

Ontario Court of Appeal affirms success in solitary confinement class action

June 22, 2021

The Ontario Court of Appeal in [*Francis v. Ontario*](#) has recently affirmed a summary judgment ruling in a class action arising out of the solitary confinement of class members in Ontario's correctional facilities between April 20, 2015 and September 18, 2018, which awarded class members \$30 million in aggregate damages for breaches of the *Canadian Charter of Rights and Freedoms*.

Background

The representative plaintiff, Conrey Francis (Francis), filed a class action against Her Majesty the Queen in Right of Ontario (Ontario) following his two plus years of incarceration at the Toronto South Detention Centre. During his time in custody, Francis, who was experiencing mental health issues, was placed in administrative segregation on two occasions. The class action sought declarations that class members' *Charter* rights were infringed by Ontario's system of administrative segregation and that Ontario was liable in negligence.

The class action was certified on a consent basis, and the class consists of two groups: those inmates who are seriously mentally ill (SMI Inmates), which included the plaintiff, and those inmates who were left in segregation for 15 or more consecutive days, regardless of mental health status (Prolonged Inmates).

Superior Court Decision

In the Superior Court of Justice, the motion judge granted summary judgment in favour of the class. In doing so, the motion judge found that the system of administrative segregation breached class members' s.7 and s.12 *Charter* rights, which protect "life, liberty and security of the person", and "the right not to be subjected to cruel and unusual treatment or punishment", respectively. The motion judge found further that Ontario owed a duty of care to the class members in the circumstances, and they fell below the standard of care. On the latter point, much turned on the differentiation between policy and operational decisions, the former attracting Crown immunity through statute.

Court of Appeal

While Ontario appealed the motion judge's decision on numerous grounds, this alert will focus on the challenge to the finding of systemic negligence. Ontario argued that its decisions at issue relating to administrative segregation were policy decisions, for which no liability could be found. In doing so, Ontario relied on the Court of Appeal's previous decision in [Brazeau v. Canada \(Attorney General\)](#) (Brazeau), a similar class action brought by mentally ill inmates in federal jails.

In Brazeau, the Court found that the claim in systemic negligence could not succeed because the primary negligence claim was "negligence at the policy-making level". In differentiating the present case from Brazeau, the Court of Appeal focused on the pleadings in the action. Specifically, the judge focused on the fact that the present class did not include all individuals who had been subjected to administrative segregation in Ontario. Further, the Amended Statement of Claim focused on the implementation of administrative segregation in Ontario institutions, and explicitly pled instances of Ontario's responsibility for the "operation" of its correctional facilities.

In the result, the Court of Appeal upheld the motion judge's finding that the present claim was founded in operational decisions that the Superintendent of a correctional institutions must make on a day-to-day basis. The Court ultimately dismissed the appeal in its entirety.

Takeaways

This case certainly adds to the jurisprudence that addresses the distinction between policy and operational decision-making and the distinction's effects on the viability of claims, particularly as against the Crown. Further, this case reinforces that a claim may be won or lost at the pleadings stage, and care should be taken when drafting a claim. The direct language in the pleadings in this case framed this claim as operational in nature, which assisted the Court of Appeal in coming to its conclusion.

By

[Jonathan Thoburn](#)

Expertise

[Class Actions](#), [Disputes](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.