

More limits and oversight needed for solitary confinement

By Jennifer Pritchett, Associate Editor



The pervasive and damaging use of solitary confinement in provincial jails and federal prisons across Canada desperately needs more limits and oversight, says Toronto civil litigator [Sarah O'Connor](#).

"There is no meaningful oversight of jails and prisons," she tells [AdvocateDaily.com](#). "In particular, there must be more transparency around the use of solitary confinement and the amount of time individuals are segregated."

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), comments on the issue after a [Globe and Mail](#) article highlighted two instances where prisoners languished in solitary confinement, including one resulting in Christopher Coaster's death. In the other case, a young indigenous man, Adam Capay, spent four years in segregation while awaiting trial on a murder charge.

"This shocking human rights violation has been made even more appalling by revelations that, until recently, Mr. Capay was kept in a cell lined with thick acrylic sheeting, that his lights were left on 24 hours a day, and that various ministers of Correctional Services ignored monthly reports about his prolonged mistreatment," says the article.

Coaster died in the same acrylic-lined cell where Mr. Capay was kept for 52 months; Coaster died there in 2008 after being placed in solitary four days earlier for violating a bail condition that prohibited him from drinking, the newspaper says.

"That judges in Ontario still order alcoholics and other addicts to quit cold turkey under pain of sanction is in itself cruel and stupid," says the [Globe](#). "But that Mr. Coaster, as a consequence of just such an order, was forced to suffer through grave withdrawal symptoms – while locked in an airless plastic box in the August heat – elevates his case into the realm of wanton disregard for an inmate's well-being," it says.

"It was horrible," Robert McKenzie, a jail sergeant at the time, said during the coroner's inquest into Mr. Coaster's death. "He dehydrated to death and boiled to death in there."

"The more one learns about Ontario's irresponsible use of solitary confinement, the more it feels as if that irresponsibility has veered into criminal neglect," the [Globe](#) says.

O'Connor says these cases point to a serious problem in the correctional system. But, she says, proving criminal negligence against the state in such cases may be difficult.

"One would have to prove that the objective standard wasn't followed and that the ministry had to know that what it was doing was wrong," she says. "You need to prove that ministry officials knew, or had the foresight to know, that the action would have caused harm."

O'Connor points to negligence lawsuits involving two Newfoundland families who have taken legal action against Corrections Canada over the separate deaths of two women in a Nova Scotia prison. The lawsuits allege the penitentiary failed to provide proper physical and mental health care in both cases, reports the [Toronto Star](#).

Veronica Park and Camille Strickland-Murphy died months apart in 2015 at the Nova Institution for Women in Truro, it says.

Kim Pate, executive director of the Canadian Association of Elizabeth Fry Societies, says the cases suggest Corrections hasn't followed up on the health-care recommendations of a coroner's jury after the death of Ashley Smith, an emotionally disturbed 19-year-old who died in 2007 after tying a strip of cloth around her neck, the article says.

"If those recommendations had been followed up on, I think it's conceivable the deaths could have been prevented," Pate said. "Where people have mental health issues they should be transferred to a mental health facility rather than being kept in segregation or both ... Camille Strickland-Murphy wasn't able to access adequate mental health."

While Ontario recently announced changes to the way it holds people in segregation, O'Connor says they don't go nearly far enough. One of the changes is that the province will impose a limit of 15 consecutive days in disciplinary segregation, reduced from the current maximum of 30 consecutive days. The province will also create a weekly segregation review committee at each jail to conduct case reviews of all inmates in segregation.

O'Connor notes Ontario didn't announce any major changes to administrative segregation.

"There is too much discretion — and not nearly enough transparency — about the use of administrative solitary confinement," she says.

O'Connor explains there are two types of solitary confinement: one is disciplinary and the other is administrative, which is used as a last-resort for security and safety reasons.

She also notes the Correctional Service of Canada hasn't announced similar limits for segregation in federal prisons or substantial changes to the way it uses solitary confinement in general.

As a result, she says it's conceivable there will be more litigation against jails and prisons related to the use of solitary confinement across Canada.

"Solitary confinement is often used for the most vulnerable prisoners — those with mental illness or addiction issues," she says. "This must change."