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BILL C-5: A LEGAL FEEDING FRENZY AT THE EXPENSE OF INDIGENOUS JURISDICTION

By Joan Jack
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The federal government's proposed Bill C-5 — which includes the *Building Canada Act* — sets a two-year timeline for major project approvals. On the surface, it promises efficiency and economic momentum. But from the perspective of many Indigenous leaders and legal professionals, this legislation signals a looming crisis: the sidelining of Indigenous law, the erosion of meaningful consultation, and a surge of culturally incompetent legal advocacy that risks deepening colonial harm.

Having practised law for decades as an Indigenous lawyer in Canada, I've witnessed first-hand how deeply the legal system misunderstands who we are as Indigenous Peoples. Most lawyers — both non-Indigenous and many Indigenous colleagues shaped by colonial education — interpret Canadian law solely through a Western legal framework. They fail to engage with the complex, land-based, relational legal systems that continue to govern Indigenous nations across Turtle Island.

The legal profession's blind spot

While the Canadian legal profession often champions procedural fairness, it routinely disregards the fundamental reality that Indigenous Peoples live under distinct and valid legal orders. These systems are not folklore or cultural symbolism; they are laws — rooted in centuries of governance, responsibility and relationships with the land. Yet Bill C-5, which accelerates the federal approval process for projects deemed in the "national interest," is poised to marginalize these legal traditions even further.

The legal community is largely unprepared for what's coming. A compressed two-year approval timeline will trigger a legal feeding frenzy. Firms will race

to represent Indigenous clients navigating increasingly complex negotiations over pipelines, mining, transmission lines and other extractive infrastructure. But who will these clients rely on? And are those lawyers equipped to advise within Indigenous worldviews, not just Canadian legal standards? The answer, in most cases, is no.

Misapplied legal advice — with real consequences

Most legal advisers, even those with good intentions, do not understand Indigenous law and governance. Their advice is filtered through paradigms of property, sovereignty and profit. This distorts what is offered to Indigenous leadership: short-term impact-benefit agreements, narrow readings of consultation obligations and transactional arrangements that sidestep true consent. In fast-moving legal contexts like Bill C-5, this isn't just a flaw — it's a threat to Indigenous self-determination.

The United Nations Declaration on the Rights of Indigenous Peoples, which Canada has adopted into federal law, requires free, prior and informed consent before development can proceed on Indigenous lands. Yet Bill C-5 frames consultation as a procedural box to check — an obstacle to economic growth rather than a space for Indigenous law and jurisdiction to guide decision-making. This contradiction cannot be overlooked.

Culturally competent legal capacity is not optional

For Indigenous Peoples, the acceleration of project approvals means a race to secure sound, culturally aware legal representation. But in a legal profession that has barely begun to decolonize its education and practice, there is no real infrastructure in place to meet that need. Indigenous leadership will be left choosing among counsel who may not understand their values, their legal orders or their visions for the future.

And so, the cycle continues: fast-tracked development, rushed agreements and legal outcomes that compromise Indigenous jurisdiction under the guise of economic progress.

> “If Indigenous leadership is to meaningfully engage with Bill C-5 or any future infrastructure regime, we must assert not only our right to be consulted, but our jurisdiction to co-govern as the means of accommodation.”

Indigenous law is law

This is not a matter of ideology; it is a matter of law. Indigenous legal orders continue to exist and govern, despite Canada’s centuries-long efforts to erase or absorb them. These laws must be respected as foundational, not as afterthoughts. If Indigenous leadership is to meaningfully engage with Bill C-5 or any future infrastructure regime, we must assert not only our right to be consulted, but our jurisdiction to co-govern as the means of accommodation.

The legal profession must also transform. It must do more than provide pro forma consultation training or occasional cultural competency seminars. It must reckon with the legitimacy and applicability of Indigenous legal orders and rebuild its frameworks around a plural legal landscape.

What now?

If Canada is serious about reconciliation, and not just rhetorical inclusion at the performative level, then Bill C-5 must be reworked. The legislation must embed Indigenous co-governance from its foundation. It must ensure that project approval processes are not just faster, but more just. And it must support Indigenous nations in building and funding legal capacity on their own terms.

Because without these reforms, Bill C-5 will not be a tool for building Canada. It will be another tool for the continued dismantling of Indigenous law and jurisdiction.

We do not need faster approvals. We need deeper respect, stronger consent and substantial accommodation through legal solutions that honour and are based on the laws that have governed our lands for millennia — Indigenous laws. Anything else will be "bigger beads and trinkets."

ONTARIO FACES $30M CLASS ACTION OVER ALLEGED MASS ABUSE AT MAPLEHURST JAIL

By Karunjit Singh
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Ontario is facing a $30-million proposed class action over allegations that nearly 200 inmates at a correctional facility were subjected to illegal strip searches and systematic violence as collective punishment for an individual inmate assaulting a guard.

The conduct that is the subject of the class action took place at the Maplehurst Correctional Complex in Milton, Ont., in December 2023. Certain videos of the incident were released under an order of the Ontario Superior Court.

Justice Colette Good, who ordered the release of the videos, described them as depicting conduct that included criminal acts towards prisoners and would "shock the conscience of the public."

The proposed **class action** commenced by Goldblatt Partners LLP and Posner Craig Stein LLP alleges that the Institutional Crisis Intervention Team at the correctional complex carried out a coordinated operation targeting all of the approximately 192 inmates in Unit 8 of the institution from Dec. 22 to 24, 2023.

The proposed representative plaintiff in the class action is Jamarey Chisholm, who was an inmate at Maplehurst in December 2023.

"The plaintiff alleges, on behalf of all class members,

that the coordinated operation included unlawful cell-by-cell strip searches of the entire unit, systematic assaults, wrenching the wrists of the inmates using zip ties, pepper-spraying and beating inmates inside their cells, and other rights deprivations," Goldblatt Partners said in a release.

Besides being strip searched, Chisholm was also allegedly dragged out of his cell using zip ties, with his hands and wrists intentionally and painfully contorted by guards.

The claim alleges that guards also beat and pepper-sprayed some inmates during strip searches and that some inmates were shot at point-blank range by pepper-ball guns.

The plaintiff has alleged that staff at Maplehurst made conditions within Unit 8 inhospitable by depriving inmates of clothing, bedding, toilet paper, medical treatment and other necessities for upwards of two days.

The temperature on Unit 8 was also allegedly lowered to extremely cold levels by turning on the exhaust fans and letting in the outdoor winter air, while inmates were deprived of clothes in their cells.

The class action alleges that Maplehurst superintendent Winston Wong, who authorized the operation, referred to it as "Wong-tanamo Bay" in remarks to Maplehurst colleagues and inmates.

"While inmates were being subjected to degrading and humiliating treatment and abuse, Superintendent Wong told the inmates 'Welcome to Wong-tanamo Bay.' He also told them 'this is my house,' 'what we say goes,' and other words to that effect," the plaintiff has alleged.

The lawsuit also alleged that Wong and other jail staff deliberately failed to document their unlawful acts, falsified jail records and/or destroyed jail records to conceal their conduct.

The plaintiff has also submitted that Ontario failed to make public the findings of the province's investigation into the incident.

Ontario's ombudsman has initiated an investigation into Ontario's response to the incident.

The lawsuit claims that the unlawful mass strip search, systematic assault and collective punishment carried out by prison authorities at Maplehurst breached inmates rights under ss. 7, 8 and 12 of the *Canadian Charter of Rights and Freedoms*.

It alleges that the unlawful conduct and wrongful acts committed by prison authorities constituted misfeasance in public office, negligence, and a breach of the fiduciary duties owed to inmates.

The class action is seeking $20 million in damages, $10 million in punitive damages and costs of the action on a full indemnity basis.

> "This type of extreme state misconduct can only occur where an institution believes itself to be immune from consequences. Deterrence is one of the key objectives of Charter damages"

"A class action calls into focus the collective nature of this governmental abuse. Everyone who went through this state-imposed nightmare is entitled to damages, whether or not they obtained individual remedies in their criminal cases," said class counsel Louis Century of Goldblatt Partners LLP.

He highlighted that most of the inmates involved were awaiting trial and presumed innocent.

Class counsel Gabriel Gross-Stein of Posner Craig Stein LLP said that the class action on behalf of the impacted inmates was a way to counter impunity at Maplehurst and create meaningful accountability.

“This type of extreme state misconduct can only occur where an institution believes itself to be immune from consequences. Deterrence is one of the key objectives of Charter damages,” he told Law360 Canada in an email.

The Ontario Ministry of the Solicitor General did not immediately respond to a request for comment.

SHOULD TV CAMERAS BE ALLOWED IN CANADIAN COURTROOMS?

By John L. Hill
Originally published on Law360 Canada,

The month of May has seen Canadians unusually fixated on courtroom drama. In the United States, we watched as the Menendez brothers sought resentencing to end their "life without parole" for shooting their parents, allowing them in future to go before a parole board to rejoin free society.

In Canada, we have been eager to hear the latest testimony of E.M. in a London, Ont., courtroom as she gave testimony of allegedly being sexually assaulted by five former members of Canada's 2018 world junior hockey team.

Several cases have been brought to the Supreme Court of Canada that have upheld the public's right to know what transpires in our courtrooms (*Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877; *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2). The courts have consistently maintained that the connection between freedom of expression and the political process is perhaps the linchpin of s. 2(b) Charter protection.

Many can remember being glued to their TV sets as the O.J. Simpson murder trial progressed. It became "must-watch" television, spawning an audience for real-life true crime viewing on Court TV. However, Canadians have been deprived of having television cameras invade our courtrooms.

On the other hand, many have watched the TV depiction of trials. Rarely does a cinematic portrayal of what goes on in court reflect the actual practice, which is often tedious and boring. Seldom are there moments like the presentation of a glove and the words, "If it doesn't fit, you must acquit." More often, time is taken up in the argument of whether an object or a letter that only has a tangential impact on guilt or innocence should be made an exhibit.

There are several good arguments for continuing to exclude television and radio reporting from all court actions. Witnesses, jurors and even judges may feel intimidated, leading to changes in behaviour or reluctance to testify. This could be an essential consideration where a prosecution depends on an informer.

The “in camera” testimony of a police informer that led to a conviction had the Quebec Court of Appeal declare the matter a “secret trial.” However, a unanimous decision of the Supreme Court stated that secret trials do not exist in Canada (*Canadian Broadcasting Corp. v. Named Person*, 2024 SCC 21). The court established procedures, including the allowance of redactions to preserve the public’s right to know.

Live coverage might encourage grandstanding or theatrics by lawyers or witnesses seeking attention. Such coverage could interfere with the privacy rights of victims and witnesses, especially when sensitive issues such as sexual assault or abuse of minors are a concern. It might deter victims from reporting horrendous crimes and expose their identities to the public.

We have also seen in the Donald Trump trials that TV coverage can lead to threats and harassment of trial participants, including judges.

Technical problems can arise. Reconfiguring a courtroom for TV could lead to disruptions impacting the space’s overall functioning.

> “Perhaps the most serious shortcoming of televised trials is the danger that the media coverage could influence public opinion, which could affect a jury’s impartiality, especially when retrials are necessary. We cannot turn our courts of law into courts of public opinion.”

Perhaps the most serious shortcoming of televised trials is the danger that the media coverage could influence public opinion, which could affect a jury’s impartiality, especially when retrials are necessary. We cannot turn our courts of law into courts of public opinion.

However, as local newspapers are rapidly disappearing and the print media has a lesser impact on news dissemination, it might be worthwhile to re-examine our reluctance to have trials conducted publicly. COVID-19 has allowed trials to proceed and be viewed by participants and observers on home computers.

The democratic principle of open courts could be advanced. We would not be dependent on an individual reporter’s inaccurate and perhaps biased reporting. Most importantly, the law must be seen to work, and allowing public oversight would ensure that justice is carried out fairly and openly. The public can be better educated about legal procedures and courtroom behaviour.

The decision to allow TV cameras in courtrooms often involves balancing the public’s right to know with the rights of defendants and witnesses to a fair and dignified process. Some jurisdictions allow

them under strict rules, while others restrict them to protect the integrity of the trial.

Our courts have carved out an acceptable middle ground that preserves our constitutional right to freedom of expression and the press without opening the process to the extent allowed in the United States. Ultimately, our courtrooms are essential centres for the administration of justice. They are not auditoriums for public entertainment any more than hospital operating rooms should be arenas for the public to observe the delicate balance between life and death.

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