

Class-action lawsuit over strip searches in prisons certified by Ontario judge

Federal prisoners who allege that degrading strip searches are being illegally conducted on them have won the right to go ahead with a class-action lawsuit against the government.

Their lawsuit - certified last week by an Ontario judge - accuses the federal prison system of conducting at least half a million illegal strip searches between 2014 and 2020. The prisoners are seeking \$900-million in damages for what they call assault, unlawful confinement and a violation of their constitutional rights.

The class action, the first to involve routine searches of prisoners in Canada, takes aim at searches known as "suspicionless," which are allowed under federal law where prisoners may have access to contraband, such as weapons or drugs. The suit contends the searches are being done where there is no reasonable chance of contraband: when leaving a prison for such things as medical visits, or because they have served their sentence; leaving a secure area; entering a family visiting area; and in transfers between prisons.

The lawsuit details the practices it says happen routinely to men and women in these searches - everything from flashlight inspections of orifices to orders to manipulate one's genitals and lift one's breasts, in front of officers of the same sex as the prisoner.

Just under 13,000 inmates sentenced to two years or more are incarcerated in federal prison.

The federal government presented an assistant warden in court who denied the searches are inherently degrading, despite a 2001 Supreme Court ruling that found police strip searches to be so, no matter how they are carried out. The government argued that the lawsuit's goal of changing the way the prisons are run is unnecessary, because the Correctional Service of Canada has individual search plans based on the needs of each prison, adjusted as needs arise.

But Ontario Superior Court Justice Benjamin Glustein dismissed the argument, saying that based on the assistant warden's refusal to accept the Supreme Court's view of strip searches, "it is unlikely there will be any change in the circumstances or manner in which suspicionless strip searches are conducted without a class action."

He said the allegation of 500,000 unlawful, unnecessary strip searches is a conservative estimate, based on the 660,000 permissions to leave prison between 2014 and 2020, many for escorted absences such as medical leave.

His ruling to certify the lawsuit is a procedural step that lets the lawsuit go ahead to determine whether the prisoners' rights were violated, and if so, what damages the government must pay.

The lawsuit cites the experiences of two federal prisoners in particular, Kimberly Major, 55, who says she suffered sexual abuse in childhood, and physical, emotional and sexual abuse from an intimate partner as an adult, and served time for fraud; and Michael Farrell, a 51-year-old who says he endured physical and sexual abuse in the child-welfare system, and served time for drug offences.

In an interview, Ms. Major (who has been free since 2018) described being strip-searched four times in two days, on her transfer from provincial custody to federal at the beginning of her sentence: "I was in their care and custody that whole time. Why did it need to happen so many times? The whole process is absolutely degrading, demoralizing, invasive, traumatizing and just out-and-out abuse.

"You can imagine having to stand in front of someone and strip down to nothing ... so they can inspect you, every corner of your body."

She said after family visits, the prisoners would be lined up, and one would be selected at random for a strip search. As a result, she had to think about whether a family visit was worth the risk of what she considered to be abuse. "To know that there was a possibility ... it was awful."

Mr. Farrell told the court that strip searches are "particularly traumatic for me because of the sexual abuse I suffered as a child."

Kent Elson, a lawyer who brought the lawsuit along with the Canadian Civil Liberties Association, said the issue is not one of safety versus rights. "It doesn't benefit safety or society to be strip-searching people unnecessarily. These people are going to be released, and traumatizing them in prison is not preparing them for life on the outside."

Sean Fine
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