Prison Lockdowns and Charter Damages: Ogiamien V Ontario, 2016 ONSC 3080

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On May 10, 2016, the Ontario Superior Court released its decision in *Ogiamien v Ontario*, 2016 ONSC 3080.

This case stems from a habeus corpus application brought by two inmates housed at the maximum-security Maplehurst Correctional Complex ("Maplehurst"). The applicants alleged that frequent and unpredictable use of 'lockdowns' constituted cruel and unusual treatment under the *Charter*.

Inmates in the general population at Maplehurst were typically allowed out of their cells for up to seven hours a day, during which time they were able to receive visitors and telephone calls, exercise, socialize, and attend religious and educational programs amongst other activities. However, during a lockdown, inmates were restricted to their cells. Over a three-year period, inmates at Maplehurst were subject to lockdown approximately 49% of the time, totalling 402 days. There was evidence before the Court that while lockdowns were sometimes necessary for safety and security reasons, they were also frequently used to compensate for staff shortages as a tool to control inmates.

The issues on the application were whether the conditions at Maplehurst violated the applicants' Charter rights, and, if so, the appropriate remedy.

The Court determined that while the use of lockdowns for genuine safety concerns was appropriate, the Federal Government's knowledge of the staffing shortages at Maplehurst, stretching back to approximately 2002, meant that the lockdowns were being inappropriately and routinely employed as a means of managing inmates. The Court found that this was an improper use of lockdowns in a manner that constituted a violation of the applicants' Charter rights.

Turning to the issue of remedies, Justice Gray considered that the case was an application brought by two inmates – it was not a class proceeding. Systemic remedies, for example, including a requirement that Maplehurst make certain procedural changes, would be more appropriate in the context of a class of individuals. Similarly, the Judge held that a declaration of rights alone, while alerting the authorities to the issues faced by the two applicants, would not go far enough to vindicate the applicants' individual rights.

Justice Gray held that in addition to a declaration of rights, the repeated and unpredictable disruptions caused by lockdowns on the applicants' daily life merited an award of damages. In applying the criteria outlined in the Supreme Court of Canada's decision in Vancouver (City) v. Ward, Justice Gray held that this approach would serve to deter future breaches while also appropriately vindicating the applicants' rights. Justice Gray further noted that there were no applicable countervailing factors against awarding damages.

In assessing quantum, Justice Gray considered that one of the applicants had been in lockdown for approximately 50% of his nearly three-year incarceration pending a decision by immigration authorities. He was awarded $60,000. The other applicant, an inmate held for a considerably shorter period of time pending his trial on various weapons-related offences, was awarded $25,000.

This decision follows a recent line of cases furthering the Court's incremental development of Charter damage awards. While this case does not reference a particular framework for the scope of damages awarded, the quantum represents significant awards under s. 24(1). Moreover, the Judge's comments situating the facts of the case within the framework of a hypothetical class proceeding appear to have opened the door to potential further litigation. We understand that certain parties are considering appealing the decision. However, at the time of writing, Notices of Appeal had not yet been filed.

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