Supreme Court of Canada rules to bolster rights of inmates in provincial jails

The Supreme Court of Canada on Friday bolstered the rights of inmates in provincial jails who are accused of serious offences while incarcerated, a major ruling from the top court that broke with a long-standing precedent.

The 6-3 judgment, written by Chief Justice Richard Wagner, represents a rare reversal from the Supreme Court on established law. The chief justice described it as “one of the exceptional cases” where the top court weighs a new constitutional issue.

The question was how inmates in provincial jails are disciplined. Those who are accused of violating prison rules, in Saskatchewan and other provinces, are judged on what’s called the balance of probabilities - whether it is more likely than not they committed an offence.

That is a lower standard of proof than beyond a reasonable doubt guaranteed by the presumption of innocence in the Charter of Rights and Freedoms.

At the Supreme Court, the John Howard Society of Saskatchewan argued inmates in provincial jails deserve that Charter right. Chief Justice Wagner and a majority of the Supreme Court agreed.

“This is a huge victory for prisoner rights,” said Samara Secter, a lawyer at Addario Law Group LLP in Toronto, who represented an intervener in the case, the Queen’s Prison Law Clinic. “A prison is not a Charter-free zone.”

Before Friday’s ruling, however, there had been a 1990 Supreme Court precedent that concluded inmate disciplinary proceedings were not criminal in nature, like trials in normal courts outside of a jail. In a 3-2 decision, the 1990 court ruled that significant punishments levied in jail did not merit the Charter protection of beyond a reasonable doubt.

The stakes for inmates in such situations are high. Those who are found guilty of a major disciplinary offence can be put in segregation or have their sentences effectively extended, with release dates pushed farther into the future.

This is what Chief Justice Wagner focused on in his judgment. He called such punishments “a true penal consequence” and said that while departing from precedent “should not be taken lightly,” he declared the 1990 ruling was no longer binding.

Chief Justice Wagner said proof of guilt beyond a reasonable doubt is a fundamental principle of Canadian law and this ruling confirmed that right “applies to persons behind the walls of correctional institutions who are charged with disciplinary offences.”

The ruling will reverberate among the provinces, starting in Saskatchewan, which will have to revise its regulations.

There was no immediate response to requests for comment on Friday morning from various provinces, including Saskatchewan, where the John Howard challenge was first heard in the lower courts. Provincial jails incarcerate people on sentences of less than two years, as well as those who are awaiting trial and have been denied bail, or are awaiting sentencing.

In federal prisons, where inmates are sentenced to two years or more, the standard of proof for serious allegations has been beyond a reasonable doubt since 1992. Such allegations are adjudicated by an independent chairperson, rather than a jail administrator.

The top court ruling means provinces will now have to follow the same standard, said Pierre Hawkins, public legal counsel at the John Howard Society of Saskatchewan.

Mr. Hawkins, who highlighted the over-representation of Indigenous people in Saskatchewan jails, has worked closely with innates accused of violations in recent years. He said the now-invalidated provincial rules stoked a “sense of unfairness” and the process to weigh alleged violations was colloquially described as a “kangaroo court.”

“People need to be treated with fairness,” said Mr. Hawkins. “These are human beings who have dignity and want to live their lives, albeit strictly limited.”

The Supreme Court case, heard over two days last October, attracted wide attention from the legal community. There were 15 interveners, with a range of civil society groups and attorneys-general from several provinces and the federal government.

The Saskatchewan government argued a lower standard of proof was necessary to maintain order and safety in provincial jails. Groups such as the Canadian Civil Liberties Association argued proof beyond a reasonable doubt was necessary in part because of well-documented systemic bias in jails against people from marginalized groups, such as Indigenous people.

In the 6-3 judgment, Justice Suzanne Côté wrote the dissent, as she often does. She was joined by justices Malcolm Rowe and Mahmud Jamal. They would have dismissed the John Howard appeal.

Justice Côté concluded that the 1990 Supreme Court decision “remains good law and a binding precedent and must be applied in the present case.” She agreed with the Saskatchewan government that its rules were designed to “maintain prison order.”

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