

Ontario loses appeal of \$30M payment in solitary confinement class action ruling

A \$30-million class-action award against Ontario for its mistreatment of inmates in solitary confinement will stand, the Court of Appeal ruled on Wednesday.

In its decision, the court dismissed the province's challenge to an earlier finding that its system of administrative segregation was negligent and violated the prisoners' constitutional rights.

The court also rejected Ontario's arguments that it could not be held liable for what it described as a policy decision, and that legislation passed in 2019 made it immune to claims of negligence.

"Ontario cannot turn a blind eye to overwhelming evidence of the unconstitutionality of its actions," the Appeal Court said. "Damages for the charter breaches were an 'appropriate and just' remedy."

Administrative segregation in Ontario is used when inmates pose a safety risk to themselves or others, or have committed a serious breach of the rules. Evidence was that 43% of inmates placed in solitary had mental health alerts on file.

"Administrative segregation in Ontario consists of isolation in a small cell for 22 hours or more with no meaningful human contact," the court noted. "Evidence shows that the cells are often filthy and covered in bodily fluids."

Conrey Francis, an inmate with serious mental illness, launched the class action in 2017. Francis spent more than two years at the Toronto South Detention Centre before being acquitted of bank-robbery charges.

Francis was placed in isolation twice for refusing to take medication he said had nasty side-effects. Authorities decided doing so amounted to a "refusal to follow an order."

The solitary experience, the court said, was "excruciating," leaving Francis feeling "terrorized" and in a "state of delirium and shock." His mental health worsened to the point where he had suicidal thoughts and auditory hallucinations.

The class action was certified with Ontario's agreement in September 2018 and applied to situations between April 20, 2015, and September 18, 2018. The class comprised inmates with serious mental illness placed in solitary as well as those left in segregation for at least 15 days.

In April 2020, Superior Court Justice Paul Perell awarded \$30 million in damages after finding segregation violated principles of fundamental justice. The province had been "systemically and routinely" negligent in running the solitary confinement regime, he ruled.

Solitary confinement, Perell noted, is widely known to cause serious mental harm, and its effects are grossly disproportionate to the purposes. As such, he ruled it to be cruel and unusual punishment.

The appellate court agreed with Perell, also rejecting Ontario's claim that it was immune from liability for what it characterized as policy decisions. Instead, the court said segregation could be characterized as "operational."

Ontario's interpretation of what constituted policy was too broad, the Appeal Court said. Adopting the province's approach would mean almost every government decision could be deemed policy, it said.

"To adopt Ontario's expansive meaning would require a conclusion either that the attorney general at the time did not understand the effect of the legislation being introduced, or that she misled the legislature as to its intention and effect," the Appeal Court said.

Lawyer James Sayce, who acted for Francis, said the court had made an important ruling in terms of immunity from liability.

"Government negligence has been an important part of Canada's legal landscape for decades," Sayce said. "This decision shows that it cannot be so easily legislated away."

The Francis lawsuit was similar to other successful ones that ultimately forced the federal government to change its practices regarding administrative segregation.

Ontario's ombudsman has also slammed the province's use of solitary, particularly with regard to those inmates who are mentally ill.
The Appeal Court ordered Ontario to pay \$50,000 in legal costs.

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