

Adam Capay: Injustice toward First Nations offenders in Canadian corrections

In October 2016, Ontario's chief human rights commissioner, Renu Mandhane, visited the Thunder Bay Provincial Jail. As part of a routine check of the institution, she asked a guard if there was anything else that should be brought to her attention. The guard told her about an inmate who had been in continuous segregation for the last four years. Mandhane was taken to the basement of the facility, where there was 24-hour artificial light and a large Plexiglas cell at the end of the hall. Here Mandhane met Adam Capay. During their interaction, Capay told her he could not tell whether it was night or day. She noticed he was experiencing speech problems and a disorder in memory orientation. She also found him to have self-harm scars. This was when the Ontario Human Rights Commission intervened. The investigation into Capay's conditions was reported on extensively by Canadian news outlets and came to the attention of members of Parliament. Capay's situation rose to national prominence for exemplifying the cruelties of solitary confinement, the miscarriages of justice in the Canadian corrections system, and a deeply embedded systemic racism toward Indigenous inmates (Ballingall & Robinson, 2016; Andrew-Gee & Blaze Baum, 2016).

YEARS IN SEGREGATION

Only 19 years old in 2009, Capay was arrested on minor theft charges and was sent to the Thunder Bay Correctional Centre. While incarcerated, he got into an altercation with another inmate, Sherman Quisses. Capay stabbed Quisses, resulting in the latter's death. Following the event, Capay was moved from the Correctional Centre to the Thunder Bay District Jail, where he was placed in administrative segregation while awaiting trial. Between the ages of 19 and 22 (Capay is 23 now), Capay

BY KATIE O'CONNOR

Katie O'Connor is a recent graduate of the Joint Graduate Program in Communication and Culture at York and Ryerson Universities. Her master's research project examined the cultural construction of the serial killer in popular culture, and assessed how the serial killer is closely linked to consumer culture, representations of crime and criminal, transgression, and celebrity culture.

resided in segregation with no trial date for his first-degree murder charge in sight. The high rate of incarceration of Indigenous people has been historically linked to discriminatory attitudes based on racial and cultural prejudice, as well as economic and social disadvantage, substance abuse, violence, and trauma (Ballingall & Robinson, 2016).

DETRIMENTAL SIDE EFFECTS

The controversial debate over solitary confinement surrounds the Capay case. Upon transfer to the Thunder Bay District Jail, Capay was immediately placed in segregation. There is no paper trail to indicate exactly why he was placed in solitary. Typically, solitary is a method of last resort. However, Michael Lundy, a correctional officer at the jail, noted, "[W]e have a couple of inmates that when they come in, we know that we have to clear out segregation space for them because we know we can't house them anywhere else" (Porter, 2016). Solitary confinement, or administrative segregation, as it is called in Canada, is a form of imprisonment that includes extreme isolation for up to 23 hours per day.

Solitary confinement is accompanied by detrimental physiological and psychological side effects. Sensory deprivation caused by constant light can lead to impairments in speech and memory, as well as impaired vision from

depth-perception damage, and is an acknowledged torture technique. Suicidal inmates typically experience an amplification of self-destructive tendencies while in solitary. From 2012 to 2017, Capay was held in segregation for an estimated 1,500 days. The United Nations deems solitary confinement beyond a period of 15 days to be a form of torture (Ballingall & Robinson, 2016).

Solitary confinement may be used for a number of reasons. While awaiting trial, some inmates spend extended periods in segregation for their own or others' safety or for the notorious nature of their crimes. Indeed, it can take years for some serious offenders to get to trial. Segregation is also used for disciplinary or administrative reasons, such as management of high-profile offenders and punishment for fights, possession of contraband items, and other infractions. Solitary may also be used as an alternative to placing an inmate in the mainstream population or for reasons of mental health, which is another major issue in its own right in corrections.

VIOLATING CHARTER RIGHTS

The Canadian corrections system falls foul in the character of law compared with the United Kingdom and even the United States. For instance, US law has a presumptive period that identifies the acceptable delay from charge to trial in order to avoid an indefinite period of incarceration without a trial date. Like many other individuals in federal prisons, provincial prisons, and even immigration detention centres, Capay has fallen victim to Canada's non-presumptive period in which detainees can be held for an indefinite period of time (Prokopchuk, 2017). The Supreme Court of Canada has ruled that a delay longer than 30 months constitutes a violation of the *Canadian Charter of Rights and*

Adam Capay, page 24

Freedoms; Adam was held for 52 months (Andrew-Gee & Blaze Baum, 2016).

In March 2017, Capay was moved to a new cell, though he continues to be held in solitary confinement. Correctional Services Minister David Oraziotti said that Capay is content with the new arrangement. "This individual has been moved from their cell," he said during Question Period in October 2017. "They are no longer in that same cell. They are in a different location, with appropriate lighting and access to day rooms, spending time out of their cell for showers, phone calls and access to TV. It is my understanding, from speaking to officials, that the inmate is satisfied with the conditions they are presently in." It should be noted Oraziotti says Capay was not moved out of his cell as a result of public pressure but instead for reasons of facility renovations (White & Morrow, 2017).

The inhumane detainment of Capay, while not only a moral issue, also violates sections of the Charter. Among other things, the Charter guarantees to all Canadians the right to be tried within a reasonable amount of time. As mentioned, the Supreme Court considers a delay of more than 30 months to be unreasonable; Capay has waited nearly twice as long. The legal rights of individuals within the justice and law enforcement systems are protected under sections 7 to 14. In Adam Capay's case, his lawyers argue that his rights and freedoms under sections 7, 9, 12, and 15 have been violated. Section 7 guarantees the right to life, liberty, and security of the person. Section 9 ensures freedom from arbitrary detention or imprisonment. Section 12 deals with the right not to be subjected to cruel and unusual treatment or punishment. Section 15 guarantees the right to be equal before the law and the right to equal protection and benefit of the law without discrimination on the basis of race and/or mental disability (Prokopchuk, 2017). Before Commissioner Mandhane discovered the circumstances of Capay's confine-

Capay's situation rose to national prominence for exemplifying the cruelties of solitary confinement, the miscarriages of justice in the Canadian corrections system, and a deeply embedded systemic racism toward Indigenous inmates.

ment in 2016, Capay had been given no access to an Indigenous elder, no opportunity to practise Indigenous spirituality, and limited access to Indigenous-specific programs and supports (Ballingall & Robinson, 2016).

These human rights violations speak volumes about the cruel and inhumane punishment Capay was enduring. It is very easy to think of prison as a different world, a world we never want to see the inside of. If not for Renu Mandhane and prison guards who have made Capay's struggles visible to us and brought similar circumstances to light, we would continue with our lives in blissful ignorance of the travesties that are taking place on Canadian soil. ❁

REFERENCES

- Andrew-Gee, Eric, & Blaze Baum, Kathryn. (2016, October 28). Adam Capay's lonely path to solitary confinement. *The Globe and Mail*. Retrieved from <https://www.theglobeandmail.com/news/national/adam-capays-journey-through-prison-system-tells-sad-story/article32585480/>
- Ballingall, Alex, & Robinson, Michael. (2016, October 29). Murder and segregation: The story of Adam Capay and Sherman Quisses. *The Toronto Star*. Retrieved from <https://www.thestar.com/news/canada/2016/10/29/murder-and-segregation-the-story-of-adam-capay-and-sherman-quisses.html>
- Canadian Charter of Rights and Freedoms. (1982). Part I of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.
- Porter, Jody. (2016, November 28). Year-long segregation "a regular thing" at jail where Adam Capay is held, guard says. *CBC News*. Retrieved from <http://www.cbc.ca/news/canada/thunder-bay/segregation-adam-capay-1.3868200>
- Prokopchuk, Matt. (2017, February 24). Lawyers for Adam Capay apply to have murder charge stayed. *CBC News Thunder Bay*. Retrieved from <http://www.cbc.ca/news/canada/thunder-bay/adam-capay-murder-stay-application-1.3996963>
- White, Patrick, & Morrow, Adrian. (2017, March 24). Adam Capay only moved from his cell due to renovations: Union official. *The Globe and Mail*. Retrieved from <https://www.theglobeandmail.com/news/national/man-held-in-solitary-for-four-years-moved-from-cell-because-of-renovations/article32536032/>

Learn more about Canada Watch and the Robarts Centre for Canadian Studies at <http://robarts.info.yorku.ca>