

Judge awards Ontario inmates \$85,000 over lockdowns

An Ontario judge has awarded \$85,000 to two inmates after ruling their Charter rights were violated by staffing-related lockdowns at a Milton jail — a move lawyers say could open the door to a class-action lawsuit against the province.

In a judgment released this week, Superior Court Justice Douglas Gray ruled that lockdowns at the Maplehurst Correctional Complex violated the inmates' rights to freedom from cruel and unusual punishment. The judge said he had little difficulty concluding that their treatment was “degrading,” “disproportionate” and “excessive as to outrage standards of decency.”

“The conditions of detention during lockdowns are very close to segregation or solitary confinement,” the judge wrote. “In some ways they are worse. The inmate is holed up with another inmate not of his choosing. The actual periods of confinement for 24 hours a day are entirely arbitrary, and unpredictable, both as to timing and length.”

The judge found most lockdowns were caused by staffing shortages. The units that housed the inmates were locked down for 50 per cent of the time in 2014 and 2015 on average, with a peak of 55 per cent last year, according to records produced by the Ministry of Community Safety and Correctional Services.

Gray noted that the two inmates, who are still behind bars at Maplehurst, are not there because they have been convicted of crimes. Jamil Ogiamien, an immigration detainee, has been at the Milton jail since 2013. Huy Nguyen, awaiting trial on a firearms-related charge, has been there since April 2015. Ogiamien sparked the lawsuit when he filed an application last July alleging unlawful detainment.

The two men, who represented themselves in court, remain at Maplehurst. Nguyen was awarded \$25,000, to be paid by the province. Ogiamien was awarded \$60,000, to be paid jointly by the province and the federal government, since Ottawa is responsible for his detention.

The decision to award damages fulfils “the function of vindication,” the judge wrote, and may deter “future breaches.”

The Ministry of Community Safety and Correctional Services would not comment on the case because it is still in the appeal review period. Neither would the Ministry of the Attorney General of Ontario. The government would not say whether it plans to appeal.

In its defence, lawyers for the province argued the conditions described by the inmates did “not come close” to being egregious or shocking to the public and did not violate their rights. In the face of criticism over jail conditions, the ministry has consistently maintained that lockdowns are imposed to ensure the safety of staff and inmates and that they are only used as last resort.

Gray rejected this argument, ruling that staffing-related lockdowns “do not arise from legitimate safety and security concerns,” but rather because the ministry has been “unwilling or unable to have sufficient staff available.”

The judge said it is “extraordinary” the province has known about the problem since at least 2002 and not corrected it. He acknowledged the ministry has lately taken steps to address staffing issues, but said that wasn't relevant to the case at hand.

During lockdowns, inmates must remain in their cells, often for 24 hours a day and several days at a time. They cannot make phone calls or go out for fresh air. Scheduled visits with family and lawyers are often cancelled, as is religious, educational and athletic programming. They are frequently denied access to showers and laundry, which means they must wear the same clothes for days, while being locked up in a small cell with another inmate. They are often not allowed to clean their cells.

Barbara Jackman, an immigration lawyer who assisted in the case but did not directly represent the complainants, said to her knowledge this is the first time inmates have been awarded monetary damages for conditions created by lockdowns. She expects it may open the door to a

class-action lawsuit. "Because it's not just Maplehurst," she said. "It's Lindsay and Toronto South."

"I'm hoping that this decision finally will force them to smarten up and make it better there," Jackman said. "There's big potential there for the government to end up having to pay millions of dollars to people for not treating them properly."

Daniel Brown, a criminal defence lawyer and a director with the Criminal Lawyers' Association, agreed. "There's going to be a lineup at the courtroom doors for other people to bring similar applications in the future because this isn't an isolated problem," he said. "I think it certainly opens the door for a much larger application."

The inmates "weren't asking for steak dinners and comfier beds," Brown added. "They were just saying, don't lock us up for no reason. Don't deny us our basic liberties, our right to have a shower and a phone call and contact with our family."

Inmates' voices

Excerpts from sworn affidavits submitted by fellow inmates :

Joshua Barreira: "If you're not used to this, it can drive a man suicidal or depressed and that leads to drugs or worse ... this lockdown is not human and can turn one crazy. Animals don't get locked up for a month at a time in a box without consequences, so why do we?"

Matthew Costain: "Me being locked in my cell all the time has had a negative effect on my physical and mental health. I am not able to speak to my family when the institution was on lockdown, even when my four-year-old daughter had surgery on her neck and throat. When we are on lockdown, there is no calls, no yard time, no showers, for days. They don't give us new clean clothes — they even take the clean clothes out of our cells."

Mustafa Muhammed: "I rarely see the sky and breathe fresh air, or get any sun. Rarely do I get my Friday prayers to practice my religion."

Amy Dempsey
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