

Damages awarded to 2 inmates over lockdowns were unjustified, court told

Jamil Ogiamien and Huy Nguyen were awarded \$85,000 in damages after a Superior Court judge deemed the prison lockdowns they endured violated their rights.

A judge's finding that two inmates were subjected to cruel and unusual treatment because of the numerous prison lockdowns they endured was based on faulty information and legally wrong, Ontario's top court heard Tuesday.

In addition, the Court of Appeal was told, the decision to award them a total of \$85,000 in damages was unreasonable and unfair given that they had never asked for money.

The Ontario government is appealing a May 2016 decision in which Superior Court Justice Douglas Gray awarded \$60,000 to Jamil Ogiamien, 46, a Nigerian facing deportation, and another \$25,000 to Huy Nguyen, who was awaiting trial on firearms charges.

Gray agreed the frequent lockdowns they went through over a two-year period violated their rights because they were largely confined to their cells, deprived of the ability to maintain basic hygiene, and otherwise subjected to harsh conditions that affected their mental and physical health.

In submissions to the appeal panel, Ontario government lawyer Mike Dunn said Gray was wrong about the number of lockdowns the men went through while at the maximum security Maplehurst Correctional Complex.

Among other things, Gray found they were in lockdown roughly half the time, but Dunn said the real proportion was closer to 30 per cent.

Dunn also argued Gray failed to appreciate the steps the province had taken — albeit to little effect — to address long-standing staffing issues that resulted in frequent lockdowns, which the government says are imposed only as a last resort.

"The court should take into account efforts made by the institution, made by the administration," Dunn said. "Running a large maximum security prison is inherently complex."

The three justices wondered whether the government had done enough to deal with the situation given that it had known for years about the staffing shortages.

"The ministry could keep on trying and keep on failing and that's just fine?" Justice Gary Trotter said.

Failing to take into account the government's best efforts to address the situation amounts to legal error, Dunn countered.

Fellow lawyer, Hart Schwartz, argued that even if the finding of cruel and unusual punishment were upheld, the award of damages should be thrown out.

For one thing, Schwartz said, the claimants had simply wanted an end to the lockdowns and neither had asked for a money award.

"We first learned of it when the decision came over the fax machine," Schwartz said. "We were, needless to say, surprised."

Barbara Jackman, appointed as a "friend of the court" to help the unrepresented litigants, said Gray was right to find violation of the men's rights. He was also well within his rights to award damages after deciding that simply slapping the government on the wrist would be insufficient to denounce its conduct and provide a remedy to the men.

"Justice Gray's assessment and finding is sustainable on the evidence," Jackman said in written filings. "The impetus for these lockdowns — staffing shortages — do not arise from legitimate security or safety concerns, but are the harmful result of administrative failures."

Neither of them were serving time for a conviction, Jackman said. She also said money damages were appropriate and were covered in the men's request to the courts for general relief.

If anything, Jackman told the judges, there was a "studied indifference" about what's going on in the jails.

Justice John Laskin, however, said it was highly unusual for a judge to come up with a money award without notifying the parties or hearing submissions. Jackman agreed, saying if the court upheld Gray's finding of a rights breach, it would be appropriate to go back to him to argue damages.

In his oral submissions, Ogamien described conditions under lockdown as cruel and inhumane and said there was "no hope" because complaints went nowhere.

Ogamien was released under strict conditions in the middle of last year as he fights deportation. Nguyen remains in custody.

The justices reserved their decision.

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