

Lawsuit over solitary confinement in Ontario jails certified as class action

The \$600M action includes inmates with severe mental illnesses

A lawsuit alleging the Ontario government violated the rights of inmates by placing them inappropriately in solitary confinement can proceed as a class action, a Superior Court judge has ruled.

The province did not oppose certification of the \$600-million action whose representative plaintiff maintains his already fragile mental health was exacerbated by stints in segregation.

The suit includes inmates diagnosed with severe mental illnesses such as schizophrenia or psychosis who served time in segregation in provincial facilities since Jan. 1, 2009. Other inmates put in the "hole" for 15 days or longer since that time are also included in the class.

"Every day, prisoners in Ontario's correctional institutions are subjected to conditions of torture, and cruel, inhuman or degrading punishment," the suit alleges in its amended statement of claim.

"Segregation, or 'solitary confinement' as it is more commonly known, is grossly overused on a systemic basis throughout Ontario's correctional system."

At issue is administrative segregation in which inmates are isolated either to ensure their own safety or that of others in the institution. Critics allege that such isolation in which inmates are kept in tiny cells without human contact for much of the day can cause significant and lasting harm.

The current lawsuit, similar to several others filed in Canada including one already certified against the federal government, alleges the provincial government has been negligent in its use of isolation by leaving prisoners for weeks, months or even years without regard to the consequences.

"The effects of segregation are significant and substantial," the statement of claim alleges.

"Such damage is often irreversible and will have a substantial and lasting effect on that person's life."

The representative plaintiff, Conrey Francis, who has been diagnosed with post-traumatic stress disorder and suffers extreme panic attacks, has spent several stints behind bars since 1982, including stretches in solitary confinement, the suit says. In his latest incarceration, Francis, in his early 50s, spent time at the Toronto South Detention Centre from January 2015 until he was acquitted of robbery charges in April 2017.

His mental health in solitary worsened to the point such that he had suicidal thoughts and auditory hallucinations, he alleged.

The lawsuit was initially filed last year on the same day Ontario Ombudsman Paul Dube slammed the province's use of solitary, particularly with regard to those inmates who are mentally ill. In January, the Ontario government and province's human rights authorities announced an agreement to stop placing mentally compromised inmates in solitary barring exceptional circumstances.

Province has yet to file statement of defence

The province, which has yet to file a statement of defence, had no comment on the certification decision but said Wednesday it would defend against the claim, which has yet to be tested in court.

However, in an expert opinion filed earlier this year, a psychiatrist hired by the province argues it is not possible to say at what point segregation might cause an inmate lasting harm. Nor is the literature conclusive about the harms solitary can cause to those with mental illness, Dr. Graham Glancy said in his affidavit. Some inmates, he said, might actually improve in isolation.

"One cannot conclude that segregation causes psychological harm," Glancy wrote.

Another court document indicates that Francis spent a total of 10 days in segregation in 2015 for refusing orders to move between units or institutions.

In his certification decision, Justice Paul Perell said inmates or former inmates had to have been alive on April 2015 - two years before the statement of claim was filed - to be included in the class.

"I am satisfied that all the criteria for certification are satisfied," Perell said.

The Canadian Press
Sep 19, 2018