

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N :

THE CORPORATIONS OF THE CANADIAN CIVIL  
LIBERTIES ASSOCIATION

Applicant  
(Appellant)

and

HER MAJESTY THE QUEEN AS REPRESENTED BY  
THE ATTORNEY GENERAL OF CANADA

Respondent

**NOTICE OF APPEAL**

THE APPLICANT, the Canadian Civil Liberties Association (the “**Appellant**”),  
APPEALS to the Court of Appeal from the Judgement of the Honourable Associate  
Chief Justice Marrocco (the “**Trial Judge**”) dated December 18, 2017 (the  
“**Judgement**”) made at Toronto.

**THE APPELLANT ASKS** that the Judgment be varied as follows:

1. The Application be granted with:
  - (a) a declaration that ss. 31-37 of the *Corrections and Conditional Release Act* (the “*Act*”) contravene sections 11(h) and 12 of the *Charter of Rights and Freedoms* (the “*Charter*”);

- (b) a declaration that the administration of ss. 31-37 of the *Act* in Canadian penitentiary institutions contravenes sections 7, 11(h) and 12 of the *Charter* insofar as:
  - (i) inmates are confined in administrative segregation for more than fifteen consecutive days;
  - (ii) inmates with mental illness are confined in administrative segregation;
  - (iii) inmates aged 21 years or younger are confined in administrative segregation; and
  - (iv) inmates are involuntarily confined in administrative segregation for their own protection.
- (c) a remedy under s. 24(1) of the *Charter* and s. 52 of the *Constitution Act, 1982*; and
- (d) such further and other relief as counsel for the Appellant may request and this Honourable Court deems just.

**THE GROUNDS OF APPEAL** are as follows:

- 2. The Trial Judge erred in fact and/or law in:
  - (a) holding that the Appellant does not have standing to seek a remedy under s. 24(1) of the *Charter*;

- (b) refusing to grant the Appellant a remedy under s. 24(1) of the *Charter*;
- (c) holding that the Respondent's administration of the *Act* was not before the Court;
- (d) assuming that the *Act* is always administered or could be administered in a constitutionally compliant manner despite a lack of appropriate safeguards;
- (e) assuming that an ability to administer the *Act* in a constitutionally compliant manner is constitutionally sufficient;
- (f) dismissing the Appellant's application for a declaration that the Respondent has administered the *Act* in a manner that contravenes sections 7, 11(h), and 12 of the *Charter* and requires a remedy under s. 24(1) of the *Charter*;
- (g) holding that a violation of the Mandela Rules is not a violation of Canada's international obligations under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* or the *International Covenant on Civil and Political Rights*;
- (h) holding that compliance with s. 52 of the *Constitution Act, 1982* requires only that the *Act* is capable of being interpreted in a Constitutionally compliant manner, in circumstances where:
  - (i) the *Act* lacks safeguards to ensure constitutional compliance; and

- (ii) there are significant barriers to obtaining meaningful relief under s. 24(1) of the *Charter* for maladministration of the *Act*, and in particular, to bar ongoing maladministration;
- (i) dismissing the Appellant's application for a declaration that sections 31-37 of the *Act* violate section 11(h) of the *Charter* by punishing inmates who have not committed a subsequent offence, notwithstanding his finding that administrative segregation contravenes responsible medical opinion and causes serious harm; and
- (j) dismissing the Appellant's application for a declaration that sections 31-37 of the *Act* violate section 12 of the *Charter* because it constitutes cruel and unusual punishment to confine:
  - (i) inmates with mental illness in administrative segregation;
  - (ii) inmates aged 21 years or younger in administrative segregation; or
  - (iii) any inmate in administrative segregation for a period exceeding fifteen consecutive days

notwithstanding his finding that administrative segregation contravenes responsible medical opinion and causes serious harm; and

3. Such further and other grounds of appeal as counsel may advise and this court may permit.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

4. Sections 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990 c.C.43;
5. Rule 61 of the *Rules of Civil Procedure*;
6. The decision appealed from is a final order of a judge of the Ontario Superior Court of Justice; and
7. Leave to appeal is not required.

January 16, 2018

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The Corporation of the Canadian Civil  
Liberties Association  
Applicant

and

Her Majesty the Queen as represented by  
the Attorney General of Canada  
Respondent

Court File No.: \_\_\_\_\_

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Proceeding commenced at **TORONTO**

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