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News Release

Supreme Court of Canada Stay of Segregation Case Shows Senate Amendments to C-83 Are a Constitutional Necessity

FOR IMMEDIATE RELEASE

OTTAWA, MONDAY, JUNE 17, 2019—On Friday, Canada obtained a temporary stay of the Canadian Civil Liberties Association's constitutional challenge of segregation by promising the Supreme Court that external oversight of segregation decisions under proposed Bill C-83 will occur within five days. Canada also acknowledged, however, that as currently drafted, the earliest such a review could possibly occur would be after two weeks and that it is only a certainty after 90 days.

The Supreme Court's decision makes clear that Bill C-83 should not pass without Senate amendments that would ensure external review by a court within that five day timeline—indeed after 48 hours.

The government's motion introduced last week to remove most of this and other key Senate amendments would leave the bill unconstitutional.

In its study of the bill, the Senate heard from constitutional lawyers, civil society, correctional officers and administrators, former prisoners and a coalition of a hundred legal academics, practitioners and experts. The experts were clear that despite the bill's intention to respond to court decisions establishing human rights protections for prisoners in isolation, Bill C-83 is a perpetuation of unconstitutional segregation.

Acknowledging the culture of rights denial within prisons, the Senate amendments notably included a requirement that correctional authorities apply to court for permission to hold an individual in isolation for more than 48 hours. This judicial oversight would allow courts to ensure that constitutional rights of prisoners are upheld. Former Supreme Court Justice Louise Arbour recommended such a measure in order to shift the existing rights-resistant correctional culture toward one of transparency, due process and accountability.

It has been nearly 12 years since Ashley Smith died in a segregation cell as the guards responsible for her care looked on, yet women and men continue to be incarcerated in the same conditions of isolation, known by Correctional Service Canada to cause irreparable psychological harm. With the government poised to reject the Senate amendments, Corrections risks remaining the only institution within the criminal justice system that is not accountable to the judiciary, and by extension, the public.

“I hope that the Correctional Service of Canada has not misled the Supreme Court of Canada in order to obtain the extension granted on Friday,” stated Senator Kim Pate. “I am hopeful that the House of Commons will amend its message in order to incorporate judicial oversight. If not, I will rely on my Senate colleagues to correct the situation. Passing the bill without these amendments would be an abdication of our duty as legislators, knowing as we do the violations of rights that we would thereby be implicitly endorsing.”

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