

Class-action lawsuit alleging anti-Black racism against inmates in Canada's prison is approved

Despite opposition by the government, the Federal Court has certified a class-action lawsuit against Canada's prison system alleging anti-Black racism suffered by inmates.

Court declared that the lawsuit - claiming systemic negligence resulting in the abuse of Black inmates as well as Charter breaches against Black inmates - can proceed as a class action, meaning it is litigated on behalf of a group of people rather than an individual.

The class was set as all Black inmates alleging physical, emotional or psychological abuse while incarcerated in a Correctional Service of Canada (CSC) facility since 1985.

The lawsuit was filed last year by Abel Araya, a Canadian citizen of Eritrean descent who did time in prison for drug trafficking. He served two years of his three-year sentence inside two federal penitentiaries.

Araya was an inmate in Drumheller Institution in Alberta and William Head Institution in British Columbia before his release in 2020.

He alleges in the claim that he was subjected to racial abuse by both CSC staff and other inmates while in the minimum-security facility on Vancouver Island but not at the primarily medium-security Alberta prison.

His lawsuit claims he was often ignored or dismissed by white guards and was treated differently than white inmates.

He said he was ignored when first seeking medical treatment for a serious head injury. He said there was no programming available specifically for Black prisoners.

He said he was treated differently and subjected to racial stereotyping. He claims his white parole officer said she would not want him coaching her children's sports teams because he was "clearly a drug dealer," while a CSC nurse said he wouldn't want someone like him living in his community.

He said a white prisoner persistently shouted an offensive racist slur at him. When Araya told him he had better stop or he would have to "settle" the matter, it was Araya who was reprimanded.

Court heard that Araya often complained of racism at William Head but didn't file a formal grievance for fear he would be punished by prison staff.

Even after leaving prison and living at a halfway house during the COVID-19 pandemic, he said he experienced racism, including being pressured to leave the facility to make room for "vulnerable" prisoners, all of whom were white, he claimed.

The incidents, he said, amplified feelings of helplessness that brought panic attacks, sleeplessness, anxiety and depression after release.

Court also heard from Akwasi Owusu-Bempah, a criminology professor at the University of Toronto who studies racism in the criminal justice system.

Owusu-Bempah said that "CSC's practices, procedures, instruments, policies and other acts and omissions systematically disadvantage racialized prisoners in comparison to white prisoners."

He said several reports from the Office of the Correctional Investigator show that compared to white male inmates, Black male inmates are more likely to experience use of force, less likely to be placed in minimum-security, are more often placed in solitary confinement, receive lower potential reintegration scores, and are disproportionately denied temporary absences and parole.

Ottawa opposed certification of the lawsuit as a class action, and challenged Owusu-Bempah's evidence, saying he testified outside of his area of expertise and was more advocate than objective expert.

Lawyers for the Attorney General of Canada also argued Araya's claim fails to show a reasonable cause of action, that the class is overly broad, and there are no common issues of law or fact among class plaintiffs. Ottawa also claimed a class action is not the best way to

resolve claims by members of the class and that Araya was unsuitable as a class representative.

Araya has filed a separate civil lawsuit in B.C. Supreme Court alleging he was denied medical care for his head injury. Prisons also have an internal grievance system to handle complaints, the government said. Lawyers said he received full parole at the earliest opportunity, with the support of his parole officer and he was never the subject of a disciplinary charge.

In a decision released Tuesday, Justice Simon Fothergill said he was satisfied that Araya's credibility was sufficient for him to proceed as a representative claimant and that Owusu-Bempah's evidence was largely useful and admissible.

Fothergill said alleged Charter breaches of undue deprivation of life, liberty or security of the person, and discriminatory protection or benefit under the law were arguable issues.

"A class action alleging systemic negligence implicating numerous acts and omissions by different perpetrators in various institutional settings over a lengthy period of time presents formidable challenges," Fothergill writes in his decision.

But there have been previous cases facing similar challenges, including a recent class-action suit claiming similar racism filed against the RCMP.

"The Plaintiff reasonably characterizes prison inmates as a vulnerable population. If this proposed class action is not certified, it is unlikely that individual Class members will pursue alternative forms of redress on their own. To the extent that the allegations advanced in the Statement of Claim have merit, no remedy will be provided for the wrongs suffered by the proposed Class except by way of a collective proceeding."

He ordered the class definition be tightened and the time period be narrowed but allowed it to proceed as a class action.

Esther Mailhot, senior adviser for issues management and media relations with CSC, said it would be inappropriate to comment on specifics of this case because the claims are before court.

"CSC has an ethnoculturally diverse offender population. Once in our custody, we are committed to working hard to address societal systemic barriers for offenders by providing programs and services that address offender's needs.

"We are committed to ensuring that Black and ethnocultural offenders are afforded the same protections, dignity and treatment as others," Mailhot said.

Araya's lead lawyer, Patrick Dudding, could not be reached prior to deadline.

The CSC uses 28 categories of racial identification for inmates when they are processed for prison intake. The self-identification of Black inmates often includes geographic-base qualifiers, such as Caribbean or Sub-Saharan African.

The process and timing for class members to opt out of the proceeding have not been set.

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