Court File No.: COA-24-CR-0400 / M56128

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HIS MAJESTY THE KING

Appellant

- and-

ATTORNEY GENERAL OF CANADA

Appellant

- and-

PATRICK FRANK WARREN

Respondent

- and-

**WEST COAST PRISON JUSTICE SOCIETY, EMPOWERMENT COUNCIL,
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION,
CRIMINAL LAWYERS' ASSOCIATION,
FORENSIC DIRECTORS GROUP AND MENTAL HEALTH PARTNERS,
THE QUEEN'S PRISON LAW CLINIC**

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PART I: OVERVIEW

1. This appeal raises the question of whether a sentencing judge can issue structural order and supervisory orders in the criminal law context under s. 24(1) of the *Canadian Charter of Rights and Freedoms* [**"*Charter*"**]. The BCCLA intervenes to make two points.

2. *First*, there is no bar in principle to the issuance of structural or supervisory orders under s. 24(1) of the *Charter* in the criminal law context. The question is what is an "appropriate and just" remedy under s. 24(1). There is no categorical bar as to subject matter.

3. Second, courts have already issued structural and supervisory orders in the criminal law and corrections context in (a) *habeas corpus* cases, and (b) under s. 24(1) of the *Charter* as conditions for the extension of a suspended declaration of invalidity under s. 52(1) of the *Constitution Act, 1982*. There is no principled or doctrinal reason to preclude the use of structural and supervisory orders in the sentencing context.

4. The BCCLA takes no position on the orders issued by the Sentencing Judge.

PART II: FACTS

5. The BCCLA accepts the facts as set out in the parties' facta and takes no position on disputed facts. We rely on and adopt the submissions of other intervener groups on the availability of remedies under s. 24(1) of the *Charter*.

PART III: QUESTION IN ISSUE

6. The BCCLA's submissions focus on the following question: as a matter of law, can a sentencing judge issue structural or supervisory orders pursuant to s. 24(1) of the

Charter to remedy an infringement of the s. 12 right to be free from cruel and unusual punishment?

PART IV: LAW AND ARGUMENT

7. The Sentencing Judge concluded that transfer to a federal penitentiary as required by s. 753(4) of the *Criminal Code* would amount to cruel and unusual punishment in the circumstances of this case. Having a found an anticipatory violation of s. 12 of the *Charter*, the question was not *whether,* but *which,* remedies were available. The Sentencing Judge accordingly issued a transfer order to a provincial hospital for treatment, and a supervisory order to retain jurisdiction over the case (both set out in **Appendix "A"** to her reasons).

8. The Appellants counter that structural and supervisory orders are limited to the minority language rights context – wherein s. 23 of the *Charter* imposes positive obligations on the state – and are not available in the criminal law context, in any circumstance.[1] They also argue that the orders issued by the Sentencing Judge by their very nature intrude into policy areas reserved for the legislative and executive branches.[2]

9. The BCCLA submits that:

   a. supervisory and structural orders under s. 24(1) of the *Charter* are, in principle, available outside the minority language rights context, including in criminal law; and

[1] Factum of the Attorney General of Ontario [**AGO Factum**], paras 68; 84. Factum of the Attorney General of Canada [**AGC Factum**], paras 35-36.
[2] AGO Factum, para 85; AGC Factum, paras 35; 38; 47-48.

b. courts have already issued structural and supervisory orders in the criminal law context under s. 24(1) of the *Charter*, in *habeas corpus* cases and in conjunction with suspended declarations of invalidity.

A. Supervisory and structural orders beyond minority language rights

10. Section 24(1) confers on judges a wide, unfettered discretion to grant appropriate remedies in response to a *Charter* violation. It is meant to provide a case-by-case remedy for unconstitutional acts of government agents operating under lawful schemes whose constitutionality is not challenged, wherever those violations occur.[3] It is a provision of general application that contains no inherent limits, either in relation to the *Charter* rights or the policy contexts to which it applies.

11. But context matters. The flexibility afforded by the words "appropriate and just in the circumstances" reflects that s. 24(1) remedies must be responsive to the unique circumstances of each case, including the rights at stake and the policy context. That is also true in criminal law, including in sentencing.

12. In exercising its remedial discretion under s. 24(1) in the criminal law context, a superior court is guided by the factors set out in *Doucet-Boudreau*. The court must consider the twin goals of responsiveness – by advancing and protecting the *Charter* protected interest that is at stake – and effectiveness, through the dispensation of an appropriate and just remedy. An effective remedy, in turn, is one that: (i) meaningfully vindicates the right at issue; (ii) respects the role of the executive and the judiciary; (iii)

[3] *Doucet-Boudreau v Nova Scotia (Minister of Education,* 2003 SCC 62 [***Doucet-Boudreau***].

falls within the institutional competence of the court; and (iv) is fair to the party against whom the order is made.[4]

13. A court considering issuing s. 24(1) relief in the criminal law context must also bear in mind *Doucet-Boudreau*'s teaching that s. 24(1) relief "must remain flexible and responsive to the needs of a given case" and "should be allowed to evolve to meet the challenges and circumstances of those cases":

> Finally, it must be remembered that s. 24 is part of a constitutional scheme for the vindication of fundamental rights and freedoms enshrined in the *Charter*. As such, s. 24, because of its broad language and the myriad of roles it may play in cases, should be allowed to evolve to meet the challenges and circumstances of those cases. That evolution may require novel and creative features when compared to traditional and historical remedial practice because tradition and history cannot be barriers to what reasoned and compelling notions of appropriate and just remedies demand. In short, the judicial approach to remedies must remain flexible and responsive to the needs of a given case.[5]

14. There are no constitutional limitations on the jurisdiction of the superior courts to issue any given remedy under s. 24(1) – including structural and supervisory orders in the criminal law context. The broad remedial discretion in s 24(1) is limited *only* by the inherent or delegated powers, as they may be, of the adjudicative body exercising it.[6] *Mills* created the following test under s. 24(1): does the "court" from which relief is sought have jurisdiction over the parties, the subject matter and the particular remedy sought?[7]

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[4] *Doucet-Boudreau*, paras 54-58.
[5] *Doucet-Boudreau*, para 59.
[6] *R v Conway*, 2010 SCC 22, para 40 [***Conway***].
[7] *Mills v The Queen,* [1986] 1 SCR 863 [***Mills***]; *Conway,* paras 83-93; 103. In Conway, the court found the Ontario Review Board could consider *Charter* claims while exercising its statutory mandate but did not have the statutory powers to issue the absolute discharge or certain orders prohibiting or directing treatment sought by the claimant.

15. Since *Mills,* the Supreme Court has maintained the "constant, complete and concurrent jurisdiction" of provincial superior courts to hear *Charter* applications under s. 24(1) and with greatest of flexibility in procedure.[8] To give effect to the constitutionally-mandated need to provide prompt and effective enforcement of *Charter* rights, a superior court can draw upon "the full panoply of available remedies" within their powers on a *Charter* application.[9] Accordingly, there has been no doubt that superior courts have the power to issue structural and supervisory orders in minority language rights cases which arise under s. 23. By extension, they possess the same power to do so in criminal law cases, including those regarding sentencing.

B. Structural and supervisory orders under s. 24(1) in criminal law

16. Courts have already issued structural and supervisory orders under s. 24(1) in the criminal law context for *habeas corpus* applications, and in conjunction with suspended declarations of invalidity under s. 52(1) of the *Constitution Act, 1982*. In principle, a sentencing judge has the power to issue such orders to remedy an anticipatory breach of s. 12.[10]

i. Habeas corpus and s. 24(1)

17. *Gamble* confirmed that s. 24(1) incorporated the traditional prerogative writs as *Charter* remedies, including *mandamus*, which in substance empower superior courts to issue structural orders. The issue in *Gamble* was whether a superior court could order a parole hearing for an inmate serving a pre-*Charter* sentence with no parole eligibility on

[8] *Mills,* para 61.
[9] *Mills,* para 83.
[10] For reference, the orders canvassed in this section are reproduced in full in **Appendix 'A'**.

an *habeas corpus* application. In allowing the application, Wilson J endorsed the view that:

> The application could have been brought expressly pursuant to s. 24(1) of the *Charter* without any reference to *certiorari* or to prohibition as such. It is convenient in situations like these for the applications to be made and discussed, and for orders to be made, in the terms and language of the traditional remedies and means of review, but a right of application conferred by s. 24(1) of the *Charter* is not to be cut down by limitations placed upon the exercise of discretionary powers or prerogative remedies in non-*Charter* situations.[11]

18. Similarly, s. 24(1) has been relied upon to supplement the relief sought through the prerogative writs. In *Idziak,* for example, the court granted *habeas corpus* relief *before* the applicant's transfer to detention (under the *Extradition Act*), relying on the expanded temporal scope of the remedial power under s. 24(1).[12]

19. In *Bacon v Surrey Pre-trial Services Center,* the application judge, having found violations of ss. 7 and 9, made orders directing that the inmate be provided with certain phone, visitor, and other privileges afforded under the *Corrections Act*. The application judge also retained supervisory jurisdiction to permit the inmate to return before her for further rulings or directions.[13] The application judge relied implicitly on s. 24(1) to make these orders, as indicated by her reference to the nature of state conduct giving rise to the *Charter* breach:

> I make no comment on the constitutionality of the *Correction Act* and the *Correction Act Regulation* inasmuch as the evidence disclosed in this

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[11] *R v Gamble*, [1988] 2 SCR 595, para 64 citing *R Arrigo and R.* (1986), 29 CCC (3d) 77 (Ont. HC).
[12] *Idziak v Canada* (1999), 53 CCC (3d) 385 (ON SC), p 394, aff'd [1992] 3 SCR 631.
[13] *Bacon v Surrey Pre-Trial Services Center,* 2010 BCSC 805, paras 346-357 [***Bacon***]. See **Appendix A** for the full order. See also: (a) *Mission Institution v Khela,* 2011 BCCA 450, para 95 adopting the application judge's transfer order (2010 BCSC 721, para 64) and directions (affirmed 2014 SCC 24), and (b) *Chambers v Daou,* 2015 BCCA 50, para 57 left open the availability of *mandamus*-like orders against federal bodies under s. 24(1) despite the exclusive jurisdiction of the federal courts under the *Federal Courts Act.*

> proceeding was that they were seriously misinterpreted, misapplied or ignored. The respondent would have to make a much stronger attempt to adhere to the laws that bind her before any question of the constitutionality of their provisions could be meaningfully addressed.
>
> Although it is remarkable that it seems necessary to say so, I direct that the respondent start by limiting her treatment of the petitioner strictly to the authority vested in her under the *Correction Act* and the *Correction Act Regulation*. I expect the petitioner, in his day to day dealings with the prison administration, to be dealt with in accordance with the Adult Custody Policy Manual, unless something better is implemented. I do not suggest it is a perfect or necessarily an adequate template for due process, but it is a starting point. As matters stand, it is not possible to meaningfully critique standards of practice and procedure honored so much more in the breach than in the observance.[14]

ii. *Structural and supervisory orders and declarations of invalidity*

20. Courts have also routinely issued structural orders as a condition for granting extensions to suspended declarations of invalidity in the criminal law context. In addition, they have sometimes bundled structural orders with supervisory orders.

21. *Ontario (Attorney General) v G.* sets out the rationale for issuing structural orders as conditions for granting extensions. As the Court explained, during a suspension "every additional day of rights violations will be a strong counterweight against giving the legislature more time." A structural order during a suspension can partially offset the impact of an unconstitutional provision remaining in place for the duration of the suspension.[15]

[14] *Bacon*, paras 338-339.
[15] *Ontario (Attorney General) v G*, 2020 SCC 38, para 139 [***G.***].

22. In *Carter 2* and the *Administrative Segregation Decisions*, the courts issued structural orders requiring specific review processes to alleviate the continuing harm arising from the extensions to suspended declarations of invalidity.[16]

23. In *Carter 1,* the Supreme Court found ss. 14 and 241(b) of the *Criminal Code* to be unconstitutional.[17] Before the expiry of the suspension, the Attorney General of Canada sought a six-month extension. *Carter 2* granted the extension but also issued the medical exemption under s. 24(1) it had previously denied in *Carter 1* to "mitigate the severe harm that may be occasioned to those adults who have a grievous, intolerable and irremediable medical condition by making a remedy available now pending Parliament's response."[18] That exemption was a structural order; it created an *ad hoc* mechanism to be administered by the superior courts according to detailed criteria.

24. In the *Administrative Segregation Decisions,* both this Court and the British Columbia Court of Appeal granted extensions for the suspension of declarations of invalidity of the provisions of the federal *Corrections and Conditional Release Act* ('*CCRA*') that had been issued by lower courts.[19] Both courts issued structural orders as conditions for ordering the extensions. As in the present case, those orders ensured the proper and constitutionally compliant operation of the *CCRA*. In addition, the British Columbia Court of Appeal issued supervisory orders.

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[16] *Carter v Canada (Attorney General)*, 2016 SCC 4 [***Carter 2***]; *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 5 [***BCCLA Administrative Segregation***]; *Canadian Civil Liberties Association v Canada, (Attorney General)*, 2019 ONCA 342 [***CCLA Segregation***] [collectively ***Administrative Segregation Decisions***].
[17] *Carter v Canada (Attorney General)*, 2015 SCC 5, para 125 [***Carter 1***].
[18] *Carter 2*, para 6. *G.* clarified that the structural order in *Carter 2* had been issued pursuant to s. 24(1): para 134.
[19] *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2018 BCSC 62; *Corporation of the Canadian Civil Liberties Association v Her Majesty the Queen*, 2017 ONSC 7491.

25. In *BCCLA Administrative Segregation,* before it had considered the appeal on the merits, the British Columbia Court of Appeal granted an extension subject to an extensive list of detailed conditions imposing reporting and policy requirements on Correctional Services Canada ('CSC') that addressed hospital visits, yard time, policy review, and training. This was a structural order. At the same time, the Court issued a supervisory order and retained jurisdiction.[20] While the appeal was still pending, the Court added three further conditions five months later – i.e., a further structural order.[21] After issuing its final judgment, the Court granted a second extension, issued a further supervisory order in the form of reporting requirements, and "reserve[d] the right to make further orders in respect to the suspension based on the information in the progress reports, and on further evidence that may be provided by the parties," – i.e. future possible structural and supervisory orders.[22]

26. In *CCLA Administrative Segregation,* this Court imposed conditions requiring CSC to implement a five-day periodic review process for inmates in administrative segregation.[23] This was a structural order.

PART IV: COSTS AND ORDER REQUESTED

27. The BCCLA does not seek costs and asks that none be awarded against it. The BCCLA does not seek any orders.

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[20] *BCCLA Administrative Segregation*, paras 33-38. See **Appendix A**.
[21] *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 177, para 35. See **Appendix A**.
[22] *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 233, paras 6–7. See **Appendix A**.
[23] *ONCA Administrative Segregation*, para 22.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of September 2025.

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Counsel to the Intervener,
British Columbia Civil Liberties Association

SCHEDULE A: AUTHORITIES CITED

1. *Bacon v Surrey Pre-Trial Services Center,* 2010 BCSC 805
2. *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2018 BCCA 282
3. *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 5
4. *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 177
5. *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 233
6. *Carter v Canada (Attorney General)*, 2015 SCC 5
7. *Carter v Canada (Attorney General)*, 2016 SCC 4
8. *Canadian Civil Liberties Association v Canada, (Attorney General)*, 2019 ONCA 342
9. *Chambers v Daou,* 2015 BCCA 50
10. *Corporation of the Canadian Civil Liberties Association v Her Majesty the Queen*, 2017 ONSC 7491
11. *Doucet-Boudreau v Nova Scotia (Minister of Education,* 2003 SCC 62
12. *Idziak v Canada* (1999), 53 CCC (3d) 385
13. *Mills v The Queen,* [1986] 1 SCR 863
14. *Mission Institution v Khela,* 2011 BCCA 450
15. *Ontario (Attorney General) v G*, 2020 SCC 38
16. *R v Conway,* 2010 SCC 22
17. *R v Gamble*, [1988] 2 SCR 595

SCHEDULE B: TEXT OF STATUTES, REGULATIONS & BY-LAWS

None.

APPENDIX A – LIST OF STRUCTURAL ORDERS

Order in *Bacon v Surrey Pre-Trial Services Center*, 2010 BCSC 805, paras 346-357

[346] The petitioner is entitled to a declaration that the respondent has failed to handle his mail as prescribed by the *Correction Act*, S.B.C. 2004, c. 46 and the *Regulation*, B.C. Reg. 58/2005, and in particular:

> (i) in monitoring the petitioner's mail without reasonable documented grounds, and
>
> (ii) in passing on mail to the police without legal authorization.

[347] The respondent is directed to handle the petitioner's mail in a manner prescribed by the *Correction Act* and the *Correction Act Regulation*, and in particular, is directed to conform to the standard set out in the Adult Custody Policy Manual, unless another standard is shown to be justifiable and necessary.

[348] The respondent's decision to impose blanket restrictions on the petitioner's visits is quashed as a wholly improper exercise of discretion for an improper purpose imposed without reasonable grounds.

[349] The respondent is directed to restore the petitioner's visits subject to the standards set out in the Adult Custody Policy Manual, unless another standard is shown to be justifiable and necessary.

[350] The respondent's decision to impose blanket restrictions on the petitioner's telephone access is quashed as a wholly improper exercise of discretion for an improper purpose imposed without reasonable grounds. To be absolutely clear, the bare assertion of "reasonable grounds" does not satisfy the requirement for reasonable grounds or a reasonable belief, but is a conclusion as to the effect of the grounds or belief that must be asserted. "Grounds" must be articulated and susceptible of meaningful assessment as to reasonableness. The records pertaining to the petitioner's treatment are replete with mantras of self-assessed "reasonableness" that have clearly come to substitute for proper, thoughtful justification. Indeed, it is clear that "reasonable grounds" were routinely asserted, when the respondent had no idea what those grounds were but hoped the police would be able to provide her with some.

[351] The petitioner is entitled to an order in the nature of *habeas corpus* directing that if he is not found, on proper grounds, to be a candidate for release within the general prison population, but must continue to be separated from at least a segment of that population, the respondent must either:

(a) find the means to place the petitioner in a setting that will include other inmates who are not at risk from, or a risk to, him; or

(b) otherwise mitigate the petitioner's conditions of confinement to achieve a level of treatment comparable to that of an inmate in the general population, including times out, recreational opportunities and comparable privileges. He must not be treated as if he is being perpetually punished or disciplined. If it is a question of resource limitations, resources must be found.

(c) in any case, periodically justify the petitioner's treatment in adherence to the *Correction Act Regulation* and the due process protocols set out in the Adult Custody Policy Manual, unless and until another standard is shown to be justifiable and necessary.

[352] The evidence establishes that the respondent has exercised the powers vested in her:

(a) for the improper purpose of assisting the police in its criminal investigation;

(b) in a manner that has improperly fettered her discretion by allowing the police to unduly influence the petitioner's placement in separate confinement; and

(c) in such a way that she has repeatedly breached her duty of procedural fairness and natural justice by failing to hold hearings and preventing the petitioner from making submissions to challenge the information which she relied upon in treating him as she did; in frequently acting on no information or on information she had not assessed because it had not been supplied; and in failing to provide reasons for her decisions beyond the inadequate conclusory self-assessment that whatever she did, her grounds were "reasonable."

[353] The respondent is in breach of s. 12 of the *Charter* in arbitrarily placing the petitioner in solitary confinement, in failing to appropriately mitigate his circumstances in solitary confinement, and in unlawfully denying him the other rights to which he was entitled, significantly threatening his psychological integrity and well-being. These impositions collectively amount to cruel and unusual treatment.

[354] The respondent is in breach of s. 7 of the *Charter* by creating circumstances and maintaining the petitioner in circumstances that manifestly threaten the security of his person (which includes both a physical and a psychological dimension) by the unlawful deprivation of his rights for an unlawful purpose.

[355] The statutory, regulatory and policy framework meant to govern the respondent in her dealings with the petitioner have been ignored or misapplied in a manner that renders

their constitutionality an abstract question. I therefore decline, at this time, to address the issues related to the substantive constitutionality of the *Correction Act* and the *Correction Act Regulation*, as such. It appears that the procedures outlined in the Adult Custody Policy Manual are meant to give form and substance to the framework of directives contained in the legislative instruments. There would have to be a good faith attempt to abide by its terms before its adequacy as a template for due process could be meaningfully assessed.

[356] This appears to be an appropriate case for special costs. If the Attorney-General wishes to make submissions, given the view counsel have taken about the *Rules* and their relationship to the court's summary jurisdiction they may do so. Failing notice to that effect within ten days of these reasons the order shall be that the petitioner is entitled to special costs.

[357] This Court remains seized of all matters arising.

Order in *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 5, paras 33-38

[33] It is our view that the circumstances of this case are such that conditions ought to be placed on the extension of the suspension of the declaration. The Court recognizes that the formulation and implementation of detailed policies is ordinarily a matter to be left to the executive branch of government. However, the inordinate delays in this case justify the Court's intervention. This is especially so, given that the Attorney General does not seriously dispute that current practices do not conform to constitutional requirements.

[34] Based on the evidence before us, including the Attorney General's written submissions regarding Canada's plans, we are of the view that the following requirements are feasible and should be imposed:

a) The daily visits of health care professionals with inmates in administrative segregation must include a visual observation of the inmate, unless, due to exceptional circumstances, such observation would jeopardize the safety of Correctional Service of Canada personnel. Section 70 of Commissioner's Directive 709 will be interpreted as including the requirement for visual observation;

b) Where a health care professional who has visited an inmate in administrative segregation is of the opinion that the inmate should be removed from administrative segregation or be subject to altered conditions of confinement, the health care professional must advise the institutional head, in writing, of that opinion and the basis upon which it has been reached. The health care professional must provide such advice as soon as reasonably practical and, in any event, not less than 24 hours after forming the opinion;

c) Where an institutional head receives such an opinion from a health care professional, the institutional head must, without delay, implement the recommendation of the health care professional or provide a written explanation as to why the recommendation is not being implemented. Copies of the written explanation, along with the health care professional's written advice, must be provided to the health care professional, the inmate, and, at the inmate's direction, to counsel;

d) Inmates in administrative segregation must be offered an additional 30 minutes of yard time each day. For clarity, s. 39(c) of Commissioner's Directive 709 will be applied by the Correctional Service of Canada to ensure that all inmates in administrative segregation are provided with the opportunity to be out of their

cells for a minimum of 2½ hours per day. Within that period, inmates must be given the opportunity to exercise outdoors for at least 1½ hours every day, unless the weather does not permit exercise to be taken outdoors, in which case the exercise opportunity will be provided indoors. These requirements will be met each day, including on weekends and holidays;

e) The Correctional Service of Canada must

i. Issue a Policy Bulletin, that will be distributed to all staff, directing staff to allow counsel to attend institutional segregation review board hearings to make submissions on behalf of the inmate whose case is reviewed;

ii. Issue a Policy Bulletin confirming that inmates in administrative segregation are allowed to make calls to counsel in a private area outside of their cells; and

iii. Distribute a memorandum to affected staff and Inmate Committees confirming the policy set out in s. 33 of Commissioner's Directive 709 that upon admission to administrative segregation, an inmate will, without delay, be informed of their right to counsel and given a reasonable opportunity to retain and instruct counsel in private;

f) The Correctional Service of Canada must take steps to have Indigenous Elders routinely visit segregation units and offer one-on-one counselling to Indigenous inmates.

g) The Correctional Service of Canada must issue to all institutions a Case Management bulletin advising that Indigenous Elders will be asked to attend segregation units on their first day of work to get acquainted with inmates and, thereafter, to be available for a minimum of two hours per working day to provide services to inmates in administrative segregation;

h) The Correctional Service of Canada must complete a review of current institutional standing orders and infrastructure and must provide written recommendations to the Commissioner about how Indigenous inmates being held in administrative segregation may be provided consistent access to smudging and, as circumstances permit, ceremonial and spiritual practices.

i) The Correctional Service of Canada must begin opening units outside of administrative segregation for inmates who do not wish to integrate into the mainstream inmate population and for inmates who are assessed as being unable to integrate into the mainstream inmate population safely but who do not meet the legislated criteria for placement in administrative segregation;

j) 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.

[35] The requirements set out in subparagraphs a) to f) must be fulfilled as soon as possible, and, in any event, before January 18, 2019, the date when the suspension given by the trial judge expires.

[36] The requirements in subparagraphs g) and h) must be met by May 1, 2019.

[37] Canada must report its progress with respect to the requirements in subparagraphs g) through j) prior to February 28, 2019, by letter addressed to the Registrar to be brought to the attention of the panel. Counsel for the Attorney General should also provide a copy to counsel for the respondents. Upon receipt of the report, the Court reserves the power to impose additional conditions on the continuation of the suspension of the declaration.

[38] These orders will continue in place for the duration of the suspension, or until further order of the Court.

Order in *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 177, para 35

[35] We are satisfied that, in addition to the conditions ordered in our January 7, 2019, order, the following conditions must be satisfied in order for the declaration of constitutional invalidity to remain suspended until June 17, 2019:

> 1. The Correctional Service of Canada must, upon admitting an inmate into administrative segregation, ask the inmate whether they wish to sign a consent form for the release of information to their counsel. If the inmate indicates a desire to sign such a document, they must be given the opportunity to do so at that time;
>
> 2. The Correctional Service of Canada must, upon admitting an inmate into administrative segregation, provide the inmate with a supply of request forms for legal calls that is expected to be adequate for the inmate's needs. While the inmate remains in administrative segregation, the Correctional Service of Canada must replenish that supply as needed;
>
> 3. Where the Correctional Service of Canada is aware that an inmate who has been admitted to administrative segregation is represented by counsel, it must, in a timely manner, provide that counsel with the date and time of the segregation review hearing.

Order in *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 233, paras 6–7

[6] The Attorney General must report on implementation progress by letters to the registry, to be brought to the attention of the members of the panel. Copies of the letters must be provided to counsel for the plaintiffs. One progress report must be made by August 30, 2019, outlining progress up to August 15, 2019. A second progress report, outlining progress up to October 4, 2019, must be provided no later than October 15, 2019.

[7] The Court reserves the right to make further orders in respect to the suspension based on the information in the progress reports, and on further evidence that may be provided by the parties.

HIS MAJESTY THE KING and THE ATTORNEY GENERAL OF CANADA

APPELLANTS

and

PATRICK FRANK WARREN

RESPONDENT

Court File No. COA-24-CR-0400 / M56128

COURT OF APPEAL FOR ONTARIO

FACTUM OF THE INTERVENER,

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