Government seeks to adjourn solitary-confinement lawsuit until Bill C-56 is finalized

Ottawa is acknowledging that proposed legislation designed to restrict the use of solitary confinement in Canada's federal prisons could face new lawsuits, and a constitutional challenge into the practice should be adjourned until the bill is finalized.

Government lawyer Mitchell Taylor said an adjournment of the trial, scheduled to start on July 4, would allow Parliament to "consider, explain and debate" the new solitary bill tabled this week. It would also prevent an unnecessary expenditure of judicial resources.

"The adjournment will preserve judicial resources by not adjudicating an existing statutory scheme that's likely to be replaced by a very different one," Mr. Taylor said in B.C. Supreme Court on Friday. "There could well be further litigation about that new regime. That's the proper time when the issues, the inadequacies, the adequacies, the good, the bad and everything else should be addressed."

However, the BC Civil Liberties Association (BCCLA) and the John Howard Society of Canada – which first sued the federal government over the matter in January, 2015 – argue that prisoners are being left to languish in solitary for indefinite periods, awaiting proposed legislation that may never pass into law.

Joseph Arvay, lawyer for the plaintiffs, said proposed legal or policy changes are no reason to adjourn the trial, as "we are asking the court to adjudicate existing legislation."

An adjournment would mean inmates currently in indefinite, prolonged solitary confinement would continue to deteriorate, Mr. Arvay said. "We're saying to them, 'Well, government's introduced a bill.'"

Further, the proposed bill, which does not include hard caps or an independent external review mechanism with real powers, still does not comply with the Constitution, he said.

Justice Peter Leask reserved his decision; the parties are due back in court on Tuesday.

The Globe and Mail has reported extensively on the prevalence and devastating effects of solitary confinement, referred to as administrative segregation by the Correctional Service of Canada. On Monday, the Liberal government tabled Bill C-56, which, along with other changes, would impose presumptive time limits on how long an inmate can be kept in solitary. However, critics note that a prison warden can still command otherwise.

The Liberal government said one objective of Bill C-56 is to prevent inmates with mental health issues from being placed in conditions that would exacerbate their illness.

The legislation states that an inmate can spend no more than 21 consecutive days in solitary unless a senior prison official specifically orders otherwise. Eighteen months after the bill's passage, that cap would drop from 21 days to 15 days, a threshold recommended in the UN's Standard Minimum Rules for the Treatment of Prisoners, also known as Mandela Rules.

An independent external reviewer, appointed by the Minister of Public Safety, would review the cases of inmates ordered to stay in solitary beyond the cap. However, the reviewer would have no power to release them.

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