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'Administrative detention is a tool that shouldn't be in the tool box," says Noa Mendelsohn Aviv.
Photo: Robin Rombki

Prison segregation rising

Trend continues despite growing calls for change

BY YAMRI TADDESE
Law Times

Seven years after Ashley Smith strangled herself to death with a piece of clothing in a small prison cell, there has been "no substantial change" to the use of solitary confinement, according to the ombudsman for federal inmates.

Despite recommending a complete prohibition on the use of segregation of prisoners who suffer from mental-health conditions, Howard Sapers of the Office of the Correctional Investigator says that with no policy changes in place, admissions to segregation cells are in fact on the rise.

At any given time, there are 850 inmates in solitary confinement in Canada's federal penitentiaries. According to the Office of the Correctional Investigator, there were 8,700 segregation placements in 2011-12. That's an increase of 700 in the last five years.

"We saw about a six- to seven-per-cent increase over the last five-year period," says Sapers. "And for the most part, that increase is in involuntary segregation."

Authorities place people in segregation when they're a threat to the safety of the institution or when officers are concerned for an inmate's own safety, says Sapers. Inmates may also go to segregation when there's a concern that their presence in the general prison population could jeopardize an ongoing investigation.

But the Office of the Correctional Investigator and other human rights groups have significant concerns about the trend of placing inmates in solitary confinement to manage their mental illnesses or tendency to injure themselves. There's a dangerous irony involved, according to the Office of the Correctional Investigator, which reports that one-third of all self injuries in federal prisons happen in segregation cells. In addition, studies have found the social deprivation of solitary confinement can exacerbate mental-health problems.

Segregation cells can be as small as five square metres with a small observation window, a steel door, and a food slot, says Sapers, who notes inmates spend 23 hours a day in them. "Segregation is the least therapeutic place in prison," he says. Authorities don't necessarily place prisoners with mental illnesses in segregation for being violent, Sapers adds, noting that sometimes their behaviour is simply "annoying" to other inmates and officers fear for their safety in the general prison population.

Still, "administrative detention is a tool that shouldn't be in the tool box," says Noa Mendelsohn Aviv of the Canadian Civil Liberties Association. The CCLA has recommended a more proactive response to mental illness instead of waiting until inmates' condition severely deteriorates and then placing them in segregation. Various types of programs can help manage mental illness among inmates, according to Mendelsohn Aviv.

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Crown vindicated in extradition case

BY YAMRI TADDESE
Law Times

The Ontario Court of Appeal has vindicated Crown counsel in an extradition case by setting aside a lower court decision that found authorities had engaged in misconduct when they sent items seized through a search warrant to the United States without informing the extradition court.

In *United States v. Lane* last Monday, the appeal court said Crown counsel didn't have to let extradition judges know of their involvement in an application to send seized items to the United States because of different statutes governing the proceedings at issue.

In a child pornography case involving a U.S. citizen, police in Kingston, Ont., obtained Brandon William Lane's computer and several external hard drives. After his arrest, Lane challenged the validity of the search warrant and wanted to present the seized items as evidence.

While the motion under the Charter of Rights and Freedoms was under reserve, Crown counsel pursued a successful mutual legal assistance treaty application that allowed them to send the computer and hard drives to U.S. authorities. They returned the materials unopened for the Charter application, but Lane still brought a motion for a stay of proceedings. In September, Superior Court Justice Brian Abrams granted the motion.

Abrams found the Crown and police had consorted in "a purposeful tactic or strategy to withhold crucial information" from the court and Lane. But in its decision last week, the Court of Appeal cleared Crown counsel of any wrongdoing.

The appeal court said the judge who granted the mutual legal assistance treaty application was aware that the items were subject to a Charter challenge and that in any event, Crown counsel didn't have to let the extradition judge know of developments in that area. "Extradition proceedings and MLAT proceedings are governed by separate statutes, each with its own purpose, procedures and safeguards to ensure that the rights of individuals are protected," the appeal court said.

"I understood the extradition judge's emotions about the proceeding and how it was felt that the corresponding MLAT proceedings were a bit of an end run around the application on behalf of the person sought at the extradition hearing," says Toronto criminal lawyer Joseph Neuberger. "But the two really were not connected."

Criminal lawyer Leo Adler says it would have helped to have one judge deal with both the extradition and the mutual legal assistance treaty applications. "I appreciate the Court of Appeal saying these are two different treaties. They are. But when you're effectively dealing with the same evidence . . . I think it would have been more prudent to have it in front of one judge." LT

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