisoners' Charter rights to life, liberty and security of the person.

In Ontario, the issue caused a storm this fall when the province's human rights commissioner revealed how Adam Capay, a 24-year-old with mental illness who is charged with murdering another inmate, was kept in solitary confinement at the Thunder Bay Jail — a provincial facility — for almost four years.

The United Nations considers 15 straight days of solitary confinement to be a form of torture.

Eligible class-action participants must have been in a federal prison at some point since Nov. 1, 1992, and been diagnosed with a mental illness during or before their time in jail, according to Perrell's decision this week.

Alongside Brazeau, the other lead plaintiff in the case is David Kift, a 58-year-old former Mountie who is now serving a six-year sentence at the Joyceville Institution for “gun possession-related” crimes, according to the statement of claim. He is diagnosed with PTSD and depression, and the statement of claim alleges that he has endured “long periods” without his medication and has been held in solitary confinement.

“You become unfit to function in a social way,” Brazeau said in his statement to the Star. “That is a prerequisite to live. You need social skills to survive. Solitary confinement removes that.”

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