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Class-action lawsuit by immigration detainees against feds can proceed

By **Quinn Patrick, True North Wire** - July 10, 2024

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The Ontario Superior Court of Justice has approved a class-action lawsuit against the federal government over its use of provincial jails to hold immigration detainees.

The class-action suit represents people detained between 2016 and 2023 by the Canada Border Services Agency and held in 87 provincial and territorial jails.

The claim is seeking $100 million in damages, to be divided among the 8,360 people in the plaintiff class, should they win at trial.

The court issued its decision Friday after rejecting all 15 objections raised by federal government lawyers, who attempted to stop the proceedings.

"Immigration detainees were incarcerated in provincial prisons and encountered the same conditions as criminal inmates, including co-

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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.

The CBSA detained these foreign nationals under the Immigration and Refugee Protection Act, however, they had not been accused of a crime.

“According to Canadian and international law, immigration detention is administrative in nature and cannot be punitive,” reads the class action filing.

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“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 CBSA told True North that it was “committed to exercising its responsibility for detentions to the highest standards, with the wellbeing of detainees and the safety and security of Canadians as top priorities.”

“It is important to note that, on average, over 30 million foreign nationals enter Canada each year and 0.02% are subject to detention. The vast majority of foreign nationals are not subject to any restrictions,” said a CBSA spokesperson.

“As of June 28, 2024, 12,928 individuals were enrolled in alternatives to detention, 160 individuals were detained within our immigration holding centres and 36 others within provincial correctional facilities or local police agency holding cells.”

The spokesperson went on to say that Canada’s immigration detention program was governed by the Immigration and Refugee Protection Act, which says detention shall be used as a last resort for individuals who may pose a danger to the public, are a flight risk or whose identity has not been established.

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The Immigration and Refugee Board of Canada, an independent quasi-judicial tribunal, then reviews whether applicants should be released or further detained.

Immigration experts have pointed to jail use as an example of buck-passing by the federal government.

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"The fundamental problem is that the federal government has no suitable immigration detention facilities segregated from the criminal elements, and has resorted to relying on the provinces to hold individuals who are either a flight risk or others who are deportable because they have been convicted of crimes in Canada," immigration lawyer Sergio Karas told True North.

"Some individuals are difficult to deport because their countries of origin will not cooperate or issue passports to them and that contributes to the length of detention."

Karas said that the slow pace of deportation proceedings also adds to the length of detention, adding that the federal government needs to speed things up "to avoid people languishing in detention at a high cost to taxpayers."

"The bottom line is that there needs to be finality to a deportation proceeding that respects Charter rights but is not a free pass for wrongdoers," said Karas.

The CBSA claims that it only detains individuals when "there are serious concerns about danger to the public, or to other detainees, or to staff.This often means the person has been convicted of an offence in Canada or abroad, such as sexual offences, violence, weapons, or drug trafficking."

"For example, when someone is held for being unlikely to appear, they may also have prior convictions and outstanding charges for violent crimes such as assault with a weapon, attempted murder, assaulting an officer with a weapon, and aggravated sexual assault," said the CBSA spokesperson.

Previously, the CBSA worked with provinces to have high-risk individuals in provincial jails, but provincial governments have indicated they're no longer willing to do this."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," Subodh Bharati, one of the lawyers leading the class action, told CBC News.

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