

## Court certifies class-action suit lawsuit over allegations of illegal prison strip searches

Ontario's Superior Court of Justice has certified a class-action lawsuit alleging that Canadian authorities illegally strip searched federal inmates hundreds of thousands of times over three decades.

The statement of claim filed against the government accuses prison officials of inappropriate conduct, seeks an end to searches that are not authorized by federal law and seeks compensation for victims.

While laws currently dictate that strip searches should be limited to instances when an inmate might have had access to drugs or other contraband, the lawsuit alleges they were far more frequent, and regularly occurred when inmates left prison buildings or secure areas, entered family visitation rooms or were transferred to different facilities.

Inmates were forced to "remove all clothing, bend over, spread their buttocks, manipulate their genitalia, remove soiled tampons and squat naked while their bodily orifices were inspected," the statement of claim says.

Lawyers for the claimants say this is a violation of basic individual liberties - and the government must stop breaking its own laws.

But the government is denying the majority of the allegations.

Its statement of defence says that contraband "is available, has been found and will continue to be subject to concealment attempts" when inmates have access to locations where non-prisoners, such as visitors, are also allowed to go.

"Routine strip searches are an essential component of an integrated safety and security strategy within penitentiaries and in the broader correctional context," the document says.

The Supreme Court has condemned the practice, however, saying in a 2001 ruling that searches are "one of the most extreme exercises of police power" and are inherently "humiliating and degrading."

Former inmate Michael Farrell is quoted in the statement of claim saying that the searches he experienced during his 15 years behind bars were "highly invasive" and led to a "flood of negative emotions."

In an interview, Farrell said the experiences were "embarrassing and humiliating," and would take place even as he was being moved from one secure location to another - putting into question why correctional officers would have suspected he had access to contraband.

"I put myself there. I get that. But the excessiveness of always being stripped - sometimes the guards make fun of you — it's just a terrible experience overall," he said.

A July 2020 document prepared for the federal public safety minister ahead of a parliamentary appearance, which was put online under proactive disclosure policy, said the Correctional Service Canada is "committed to safe, humane and effective corrections for offenders in Canada."

The document, which laid out how the minister could respond to concerns about the class-action suit, said the agency only conducts strip searches "in the most discrete, humane and sensitive manner possible by trained professionals."

Public Safety Minister Marco Mendicino, whose portfolio includes the correctional service, did not respond to a request for comment.

Kent Elson, one of the lawyers representing the applicants, said in an interview that the government is breaking its own laws restricting the use of strip searches, and they are taking place "far too often."

"Certifying a class action like this will hopefully make prison officials much more careful, and work a lot harder to stop unnecessary strip searches," he said.

"Prisoners suffer. And eventually, society suffers, when prisoners come out of prison and they've been traumatized."

Now that the lawsuit has been certified, it will proceed to a common issues trial, and a judge will determine which issues apply to all class members. Dates have not yet been set for those proceedings.

The government's statement of defence argues that the class-action lawsuit is "overly broad and unmanageable" because it includes inmates incarcerated over the last 30 years "regardless of whether they were subjected to routine strip searches and/or experienced harm from routine strip searches."

That time period could result in claims that fall outside the statute of limitations for civil cases, it adds.

The statement of defence says that claims should be restricted to a more recent two-year period and "only include individuals who actually experienced a routine strip search, which caused or materially contributed to recognizable and compensable psychological or emotional harm."

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