

Unique lawsuit deals with trauma of witnessing crime in jail

By Jennifer Pritchett, Associate Editor



A lawsuit filed by six prisoners against the province of Ontario is a unique case that may be one of the first in Canada to seek damages for the trauma of witnessing crime in a jail or prison setting, says Toronto civil litigator [Sarah O'Connor](#).

It's an unusual type of lawsuit to be launched by inmates, she tells [AdvocateDaily.com](#).

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), comments on the lawsuit that alleges the prisoners were forced to helplessly witness a murder that left them with lasting psychological damage and trauma.

The prisoners allege they were trapped in their cells in a poorly supervised jail when they heard and watched a brutal assault that left a man dead, reports the [National Post](#).

"The next day, many endured the boasting of the murderer and saw the bloody evidence. Some were locked in their cells for two weeks and more after witnessing the killing," says the newspaper. "But none were offered or received adequate counselling immediately after the killing, and continue to suffer psychological damage and post-traumatic stress, the inmates say."

The prisoners seek \$15 million in damages and want the province to admit it infringed their Charter rights to security and freedom from cruel and unusual punishment, reports the [Post](#).

The allegations haven't been proven in court.

O'Connor, who speaks generally about the case and isn't directly involved, says there have been lawsuits launched by people who have been impacted by crime. In the United States, there have been cases where an individual launches a lawsuit for damages because they witnessed the death of a loved one who was killed by a drunk driver, she says.

"But those haven't been in a jail setting," she says.

O'Connor doesn't know of any similar cases that have been launched in Canada.

She says the issue of the traumatic impact of witnessing a crime is a subject that has been receiving more attention in recent years.

She points to how Ontario now funds counselling for former jurors who are traumatized by their involvement in the court process and the gruesome exhibits they see. They can call a toll-free number for support and can access up to eight free counselling sessions in person, over the phone, by email or video conference, reports the [Toronto Star](#).

This Ontario lawsuit is interesting because the allegations are that inmates are also impacted by witnessing violent incidents and need assistance to deal with them, O'Connor says.

She notes that prisoners also have nowhere to go to avert their attention away from such traumatic events because "they are stuck in their cells."

"It sounds like the allegation is that it's basically PTSD they are suffering from and that they require continued treatment," she says.

"Having to hear the assault without any help coming, I think that's the crux of their allegations."

O'Connor says the plaintiffs will have to show they suffered mental stress, which is difficult to prove.

"They will have to prove that watching or hearing the hour-long assault is akin to cruel and unusual punishment," she says.

O'Connor says another avenue for financial support for such matters may be available through the provincial [Criminal Injuries Compensation Board](#).