



*The Honourable Kim Pate, C.M. | L'honorable Kim Pate, C.M.  
Senator for Ontario | Sénatrice pour l'Ontario*

## **News Release**

### **Non-Judicial Reviews of Segregation Failed Adam Capay: Bill C-83 Must Do Better**

FOR IMMEDIATE RELEASE

OTTAWA, FEBRUARY 27, 2019 – As the House of Commons continues to debate amendments to the *Corrections and Conditional Release Act*, the Ontario Superior Court’s decision in *R v. Capay* is a reminder why Bill C-83’s claims of ending segregation—while continuing separation and isolation of prisoners and failing to provide judicial oversight of the Correctional Service of Canada—are a mere pretense.

Justice John Fregeau stayed criminal charges against Adam Capay on the grounds that his section 7, 9, 12 and 15 *Charter* rights were violated by an “outrageous, abhorrent, and inhumane ... shocking and intolerable” four and one-half years of continuous administrative segregation. Mr. Capay, a young Indigenous man with serious mental health issues, was detained in segregation in an Ontario prison while awaiting trial.

While Ontario’s corrections legislation, not unlike Bill C-83, provides for non-judicial reviews of decisions to segregate prisoners, Justice Fregeau found that the decision to place and maintain Mr. Capay in conditions recognized internationally as amounting to torture was devoid of meaningful review. Mandated reviews did not occur and the reviews that did occur were based on unreliable and inaccurate information. He concluded that, “correctional officers failed to consider any alternatives to segregation and failed to consider any measures directed at mitigating the devastating impact of segregation” and that the evidence “demonstrates a disturbing pattern of disregard for policy, procedure, and [prisoners’] ... rights within the Ontario corrections system.”

More than two decades ago, following the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, Former Supreme Court Justice Louise Arbour reached the same conclusion regarding the federal prison system.

“Too many people have endured the torture of segregation in this country’s prisons. It is time to end the practice and implement Louise Arbour’s recommendation for judicial oversight of corrections and the ability to revisit and revise sentences when correctional ‘treatment’ of prisoners results in sentences being rendered more severe than what a judge imposed,” said Senator Kim Pate. “Bill C-83 could have made meaningful change by ending the use of segregation and enhancing provisions of the corrections and conditional release act that allow for people to be decarcerated. Instead, they have not only just renamed segregation and removed many of the preexisting procedural safeguards, the proposed amendments will make it more difficult to access provisions that would allow the transfer of those with mental health issues and Indigenous prisoners into appropriate mental health and community based services and programs. I am profoundly disappointed and heartsick about what this means for those in prison. It will only be a matter of time before we have another Adam or Ashley. We can and must do better to prevent more travesties and tragedies.”

- 30 -

**For more information:**

Evan Cathcart or Emily Grant

Office of Senator Kim Pate

[evan2.cathcart@sen.parl.gc.ca](mailto:evan2.cathcart@sen.parl.gc.ca); [emily.grant@sen.parl.gc.ca](mailto:emily.grant@sen.parl.gc.ca)

Tel: 613-995-9220