Court File No.: 38574

IN THE SUPREME COURT OF CANADA
(COURT OF APPEAL FOR ONTARIO)

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant
(Respondent in Appeal)

- and -

CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Respondent
(Appellant in Appeal)

RESPONDING MOTION RECORD OF THE RESPONDING PARTY, CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

VOLUME I

Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8
Tel: 416-598-1744
Fax: 416-598-3730

Jonathan C. Lisus
LSUC#32952H
Email: jlisus@counsel-toronto.com

Larissa C. Moscu
LSUC#62928W
Email: lmoscu@counsel-toronto.com

McCarthy Tétrault LLP
Suite 5300,
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Tel: 416-362-1812
Fax: 416-868-0673

H. Michael Rosenberg
LSUC#58140U
Email: mrosenberg@mccarthy.ca

Charlotte-Anne Malischewski LSUC#69687F
Email: cmalischewski@mccarthy.ca

Conway Baxter Wilson LLP/s.r.l
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9
Tel: 613-780-2012
Fax: 613-688-0271

Colin Baxter

Email: cbaxter@conway.pro

Lawyers for the Respondent, Corporation of the Canadian Civil Liberties Association

TO: **ATTORNEY GENERAL OF THE ATTORNEY GENERAL**
Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto ON M5H 1T1

Fax: 416-954-8982

Kathryn Hucal
Johnathan Provart
Bradley Bechard
Tel: 647-246-7510 / 647-256-0784 / 647-256-0883
Fax: 416-973-0809
Email: kathryn.hucal@justice.gc.ca / John.Provart@justice.gc.ca / Bradley.Bechard@justice.gc.ca

Lawyers for the Applicant

DEPUTY ATTORNEY GENERAL OF CANADA
Department of Justice Canada
National Litigation Sector
500-50 O'Connor Street
Ottawa ON K1A 0H8

Christopher Rupar
Tel: 613-670-6290
Fax: 613-954-1920
Email: christophe.rupar@justice.gc.ca

Agent for the Applicant

ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto ON M7A 2S9

Michael S. Dunn
Andrea M. Bolieriro
Tel: 416-453-2765
Fax: 416-326-6287
Email: michael.dunn@ontario.ca
andrea.bolieiro@ontario.ca

Counsel to the Intervener,
Attorney General of Ontario

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
1300-100 Queen
Ottawa, ON K1P 1J9

Karen Perron
Tel: 613-369-4795
Fax: 613-237-8842
Email: kperron@blg.com

Agent for the Intervener,
Attorney General of Ontario

Court File No.: 38574

IN THE SUPREME COURT OF CANADA
(COURT OF APPEAL FOR ONTARIO)

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant
(Respondent in Appeal)

- and -

CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Respondent
(Appellant in Appeal)

SUPPLEMENTARY MOTION RECORD OF THE RESPONDING PARTY, CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

INTERIM STAY

INDEX

Court File No.: 38574

IN THE SUPREME COURT OF CANADA
(COURT OF APPEAL FOR ONTARIO)

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant
(Respondent in Appeal)

- and -

CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Respondent
(Appellant in Appeal)

AFFIDAVIT OF CHRISTINA VINCENT

(Affirmed June 13, 2019)

I, **CHRISTINA VINCENT,** of the City of Toronto, in the Province of Ontario,

AFFIRM THAT:

1. I am a law clerk with the firm McCarthy Tétrault LLP, counsel for the Appellant, Corporation of the Canadian Civil Liberties Association ("**CCLA**"). As such, I have personal knowledge of the matters set out herein except where otherwise stated. Where I do not have personal knowledge, I have identified the source of my information and belief, and believe the information I am conveying to be true.

2. Attached hereto and marked as Exhibit "A" is a newspaper article by Colin Perkel, The Canadian Press, National Newswatch, "Government asks Supreme Court for urgent stay of solitary confinement ruling", June 12, 2019: **https://www.nationalnewswatch.com/2019/06/12/government-asks-supreme-court-for-urgent-stay-of-solitary-confinement-ruling-3/#.XQGqqvZFzZs.**

3. Attached hereto and marked as Exhibit "B" is the memoradum of Cari Turi, dated February 9, 2019. This was produced as an answer to undertaking arising form the Examination of Lee Redpath on April 4, 2019 in this matter and filed in the Court below.

4. Attached hereto and marked as Exhibit "C" is an extract of the Examination of Lee Redpath, April 4, 2019, Q. 178-182, 357. Transcript filed in the Court below.

5. Attached hereto and marked as Exhibit "D" is an extract of the Examination of Kevin Snedden, March 8, 2019, Q. 455-465, Transcript filed in the Court below.

6. I make this affidavit in response to Attorney General of Canada's motion for an interim stay of the Ontario Court of Appeal's declaration of constitutional invalidity in this matter and for no other or improper purpose.

Affirmed BEFORE ME at the City of Toronto, in the Province of Ontario on June 13, 2019.

C. A. Malischewski

Commissioner for Taking Affidavits

Charlotte-Anne Malischewski
LSUC# 69687F

CHRISTINA VINCENT

NATIONAL NEWSWATCH (https://www.nationalnewswatch.com)

Government asks Supreme Court for urgent stay of solitary confinement ruling

This is Exhibit ..A..... referred to in the affidavit of CHRISTINA VINCENT sworn before me, this 13TH day of JUNE 20..19..

A COMMISSIONER FOR TAKING AFFIDAVITS

By Colin Perkel, The Canadian Press (https://www.nationalnewswatch.com/author/colin-perkel-the-canadian-press-2/) — Jun 12 2019

TORONTO — Faced with the prospect that segregation is about to become illegal next week, the federal government has asked Canada's top court for an urgent stay of an 18-month-old ruling that declared the practice unconstitutional because of its lack of meaningful oversight.

In a hand-delivered application on Tuesday, the Department of Justice tells the Supreme Court of Canada that it needs the stay for safety reasons.

"This motion is urgent, as administrative segregation is will no longer be available after June 17, 2019, regardless of the safety and security of inmates administratively segregated, other inmates or corrections staff in federal penitentiaries," the government says. "If the extension is not granted ... the safety and security interest of inmates and staff in penitentiaries will be in jeopardy."

Administrative segregation allows correctional authorities to place inmates deemed a threat either to themselves or others in solitary confinement. However, Superior Court Justice Frank Marrocco in December 2017 struck down parts of the Corrections and Conditional Release Act that allowed the practice.

Marrocco, who was critical of the lack of supervision, put his ruling on hold for one year to give the government time to remedy the situation. The government did not appeal the ruling but asked Ontario's top court for more time to implement it.

In a scathing assessment of the government's lack of action, the Ontario Court of Appeal agreed to stay Marrocco's ruling in December. The Appeal Court then reluctantly did so again in April, saying there would be no further extensions.

It also imposed a condition for the stay: Correctional Service Canada had to implement an independent review after a prisoner had spent five days in isolation. Ottawa now says it has been unable to comply with that order and the government is seeking leave to appeal the issue.

The Canadian Civil Liberties Association, which pressed the fight against segregation, expressed dismay at the government's tactics.

"Canada has had a year and a half to address its constitutionally defective statute," said association lawyer Michael Rosenberg. "It has failed to do so. This meritless application for leave to appeal is an outrageous attempt to prolong the suffering of prisoners in solitary confinement and perpetuate an abhorrent practice that has been thoroughly denounced by our courts."

The government has long maintained it was addressing the problems with administrative segregation through Bill C-83, which senators were debating on Wednesday. Asked what would happen when the practice becomes illegal next week, the government had little to say.

"The minister has nothing further to add at this point," a spokesman for Public Safety Minister Ralph Goodale told The Canadian Press on Tuesday. "The government continues to review the implications of the rulings and is advancing Bill C-83 through the Parliamentary process."

Critics have questioned whether the legislation will remedy the constitutional problems the courts have identified.

A spokeswoman for Correctional Service Canada said on Tuesday that prison authorities were "still examining the specifics of the ruling" and noted Bill C-83 was before Parliament but offered no details of what might happen next week.

"CSC will ensure that measures are in place to protect the safety of our staff, offenders and our institutions while being compliant with the law," the spokeswoman said in an email.

The urgent request to the Supreme Court is similar to one it made in April, when, at the last minute, it sought a stay of another ruling from the Court of Appeal that declared more than 15 days in isolation to be cruel and unusual punishment and therefore unconstitutional. The Supreme Court granted that one.

It's not immediately clear when the high court will consider the new stay motion.

Colin Perkel, The Canadian Press

5

Tweets by @natnewswatch

National Newswatch
@natnewswatch

SUN EXCLUSIVE: Ford's approval rate drops to 29% - New poll leaves Ford with question ottawasun.com/news/national/…

TOWHEY: New poll leaves Ford with question
Honeymoon? What honeymoon? One year after his election, Ontario Premier Doug Ford’s approval has dropped steadily by 11 percentage points since his
ottawasun.com

1h

National Newswatch
@natnewswatch

Embed View on Twitter

(/)

Most-Read Articles (https://www.nationalnewswatch.com/most-read-articles/)

News Sources (https://www.nationalnewswatch.com/news-sources/)

Advertise (https://www.nationalnewswatch.com/advertise/)

Contact (https://www.nationalnewswatch.com/contact/)

Video (https://www.nationalnewswatch.com/video/)

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / A: Wardens
Pacific Region

FROM / DE: Cari Turi
A/Regional Deputy Commissioner
RHQ Pacific

SECURITY CLASSIFICATION - CLASSIFICATION DE SÉCURITÉ
OUR FILE - NOTRE RÉFÉRENCE
YOUR FILE - VOTRE RÉFÉRENCE
DATE: February 4th 2019

SUBJECT / OBJET: **Regional Segregation Review Board Timeframes**

The purpose of this memo is to advise of amendments to the Regional Segregation Reviews Board timeframes. This is a result of the January 7th 2019 British Columbia Court of Appeal decision brought by the British Columbia Civil Liberties Association (BCCLA) and the John Howard Society of Canada.

The BC Court of Appeal's condition outlined in section *j*) of the decision states: "*The Correctional Service of Canada must establish a system of review whereby no inmate will remain in administrative segregation for more than fifteen days without such continued detention being authorized by a senior official who is neither the institutional head of the institution where the inmate is incarcerated nor a person who is subordinate to that institutional head.*"

In order to comply with the Court's condition (j), the Regional Segregation Review Board will occur on every case before the inmate reaches 15 days in administrative segregation. The 15-day Regional Segregation Review Board decision will reflect whether the the administrative segregation of the inmate continues to be justified, and the decision will be rendered by the ADCCO or ADCIS of the Pacific region. In case of ADCCO/ADCIS absence, the 15-day Segregation Review Board decision can be delegated to the District Director, Pacific region.

All subsequent Regional Segregation Reviews Board decisions will continue to adhere to CD 709 para 65 (a) that states the Regional Deputy Commissioner will "*review the case of every inmate who reaches 40 days and that has been reviewed by the RSRB to determine whether the administrative segregation of the inmate continues to be justified.*"

Full compliance of thee additional timeframes identified above will take place by February 18th 2019.

Thank you for your cooperation,

Canada

This is Exhibit B referred to in the affidavit of CHRISTINA VINCENT sworn before me, this 13TH day of JUNE 20 19

A COMMISSIONER FOR TAKING AFFIDAVITS

Cari Turi
A/Regional Deputy Commissioner, Pacific Region

CC: Assistant Commissioner Correctional Operations and Programs
Deputy Wardens,
RA Interventions and Assessment
Regional Segregation Oversight Manager

55. MR. ROSENBERG: These are submissions to Treasury Board, these are not protected by cabinet privilege, Counsel.

MR. PROVART: I don't want to prejudge that matter because I don't know what that document is.

56. MR. ROSENBERG: All right. So, I am going to ask for a copy of the Treasury Board submission that you have just referenced.

MR. PROVART: And we will take that under advisement. U/A

57. MR. ROSENBERG: And you won't even tell me when this submission was made?

MR. PROVART: No, I think we are going to take that under advisement, as well. U/A

BY MR. ROSENBERG:

58. Q. What was the request for funding?

A. In order to start SIUs, structured intervention units.

59. Q. How much money is...

A. Sorry, you are comfortable if I just say SIUs?

60. Q. That is fine, yes. I will understand what you are saying.

A. Okay.

61. Q. How much money was requested in the submission?

MR. PROVART: Again, I mean, we are getting into the exact...if there is an issue here, this is precisely what would be covered. /R

BY MR. ROSENBERG:

62. Q. What was the result of the submission, was it approved?

MR. PROVART: Again...I think you can answer that question.

THE DEPONENT: There was an approval for funding, yes.

BY MR. ROSENBERG:

63. Q. When?

A. The Fall Economic Statement came out...

64. Q. November 21, 2018?

A. Sorry, I don't know the exact date, but it was the Fall Economic Statement.

65. Q. All right. We will turn to that in a moment. And what was the result, in terms of the quantum of funding approved?

A. The result was we received notice that we were getting the funding, so we were able to move forward with the planning of the...

66. Q. You said "the funding", you got the funding that you requested?

A. For the structured intervention units, yes.

67. Q. Now, that funding that you received had, I take it, baked into it a component to cover the cost of the additional staffing required to provide SIUs?

A. Correct, yes.

68. MR. ROSENBERG: And, you are not going to provide me that number?

MR. PROVART: We will take that under advisement and we will get back to you. U/A

BY MR. ROSENBERG:

69. Q. Does the 2017/2018 CSC report on plans and priorities say anything about compliance with the Ontario or B.C. Court Decisions determining that sections 31 to 37 of

that an election could be called before that time?

A. I don't know.

139. Q. You understand that Parliament has to be prorogued before an election?

A. I am not familiar with the electoral process.

140. Q. So, you can't tell me when Parliament would be prorogued in advance of an election?

A. No.

141. Q. Canada can offer no guarantee that Bill C-83 will be proclaimed into force before Parliament is prorogued before the election?

A. I don’t have that information.

142. Q. If there is a change in government following the election, it is possible that a new government will abandon Bill C-83?

A. I don't know.

143. Q. And on the Motion presently before the Court, Canada is asking to extend the suspension until after the upcoming federal election, correct?

A. Yes.

Do you see that?

A. Yes.

153. Q. The letter advises that CSC expects to have such a system of review in place in the Pacific region in April 2019, correct?

A. Yes.

154. Q. Any other regions?

A. No, not to my knowledge.

155. Q. And just so I understand that, maybe that these 15-day reviews are not going to happen by April 2019 in other regions, but are there plans to implement these 15-day reviews in other regions?

A. Not to my knowledge.

156. Q. When did CSC begin working on the 15-day review, as discussed in this letter?

A. I am going to say end of January.

157. Q. And what...

A. Sorry, when we received...when we put the letter in and it was accepted, we had started to think about it...by "we", not me, personally.

158. Q. Right, but you were involved in this process. I see that there was a meeting of January 31, 2019, in which it is stated that,

169. Q. The letter continues to say that at the end of February, what CSC was considering was,

"...Using the existing regional segregation review board review process as a model for the 15-day review..."

That is consistent with your understanding?

A. There was a discussion to...as a framework, if you will.

170. Q. Who chairs that regional segregation review board?

A. Currently? The regional segregation review board is by the assistant deputy commissioner of correctional operations or in their absence, the assistant...oh gosh. ADCIS, assistant deputy...I don't know. ADCIS, yes, I believe it is integrated services, it's their counterpart. Is it integrated services? Yes.

171. Q. Thank you. And after how many days does that board currently review segregation placements?

A. Sorry, we just changed policy back in 2017. Can I...top of head, I am going to say 48 days but for, like, preciseness I could

look to the policy.

172. Q. Is it possible it is 38 days?

A. Can I look...I don't have...I don't pay attention to that, to be honest with you.

173. Q. All right, understood. Are you aware of any case where the regional segregation review board has overruled an institutional head's decision to maintain an inmate in segregation and ordered that inmate's release?

A. I am not personally aware of those cases.

174. Q. Now, how is this going to work, that you have a 15-day review conducted by something like the regional segregation review board when the *Corrections and Conditional Release Act*, or regulation thereunder, commissioner's directive, CD-709, none of those instruments say anything about a 15-day review?

MR. PROVART: Yes, and I think I am going to object to that question because I think we are getting into basically asking for a legal opinion here from the witness about how this works within the framework, the legal framework, you have

Canada from counsel for the Department of Justice. So...

177. MR. ROSENBERG: I want to keep this in terms of the witness's involvement so that I make this very practical.

MR. PROVART: Yes.

BY MR. ROSENBERG:

178. Q. In order to implement the 15-day review that is described in this letter and in which you have some involvement, is there any plan to amend the *Corrections and Conditional Release Act*, that you know of?

A. I am not aware of that.

179. Q. Is there any plan to amend the regulation under the *Corrections and Conditional Release Act*?

A. I am not aware.

180. Q. Is there any plan to amend any commissioner's directive?

A. At this point, I am not aware.

181. Q. Is there any plan to amend any policy?

A. Policy would be 709.

182. Q. Okay.

A. And, I am not aware at this point.

183. Q. I see. And, have you received advice that it will be necessary to make an amendment to the *Act*, the regulation or the commissioner's directive, in order to vest a board like the regional segregation review board with authority to conduct a 15-day review of an inmate's detention in administrative segregation?

MR. PROVART: And we are going to object to that question, of course, because we are talking here about legal advice. So, that is solicitor/client privileged. /R

184. MR. ROSENBERG: I guess I am getting a little frustrated here, Counsel, because I am trying to understand what is being planned to implement the 15-day review that is being described to the Court of Appeal as something that is to be available to the Pacific region this month, right. And I am trying to understand if, in order to implement this kind of review, any changes are made or required to be made beyond CSC

A. Underway.

206. Q. What has been done?

A. Reviewing policy. Reviewing who could be in the...who could be making that decision.

207. Q. When did the review of the policy start?

A. I couldn't give you an actual date. As we started to look at the structured intervention units, we looked at a different scheme taking into consideration what the court cases had said. So, we are now looking, what could that scheme look like.

208. Q. Is that back in early 2018, you started reviewing the policy?

A. No. Not for this particular... not for the fifth day, sorry.

209. Q. Okay. So, for the fifth day independent review, when did that...you said you couldn't give me a precise date but when did the review of the policy start, in that regard?

A. It is not a formal review, just to be clear, but we have started to look around the beginning of January of this year...

210. Q. Of 2019?

A. ...as we start to move towards the structured intervention units.

211. Q. But January 2019 is when that effort started?

A. Yes.

212. Q. So, more than a year after Associate Chief Justice Marrocco's Decision?

A. Yes.

213. Q. And you said it is not a formal review. Who is conducting the review?

A. It is my staff and I...are looking at the policy as we look to move forward, but we haven't written anything down yet. It is just conversations, consultation with our staff to see what makes sense.

214. Q. What makes sense?

A. From an operational perspective, sorry.

215. Q. I see. What are you contemplating?

A. Looking at who would be better positioned to make that entry into segregation. Who could that be?

216. Q. And, what are your ideas?

A. At this point, they are quite

fluid but we would be looking at a deputy warden.

217. Q. You want a deputy warden, who works for the warden, to provide the independent review at the fifth working day review?

A. Sorry, the deputy warden would be placing the inmate. Would have the authority to place the inmate...

218. Q. Oh, I see.

A. ...and the warden, independently, would then review that placement at the fifth... yes, sorry.

219. Q. And so, that would then be the kind of independent review that CSC is contemplating?

A. But, again, this is very preliminary.

220. Q. Okay.

A. So, I would not say that this is what we are...

221. Q. No, I understand. But that is the working plan you have, right?

A. That is the beginning of it.

222. Q. Okay. Any other working plans?

A. At this point, no.

223. Q. Any steps, beyond the

conversations that you have had with your staff, that CSC has taken to implement a fifth working day independent review of segregation placements?

A. Sorry, could you repeat that again?

224. Q. Has CSC taken any steps to implement a fifth working day independent review of segregation placements, beyond the conversations that you have just described with your staff?

A. Not to my knowledge. I have not participated in those.

225. Q. And you would expect to...

A. So, me and my staff.

226. Q. You would expect...you and your staff expect to be involved in any such discussions, given your role?

A. There could be conversations at a higher level that haven't trickled to me yet.

227. Q. You are not aware of any, though?

A. Exactly.

228. Q. And in terms of your understanding beyond the conversations that you have had with your staff, CSC has done nothing to implement an independent fifth working day review

245. Q. Section 36(1) describes the entitlements of an inmate in a structured intervention unit?

A. Yes.

246. Q. Section 37(1) describes the exceptions to those entitlements, correct?

A. Yes.

247. Q. And 37(1)(c) provides that those entitlements will not be offered in those circumstances that are reasonably required for security purposes, correct?

A. The natural...yes.

248. Q. Well, more than natural disasters. It's...

A. Yes, riots, other...yes.

249. Q. ...security reasons.

A. That paragraph, yes.

250. Q. Okay. Are there any prescribed circumstances that have been identified for the purpose of subparagraph 37(1)(c)?

MR. PROVART: And I just, by way of clarification, I think, again, the witness is not a lawyer. You want to specify how the prescribed circumstances refer to the regulations? Are you...

251. MR. ROSENBERG: I want to know if there are any draft regulations, if CSC has contemplated what the prescribed circumstances will be, if there is anything to provide content beyond, you know, what I can read in the text of the Bill, which is what is reasonably required for security purposes. This is the opportunity to provide me with that information, Counsel.

MR. PROVART: Go ahead.

THE DEPONENT: I am not familiar with the regulations...sorry, I am familiar with the regulations, the draft regulations. What I am not familiar with is if they get more prescriptive than what is here in the Bill.

BY MR. ROSENBERG:

252. Q. So, the answer is you don't know?

A. Correct.

253. Q. And these are circumstances under section 37, where the inmate may not get four hours out of cell in a given day, correct?

A. Correct.

254. Q. In fact, there are circumstances where the inmate may not get any hours out of cell in a given day?

A. Yes.

255. Q. All right. Let's look at what the independent review does in those circumstances. So, we will flip ahead to section 37.83. Now, this section describes the circumstances under which an independent review will be triggered, correct?

A. Yes.

256. Q. So, an independent review of the inmate's detention in the structured intervention unit can be triggered after five consecutive days, in which the inmate has been denied the entitlements that we saw in section 36, correct?

A. Correct.

257. Q. So, this would be in a circumstance where the inmate isn't getting out of his cell?

A. Yes.

258. Q. Now, in those circumstances...

MR. PROVART: Mr. Rosenberg, I just want to...you asked in your question, you used the permissive. You said, "can

it, too, after 30 years.

284. Q. Fair enough. When I get confused, right...I know it is not all the same to you but...

A. No, it is not.

285. Q. All right.

A. So, just, sorry, for the four hours?

286. Q. Yes?

A. That is not...so when you keep saying he or she is not out of their cell, that ...there also is the showers. They are in and out of the shower.

287. Q. I understand.

A. So, it is not that they are locked in their cell for 24 hours. We are clear on that.

288. Q. No, no. But let's say you had an inmate who was not leaving his cell for five consecutive days, that triggers the independent review, correct?

A. Correct.

289. Q. The independent review happens, and the independent reviewer concludes that CSC is not taking all reasonable steps to get the

inmate out of his cell?

A. Yes.

290. Q. All right. Let's say that that independent review takes place instantaneously, as unrealistic as that scenario may be. It is still a further seven days before the independent reviewer is able to order CSC to remove the inmate from the structured intervention unit, correct?

A. Yes. So, within seven days.

291. Q. Okay.

A. Yes, I agree.

292. Q. Okay. And so, we can agree that that may mean that the inmate remains in his cell for 12 consecutive days before the decisionmaker can order his release, correct?

A. Correct.

293. Q. Okay. Now if we can agree on that, then I think we can also agree that what is set out here in Bill C-83 is not the independent review with authority to release the inmate after five working days, that is contemplated in Associate Chief Justice Marrocco's Decision, correct?

MR. PROVART: Okay, I think that

question...of course, when you say, "when contemplated in the Decision", I think we are getting into a legal interpretation again. So, I think you should...rephrase.

BY MR. ROSENBERG:

294. Q. Let me make this very practical for the witness. Associate Chief Justice Marrocco, paragraph 175 of his Decision, stated that,

> "...The independent decisionmaker must be able to substitute its decision for that of the person whose decision is being reviewed..."

There is nothing in Bill C-83 that allows an independent decisionmaker to substitute his or her decision, for the decision of the institutional head to maintain segregation after five working days?

A. Yes.

295. Q. There is nothing in Bill C-83 that authorizes the independent decisionmaker to order the release of an inmate from segregation after working days?

A. Correct.

296. Q. And I take it that beyond the discussions that you have had with your staff, there is no plan for an independent decisionmaker with that kind of authority?

A. Beyond what is in the Bill, correct. Sorry, in a couple of minutes, can I...

297. MR. ROSENBERG: Yes. You are asking for a break.

--- upon recessing at 10:38 a.m.

--- A BRIEF RECESS

--- upon resuming at 10:49 a.m.

LEE REDPATH, resumed

CONTINUED CROSS-EXAMINATION BY MR. ROSENBERG:

298. Q. Let's go back on the record. Ms. Redpath, you are familiar with the Ontario Court of Appeal's Decision in this matter dated March 28, 2019?

A. Yes.

299. Q. You understand that the Court of Appeal limited segregation placements to 15 days, after which continued detention becomes cruel and unusual punishment or treatment?

people that can participate in those calls.

308. Q. Let me just be clear, though. You said it was the regional deputy commissioner for the Ontario region that is chairing these meetings. Is this only about complying with the Court of Appeal's Decision of March 28, in the Ontario region?

A. Yes. For that particular decision, yes.

309. Q. I see. Is there any effort being taken to comply with the Court of Appeal's decision of March 28, outside of the Ontario region?

A. Not that I am involved in, or aware of.

310. Q. What will Canada do to comply with the Court of Appeal's Decision of March 28?

MR. PROVART: And that, of course, calls for a legal interpretation with respect to the requirements of the Decision.

BY MR. ROSENBERG:

311. Q. Well, let's take the legality out of it, then, Counsel. What will Canada do to

limit segregation placements to 15 days?

A. They are going to comply with the law. How they get there, I have not been involved in those conversations.

312. Q. Now, let's talk about funding. At paragraph 8 of your affidavit, you told me earlier that these numbers come from the Fall Economic Statement 2018?

A. Sorry...yes.

313. Q. I am going to ask you to turn up Exhibit E to Mr. Klugsberg's affidavit in our responding record. This is volume 2, Counsel. Please turn to page 679 of the responding record, and you will see this is a transcript from the standing committee on public safety and national security, dated November 27, 2018.

Please turn to page 682 of the responding record. The last question on this page is from Ms. Pam Damoff, D-A-M-O-F-F, a Liberal Member of Parliament. She is asking about $448 million allocated to Corrections. The top of page 683, Minister Ralph Goodale...that is your minister, correct?

A. Yes.

314. Q. Minister Goodale says that the

November 2019?

A. Correct.

337. Q. And that is regardless of whether Bill C-83 becomes law?

A. We will move to...yes.

338. Q. Do you have enough money budgeted and approved by the Treasury Board to implement structured intervention units?

A. We have put...we are going forward with the Treasury Board's submission to access that money. So, the money has been allotted. Once we access that money, we have enough to do our staffing and to open our units.

339. Q. That is the...well, I shouldn't say that. I can see that there is $13 million for the last fiscal year. There is $44 million for the current fiscal year. But I don't have the breakdown between the structured intervention units and mental healthcare, do I?

A. I don't know.

340. Q. Well, I see in your affidavit you have broken down the amounts for those two buckets...

A. M'hm.

341. Q. ...but I don't see that in the

Fall Economic Statement. Where did you get the division between the $297.3 million and the $150.3 million?

A. That I believe came...I am not 100 percent certain, so I won't...

342. Q. Okay. So, I don’t want you to guess but...

A. Yes.

343. Q. ...do you think I would get that information from your Treasury Board submission?

A. Yes.

344. Q. And, likewise, that Treasury Board submission would identify how much money is to be spent last year and this year for structured intervention units, as opposed to mental healthcare enhancements?

A. Correct.

345. Q. Okay. Now, you say you have enough money that has been approved, so long as the Treasury Board releases it to you in order to implement structured intervention units, correct?

A. Correct.

346. Q. Do you have a budget for the cost of implementing the structured intervention units?

352. Q. Sure.
A. I don't have it off the top of my head.
353. Q. But if I had the document I have requested, I would be able to identify that?
A. Yes.
354. Q. It is fair to say that Bill C-83, if it were passed, would set a legislated floor for the treatment of prisoners, correct?
A. The treatment of prisoners?
355. Q. Yes.
A. In the structured intervention unit?
356. Q. Right.
A. Yes.
357. Q. But you don't need a new statute to create a subpopulation, do you?
A. No.
358. Q. You don't need a statute to implement a new commissioner's directive?
A. No.
359. Q. You don't need a statute to grant inmates' rights that are less than the general population, but more than currently offered in administrative segregation?

BY MR. ROSENBERG:

368. Q. Suffice it to say that you understand that CSC is currently trying to get authority to access the funding that has been approved for fiscal 2019/2020?

A. Yes.

369. Q. In your affidavit, at paragraph 17, you say that you and your team,

"...Met with CSC managers across all five regions in February and March 2019, to discuss how SIUs will be implemented..."

Do you know who Curtis Jackson is?

A. Yes.

370. Q. What is his title?

A. Assistant deputy commissioner, correctional operations.

371. Q. For the Ontario region?

A. Ontario region, sorry, yes.

372. Q. I understand that he has responsibility for implementing SIUs in the Ontario region?

A. Yes.

373. Q. Did you meet with him?

A. He was part of the group, yes.

under advisement with all the other requests. U/A

BY MR. ROSENBERG:

402. Q. Paragraph 23 of your affidavit, you list the things that CSC will need to do over the next several months to implement structured intervention units, correct?

A. Yes.

403. Q. Now, if we look at this list, for example, 23(a), you don't need Bill C-83 in force to hire and train large numbers of new staff?

A. Not C-83, no.

404. Q. You need resources that you have told me have already been approved by the Treasury Board, correct?

A. Yes.

405. Q. And as you propose at paragraph 30 of your affidavit, CSC's already recruiting new staff to meet the needs of Bill C-83?

A. Correct.

406. Q. So,

"...CSC has opened a new training centre for those staff members..."

A. The correctional officers.

407. Q. Right. And that didn't need require any new legislation?

A. No. Funding.

408. Q. Funding, but not legislation?

A. Correct.

409. Q. And the funding, as you said, already approved?

A. Correct.

410. Q. Paragraph 23(c), you don't need new legislation to develop programming and interventions for inmates so that they can spend more time out of cell?

A. That is correct. The development of the training...that is correct.

411. Q. Paragraph 23(b), you don't need new legislation to build, say, additional yards at prisons or additional facilities for traditional indigenous spiritual practices?

A. No.

412. Q. You don't need new legislation to subdivide spaces at CSC's prisons?

A. No.

413. Q. To install specialized furniture?

A. No.

414. Q. To develop information technology

systems?

A. No. But we wouldn't be doing that if we didn't have the legislation.

415. Q. Well, hold on a second. You can do that if CSC decides to spend its budget allocation on information technology systems, right?

A. The information technology system is specific to the requirements of the Bill.

416. Q. Well, the information technology system is to track how much time inmates spend in his cell, right?

A. Correct.

417. Q. And CSC could of its own volition, decide to invest in such an information technology system, whether or not Bill C-83 was...

A. Fair enough.

418. Q. Same thing for, say, ordering secure fitness agreement, as you have described at paragraph 26 of your affidavit, correct?

A. Correct.

419. Q. You don't need new legislation to give segregated inmates four hours out of cell each day?

A. Correct.

420. Q. You don't need new legislation to give inmates in segregation two hours of meaningful human contact each day?

A. Correct.

421. Q. At paragraph 29 of your affidavit, you deposed to November 2019 as the date to which you are working to have SIUs in place at identified CSC institutions, correct?

A. Yes.

422. Q. Is that at all of the SIUs that are planned, operational?

A. Yes.

423. Q. How many SIUs are planned?

A. Fifteen, for '19/'20.

424. Q. When will the first one open?

A. November.

425. Q. Is there some kind of workflow document that explains the steps you are going to take and when they are going to be taken, with respect to that November 2019 date for the opening of the SIUs?

A. There are separate documents. There is not one.

426. Q. There is one for each SIU?

A. Correct.

420. Q. You don't need new legislation to give inmates in segregation two hours of meaningful human contact each day?

A. Correct.

421. Q. At paragraph 29 of your affidavit, you deposed to November 2019 as the date to which you are working to have SIUs in place at identified CSC institutions, correct?

A. Yes.

422. Q. Is that at all of the SIUs that are planned, operational?

A. Yes.

423. Q. How many SIUs are planned?

A. Fifteen, for '19/'20.

424. Q. When will the first one open?

A. November.

425. Q. Is there some kind of workflow document that explains the steps you are going to take and when they are going to be taken, with respect to that November 2019 date for the opening of the SIUs?

A. There are separate documents. There is not one.

426. Q. There is one for each SIU?

A. No. So, for infrastructure, here is the plan. For staffing, here is the plan.

427. Q. Right. And those documents lay out the steps...

A. Timeline.

428. Q. ...that ought to be taken and when they will be taken?

A. Correct.

429. Q. Those documents exist?

A. Yes.

430. Q. They are in your possession?

A. Can be.

431. MR. ROSENBERG: Can I have copies, please?

MR. PROVART: And we will take that under advisement with the others. U/A

BY MR. ROSENBERG:

432. Q. And I understand, for example, that the segregation unit at Millhaven has already been closed?

A. Correct.

433. Q. For the purpose of establishing a structured intervention unit in that space?

A. No. Where the segregation unit

explained, the concerns about transitional units being denied access to activities, that arises from the fact that these transitional units did not have defined entitlements, right? They were defined entitlements for general population and for segregated population, but not for these kinds of middle grounds, right?

A. I don't recall what the specific policy framework was around them. But they were open -- I believe they were open population areas.

Part of the challenge is institutional design, for example, they will add a gym, a hospital, add a school, and subdividing populations then makes it difficult to provide equitable access to those various services.

454 Q. You'll see that in the Task Force Report, one of the concerns that they raised -- you'll see this at page 48 under heading No. 7, it really starts on 47, "Extending a Legal Framework".

They seem to have been concerned about the lack of a legal framework governing the subpopulations and clearly are articulating entitlements, fair?

A. Correct.

455 Q. So what is the current status of

the availability of special housing units or transitional units?

A. There are subpopulations within institutions. Again, the make up of those units is such that attention needs to be paid to making sure that they have equitable access to the different services of the institutions and affording, you know, access to those types of things as required.

So there are -- I can't speak to the entire country at this point, but that there are of different subpopulations in different institutions.

So, for example, Millhaven, with the different populations that we had when I was warden, we would work with the inmate committees to develop a routine that would allow different groups of offenders access at different times to provide them even separation between the populations that weren't compatible.

456 Q. Is there a policy that governs the entitlements of inmates in subpopulations?

A. So the policy framework is the general policy framework for open populations because they are open populations, so you have to provide them similar access to what everybody else gets.

Hence, so the Millhaven example I gave, they were provided, you know, for the one gym, for example, we would divide up gym times and try and make sure that there was equitable access to those things within the population to develop those routines.

457 Q. Is there a policy or a listing of the subpopulations that exist at each institution?

A. I don't know if we have a very definitive listing of each individual one across the country, I don't know.

458 Q. I guess what I'm wondering is whether there's a standard subpopulation you'd expect in a given institution?

A. Again, it's going to depend on the population at that institution. So, for example, Millhaven Institution with the closure of Kingston Penitentiary had those different populations. So that experience and that reality would be a little bit different than a Collins Bay, for example, which would have one -- generally speaking, one population.

459 Q. Does the subpopulation gets its own range; is that right?

A. That would just be a separate

set -- a separate unit, or a range. Again, that would depend on physical layout of the institution.

BY MR. ROSENBERG:

460 Q. Counsel, can I have a list of the subpopulations that exist at CSC facilities and their capacity?

U/T MS. HASHEMI: Yes.

MR. ROSENBERG: Thank you.

BY MR. ROSENBERG:

461 Q. So in terms of subpopulations, I'm just trying to understand the transition from the time of this Task Force Report in 1997 to present.

Is what you're telling me that CSC relies less on subpopulations today than it did in 1997?

A. I can't say. I don't know what the reliance on subpopulations was in 1997, I was still a junior correctional officer. I think at that time I was a term, or just hired in terminally. So I don't know what the prevalence was back then, so I couldn't draw a comparison.

462 Q. Are they still called "special housing units"; is that term still used?

A. I am not -- in my experience, I haven't heard that -- what's in brackets there is

what I'm more familiar with, in terms of calling it "transition units" but...

463 Q. Was what we discussed earlier at the Springhill Institution, A Range in 2015 moving the inmates who were now being transferred to a higher security classification, is that an example of the subpopulation?

A. It would be a subpopulation, yes.

464 Q. So there's some room for creativity, I suppose, in designating subpopulations to get people out of segregation?

A. There is room for it, yes. Again, what is possible would be dependent on a number of factors. Not least of which would be infrastructure and things of that nature.

465 Q. Although as we discussed, the Springhill Institution example, did not require a change in infrastructure?

A. Exactly. So where infrastructure lends itself to it, then there's opportunity to do those things.

466 Q. Next in this pyramid in the Task Force Report at page 45, "Individual Lockup"; what is that?

A. My assumption there would be -- so

administrative segregation units at maximum-security institutions [...]" by February 2019; did it do so?

A. My understanding it has, yes.

526 Q. With the result that CSC was able to better deliver segregation interventions one-on-one in small groups with inmates in the program or interview spaces in segregation units, correct?

A. That's my understanding, yes.

527 Q. Paragraph 7:

"Starting in January 2019 and continuing thereafter, CSC will open units outside of administrative segregation for inmates who do not want to integrate in mainstream inmate population and who do not meet the criteria for placement in administrative segregation."

Has that happened?

A. Yes.

528 Q. Where?

A. Atlantic Institution, I believe Donnacona and Kent Institution are the three that are currently open.

529 Q. These are using units, wings that were underutilized?

A. It's using existing cell space and re-profiling populations. I wouldn't say "underutilized", but we're reshaping how they're utilized.

530 Q. Sure. No infrastructure changes, I guess is my point, were required?

A. Correct.

531 Q. You were able to take a segregated population and move it to non-segregated, less restrictive conditions, correct?

A. Correct.

532 Q. And that was a matter of changing your population management practices?

A. That, and resourcing implications as well.

533 Q. So you're talking about no infrastructure changes, but allocating staff differently?

A. Yes, and new staff.

534 Q. And new staff.

So by allocating staff to the task of removing this population from segregation, you've been able to do so successfully at these three

institutions you've mentioned?

A. Thus far, yes.

535 Q. Is there a plan to roll this program out across all CSC institutions?

A. There's a number of sites identified to have -- as it says, we started in January 2019 and continuing thereafter. That won't necessarily be in every institution, but there's a series of sites identified. Unfortunately, I don't have the list of sites with me today.

536 Q. So these are people we're talking about who shouldn't have been in segregation?

A. I wouldn't say that they shouldn't have been in segregation. There was reasons for them to be in segregation, and we've developed this as an alternative.

537 Q. They no longer met the legal definition for "segregation of an inmate", correct?

A. Not necessarily.

538 Q. You said in your affidavit, these are people who "do not meet the criteria for placement in administrative segregation"?

A. Sorry. So there are cases -- let me clarify.

There were cases that were in

were being maintained. We didn't want them in segregation.

544 Q. Right. You found an alternative for these inmates, right?

A. Correct.

545 Q. A less restrictive housing alternative?

A. Correct.

546 Q. And as a result of this change in population management starting in January 2019, it was no longer necessary to house them in segregation, because they could be accommodated in a less restrictive housing option?

A. Yes, because we were able to provide that space to them, yes.

547 Q. Why didn't you do this before January 2019?

A. Prior to January 2019, and certainly in my experience as a warden, when I had cases where we felt that there was a safe, viable option for the offender, we did what we could to encourage them to avail themselves of that opportunity.

I've had personal conversations with offenders about inmate codes and perceptions of

particular types of institutions, but that offenders self-selected segregation over attending those institutions.

I've tried to impress upon them that post-social lifestyles don't necessarily put weight on those, you know, prison culture type things.

And so my experience has been that we really tried to get offenders out back into the full open population where we could -- in light of the issues we're facing now, and with additional resources, in terms of being able to adjust routines in the institution, we were able to open these types of areas to provide that additional access to these folks.

548 Q. Okay. Whatever efforts you've made to get inmates out of segregation before this policy change in January 2019, the effect of this policy change, as you say in your affidavit, is to take one-third of the segregated population out of segregation, right?

A. Approximately.

549 Q. That one-third of the segregated population is a group of inmates for whom no previous efforts have been unsuccessful in removing them from segregation, correct?

A. Correct. With the individuals had been selected, except the opportunities that we were putting up with. But, yes, you're correct that our efforts weren't successful.

550 Q. These folks stayed in segregation until you opened another wing for an alternative housing arrangement, right?

A. Correct.

551 Q. And my question to you is, if it was simply a matter of opening another wing for an alternative housing arrangement, why wasn't this done before January 2019?

A. Well, again, it requires resources and --

552 Q. What resources?

A. You have to have the -- if you're going to expand the operational day, then you need to have correctional officers available to do those types of things.

553 Q. How many correctional officers?

A. Again, I didn't bring the stats around these efforts.

554 Q. Could you find out what the cost of doing this was, please? How many people had to be hired to staff these alternative arrangements at

the institutions, each of the institutions that you've mentioned the Atlantic Institution, Donnacona and Kent?

U/T MS. HASHEMI: Yes, we can undertake to do that.

MR. ROSENBERG: Thank you.

BY MR. ROSENBERG:

555 Q. So that's what you're saying. You're saying this was really just a matter of hiring some additional correctional officers, that's the resources you're talking about?

A. Well, it's additional resources, it's having the space available.

556 Q. You said the space was already available.

A. It was being used so, yes, it's re-profiling the population --

557 Q. You didn't have to make any changes to the infrastructure, right?

A. -- moving people around. So, yes, it's a shift in how we manage the population, a shift in how we're aligning the populations in our institutions.

558 Q. Now paragraph 9 of your affidavit: "Starting in January 2019

577 Q. Paragraph 35, it says that --
A. Oh, 35, sorry. Wrong page.
Q. "The requirements set out in subparagraphs (a) to (f) of paragraph 34, must be fulfilled --"
A. "-- as soon as possible and in any event before 18th of January, 2019."
578 Q. Has that happened?
A. It's my understanding that they have, yes.
579 Q. So inmates are getting, in subparagraph (d), the extra 30 minutes of yard each day?
A. Correct.
580 Q. That didn't require the construction of any new yards?
A. No, expansion of the operational day.
581 Q. Paragraph 36 states that the requirements in paragraph 34 (g) through (h) must be met by May 1, 2019.
Is that going to happen?
A. I believe so.
582 Q. Subparagraph (i) in paragraph 34,

The Corporation of the Canadian Civil Liberties Association et al Applicant (Respondent)	and	Her Majesty the Queen as Represented by the Attorney General of Canada Respondent (Appellant)	Court File No.: 38574

IN THE SUPREME COURT OF CANADA
(COURT OF APPEAL FOR ONTARIO)

Proceeding commenced at Toronto

AFFIDAVIT OF CHRISTINA VINCENT
(Affirmed June 13, 2019)

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Jonathan C. Lisus LS#: 32952H
Tel: (416) 598-7873
jlisus@counsel-toronto.com
Larissa C. Moscu LS#: 62928W
Tel: (416) 360-3018
lmoscu@counsel-toronto.com

MCCARTHY TÉTRAULT LLP
Suite 5300, 66 Wellington Street West
Toronto, ON M5K 1E6

H. Michael Rosenberg LS#: 58140U
Tel: (416) 601-7831
Charlotte-Anne Malischewski LS#: 69687F
Tel: (416) 601-8420

Lawyers for the Canadian Civil Liberties Association

Court File No.: 38574

IN THE SUPREME COURT OF CANADA
(COURT OF APPEAL FOR ONTARIO)

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

- and -

CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Respondent

MEMORANDUM OF ARGUMENT OF THE RESPONDING PARTY, CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION
INTERIM STAY AND INTERIM EXTENTION OF SUSPENSION DECISION

McCarthy Tétrault LLP
Suite 5300,
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Tel: 416-362-1812
Fax: 416-868-0673

Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8
Tel: 416-598-1744
Fax: 416-598-3730

H. Michael Rosenberg LSUC#58140U
Email: mrosenberg@mccarthy.ca
Charlotte-Anne Malischewski
LSUC#69687F
Email: cmalischewski@mccarthy.ca

Jonathan C. Lisus LSUC#32952H
Email: jlisus@counsel-toronto.com
Larissa C. Moscu LSUC#62928W
Email: lmoscu@counsel-toronto.com

Lawyers for the Respondent, Corporation of the Canadian Civil Liberties Association

TO: **ATTORNEY GENERAL OF THE ATTORNEY GENERAL**
Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto ON M5H 1T1

Fax: 416-954-8982

Kathryn Hucal
Johnathan Provart
Bradley Bechard
Tel: 647-246-7510 / 647-256-0784 / 647-256-0883
Fax: 416-973-0809
Email: kathryn.hucal@justice.gc.ca / John.Provart@justice.gc.ca / Bradley.Bechard@justice.gc.ca

Lawyers for the Respondent

INDEX

PAGE

Contents

PART I. OVERVIEW

1. The Attorney General of Canada ("**Canada**") has sought leave to appeal from the decision of the Court of Appeal for Ontario ("**ONCA**") refusing to extend the suspension of the declaration of constitutional invalidity of ss. 31-37 of the *Corrections and Conditional Release Act* ("***CCRA***") beyond June 17, 2019. ("***CCRA***").[1] Canada has sought an interim stay of the ONCA's order and an interim extension of the stay of the declaration of constitutional invalidity, both pending this Court's determination of its application for leave to appeal.

2. The Canadian Civil Liberties Association (**"CCLA"**) opposes the Attorney General of Canada's ("**Canada**") application for interim relief. Canada's application for leave to appeal is an abuse of process, as are its efforts to forestall the declaration of constitutional invalidity.

3. Canada promised the ONCA – in its written argument – that it would implement independent review of administrative segregation placements during the term of an extended suspension of the declaration of constitutional invalidity. Canada also told the ONCA that it did not oppose a supervisory order of this nature. Relying on this representation, the ONCA extended the suspension on the condition that Canada would implement independent review in the interim. Canada said nothing and had the benefit of the extension. Now that the suspension has come to an end, however, instead of implementing independent review, Canada argues that the ONCA erred in imposing this condition.

4. There is no merit to Canada's attack on the condition imposed by the ONCA. It is a distraction from Canada's real objective, which is to preserve its statutory authority to subject inmates to indefinite solitary confinement, notwithstanding the serious harm that the practice causes. Canada's real complaint is that the ONCA refused to extend the suspension of the declaration of constitutional invalidity beyond June 17, 2019. However, Canada advances no basis for leave to appeal on this issue. Instead, Canada challenges the imposition of a condition to which it had acquiesced, with the hope of staying both the condition and the underlying declaration of constitutional invalidity.

5. This Court should not accede to Canada's suggestion that it requires statutory authority to implement independent review, or that a legislative vacuum will threaten the safety of staff and inmates if the impugned provisions are permitted to fall. Canada admitted that it has appropriate tools to implement independent review and maintain the safety of its penitentiaries without any assistance from this Court. Canada will rely on these

[1] *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (**"*CCRA*"**).

tools once the impugned provisions of the *CCRA* cease to be of any force or effect on June 18, 2019.

6. The Court should be concerned about Canada's approach to this application. It asked for and received the indulgence of a seven week extension of the suspension, and now, having had the benefit of that suspension, it denies the bargain by which the ONCA accommodated its request. Furthermore, it is unacceptable that Canada allowed seven weeks to elapse and gave the CCLA **one day's notice** of its application. By waiting to the last minute, Canada seeks to force this Court's hand and deny the CCLA a fair opportunity to respond. This Court should not condone Canada's tactics.

7. The victims of Canada's approach to this application are twofold. On one hand, there are the inmates who will remain in conditions of prolonged solitary confinement that have already been declared unconstitutional. On the other hand, there is the reputation of the administration of justice, which, as the ONCA noted, receives a black eye from Canada's continued efforts to flout its obligations under the *Charter*. Canada's application is abusive and it should be dismissed.

PART II. FACTS

A. Chronology of the relevant events

8. On December 17, 2017, Marrocco ACJ released his decision on the CCLA's application challenging the constitutionality of the provisions of the *Corrections and Conditional Release Act* ("***CCRA***") that authorize administrative segregation.[2] Marrocco ACJ found that Canada subjects segregated prisoners to solitary confinement until they suffer harm:

> [254] I am satisfied that there is no serious question the practice of keeping an inmate in administrative segregation for a prolonged period is harmful and offside responsible medical opinion.
>
> [255] Despite section 87 (a) of the legislative scheme, the current regime waits for the negative psychological effects to manifest in the form of some recognizable observable form of mental decompensation or suicidal ideation before supporting or perhaps removing the inmate. In other words, the person is not removed or supported until it is obvious that they have been harmed.[3]

9. Marrocco ACJ held that independent review within five working days was a constitutional floor to

---

[2] *Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491.

[3] *Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, at paras. 254-55.

guard against the abuse of administrative segregation that was manifest on the record.[4] Because the *CCRA* and its regulations provide that the institutional head makes decisions to admit inmates to segregation, and those decisions are reviewed by the institutional head or his or her subordinates, there is no independent review.[5] Accordingly, Marrocco ACJ declared sections 31 to 37 of the *Corrections and Conditional Release Act* ("***CCRA***") contravene s. 7 of the *Charter*, are not saved by s. 1, and are of no force or effect pursuant to s. 52 of the *Constitution Act, 1982*.

10. At Canada's request, and over the objection of the CCLA, Marrocco ACJ suspended his declaration of constitutional invalidity for 12 months.[6] On January 16, 2018, the CCLA appealed to the ONCA seeking additional declarations pursuant to ss. 7, 11(h), and 12 of the *Charter*. Canada took no appeal from Marrocco ACJ's declaration of constitutional invalidity pursuant to s. 7 of the *Charter* or the factual findings about the serious harm caused by administrative segregation.

11. Canada did nothing to remedy its constitutionally defective statute until October 16, 2018, when the government introduced Bill C-83: *An Act to amend the Corrections and Conditional Release Act and another Act*. Concurrent with the hearing of the CCLA's appeal on November 20-21, 2018, Canada moved to extend the suspension of Marrocco ACJ's declaration of constitutional invalidity until July 31, 2019, which would allow time to bring Bill C-83 into force.

12. On December 17, 2018, the ONCA allowed the motion to extend the suspension, but only until April 30, 2019. It noted the absence of an explanation for Canada's delay in addressing the Constitutional infirmity; the absence of information about interim measures to address or mitigate the *Charter* breach pending new legislation; and the fact that the proposed legislation did not seem to correct the constitution infirmity.[7] The ONCA rebuked Canada for its "disappointing" failure to "address the concerns identified by the court" [8]

13. In the parallel action styled *British Columbia Civil Liberties Association v Canada (Attorney General)*, which likewise struck down ss. 31-37 of the *CCRA* with a one-year suspension, the Court of Appeal for British Columbia ("**BCCA**") echoed the ONCA's frustration with Canada's conduct and imposed terms to ameliorate the conditions of administrative segregation during an extension of the suspension of the declaration of

---

[4] *Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, at paras. 156 and 272-73.
[5] *Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, at para. 155.
[6] *Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491**,** at para. 51.
[7] *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2018 ONCA 1038**,** at para. 9.
[8] *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2018 ONCA 1038, at para. 12.

invalidity to June 17, 2019.[9]

14. On April 2, 2019, Canada moved for a further extension of the ONCA suspension until November 30, 2019. This motion was heard in writing on April 23, 2019, and the ONCA released its decision on April 26, 2019. The ONCA found that Canada had waited more than a year before even discussing the implementation of the fifth working day independent review that Marrocco A.C.J. had declared to be a constitutional floor:

> The evidence discloses that in January 2019, more than one year after the application judge released his decision, there were "discussions" about how the fifth-day review "could be operationalized". Nothing more has been done to remedy the breach in the interim, and it remains unclear how Bill C-83 will remedy it if enacted.[10]

15. After considering Bill C-83, which neither eliminates solitary confinement nor provides for an independent fifth working day review, the ONCA concluded that "we have virtually nothing to indicate that the constitutional breach identified by the application judge is being or will be addressed in the future".[11] In these circumstances, the ONCA concluded that acceding to Canada's request for a lengthy extension of the suspension "would compromise public confidence in the administration of justice and the court's ability to act as guardian of the Constitution" – an outcome that the ONCA deemed "unacceptable".[12]

16. Nevertheless, with "great reluctance" the ONCA ordered that the suspension be extended a last time – "one final extension" – for a further seven weeks to June 17, 2019, on the condition that Canada implement an independent fifth working day review in the interim – a condition that Canada did not oppose and with which it said it would comply.[13]

17. Canada did nothing until May 16, 2019, when it circulated a draft order for counsel's review and approval. Unfortunately, Canada's draft order bore no resemblance to the ONCA's decision. Instead of extending the suspension, Canada provided the ONCA with a mark-up of the *CCRA* and asked the Court

---

[9] *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 5, at paras. 10, 32-33.
[10] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at para. 15.
[11] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at para. 14.
[12] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at paras. 16-17.
[13] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at paras. 19-22.

to read down the statute accordingly.[14] Canada submitted its draft order together with submissions that noted the "unusual request" and rehashed arguments that it had made on the motion about a legislative vacuum.

18. Marrocco ACJ had expressly rejected Canada's request to read down, rather than strike down the statute, Canada took no appeal from that order, and Canada brought no motion to vary that order. The CCLA opposed Canada's draft order and urged the ONCA to issue an Order that reflected its decision to extend the suspension to June 17, 2019, which it did on June 7, 2019.[15]

19. Canada then waited until the afternoon of June 12, 2019, when it delivered notice of an application for leave to appeal from the ONCA's refusal to extend the suspension to November 30, 2019. This was the first time that Canada gave any indication of its intention to appeal from the ONCA's April 26, 2019 decision. Having waited until the last minute, Canada now insists that the ONCA's order must be stayed without giving the CCLA appropriate time to respond. Canada has not implemented an independent fifth working day review, and there is no evidence that it made any effort to do so.

20. Despite the ONCA's clear direction and the passage of more than a year and a half since Marrocco ACJ issued his declaration of constitutional invalidity, hundreds of federally incarcerated inmates remain indefinitely confined in conditions that have been found to be cruel and unusual and which cause serious, often permanent, harm. Meanwhile, Canada's purported remedial legislation, Bill C-83, appears to be stalled in the Senate, where a committee proposed substantial amendments that will have to be considered by the House of Commons, and no vote has been scheduled before either chamber. The office of the legislation's sponsor, the Honourable Ralph Goodale was non-committal about its fate, telling the Canadian Press that "[t]he government continues to review the implications of the rulings and is advancing Bill C-83 through the Parliamentary process".[16]

21. Nor has Canada taken any steps to implement the ONCA's decision on the merits of the CCLA's application, which relied on s. 12 of the *Charter* to cap solitary confinement at 15 days, and which remains

---

[14] Exhibit H to the Affidavit of K. Mendonca, sworn June 10, 2019, Motion Record of the Applicant, Tab 2H, p. 130.

[15] Exhibit J to the Affidavit of K. Mendonca, sworn June 10, 2019, Motion Record of the Applicant, Tab 2J p. 133 and 143.

[16] Colin Perkel, The Canadian Press, National Newswatch, "Government asks Supreme Court for urgent stay of solitary confinement ruling", June 12, 2019, Exhibit A to the Affidavit of C. Vincent, dated June 14, 2019, Respondent's Motion Record, Tab 1A.

suspended by an "interim, interim" stay issued by this Court on April 12, 2019.[17]

B. Canada undertook to comply with the condition that it now seeks to challenge on appeal

22. Canada seeks leave to appeal on the basis that "[t]here is a serious issue with respect to whether the ONCA erred in imposing [the condition that Canada implement an independent fifth working day review] in the circumstances, without any comment on the concerns identified by Canada.[18] However, the ONCA noted, **Canada did not oppose this condition and indicated that it would comply**:

> [18] This leaves open the possibility of a short extension with conditions imposed by the court. **The AGC "does not oppose" a conditional extension similar to that issued by the BCCA when it extended the BCSC's suspended declaration of invalidity to June 17, 2019**. The BCCA imposed numerous terms on its extension, including a fifteenth day review of segregation placement decisions by a person outside the sphere of influence of a prison's institutional head.
>
> [19] The AGC indicates that Canada is currently in compliance with the BCCA's order. **The AGC also states that "Canada would comply with an Order to conduct an internally independent fifth-working day review of administrative segregation pending implementation of Bill C-83.**"
>
> [20] Unlike its first request for an unconditional extension of the suspension, the AGC now invites the court to impose a condition on the extension. **Clearly, Canada now accepts that an independent fifth day review can be implemented pending passage of Bill C- 83.** Regrettably this was not the case on its first request for an extension in November 2018 and so the breach has been unnecessarily prolonged.[19]

23. The ONCA referenced Canada's own reply factum on its motion to extend the suspension, which stated:

> …CCLA's reference to the British Columbia Court of Appeal's solution of a court ordered internally independent administrative review of segregation is one that this Court may find of interest in this case. **As it may be an approach that this Court could adopt to overcome the statutory constraints on conducting a fifth-working day review pending implementation of Bill C-83. Canada is not opposed to a supervisory order in the circumstances**…
>
> **Canada would comply with an Order to conduct an internally independent fifth working day review of administrative segregation pending implementation of Bill C-**

[17] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243, at para. 150.

[18] Canada's Notice of Application for Leave to Appeal, at para. 9.

[19] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at paras. 18-20 [emphasis added].

83.[20]

24. In these circumstances, it is disingenuous for Canada to argue that the ONCA's decision "raises an issue of public importance with respect to the appropriateness of court-imposed conditions when granting extensions".[21] Having asked for and received an extension of a suspension conditional on implementing an independent fifth working day review, Canada cannot now resile from its own commitment to the ONCA. To permit it to do so would be an abuse of process.

C. Canada has demonstrated that it can implement independent review

25. There is no merit to Canada's claim that "it could not implement an independent fifth day review of administrative segregation without changes to the legislative provisions of the *CCRA*".[22] The provisions governing the review of administrative segregation are not even set out in the *CCRA*, but rather, in the regulations thereto.[23]

26. Moreover, Canada has already avowed that it has all the tools it needs to implement independent review. Canada's Application Record before this Court includes the affidavit of Lee Redpath, sworn April 2, 2019.[24] However, Canada did not disclose that Ms. Redpath was cross-examined on that affidavit on April 4, 2019. On cross-examination, Ms. Redpath was asked how Canada had complied with the BCCA's direction that the suspension of the declaration of constitutional invalidity would only be extended on the basis that:

> The Correctional Service of Canada must establish a system of review whereby no inmate will remain in administrative segregation for more than fifteen days without such continued detention being authorized by a senior official who is neither the institutional head of the institution where the inmate is incarcerated nor a person who is subordinate to that institutional head.[25]

27. Ms. Redpath indicated that **CSC had implemented an independent fifteenth day review by issuing a memorandum from the Deputy Commissioner for the Pacific Region**. That memorandum directed that fifteenth day segregation reviews would be decided by the Assistant Deputy Commissioner,

---

[20] Canada's Reply Factum on Motion to Extend the Suspension, at paras. 5 and 26, Exhibit G to the Affidavit of K. Mendoca, sworn June 10, 2019, Motion Record of the Applicant, p. 111 and 120.

[21] Canada's Notice of Application for Leave to Appeal, at para. 10.

[22] Canada's Notice of Application for Leave to Appeal, at para. 7.

[23] *Corrections and Conditional Release Regulations*, SOR/92-620, ss. 21 and 23

[24] Affidavit of Lee Redpath, Exhibit E to the Affidavit of K. Mendoca, sworn June 10, 2019, Motion Record of the Applicant, p. 49.

[25] *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 5, at para. 34(j).

Correctional Operations or Assistant Deputy Commissioner, Integrated Services, or in their absence, the District Director – but only in the Pacific Region.[26] This memorandum, issued by Cari Turi on February 9, 2019, is reproduced in **Appendix "A"**.

28. While the review contemplated by Ms. Turi would not meet the definition of independence articulated by Marrocco ACJ, which required a decision-maker "completely outside the circle of influence of the person whose decision is being reviewed" – it might nevertheless satisfy the ONCA's stop-gap condition for the extension of the suspension to June 17, 2019:

> The Correctional Service of Canada must establish a system of review whereby no inmate will be kept in administrative segregation for more than five working days without the placement decision being reviewed and upheld by a senior official who is neither the institutional head of the institution where the inmate is incarcerated nor a person who is subordinate to that institutional head.[27]

29. Canada has provided no reason why it could not comply with its commitment to the ONCA in precisely the same manner that it complied with the direction of the BCCA. Canada clearly does not require an order under s. 52 of the *Constitution Act, 1982* to make this change. Indeed, Canada has no plans to amend even the regulations pertaining to the review of segregation placements to implement the fifteenth day review that is already in place in British Columbia.[28]

PART III. ISSUES

30. The only issue on this application is whether Canada has discharged its "heavy" burden of demonstrating "extraordinary circumstances" to justify an extension of the suspension of the declaration of constitutional invalidity.[29] This question should be answered in the negative and the application for an interim stay and an interim extension should be dismissed.

---

[26] Memoradum of Cari Turi, dated February 9, 2019, Exhibit A to the Affidavit of C. Vincent, dated June 14, 2019, Respondent's Motion Record, Tab 1B.

[27] *Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, at para. 175; *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at para. 22.

[28] Examination of Lee Redpath, April 4, 2019, Q. 178-182, Exhibit C to the Affidavit of C. Vincent, dated June 14, 2019, Respondent's Motion Record, Tab 1C.

[29] *Carter v. Canada (Attorney General)*, 2016 SCC 4, at para. 2.

PART IV. ARGUMENT

31. There is no merit to Canada's claim that "the ONCA decision raises an issue of public importance with respect to what criteria should govern the granting of extensions of suspensions of invalidity, particularly when amending legislation which is at an advanced stage [sic] before Parliament".[30] This Court provided clear guidance on point in its decision in *Carter v. Canada*.

32. In *Carter*, this Court recognized the gravity of Canada's request: "[t]o suspend a declaration of the constitutional invalidity of a law is an extraordinary step, since its effect is to maintain an unconstitutional law in breach of the constitutional rights of members of Canadian society. To extend such a suspension is even more problematic".[31] As in *Carter*, Canada is seeking to perpetuate a breach of s. 7 of the *Charter*. This Court articulated the onerous test for an extension: "[t]he appellants point to the severe harm caused to individuals by the extension. Extraordinary circumstances must be shown. The burden on the Attorney General who seeks an extension of a suspension of a declaration of constitutional invalidity is heavy".[32]

33. This more onerous test, rather than the usual balance of convenience, is applicable on Canada's application for an interim stay because it is, in effect, seeking to extend the suspension of a declaration of constitutional invalidity. There is no practical distinction between extending the suspension of the declaration and staying the ONCA's order implementing Canada's interim proposal to mitigate the *Charter* breach. The underlying invalidity – a breach of s. 7 of the *Charter* - is not subject to appeal, and the only question is whether the Court should condone the continued breach of *Charter* rights.

34. In *Carter*, "the interruption of work on a legislative response to the Court's decision due to a federal election" constituted exceptional circumstances.[33] However, there are no such circumstances here. Canada has had more than a year and a half to bring remedial legislation into force, and it did not even begin to consider the issue of independent review until more than a year had elapsed. Canada's proposed legislation does not eliminate solitary confinement, nor does it provide for an independent fifth working day review, and the ONCA found that it does not appear to remedy the constitutional infirmity.[34] Even if the legislation were up to the

---

[30] Canada's Notice of Application for Leave to Appeal, at para. 10.
[31] *Carter v. Canada (Attorney General)*, 2016 SCC 4, at para. 2.
[32] *Carter v. Canada (Attorney General)*, 2016 SCC 4, at para. 2.
[33] *Carter v. Canada (Attorney General)*, 2016 SCC 4, at para. 2.
[34] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at paras. 14 and 17.

the task, its future remains uncertain as Parliament prepares to dissolve for a fall election. There is no evidence that Bill C-83 will ever become law.

35. This Court should not accede to Canada's argument that "extending the suspension of the declaration of invalidity would prevent a harmful regulatory void" because the ONCA "failed to consider the safety and security concerns of inmates and staff".[35] In support of this allegation, Canada tenders nothing more than a law clerk's affidavit. By contrast, the ONCA had before it Canada's unequivocal evidence that it **does not require legislative authorization to create prison subpopulations that address the needs of inmates who require isolation from some or all other inmates, and it has already done so**.[36]

36. It is clear that if Canada considers it necessary to isolate inmates it will rely on what it considered to be general authority under the *CCRA*. **In particular, ss. 28 and 70 of the *CCRA* specifically require that inmates be confined in "the degree and kind of control and custody necessary for the safety of the public, the safety of the person and other persons in the penitentiary, and the security of the penitentiary"**.[37] These are the same considerations that are supposed to govern administrative segregation under s. 31 of the *CCRA*.[38] However Canada will no longer have a legislated regime that regularizes and institutionalizes solitary confinement, and the practice will now be subject to challenge. That change cannot wait.

37. The spectre of a legislative vacuum is an empty threat conjured by Canada in a last effort to give this Court pause. However, we are now at the point where enough must be enough. The ONCA carefully considered and rejected all of the arguments that Canada advances before this Court in support of its request for a continued suspension.[39] Canada does not suggest otherwise, nor does its notice of application identify any reason why leave to appeal should be granted on this issue. Rather, Canada simply seeks a different outcome.

38. The ONCA rightly concluded that an extension beyond June 17, 2019 "would compromise public confidence in the administration of justice and the court's ability to act as guardian of the Constitution".[40] **The**

---

[35] Canada's Notice of Application for Leave to Appeal, at para. 11.

[36] Examination of Kevin Snedden, March 8, 2019, Q. 455-465, Exhibit D to the Affidavit of C. Vincent, dated June 14, 2019, Respondent's Motion Record, Tab 1D; Examination of Lee Redpath, April 4, 2019, Q. 357, Exhibit C to the Affidavit of C. Vincent, dated June 14, 2019, Respondent's Motion Record, Tab 1C.

[37] *CCRA*, ss. 28(a)(i)-(iii) and 70.

[38] *CCRA*, ss. 31(3).

[39] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at para. 17.

[40] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342, at para. 17. See also *Canada (AG) v. Descheneaux*, 2017 QCCA 1238, at paras. 38-43.

ONCA's order expressly stated that "on June 18, 2019 sections 31 to 37 of the Act will be of no force or effect".[41] This Court should give full credit to the ONCA's decision, and the decision of Marrocco ACJ and allow the declaration of constitutional invalidity to take effect.

PART V. ORDER REQUESTED

39. The CCLA requests that this application for an interim stay and an interim extension be dismissed as an abuse of process, such that the impugned provisions of the *CCRA* will be of no force or effect on June 18, 2019. In the CCLA's respectful submission, this is the result that justice demands.

40. In the alternative, if this Court grants an interim extension, it should refuse the interim stay and direct Canada to immediately implement a system of independent review of administrative segregation placements every five working days, and further, that Canada certify compliance to this Court, on notice to the CCLA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of June, 2019.

Michael Rosenberg for Jonathan Lisus

H. Michael Rosenberg LS# 58140U
Charlotte-Anne Malischewski LS#69687F
Lax O'Sullivan Lisus Gottlieb LLP

Jonathan C. Lisus LS#32952H
Larissa C. Moscu LS#62928W
McCarthy Tétrault LLP

Lawyers for the Respondent, the Canadian Civil Liberties Association

[41] Order of the ONCA, April 26, 2019, at para. 1.

SCHEDULE "A"
TABLE OF AUTHORITIES

Tab	Cases	Paragraph(s) Referenced in Memorandum
1.	*British Columbia Civil Liberties Association v Canada (AG)*, 2019 BCCA 5	10, 32-33, 34(j)
2.	*Canada (AG) v. Descheneaux*, 2017 QCCA 1238	38-43
3.	*Canadian Civil Liberties Association v Her Majesty the Queen*, 2017 ONSC 7491	51, 156, 175, 254, 255, 272, 273
4.	*Canadian Civil Liberties Association v Canada (AG)*, 2018 ONCA 1038	9, 12
5.	*Canadian Civil Liberties Association v Canada (AG)*, 2019 ONCA 243	150
6.	*Canadian Civil Liberties Association v. Canada*, 2019 ONCA 342	14-22
7.	*Carter v. Canada (Attorney General)*, 2016 SCC 4	2

SCHEDULE "B"
TABLE OF STATUTES

Tab	Cases	Paragraph(s) Referenced in Memorandum
1.	*Corrections and Conditional Release Act*, S.C. 1992, c. 20	31-37

Appendix "A"
TURI MEMO

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: Wardens
Pacific Region

FROM / DE: Cari Turi
A/Regional Deputy Commissioner
RHQ Pacific

SECURITY CLASSIFICATION - CLASSIFICATION DE SÉCURITÉ:

OUR FILE - NOTRE RÉFÉRENCE:

YOUR FILE - VOTRE RÉFÉRENCE:

DATE: February 4th 2019

SUBJECT / OBJET: **Regional Segregation Review Board Timeframes**

The purpose of this memo is to advise of amendments to the Regional Segregation Reviews Board timeframes. This is a result of the January 7th 2019 British Columbia Court of Appeal decision brought by the British Columbia Civil Liberties Association (BCCLA) and the John Howard Society of Canada.

The BC Court of Appeal's condition outlined in section *j*) of the decision states: "*The Correctional Service of Canada must establish a system of review whereby no inmate will remain in administrative segregation for more than fifteen days without such continued detention being authorized by a senior official who is neither the institutional head of the institution where the inmate is incarcerated nor a person who is subordinate to that institutional head.*"

In order to comply with the Court's condition (j), the Regional Segregation Review Board will occur on every case before the inmate reaches 15 days in administrative segregation. The 15-day Regional Segregation Review Board decision will reflect whether the the administrative segregation of the inmate continues to be justified, and the decision will be rendered by the ADCCO or ADCIS of the Pacific region. In case of ADCCO/ADCIS absence, the 15-day Segregation Review Board decision can be delegated to the District Director, Pacific region.

All subsequent Regional Segregation Reviews Board decisions will continue to adhere to CD 709 para 65 (a) that states the Regional Deputy Commissioner will "*review the case of every inmate who reaches 40 days and that has been reviewed by the RSRB to determine whether the administrative segregation of the inmate continues to be justified.*"

Full compliance of thee additional timeframes identified above will take place by February 18th 2019.

Thank you for your cooperation,

Canada

Cari Turi
A/Regional Deputy Commissioner, Pacific Region

CC: Assistant Commissioner Correctional Operations and Programs
Deputy Wardens,
RA Interventions and Assessment
Regional Segregation Oversight Manager

The Corporation of the Canadian Civil Liberties Association et al Applicant (Respondent)	and	Her Majesty the Queen as Represented by the Attorney General of Canada Respondent (Appellant)	Court File No.: 38574

IN THE SUPREME COURT OF CANADA
(COURT OF APPEAL FOR ONTARIO)

Proceeding commenced at Toronto

MEMORANDUM OF ARGUMENT OF THE RESPONDING PARTY, CANADIAN CIVIL LIBERTIES ASSOCIATION INTERIM STAY AND EXTENSION

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Jonathan C. Lisus LS#: 32952H
Tel: (416) 598-7873
jlisus@counsel-toronto.com
Larissa C. Moscu LS#: 62928W
Tel: (416) 360-3018
lmoscu@counsel-toronto.com

MCCARTHY TÉTRAULT LLP
Suite 5300, 66 Wellington Street West
Toronto, ON M5K 1E6

H. Michael Rosenberg LS#: 58140U
Tel: (416) 601-7831
Charlotte-Anne Malischewski LS#: 69687F
Tel: (416) 601-8420

Lawyers for the Canadian Civil Liberties Association

The Corporation of the Canadian Civil Liberties Association et al Applicant (Respondent)	and	Her Majesty the Queen as Represented by the Attorney General of Canada Respondent (Appellant)

Court File No.: 38574

IN THE SUPREME COURT OF CANADA
(COURT OF APPEAL FOR ONTARIO)

Proceeding commenced at Toronto

RESPONDING MOTION RECORD OF THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Jonathan C. Lisus LS#: 32952H
Tel: (416) 598-7873
jlisus@counsel-toronto.com
Larissa C. Moscu LS#: 62928W
Tel: (416) 360-3018
lmoscu@counsel-toronto.com

MCCARTHY TÉTRAULT LLP
Suite 5300, 66 Wellington Street West
Toronto, ON M5K 1E6

H. Michael Rosenberg LS#: 58140U
Tel: (416) 601-7831
Charlotte-Anne Malischewski LS#: 69687F
Tel: (416) 601-8420

Lawyers for the Canadian Civil Liberties Association

VOLUME I OF I