Indefinite solitary confinement in Canadian prisons ruled unconstitutional by B.C. court

A B.C. Supreme Court judge has ruled that the practice of prolonged and indefinite solitary confinement in Canadian prisons is unconstitutional.

In a lengthy ruling released Wednesday, Justice Peter Leask found that the laws surrounding what is known as administrative segregation in prison discriminate against Aboriginal and mentally ill inmates.

He said the existing rules create a situation in which a warden becomes judge and jury in terms of ordering extended periods of solitary confinement.

"I find as a fact that administrative segregation … is a form of solitary confinement that places all Canadian inmates subject to it at significant risk of serious psychological harm, including mental pain and suffering, and increased incidence of self-harm and suicide," Leask wrote.

'Stunning decision'

The B.C. Civil Liberties Association (BCCLA) and the John Howard Society of Canada (JHSC) brought the challenge against the federal government, arguing that rules regarding administrative segregation, more commonly known as solitary confinement, are inhuman and unconstitutional.

Leask said he was prepared to suspend his ruling for 12 months in order to give the government time to craft an appropriate legislative response to his concerns.

"This is the most significant prison law decision from a trial court in Canadian history," said Jay Aubrey, a staff lawyer with the BCCLA.

"It is a stunning decision that is grounded in four decades of history, and the best social science and medical evidence on the impact on inmates health of solitary confinement, and alternatives to solitary confinement."

The BCCLA and other intervenors argued that the sections of the Corrections and Conditional Release Act governing the practice of administrative segregation "permit indeterminate and prolonged solitary confinement" which has "significant adverse effects on the physical, psychological and social health of inmates."

Public Safety Minister Ralph Goodale said in a statement the government will review the B.C. judgment along with an Ontario ruling which found administrative segregation for longer than five days is unconstitutional.

Goodale said the government has new legislation before Parliament to impose time limits and independent oversight on solitary confinement. He also said Ottawa is improving conditions of confinement and investing nearly $60 million toward the treatment of mental illness.

"We will identify any further and better ideas that need to be incorporated in our reform package," Goodale said. "But we have been proactive from the beginning and our work is already well advanced."

Litany of tragic cases

In his ruling, Leask cited many of the tragic cases which brought the issue of solitary confinement to the forefront in recent years, including that of Ashley Smith, a 19-year-old who died in a segregated prison cell in Kitchener, Ont., in 2007. A coroner's jury ruled Smith's self-inflicted choking death was a homicide.

The judge also cites the death of Edward Snowshoe, a 22-year-old who took his own life at the Edmonton Institution in August 2010 after spending more than five months in segregation. A public inquiry concluded he had "fallen through the cracks" and that corrections officials were unaware he had attempted suicide numerous times at a previous facility and that he had been in segregation as long as he had.

"On the evidence before this court, the most serious deficiency in dealing with administrative segregation is the inadequacy of the government's processes for dealing with the mentally ill," Leask wrote.
"I am satisfied the law … fails to respond to the actual capacities and needs of mentally ill inmates and instead imposes burdens in a manner that has the effect of reinforcing, perpetuating or exacerbating their disadvantage."
Leask also called on the correctional service to make a concerted effort to improve programs for Aboriginal inmates, who are over-represented in segregation.
"Beyond the risk of psychological harm inherent in the segregation experience itself, the fact that Aboriginal inmates are placed in segregation more often, with limited access to programming, impacts their ability to transfer to lower security institutions and to obtain conditional release, as they may not have been able to carry out their correctional plan and may not be perceived as significantly rehabilitated as a result," Leask wrote.

'Meaningful human contact'
The Corrections and Conditional Release Act provides for two types of segregation: disciplinary and administrative. Disciplinary segregation is limited to 30 days, whereas the length of administrative segregation is effectively left to the discretion of the warden.
The Attorney General of Canada argued that administrative segregation as practised in federal prisons is not solitary confinement, since inmates have "daily opportunity for meaningful human contact."
They also claimed that administrative segregation is a necessary tool and that the length of placements is not indeterminate but calculated by the time needed to eliminate safety or security issues.
The Attorney General asked for the 12 month suspension in the event that Leask ruled against them, arguing that the break would give the legislature "sufficient time to craft an appropriate legislative response."
Leask agreed, saying an immediate declaration of invalidity would pose a "potential danger to the public or threaten the rule of law."

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