

Federal government trying to stop class action by imprisoned migrants

The Trudeau government has appealed an Ontario court's decision to approve a class action representing thousands of incarcerated immigrants.

Last July, the Ontario Superior Court of Justice gave the green light to a lawsuit filed on behalf of 8,360 people who were detained in 87 provincial and territorial jails by the Canada Border Services Agency (CBSA) between 2016 and 2023. The migrants were not accused of any crime.

"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.

But lawyers for the federal government allege the judge "erred in law" when he determined there are grounds for a class action claiming negligence and violations of the Canadian Charter of Rights and Freedoms, according to documents filed in court in August, and which Radio-Canada has just been made aware of.

According to federal lawyers, the jail conditions experienced by migrants were "mischaracterized" as "penal and punitive."

They argue principles pertaining to duty of care and Charter rights were therefore misapplied by the judge. For instance, they deny that the imprisonment of migrants for administrative reasons contravenes the Charter, which prohibits arbitrary imprisonment as well as cruel and unusual treatment or punishment.

No date has been set for an appeal hearing, when the appeal court will determine if the class action can proceed or not.

Repeatedly strip-searched

Among the plaintiffs involved in the class action is Tyron Richard, originally from Grenada.

Even though he was not considered dangerous, Richard spent 18 months in three different maximum-security jails in Ontario from January 2015 to July 2016.

Under the Immigration and Refugee Protection Act, CBSA can detain foreign nationals if it believes 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.

Richard was held as a flight risk. 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."

Most provinces withdrew

Previously, CBSA could send detainees to one of its three immigration holding centres, or to jails across the country under agreements with provincial governments.

Since 2022, however, most provinces have withdrawn from these agreements, with some saying imprisonment for immigration purposes contravenes Canada's human rights obligations.

The practice remains in effect in Ontario, the province with the largest number of immigration detainees. Newfoundland and Labrador has indicated its intention to stop incarcerating migrants on behalf of CBSA as of March 31.

In reaction to the withdrawal of most provinces, the federal government has announced that starting this year it will use its penitentiary in Sainte-Anne-des-Plaines, Que., for what it calls "high-risk immigration detainees".

Organizations such as Human Rights Watch and Amnesty International have been calling on Canada to end the detention of migrants.

Brigitte Bureau
CBC News
Jan 17, 2025