THE HIGH COURT OF THE DOMINION OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

CLAUDETTE TINIO and LILY TINIO (BY HER LITIGATION GUARDIAN CLAUDETTE TINIO)

Appellants

– AND –

ATTORNEY GENERAL OF CANADA

Respondents

FACTUM OF THE RESPONDENTS

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PART I – OVERVIEW

[1] The question before the Court is whether the Appellant's constitutional rights under sections 15 and 7 of the *Canadian Charter of Rights and Freedoms* are infringed by the addition of s. 18.1 to Commissioner's Directive 768 (the "Directive"). The Directive sets out the terms of the Institutional Mother-Child Program ("the MCP").

> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].
> Exhibit "A" to the Official Problem - Commissioner's Directive 768 [Directive].

[2] Section 18.1 limits potential eligibility for participation in the MCP to those individuals convicted of non-violent crimes. The Appellant is serving a four-year sentence for committing assault with a weapon and is accordingly ineligible for consideration in the MCP.

> Official Problem, Wilson Moot 2015 at 1 and 5 (para 18) [Official Problem].

[3] Separation from society is a necessary consequence of serving a custodial sentence. While the federal government is under no constitutional or statutory obligation to establish the MCP, the Minister and Commissioner took the innovative step of doing so in 1999. The Program is carefully designed to permit non-violent mothers to reside with their children while incarcerated.

> Official Problem, *supra* para 2 at 1.

[4] Enrolment in the MCP has always been limited to a select group in order to ensure that the program is administered safely and securely. The Minister and officials in Correctional Service Canada ("CSC") develop the eligibility requirements, which are based on their specialized knowledge and expertise.

[5] The Minister and Commissioner take seriously their obligations to design and administer prisoner programs in a non-discriminatory way, and they have met their obligations with respect to the Appellant. The s. 18.1 amendment restricts enrolment to those mothers convicted of non-

violent crimes. This is not the kind of distinction that s. 15 is aimed at preventing, nor does it create a discriminatory effect.

[6] Section 18.1 confers a benefit on some inmates. It does not deprive Ms. Tinio or any other ineligible inmates of any residual s. 7 *Charter* right.

[7] The administration of corrections is a complex challenge. The s. 18.1 amendment strikes an appropriate balance between the needs of inmates on one hand and public safety concerns on the other.

PART II – STATEMENT OF FACTS

A. Factual background

[8] The MCP is a discretionary program implemented by CSC that allows a select group of female offenders to keep their young children with them in prison while serving their sentences. Prisoners must apply to participate in the MCP, and their continued enrolment is subject to a number of conditions. At the national level, an average of 75 women were enrolled in the MCP prior to 2013.

Official Problem, *supra* para 2 at paras 12, 25.

[9] In May 2013, s. 18.1 was added to the Directive's eligibility requirements.

Official Problem, *supra* para 2 at para 1.

[10] Ms. Claudette Tinio is currently serving a four-year prison sentence at Maplehurst Women's Penitentiary for assault with a weapon. Ms. Tinio began serving her sentence in August 2013 and gave birth to her daughter, Lily Tinio, in October 2013. Lily has been in the care of Ms. Tinio's sister, Emily, since birth. Lily is, in Emily Tinio's opinion, a happy and healthy child.

Official Problem, *supra* para 2 at paras 18-21.

[11] Ms. Tinio was diagnosed as having bipolar disorder when she was 17 and has a history of drug use. Ms. Tinio also has a lengthy criminal record, including convictions for possession, possession for the purposes of trafficking, assault, theft under $5000, and resisting arrest.

Official Problem, *supra* para 2 at paras 5-7.

B. Procedural History

[12] The Appellant brought an application before the Federal Court seeking a declaration on behalf of herself and her daughter that their exclusion from the MCP violates their rights under s. 15 and Ms. Tinio's rights under s. 7 of the *Charter*. The Appellant also seeks an order in the nature of *mandamus* that the Institutional Head of Maplehurst enroll her in the MCP.

[13] Justice Lazier of the Federal Court held that s. 18.1 discriminates against both Ms. Tinio and Lily on the grounds of gender, race and ethnicity. Justice Lazier also held that s. 18.1 infringed the Appellant's security of the person in a manner that was overbroad and grossly disproportionate. He concluded that the violations were not justified under s.1 of the *Charter.*

Official Problem, *supra* para 2 at para 30.

[14] On appeal, a majority of the Federal Court of Appeal overturned the judgment of the court below. The majority ruled that the distinction made by s. 18.1 of the Commissioner's Directive is unambiguously based on Ms. Tinio's status as a violent offender and does not amount to a distinction based on an enumerated ground. The majority did not accept that "prisoner status" constitutes an analogous ground and similarly rejected Lily's s. 15 claim on the basis that family status is not an analogous ground. The majority also dismissed Ms. Tinio's s. 7 claim on the grounds that s. 18.1 does not offend the principles of fundamental justice. The dissenting judge would have adopted the reasoning of Justice Lazier.

Official Problem, *supra* para 2 at para 30.

PART III – STATEMENT OF POINTS IN ISSUE

[15] The present appeal raises the following three issues:

Issue 1: Does section 18.1 of the Commissioner's Directive infringe Claudette or Lily Tinio's rights under section 15(1) of the *Charter?*

Issue 2: Does section 18.1 of the Commissioner's Directive infringe Ms. Tinio's section 7 rights under the *Charter*?

Issue 3: If the answer to issues 1 or 2 is yes, is that infringement demonstrably justified in a free and democratic society under section 1 of the *Charter*?

PART IV – ARGUMENT

The legislative context informs the section 15 and section 7 analysis

[16] The terms of the MCP are laid out in Commissioner's Directive 768 (the "Directive"), which is enabled pursuant to the Commissioner's rule-making power in s. 97 of the *Corrections and Conditional Release Act* ("*CCRA*").

Corrections and Conditional Release Act, SC 1992, c 20 at s 97 [*CCRA*].

[17] Commissioner's Directives are the means by which the Commissioner is empowered to add nuance and detail to the statutory guiding principles and purposes of corrections laid out in s. 3 and s. 4 of the *CCRA*.

[18] All Directives enabled under the *CCRA* must be interpreted in light of these guiding principles and purposes. Primary amongst these guiding principles is s. 3.1 of the *CCRA*, which stipulates that the paramount consideration underlying the corrections process is the protection of society. The Directive must be interpreted with reference to this paramount consideration.

CCRA, *supra* para 16 at s 3.1.

[19] The majority of the CSC guiding principles are laid out in s. 4 of the *CCRA*. For example, these principles provide that the CSC should be guided by the "nature and gravity" of offences and CSC policies should "respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups". Central to these statutory guidelines is s. 4(d), which notes that inmates retain all the rights of members of society, "except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted". Giving effect to these guidelines requires a careful balancing of interests.

CCRA, supra para 16 at s. 3, 3.1, 4 (a), 4(g), 4(d).

[20] Given the nature of the Appellant's claim, it is important to establish the scope of an inmate's right to maintain familial relationships while incarcerated. Under s. 71(1) of the *CCRA*, every inmate has the right to maintain relations with his or her family by visits and correspondence, subject to reasonable limits to ensure the security of the penitentiary and the safety of persons. Subsection 90(1) of the Regulations makes clear that inmates do not have an absolute right or a strict right to contact visits.

CCRA, supra para 16 at s. 71(1).
Corrections and Conditional Release Regulations, SOR/92-620, ss. 90(1) [*CCRR*].

[21] The MCP, a discretionary program that allows children to reside with their mothers in prison, goes far beyond this statutory requirement. Access to the program is, and has always been, limited to mother-child relationships that meet a host of eligibility criteria. Like other elements of the Program's design, these limitations are aimed at creating a supportive and stable environment for participants and a feasible one for CSC to administer.

Directive, *supra* para 1 at paras 8, 17-22, 68, 70, 73.
Official Problem, *supra* para 2 at para 16.

Issue 1: Section 18.1 of the MCP does not infringe s. 15(1) of the *Charter*

[22] For the Court to find that a provision is discriminatory under s. 15(1) of the *Charter*, the Appellants must establish the following two steps on a balance of probabilities:

1. The law creates a distinction based on an enumerated or analogous ground; and
2. The distinction creates a disadvantage by perpetuating prejudice and stereotyping.

R v Kapp, 2008 SCC 41, [2008] 2 SCR 483 at para 17 [*Kapp*].

[23] The Appellants have not established that s. 18.1 meets either step of the *Kapp* test. Section 18.1 draws a distinction based on whether someone has committed a violent crime, which is not an enumerated or analogous ground. It does not create a distinction through adverse effects. The provision does not create a disadvantage by perpetuating prejudice and stereotyping. Rather, the distinction relates to a balancing of public health and public security objectives.

1. Section 18.1 does not draw a distinction based on enumerated or analogous grounds

[24] Section 18.1 of the Directive does not impose differential treatment, either on its face or in its effects, on the basis of any of the prohibited grounds.

A. Section 18.1 does not create a distinction on its face for the purposes of s. 15(1) of the Charter

[25] Section 18.1 distinguishes between offenders based on whether they have committed a "crime of violence", which both parties agree is a common sense determination. Section 18.1 is one of a number of distinctions drawn by the Directive, which determine the appropriate pool of applicants for the MCP, taking into account public health and public security objectives. For example, paragraph 17 of the Directive excludes women inmates classified as maximum security from participating in the program. Section 18.1's exclusion of violent offenders from this pool flows not from their immutable, personal characteristics but from the violence of their past

criminal actions. As McIntyre J noted in *Andrews*, "[d]istinctions… based on an individual's merits and capacities will rarely be… classed [as discriminatory]".

Clarifications to the Official Problem (2015) at 4 [Clarifications].
Directive *supra* para 1 at paras 8, 17-22, 68, 70, 73.
Andrews v Law Society of British Columbia, [1989] 1 SCR 143 at para 37 [*Andrews*].

[26] Whether someone has committed a violent crime is not an analogous ground for the purposes of s. 15(1) of the *Charter*. The courts have not recognized prisoner status as an analogous ground, and the four members of the Supreme Court of Canada who addressed the issue in *Sauvé* rejected this possibility. While the status of being imprisoned can be characterized as an immutable characteristic, Gonthier J. noted in *Sauvé* that, "the immutability or constructive immutability is nonetheless an inherent and necessary dimension of being incarcerated, which obviously and validly relates to the state's legitimate role of punishing serious criminals for their criminal activity."

Sauvé v Canada (Chief Electoral Officer), 2002 SCC 68, [2002] 3 SCR 519 at paras 63, 195, 197 [*Sauvé*].

[27] The case for recognizing a subset of prisoner status as an analogous ground – such as the status of being a prisoner convicted of a violent offence – is therefore even more tenuous. Parliament has a legitimate interest in treating convicted offenders differently based on the violence of their crimes.

[28] Correctional policy commonly draws distinctions similar to that drawn by s. 18.1. For example, the *CCRA Regulations* mandate that correctional officials consider inmates' potential for violent behaviour when determining their security classification. Because the distinction drawn by s. 18.1 is of a type commonly drawn in the correctional context, to hold that it is a discriminatory distinction risks distorting the purpose of section 15(1) of the *Charter* and risks impugning the legitimacy of much correctional law and policy.

CCCR, *supra* para 21 at s. 17(f).
Sauvé, *supra* para 26 at para 201 [where Gonthier J. expressed a similar concern about the impact of recognizing prisoner status as an analogous ground on the legitimacy of the *Criminal Code*].

B. Section 18.1 does not create a distinction prohibited by s. 15(1) in its effects

[29] The Appellants allege that s. 18.1 creates a distinction in its effects based on race, disability, family status and sex. They have failed to show that it does.

[30] As noted in *Egan,* adverse effects discrimination occurs when "a law, rule or practice is facially neutral but has a disproportionate impact on a group *because of* a particular characteristic of that group."

Egan v Canada, [1995] 2 SCR 513 at paras 586-587, 124 DLR (4th) 609 (emphasis added) [*Egan*].
Eaton v Brant County Board of Education, [1997] 1 SCR 241 at para 67, 142 DLR (4th) 385.
Jonette Watson Hamilton and Jennifer Koshan, "Adverse Impact: The Supreme Court's Approach to Adverse Effects Discrimination Under Section 15 of the *Charter*", forthcoming in (2015) Rev Const Stud, available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2528157 [Adverse Impact].

[31] Section 18.1 does not fit that characterization. Far from neglecting or being inattentive to the needs of a vulnerable group, s. 18.1 is one piece of an overall program designed to specifically benefit imprisoned mothers. Section 18.1 does not have an adverse effect on any of the protected groups. It excludes women based on the violence of their criminal actions, not their personal characteristics.

Egan, supra para 30 at paras 586-587.

C. A note about terminology: two types of adverse effects discrimination

[32] Adverse effects discrimination may be demonstrated through evidence in two ways. First, the appellants could show that the impugned distinction affects a disproportionate number of individuals who possess characteristics recognized as prohibited grounds of discrimination, an effect described by Dianne Pothier as a "disproportionate impact". Second, they could establish

that the distinction has a greater negative effect on those who possess a certain characteristic, compared to others. This type of adverse effect is described by Pothier as a "categorical exclusion". We adopt the terminology of Dianne Pothier when referring to these two types of adverse effects.

> *British Columbia (Public Service Employee Relations Commission) v British Columbia Government and Service Employees Union (BCGSEU),* [1999] 3 SCR 3 at paras 11, 69 [a disproportionate impact case, because a much higher proportion of women - but not *all* women - failed an aerobics test for firefighters compared to men] [*Meiorin*].
> *Eldridge v British Columbia (AG),*[1997] 3 SCR 624, 151 DLR (4th) 577 [a categorical exclusion case, because a lack of funding for interpretation services had a more severe impact on *all* deaf patients].
> Dianne Pothier, "Tackling Disability Discrimination at Work" (2010) 4 McGill JL & Health 17 at 35.
> Adverse Impact, *supra* para 30 at 7.

Section 18.1 does not create a distinction based on race or disability

(i) Section 18.1 does not have a disproportionate impact on racialized and disabled groups

[33] Canadian prisons have high proportions of racialized and disabled individuals in comparison to the general population. Those groups are more likely to be affected by any provision of the MCP because they are more likely to be inmates. This does not establish that s. 18.1 has a disproportionate impact on those prohibited grounds.

> Official Problem, *supra* para 2 at para 28.

[34] To demonstrate that s. 18.1 has a disproportionate impact on racialized or disabled groups, the Appellants must compare those mothers excluded by s. 18.1 with those mothers who remain eligible for the program. The only relevant evidence on this point is the evidence stating that "racialized women… and women [with mental health and substance abuse issues] are more likely to be serving time for violent offences than Caucasian women or women without mental health or substance abuse issues." This evidence does not speak directly to the group excluded by

s. 18.1. It speaks to a different, broader group -- not just mothers in prisons that offer the MCP, but all female inmates convicted of violent crimes. It does not address whether racialized or disabled mothers form a greater proportion of the ineligible group compared to the eligible group, and if so, by how much.

Official Problem, *supra* para 2 at para 28.

[35] The jurisprudence indicates that a large statistical difference is necessary to demonstrate that a provision has a disproportionate impact on the prohibited grounds. For example, in *BC Health Services*, the evidence established that a high proportion of those adversely impacted by the legislative change were women: 98% of nurses in BC were women, 85% of healthcare support workers in the Hospital Employees Union were women, and 90% of the British Columbia Government Employees Union were women. This high level of overrepresentation was nonetheless insufficient for the trial judge to establish that Bill 28 drew a distinction based on sex. This holding was affirmed by the SCC.

Colleen Sheppard, "Of Forest Fires and Systemic Discrimination: A Review of *British Columbia v B.C.G.S.E.U.*" (2001) 46 McGill L.J. 533 at 544-548 (discussing how much of a statistical disparity is necessary to establish discrimination)

The Health Services and Support – Facilities Subsector Bargaining Association v Her Majesty The Queen, 2003 BCSC 1379, 19 BCLR (4th) 37 at para 161 (decision affirmed on the s. 15 issue at 2007 SCC 27 at para 165).

See also: *Meiorin*, *supra* para 32 at para 11 [65% of women failed the aerobics test compared to 30-35% of men].

See also: *R v Nur*, 2011 ONSC 4874 at paras 76-79, 96 WCB (2d) 425 (62.1% of all s. 95 possession charges in Toronto were laid against black individuals, but only 8.4% of the Toronto population was black. Code J. found that this level of overrepresentation did not establish that the provision was discriminatory. Decision affirmed at 2013 ONCA 677 at para 182, leave to appeal to SCC granted, but not for the s. 15 issue) [*Nur*].

[36] Courts have cautioned against relying on statistical evidence alone as sufficient proof for establishing that a provision has a disproportionate impact on the prohibited grounds. As Morgan J. states in *Barbra Schlifer Commemorative Clinic*, while statistical data has its place, it "can

rarely, if ever, do the work of proof on its own." This caution is especially pertinent in this case, where the statistical data brought by the Appellants is vague and not quantitative.

> *Barbra Schlifer Commemorative Clinic v Canada*, 2014 ONSC 5140 at para 100, 116 WCB (2d) 329.

[37] If the Court accepts that s. 18.1 creates a distinction based on race or disability because of a disproportionate impact, the validity of many other distinctions imposed by criminal law, sentencing, and correctional policy would be called into question for the same reason. Indeed, courts have repeatedly raised this concern. In *R v Johnson*, *Criminal Code* amendments were challenged under s. 15(1) of the *Charter* because they impacted a disproportionate number of black and Aboriginal individuals. Sparrow J. rejected the applicant's claim, finding that "the Applicant's argument, logically pursued, renders much of criminal law – or, at minimum, those statutory instruments bearing on penal sanctions – vulnerable to s. 15 challenge on the same footing. This hardly seems tenable."

> *R v Johnson*, 2011 ONCJ 77 at para 130, 82 CR (6th) 241.
> See also: *R v Chambers,* 2014 YKCA 13 at paras 127-28, 2014 YJ No 7 (QL).
> See also: *Nur*, *supra* para 35 at para 80.

[38] The overrepresentation of disadvantaged groups in prison is an important social issue, but s. 15(1) has not been held to oblige the government to take positive steps to remedy general social disadvantage. Section 15 guarantees legal, not social, equality. This case is not the appropriate situation in which to expand s. 15 beyond its principled scope.

> *Andrews*, *supra* para 25 at para 25.
> *Ferrel v Ontario*, 168 DLR (4th) 1 at para 47, [1998] OJ No 5074 (QL).
> *Nur*, *supra* para 35 at para 79.
> See also: *Sauvé*, *supra* para 26 at para 204.

(ii) Section 18.1 does not categorically exclude disabled groups

[39] Section 18.1 does not create a categorical exclusion on the basis of disability. The Appellant argues, "the trauma [of separating mothers from their children] is exacerbated in

women with mental health or addiction issues". However, it bears noting that this applies to all child protection situations, regardless of whether they occur within prisons. That some of the parents in these situations have mental illnesses does not render the measures discriminatory.

Official Problem, *supra* para 2 paras 19-21, 22(d).

Family Status is not an analogous ground

[40] There is no consensus on whether family status is an analogous ground for the purposes of s. 15 of the *Charter*. The SCC has yet to decide whether it should be recognized as an analogous ground. The ground has been recognized by some lower courts but rejected by others.

[41] When deciding whether a characteristic is an analogous ground, courts have been guided by the approach set out in *Corbiere v Canada (Minister of Indian and Northern Affairs)*. McLachlin J. (as she then was) and Bastarache J. held that new analogous grounds, like the enumerated grounds, need to identify personal, immutable characteristics that are associated with stereotyping, and that "too often have served as illegitimate and demeaning proxies for merit-based decision making."

Corbiere v Canada (Minister of Indian and Northern Affairs), [1999] 2 SCR 203 at para 13, 173 DLR (4th) 1 [*Corbiere*].

[42] Children of incarcerated mothers have no control over their mother's incarceration; thus, their status can be characterized as immutable. However, the child's status is not connected to the child's own sense of self or identity in the way that other prohibited grounds are, such as age, sex and race. The status properly flows from their mother's conviction, not the child's personal characteristics.

[43] Family status distinctions in existing *Charter* case law and statutory human rights law tend to be readily connected to common stereotypes. For example, in *Schachter*, legislation provided parental leave benefits to biological mothers and adoptive parents but not biological

fathers. Strayer J. found that this denial of equal benefit of the law was based on stereotypes about the proper roles of mothers and fathers. In contrast, s. 18.1 is not linked to any common stereotypes about the value of inmates' families or the parenting capacities of incarcerated mothers. The very existence of the MCP challenges any such stereotype. The exclusion created by s. 18.1 is based on important correctional considerations.

> *Schachter v Canada*, [1992] 2 SCR 679 at paras 7-8, 27, 93 DLR (4th) (The federal government conceded the breach of section 15 on appeal to the FCA and the SCC).
> See also: *Pratten v British Columbia (Attorney General)*, 2011 BCSC 656 at paras 248-253, 235 CRR (2d) 118 (legislation gave adopted children, but not children conceived through artificial insemination, the right to information about their biological origins. Distinction was found to be connected to a common stereotype that the needs of donor offspring are not worthy of legislative attention).

[44] Thus, even if family status was held to be an analogous ground for section 15 of the *Charter*, it is not clear that "child of an incarcerated mother" would fall within its scope. Recognizing a new analogous ground is a step that should only be undertaken when the scope of that ground is clearly understood, since this step would greatly enlarge the applicability of s. 15 of the *Charter*. Where the SCC has recognized new analogous grounds, such as in *Corbiere, Egan* and *Vriend,* there existed a greater consensus about their definition and breath. The scope of family status, however, is not so clear.

> *Corbiere, supra* para 41 at para 15 (for an example of the SCC clearly delineating the scope of aboriginality-residence when recognizing it as an analogous ground).
> *Egan, supra* para 30.
> *Vriend v Alberta*, [1998] 1 SCR 493, at para 49, 156 DLR (4th) 385 [*Vriend*].

Section 18.1 does not create a distinction based on sex

[45] Section 18.1 does not distinguish between individuals based on their sex because both groups created by this distinction are female.

[46] In *Brooks* and *Janzen*, the SCC established that distinctions that have adverse effects for only some women can still constitute distinctions based on sex. In these cases, however, the

distinctions at issue were linked to gendered personal characteristics (such as pregnancy in *Brooks*). Whether a woman commits a crime of violence is unrelated to her gender.

> *Brooks v Canada Safeway*, [1989] 1 SCR 1219 at paras 44-45, 59 DLR (4th) 321.
> *Janzen v Platy Enterprises*, [1989] 1 SCR 1252 at para 38, 59 DLR (4th) 352.

2. S. 18.1 does not create a disadvantage by perpetuating prejudice and stereotyping

[47] Distinctions are discriminatory when they are based not on the actual capacities and circumstances of the affected group, but on stereotypes and prejudice. Section 18.1 does not perpetuate prejudice or stereotypes about racialized or disabled women, or children of incarcerated mothers.

[48] When distinctions are linked to stereotype or prejudice, they are often out of sync with the legislative purpose as a whole. For example, the exclusion of sexual orientation as a prohibited ground of discrimination from Alberta's statutory human rights legislation stood in direct opposition to the stated legislative purpose of protecting all Albertans from discrimination. Section 18.1 of the Directive is different; it is grounded in the public health and public safety concerns of the MCP and the *CCRA*.

> *Vriend*, *supra* para 44 at para 94.

[49] It is important to note that Parliament is not held to a standard of perfection in drawing distinctions to achieve its purposes. Some imperfection is inevitable, and indeed acceptable, as the government attempts to create provisions that accomplish the purpose of a measure for a diverse group of individuals. A unanimous Supreme Court in *Withler* held that "[p]erfect correspondence between a benefit program and the actual needs and circumstances of the claimant group is not required… [P]articular policy goals that the legislature may be seeking to achieve may… be considered."

> *Withler v Canada (AG)*, 2011 SCC 12 at para 67, [2012] 1 SCR 396.

See also: *Gosselin v Québec (AG)*, 2002 SCC 84 at para 56, [2002] 4 SCR 429 (where a majority of the Court endorsed this same approach).

A. Section 18.1 does not exacerbate the disadvantage of a historically disadvantage group

[50] Section 18.1 does not create any disadvantage, so it cannot be found to perpetuate the disadvantage of any group. The nature of imprisonment is to be separated from society, including from family members. This difficulty is the status quo for prisons; it existed prior to the creation of s. 18.1, and is not imposed through s. 18.1. As the SCC noted in *Symes,*"[i]f the adverse effects analysis is to be coherent, it must not assume that a statutory provision has an effect which is not proved. We must take care to distinguish between effects which are wholly caused, or are contributed to, by an impugned provision, and those social circumstances which exist independently of such a provision."

Symes v Canada, [1993] 4 SCR 695 at para 134, 110 DLR (4th) 470.

Issue 2: Section 18.1 does not violate the s. 7 *Charter* rights of the appellant, Ms. Tinio

[51] Considered within the proper context of corrections, the s. 18.1 amendment is not contrary to the s. 7 *Charter* rights of the Appellant. In seeking to constitutionalize the MCP, the Appellant asks this Court to limit Parliament's ability to innovate in the provision of correctional services and to create a novel right of female prisoners to cohabitate with their children while incarcerated.

1. The claimant has not satisfied her burden of proof to show that s. 7 is engaged

[52] While "serious state-imposed psychological stress" may engage security of the person, there is a high threshold to be met on an objective standard. First, the psychological harm must be state imposed, meaning that there is a "sufficient causal connection" between the state action and the harm suffered by the claimant. Second, the harm suffered must be "serious and

profound". The claimant bears the burden of proof for showing a deprivation of security of the person.

> *R v Morgentaler,* [1988] 1 SCR 30 at para 173, 44 DLR (4th) 385.
> *Blencoe v British Columbia (Human Rights Commission),* 2000 SCC 44 at para 57.
> *Canada (AG) v. Bedford*, 2013 SCC 71 at para 127 [*Bedford*].

[53] The Appellant argues that being separated from her daughter while incarcerated is causing her considerable emotional distress. She argues that the s. 18.1 amendment is the only reason she is separated from her daughter. The Appellant does not contest the validity of her custodial sentence, or the fact that the separation of inmates from society is a necessary consequence and legitimate purpose of incarceration.

[54] It bears highlighting that inmates can only enrol in the MCP at the discretion of the Institutional Head. Female inmates are not automatically entered into the program solely on the basis of their status as mothers. There is no evidence before the Court as to whether Ms. Tinio would have been admitted to the Program. Therefore, the redress she seeks is based solely on speculation as to whether she would have been permitted to participate in the MCP.

> Directive, *supra* para 1 at paras 22-25.

[55] The SCC has repeatedly cautioned that *Charter* issues should not be determined until there is a full factual record before the Court. Grounding a *Charter* ruling upon speculation would set a dangerous precedent.

> *R v Edwards Books and Art Ltd,* [1986] 2 SCR 713 at p 762, 767-768.
> *Danson v Ontario (AG),* [1990] 2 SCR 1086 at p 1099.
> *British Columbia (AG) v Christie,* [2007] 1 SCR 873 at paras 14, 28.

[56] If the Court finds that the Appellant has satisfied her burden and that the record before the court is sufficient, a contextual analysis of the Appellant's s. 7 *Charter* rights must be taken. Such an analysis will demonstrate that the harm in this case - that is, Ms. Tinio's separation from her daughter - does not engage the Appellant's residual s. 7 rights.

2. Section 7 of the *Charter* safeguards against <u>new</u> deprivations of an inmate's right to security of the person within the prison context

[57] Section 7 is a contextual right. Therefore, the analysis of Ms. Tinio's claim must have full regard for the Appellant's status as an incarcerated offender.

> *Bedford*, *supra* para 52 at para 78 ("state conduct must be considered in light of the context of the appeal").
> *New Brunswick (Minister of Health and Community Services). v G(J)*, [1999] 3 SCR at paras 65-66 (analysis is conducted "with regard to the context of the claim").

[58] Prisons by their very nature severely restrict the liberty and, in certain instances, the security of the person interests of inmates. One of the most significant burdens inmates face is their separation from society during the course of their custodial sentences. Because prison sentences impair fundamental rights and freedoms to such a degree, custodial sentences may only be lawfully imposed following a full and fair trial that complies with the principles of fundamental justice.

[59] The jurisprudence and the *CCRA* are both clear that incarcerated offenders retain the rights of all members of society, "except those that are, as a consequence of a sentence, lawfully and necessarily removed or restricted". Therefore, in the context of incarceration, s. 7 of the *Charter* is concerned with the residual life, liberty and security of the person interests of inmates.

> *CCRA, supra* para 16 at s. 4(d).
> *Solosky v The Queen*, [1980] 1 SCR 821 at p 839.

[60] The scope of inmates' residual s. 7 *Charter* rights have been explored most thoroughly in the jurisprudence by way of *habeas corpus* applications. The Supreme Court of Canada in *May v Ferndale Institution*, and most recently in *Mission Institution v Khela*, recognized that *habeas corpus* applications are a crucial remedy in pursuit of the s. 7 right to liberty. While *habeas corpus* applications predominantly concern liberty interests of the incarcerated, they are also instructive on the scope of residual security of the person rights in the prison context.

May v Ferndale Institution, [2005] 3 SCR 809 at para 18 [*May v Ferndale*].
Mission Institution v. Khela, 2014 SCC 24 at para 29.

i) The decision to exclude a prisoner from a discretionary prison program does not amount to a new deprivation of that prisoner's s. 7 *Charter* interests

[61] Given that the s. 7 rights of inmates are already limited by virtue of their incarceration, the role of *habeas corpus*, and by extension s. 7 of the *Charter*, is to guarantee that administrative decisions within the prison do not subject inmates to additional deprivations. To rise to the level of a further deprivation of a prisoner's residual s. 7 interests, an administrative change must place significant, additional restrictions upon the inmate beyond that which is the norm in prison. The inquiry into whether a change in conditions constitutes a further restriction upon the inmate's residual s. 7 rights is informed by both the current circumstances of the prisoner and the circumstances of the general prison population.

R v Miller, [1985] 2 SCR 613 at p 640-41.

[62] Consider, for example, the decision to transfer an inmate to administrative segregation, or to a higher security institution. Both decisions add additional restrictions beyond what the inmate was previously subjected to. The Supreme Court of Canada CC has held that both decisions amount to significant changes in the conditions of an inmate's incarceration that adversely affect his or her residual s. 7 interests.

R v Miller, *supra* para 61 at 641 (administrative segregation).
May v Ferndale, supra para 60 at para 76 (transfer to a higher security institution).

[63] Ms. Tinio's claim does not concern such a change; in fact, Ms. Tinio's claim does not concern a change at all. Rather, Ms. Tinio seeks the right to have her eligibility for a discretionary program considered.

[64] In *Dumas v Leclerc Institution*, the Supreme Court CC held that the decision not to grant an inmate day parole did not amount to a substantial change in the conditions of that inmate's

incarceration and was therefore not contrary to the inmate's residual s. 7 interests. A similar decision was reached by the Court in *Mapara v Ferndale Institution* with regards to escorted temporary absences. The jurisprudence is clear that a decision that denies an inmate access to less restrictive conditions does not constitute a deprivation of that inmate's residual s. 7 interests.

> *Dumas v Leclerc Institution,* [1986] 2 SCR 459 at para 11.
> *Mapara v Ferndale Institution,* 2012 BCCA 127 at paras 15-17.

[65] The jurisprudence is similarly clear that the residual s. 7 rights of inmates do not include an unfettered right to maintain relationships with children, partners or other family members. For example, in *Sinobert v Canada*, two inmates who had a close personal relationship were found to have no right to be housed together. In *Flynn v Canada,* the Court held that inmates do not have an absolute right to participate in conjugal visit programs. Finally, in *Riley v Canada* it was held that inmates do not have an absolute right to contact visits with their spouse or children.

> *Sinobert v Canada*, 2014 SKCA 51 at paras 7-9.
> *Flynn v Canada,* 2007 FCA 356 at paras 12-13.
> *Riley v Canada*, 2011 FC 1226 at paras 16-19.

[66] The Minister's decision to restrict the eligibility of the discretionary MCP cannot be construed as an additional restriction upon the residual s.7 rights of those inmates who were never enrolled in the program and would now like the opportunity to have their eligibility considered. The Appellant's s. 7 rights are not engaged as there has been no deprivation of her residual security of the person interests.

[67] Furthermore, the MCP is a discretionary program; it does not provide a right to which all prison inmates are entitled. To hold otherwise would create a positive s. 7 right to participation in discretionary prison programs. Recognizing such a right would massively expand the scope of judicial review, and result in courts micro-managing the administration of prisons.

3. In the alternative, any deprivation of the Appellant's security of the person is in accordance with the principles of fundamental justice

[68] Even if the s. 18.1 amendment engages the *Charter* by intruding on the Appellant's security of the person interest, it does not cause a breach that is inconsistent with any of the recognized principles of fundamental justice. The Appellant bears the burden to prove that any deprivation is not consistent with the principles of fundamental justice.

> *Bedford, supra* para 52 at para 127.
> *Canada (Attorney General) v. PHS Community Services Society,* (2011) SCC 44 at para 130 [*Insite*].

[69] The question with regard to the principles of fundamental justice is whether the law or policy's purpose is connected to its effects. In considering whether s. 18.1 is arbitrary, overly broad or grossly disproportionate, the legislative objective(s) must be carefully identified.

> *Bedford, supra* para 52 at para 112.

[70] The s. 18.1 amendment seeks to protect public safety and maintain public confidence in the administration of justice by denouncing the commission of violent crimes and taking action to ensure the safety of children. The s. 18.1 reform, considered within the proper context of corrections administration, strikes a proper balance between the health needs of those inmates that are, or may be, eligible for participation in the MCP and valid public safety concerns. As discussed above, a balancing of this nature is fundamental to legislating within the difficult environment of corrections, where the concern for safety is the paramount consideration of every institutional program.

> *CCRA, supra* para 16 at s. 3.1 ("The protection of society is the paramount consideration for the Service in the corrections process").

[71] Questions of deference to Parliament's policy choices are not properly considered during the s. 7 inquiry. Similarly, when assessing arbitrariness, overbreadth or gross disproportionality, a court is not to weigh policy alternatives or second-guess the efficacy of Parliament's policy

choices. As the Supreme Court C stated in *Clay*, "the Court's concern is not with the wisdom of the prohibition but solely with its constitutionality".

Bedford, supra para 52 at para 90.
Cochrane v Ontario (Attorney General) (2008), 92 OR (3d) 321, 2008 ONCA 718 at para 26, leave to appeal to SCC refused [2009] SCCA No. 105.
R v Clay, 2003 SCC 75 at para 4.

[72] The Appellant has failed to show that this case is contrary to any recognized principle of fundamental justice, nor does this case call for the Court to depart from previous jurisprudence and recognize a new principle of fundamental justice.

i. Subsection 18.1 is not arbitrary

[73] An arbitrary law is one whose effects bear no relation to, or are inconsistent with, the objectives that the law intends to achieve. The standard is not easily met.

Bedford, supra para 52 at para 119.

[74] In *Bedford,* McLachlin C.J. emphasized that questions regarding the necessary degree of connection between an impugned provision and its effects are unnecessary. The "root question is whether the law is inherently bad because there is no connection, in whole or in part, between its effects and its purpose". The evidence may, as in *Morgentaler*, show that the effects are inconsistent with the objective. Or, the evidence may, as in *Chaoulli*, show that there is simply no connection between the effects and the objective.

Bedford, supra para 52 at para 119.
Morgentaler, supra para 52 at para 72-73.
Chaoulli v Quebec (Attorney General), (2005) SCC 35 at para 233-34.

[75] Regardless of how the lack of connection is described, the burden rests with the Appellant to show that the s. 18.1 reform violates basic norms because there is *no connection* between its effects and its purpose. It cannot properly be said that the effect of

s. 18.1 on the appellant is "inconsistent with", or "bears no relation to" the legislative objective of maintaining public confidence in the administration of justice by promoting a proper balance between public safety concerns and the needs of inmates.

[76] The MCP was amended in response to a specific problem: the inappropriate access of the program by violent criminals. That a risk assessment was not completed prior to the s. 18.1 reform does not inexorably lead to the conclusion that the intended effects of the program are arbitrary. In *Cunningham*, the Supreme Court recognized that the realities of prison administration require the freedom to enact punctual, responsive reform. McLachlin J. (as she was then) writes:

> A change in the form in which a sentence is served, whether it be favourable or unfavourable to the prisoner, is not, in itself, contrary to any principle of fundamental justice. Indeed, our system of justice has always permitted correctional authorities to make appropriate changes in how a sentence is served, whether the changes relate to place, conditions, training facilities, or treatment. ...From time to time, for example, new approaches in correctional law are introduced by legislation or regulation. These initiatives change the manner in which some of the prisoners in the system serve their sentences.
>
> Official Problem, *supra* para 2 at para 13.
> *Cunningham v Canada*, [1993] 2 SCR at para 152.

[77] Similarly, in *May v Ferndale Institution*, Lebel and Fish JJ. held that the decision to transfer five inmates from minimum to medium security institutions as a result of a CSC policy change was not arbitrary. The policy change required that all prisoners serving life sentences complete a violent offender program in order to be classified as minimum security risks. The inmates that were transferred had not completed the program. The claimants argued that the transfer decision was arbitrary because it was made in the absence of any fault or misconduct on their part. In dismissing the claim, Lebel and Fish JJ. held that:

> A decision initiated by a mere change in policy is not, in and of itself, arbitrary... A fair balance must be reached between the interest of inmates deprived of their residual liberty and the interest of the state in the protection of the public (emphasis added).

May v Ferndale Institution, supra para 60 at paras 79, 83.

ii. Subsection 18.1 is not overly broad

[78] The principle of overbreadth is concerned with laws that are so broad in scope that they include *some* conduct that bears no relation to their purpose. The overbreadth analysis is individually focused and concerned with whether the effect on the individual is rationally connected to the law's purpose. The s. 18.1 amendment targets women serving sentences in federal penitentiaries for crimes of violence. The s. 18.1 amendment affects *only* women serving sentences in federal penitentiaries for crimes of violence. The Appellant is a woman serving a four-year prison sentence in a federal penitentiary for assault with a weapon. She is the exact target of the amendment, thus it cannot be said that s. 18.1 is overbroad.

Bedford, supra para 52 at para 113.
Official Problem, *supra* para 2 at 1.

[79] Similarly, the amendment's use of the term "crime of violence" is not overly broad. The parties agree that determining whether a conviction is for a crime of violence is a common sense determination. The amending provision is intended to target all violent offenders. The defining language of s. 18.1 is tailored to achieve this objective. The term "crime of violence" ensures that the effects of the amendment are felt only by those it was intended to reach.

Directive, *supra* para 1 at para 18.
Clarifications, *supra* para 25 at para 4.

iii. Subsection 18.1 is not grossly disproportionate to Parliament's objective

[80] Gross disproportionality describes state actions or legislative responses to a problem that are "so extreme as to be disproportionate to any legitimate government interest". The Court must be satisfied that the effects on security of the person are so

grossly disproportionate to its purposes that they cannot be rationally supported. This is a high threshold for the claimants to establish.

Insite, supra para 68 at para 133.
R v Caine, (2003) SCC 74 at para 143.

[81] The Supreme Court of CanadaCC has only found a law to be grossly disproportionate in extreme circumstances. For example, in *Bedford* and *Insite*, the Court found that laws that jeopardized the very lives individuals were disproportionate to their respective legislative goals.

Bedford, supra para 52 at para 121, 159.
Insite, supra para 68 at para 133.

[82] The effect of the s. 18.1 amendment is to limit the scope of eligibility for a discretionary prison program. The effect on the appellant is that she must continue to serve her valid custodial sentence in the manner in which she has been doing so for the last year: without the presence of her daughter. The purpose of the s. 18.1 amendment is to maintain public confidence in the administration of justice by ensuring a proper balance between the health needs of inmates and public safety.

[83] The separation of convicted offenders from society, and from their families, is in accordance with the principles and objectives of sentencing. The Appellant's status as a mother does not in any way render her custodial sentence for assault with a weapon and her associated separation from her daughter grossly disproportionate.

Section 718(c) of the Criminal Code
R v Ipeelee [2012] SCJ No 13 at paras 34-38.

Issue 3: Any infringements are justified under s. 1 of the *Charter*

[84] Any infringement caused by the s. 18.1 amendment on either the Appellant's s. 15 or s. 7 *Charter* rights is prescribed by law and demonstrably justified in a free and democratic society.

The Respondent acknowledges that it is rare for legislation found to breach s. 7 to be justified pursuant to s. 1. However, the SCC has recognized the possibility that legislation found contrary to s. 7 may be justified, "depending on the importance of the legislative goal and the nature of the s. 7 infringement".

Bedford, supra para 52 at para 129.
R v Oakes, [1986] 1 SCR 103 at paras138-9.

[85] The SCC has held that Parliament should be accorded a measure of deference where legislation deals with a range of competing interests. This is especially true in challenging legislative contexts like the development of corrections policy, where Parliament, and not the judiciary, is in the best position to respond to changing developments in prisons.

Irwin Toy Ltd v Quebec (AG), [1989] 1 SCR 927 at paras 58, 75.
Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37 at para 53 [*Hutterian Brethren]*.

A. The s. 18.1 amendment is prescribed by law

[86] It is clear that Commissioner's Directive 768 is a law for the purposes of s. 1 of the *Charter*. The Supreme Court in *Greater Vancouver Transport Authority v. Canadian Federation of Students* held that rules or policies satisfy the "prescribed by law" requirement if their adoption is authorized by statute, they are binding rules of general application, and they are sufficiently accessible and precise to those whom the apply.

Greater Vancouver Transport Authority v. Canadian Federation of Students, (2009) SCC 31, 2 SCR 295 at para 53.

[87] Commissioner's Directive 768 is adopted pursuant to s. 97 of the *CCRA*. Further, s. 98 of the *CCRA* allows the Commissioner to designate as Commissioner's Directives any or all rules made under s. 97. All Commissioner's Directives are to be accessible to all offenders, staff member and the public. Directive 768 satisfies the consideration criteria for "prescribed by law".

CCRA, supra para 2 at paras 97, 98.

A. Section 18.1 reflects a pressing and substantial objective

[88] The objectives of the s. 18.1 amendment are pressing and substantial. Parliament acted within its purview to alter the scope of a discretionary prison program in response to information that the program was being inappropriately accessed. In amending the MCP, Parliament promotes public confidence in the maintenance of justice by striking an appropriate balance between the needs of inmates and pressing public safety concerns. The SCC has recognized that both maintaining confidence in the justice system and ensuring the reasonable safety of children are pressing and substantial objectives.

Official Problem, *supra* para 2 at para 13.
Canadian Broadcasting Corp v Canada (AG), (2011) SCC 2 at para 69.
Multani v Commission scolaire Marguerite-Bourgeoys, [2006] 1 SCR 256 at para 44.

B. Section 18.1 is rationally connected to Parliament's objectives

[89] Section 18.1 is rationally connected to the government's objective. The SCC has unanimously agreed that rational connection, "is to be established upon a civil standard, through reason, logic or simply common sense". The legislative justification, "does not require empirical proof in a scientific sense". For example, in *Butler*, Sopinka J. found that it was "reasonable to presume" that there was a causal relationship between obscenity and harm to society. In *Ross v. New Brunswick School District No 15*, La Forest J. stated that it was "reasonable to anticipate" that there was a causal link between anti-semetic activity by schoolteachers outside school and its discriminatory attitudes within school. The rational connection stage of the s. 1 inquiry clearly demands not the strongest connection, or the most convincing connection, but a logical connection.

RJR-MacDonald Inc. v Canada (Attorney General), [1995] 3 SCR 199 at para 86 [*RJR-MacDonald*].
Sauvé, *supra* para 26 at para 18.
R v Butler, [1992] 1 SCR 452 at para 502.

Ross v New Brunswick School District No 15, [1996] 1 SCR 825 at para 101.

[90] The Appellant suggests that because the Minister did not conduct a risk assessment prior to enacting the s. 18.1 reform, that the impugned provision cannot be rationally connected to Parliament's objective. As stated by the SCC in *RJR-Macdonald*, "to require Parliament to wait for definitive social science conclusions every time it wishes to make social policy would impose an unjustifiable limit on legislative power". Holding Parliament to such a paralyzing requirement is especially problematic where the safety of children is concerned. In *Winnipeg Child and Family Services v. K.L.W.*, the SCC recognized that "the state must be able to take preventive action to protect children. This means that the state should not always be required to wait until a child has been seriously harmed before being allowed to intervene."

RJR-MacDonald, supra para 89 at para 67.
Winnipeg Child and Family Services v KLW, (2000) SCC 48 at para 102.

[91] Parliament enacted s. 18.1 on the reasoned apprehension of harm to both children and the public's confidence in the administration of justice. There is no requirement that Parliament adduce scientific evidence in support of reasoned policy determinations. There is similarly no requirement that Parliament wait for the identified harms to manifest. To suggest such a thing would dangerously undermine Parliament's ability to govern.

C. Section 18.1 minimally impairs the Appellant's rights

[92] Section 18.1 is minimally impairing. It is tailored to achieving Parliament's objectives and applies to a discrete category of offenders.

[93] There has been little academic study on MCPs. However, what studies have been completed reveal a spectrum of legislative approaches. While most European countries offer some form of open MCP, other countries restrict their programs and exclude those convicted of serious crimes of violence. Other countries still, like the United States, do not have MCPs at all.

On the spectrum outlined above, the decision of the Canadian government to remove all violent offenders from the MCP is one of moderation that falls squarely within a range of reasonable alternatives.

> Official Problem, *supra* para 2 at paras 22(g), 24.
> Sarah Brennan, "Canada's Mother-Child Program: Examining its Emergence, Usage and Current State" (2014) 3:1 CGJSC at 14 (examining the limited body of research on the topic).

[94] Further, the effects of Ms. Tinio's separation from her daughter are temporary. Like every other inmate separated from society, the Appellant and her daughter will automatically be reunited upon Ms. Tinio's release. Finally, violent offenders like Ms. Tinio have full access to the usual measures in place designed to help the incarcerated maintain familial relationships. These measures include: escorted temporary absences, unescorted temporary absences, and family visits without a physical barrier to personal contact.

> Official Problem, Appendix A, *supra* para 1 at para 17.
> *CCRA, supra* para 16 at s. 17(1)(b), s. 71(1), s. 116.
> *CCRR, supra* para 21 at s. 9, s.90, s. 155(e).

[95] There are no less intrusive methods by which Parliament could pursue its objectives. Individualized assessments, or a more limited exclusion for only the most seriously violent offenders would not be as effective as the clear line Parliament has elected to draw. As the SCC noted in *Hutterian Brethren,* the minimal impairment test cannot be satisfied by pointing to "less drastic means, which do not actually achieve the objective". Parliament has elected to send a clear message that there are no acceptable levels of violence. Any derogation amounts to second guessing Parliament as to what constitutes an acceptable level of violence.

> *Hutterian Brethren, supra* para 83 at para 54-55

D. The benefits of section 18.1 outweigh any deleterious effects

[96] Context is crucial when conducting a proportionality inquiry. In this case, and in this context, the potentially adverse effects on violent female inmates are proportionate to the benefits of s. 18.1.

[97] The deleterious effects of s. 18.1 are limited. The amendment is targeted to violent offenders serving a custodial sentence of greater than two years and affects roughly 33 women across Canada. Further, the amendment does not significantly worsen their situation. These women are serving valid custodial sentences for violent crimes. Their inability to participate in the program does not change this fact. Second, their ineligibility, and thus separation from their children, must be considered alongside the measures discussed above to mitigate the burden of that separation.

Official Problem, *supra* para 2 at para 25(a).

[98] The limited deleterious effects must be balanced alongside the benefits of the amendment. The Canadian public expects the penal system to be administered in a manner that ensures the maintenance of a just and peaceful society. Such an expectation is not met by placing children at risk. The s. 18.1 amendment sends the message that violent offenders sentenced to greater than two-years in prison will be excluded from participating in the MCP. In this way, the amendment puts forward a statement of principles, or values, by which Canadians live. The amendment signals that in Canada, there are no acceptable acts of violence. This is an appropriate role for Parliament to play. As stated by the SCC in *R. v. Sharpe*:

> The Court should be particularly sensitive to the legitimate role of government in legislating with respect to our social values. Where the balancing of values is concerned, the proportionality inquiry will never yield a perfect balance. However, Parliament, not the Court, is in the proper position to weigh evolving societal norms and values.
> *R v Sharpe*, (2001) SCC 2 at para 191.

[99] Parliament is entitled to take a firm view of the seriousness of violent crimes based on its unique appreciation of evolving social conditions and values. Parliament's choice to target violent offenders, and the means by which the legislature chose to pursue this objective, are within a range of reasonable alternatives.

PART V – ORDER SOUGHT

[100] The Respondent respectfully requests that this appeal be dismissed.

All of which is respectfully submitted this 30th day of January, 2015.

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Team 7

Counsel for the Respondent

PART VI – LIST OF AUTHORITIES AND STATUTES

LEGISLATION	PARAGRAPHS
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Corrections and Conditional Release Act, SC 1992, c 20.	3, 4, 71, 97
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Official Problem, Wilson Moot 2015	1, 5, 6, 7, 12, 13, 16, 17, 18, 19, 20, 21, 22, 24, 25, 28, 30
Clarifications to the Official Problem, Wilson Moot 2015	4
Exhibit "A" to the Official Problem – Commissioner's Directive 768	8, 17, 18, 19, 20, 21, 22, 23, 24, 25, 68, 70, 73