

## Ontario court approves class-action by immigration detainees against federal government

The Ontario Superior Court of Justice has certified a class-action lawsuit against the federal government regarding the use of provincial jails for immigration detainees.

The suit represents 8,360 people who were detained in 87 provincial and territorial jails by the Canada Border Services Agency (CBSA) between 2016 and 2023.

In the decision issued Friday, the court rejected each of the 15 objections raised by the federal government's lawyers who were trying to stop the action from proceeding.

"Immigration detainees were incarcerated in provincial prisons and encountered the same conditions as criminal inmates, including co-mingling with violent offenders, use of restraints such as shackles and handcuffs, strip searches, and severe restrictions on contact and movement," wrote Justice Benjamin Glustein.

Foreign nationals and permanent residents detained by CBSA under the Immigration and Refugee Protection Act are not accused of a crime.

"According to Canadian and international law, immigration detention is administrative in nature and cannot be punitive," according to the class action.

"Nonetheless, the CBSA has a longstanding practice of detaining thousands of immigration detainees in provincial prisons through arrangements with provinces and territories. This practice violates the Charter rights of the detainees."

The federal government has not indicated if it will appeal the court's decision.

### 'Dozens of strip searches'

One of the plaintiffs representing the immigration detainees is Tyron Richard, originally from Grenada.

Richard spent 18 months in three different maximum security jails in Ontario from January 2015 to July 2016, even though he was not considered a danger. He was being held as a flight risk.

He said while in jail, he was subjected to dozens of strip searches.

"I was required to strip off my clothes, turn around, bend over, spread my buttocks, and undergo an inspection of my anus by a guard with a flashlight, and to undergo a visual inspection under and next to my genitals," Richard swore in his affidavit. "I would describe my life in prison as a living hell, where I cried almost every day."

Nor was he afforded any privacy from his cellmate or guards, Richard said.

"The toilet was open in the room right next to the door."

Communication with friends and family was extremely difficult.

"Visits were no-touch and were conducted in booths through glass, using a telephone, and limited to only 15-20 minutes," Richard said.

He has since regained his permanent resident status and is currently applying to become a Canadian citizen.

"I am proud that I am now able to stand up and fight back against this inhumane practice on behalf of the class to help make sure that it does not happen to anyone else," Richard said in a statement provided by his lawyers.

### Most deemed a flight risk

CBSA can detain foreign nationals including asylum seekers if their identity hasn't been well enough established, if they're deemed a danger to the public, or if they're considered a flight risk, meaning the border agency believes they won't appear for immigration processes including removal.

Over the years, more than 80 per cent of the detainees were held for flight risk.

CBSA can choose to hold an immigration detainee either in one of its three immigration holding centres or in jails used under agreements with provincial governments.

Since 2022, most of the provinces have pulled out of these agreements, with some saying the practice is contrary to Canada's human rights obligations.

"It is difficult to imagine living in a place where the government can incarcerate people who have been charged with no crime, in maximum security prisons where they are subjected to cruel conditions including solitary confinement and strip searches," said immigration lawyer Subodh Bharati, one of the lawyers leading the class action.

"Yet this is what the CBSA does to immigration detainees - some of the most vulnerable people in our country."

For those Bharati represents, the battle is far from over.

Certification means the court believes there's enough evidence to justify the lawsuit, but only a future trial will determine whether the group of immigration detainees or the federal government wins the case.

The claim seeks \$100 million dollars in damages, to be divided among the complainants if they win.

Radio-Canada reached out to the offices of Public Safety Minister Dominic LeBlanc, who is responsible for CBSA, and to Justice Minister Arif Virani. Neither has provided any comments regarding the Ontario court's decision.

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