Unofficial English Translation of the Judgment of the Court

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| Turbide Labbé c. Ministère de la Sécurité publique | 2021 QCCA 1687 |
| COURT OF APPEAL |
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| CANADA |
| PROVINCE OF QUEBEC |
| REGISTRY OF | MONTREAL |
| No.: | 500-09-029601-218 |
| (765-36-000292-211) |
|  |
| DATE: |  November 12, 2021 |
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| CORAM: | THE HONOURABLE | STEPHEN W. HAMILTON, J.A.BENOÎT MOORE, J.A.GUY COURNOYER, J.A. |
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| JEAN-FRANÇOIS TURBIDE LABBÉ |
| APPELANT – applicant  |
| v. |
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| MINISTÈRE DE LA SÉCURITÉ PUBLIQUE |
| RESPONDENT – respondent  |
| and |
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| **ATTORNEY GENERAL OF QUEBEC** |
| IMPLEADED PARTY – impleaded Party |
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| JUDGMENT |
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1. The appellant appeals from a judgment rendered on July 8, 2021, by the Superior Court, District of Richelieu (the Honourable Daniel Royer), granting in part his motion for *habeas corpus* (amended motion dated June 9, 2021), in which he essentially contested the effects of solitary confinement on his mental health.
2. For the reasons of Cournoyer, J.A., with which Hamilton and Moore, JJ.A. agree, **THE COURT:**
3. **ALLOWS** the appeal, without legal costs.

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|  | STEPHEN W. HAMILTON, J.A. |
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|  | BENOÎT MOORE, J.A. |
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|  | GUY COURNOYER, J.A. |
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| Jean-François Turbide Labbé |
| Not represented |
|  |
| Mtre David Tremblay |
| BERNARD ROY (JUSTICE QUÉBEC) |
| Counsel for the respondent and the impleaded party |
|  |
| Date of hearing: | August 5, 2021 |

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| REASONS OF COURNOYER, J.A. |
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**TABLE OF CONTENTS**

**I - INTRODUCTION 4**

**II - BACKGROUND 5**

**III - FACTS 8**

**A - The restrictive classification at the Sorel-Tracy correctional facility 8**

**B - The appellant’s segregation in the MS area 9**

**IV - ASSESSMENT OF THE APPELLANT’S MENTAL HEALTH 12**

**V - TRIAL JUDGMENT 15**

**V - ANALYSIS 19**

**A - Mootness of the appellant’s appeal 20**

**B - Questioning solitary confinement in Canada 21**

**C - Constitutional challenges to the *CCRA* 23**

**D - Bill C-83 25**

**E - Quebec correctional law: solitary confinement and the protection of inmates’ mental health 26**

**F - Habeas corpus and the challenge to solitary confinement 27**

**VI - THE SCOPE OF THE APPELLANT’S CHALLENGE TO HIS DETENTION CONDITIONS 29**

# I - INTRODUCTION

1. Placing an inmate in solitary confinement restricts the inmate’s liberty in a heightened and significant manner. It is considered to be a new detention in a “prison within a prison”.
2. Since the early 1970s, this controversial correctional measure has been the subject of many reports and legal challenges due to its deleterious effects on the mental health of inmates.
3. In December 2015, the United Nations General Assembly revised the minimum rules for the treatment of prisoners adopted in 1995 tilted The United Nations Standard Minimum Rules for the Treatment of Prisoners. These rules are also known as the Nelson Mandela Rules.[[1]](#footnote-1)
4. The Nelson Mandela Rules set out certain principles governing solitary confinement, which must be used only as a last resort; it must be authorized by statute or regulation of the competent authority; the daily duration of confinement and prolonged solitary confinement must be limited; it must be subject to regular and independent review; it must include meaningful human contact; and the prisoner’s state of health must be assessed by health-care professionals.
5. These rules are based on best correctional practices and reflect a broad international consensus.
6. The influence of these Rules is considerable. In Canada, two appellate courts have relied on them in part in their judgments declaring constitutionally invalid certain provisions of the *Corrections and Conditional Release Act*[[2]](#footnote-2) (“*CCRA*”), which regulated solitary confinement in the federal correctional system.
7. Relying on the report of a psychologist who noted the effects of solitary confinement on his mental health, the appellant, who is detained in the Sorel-Tracy detention centre while awaiting trial, brought *habeas corpus* proceedings seeking release from solitary confinement on the grounds that the conditions of his confinement do not comply with the recent guidance in the Canadian case law. He submits that they constitute cruel and unusual treatment.
8. The appellant does not dispute that his behaviour requires him to be isolated from the general population of prisoners, which the file in fact amply demonstrates; however, he submits that the minimal constitutional requirements that must govern his confinement have not been met.
9. Although the Superior Court was extremely mindful of the impact of the appellant’s confinement on his mental health, it found that the appellant’s detention was not cruel and unusual. However, it allowed his motion for *habeas corpus* and ordered the correctional authorities [translation] “to implement an alternative, within a reasonable time, at the Sorel facility or elsewhere, to Mr. Turbide-Labbé’s detention conditions depriving him of meaningful human contact in person and by telephone”.
10. In his appeal before this Court, the appellant raises a constitutional challenge to the solitary confinement of prisoners for the first time.
11. For the reasons that follow, I am of the view that despite the appeal being moot given that the appellant was transferred to another detention facility, a ruling is necessary.

# II - BACKGROUND

1. Before setting out a summary of the facts, some background is in order.
2. It is not easy to draw strong and specific conclusions from the record about the appellant’s various periods of detention,[[3]](#footnote-3) the conditions surrounding them, or their respective legal bases.
3. It is necessary to make that observation from the outset, as it is important to acknowledge the challenge faced by Superior Court judges, who must rule on applications for *habeas corpus* concerning situations of solitary confinement in the Quebec correctional system – an exercise that is not easy due to the absence of clear rules.
4. Indeed, the Quebec correctional system distinguishes between administrative segregation relating to contraband,[[4]](#footnote-4) on the one hand, and confinement[[5]](#footnote-5) and solitary confinement[[6]](#footnote-6) resulting from a disciplinary offence, on the other.
5. Contrary to the federal correctional system, however, there is no specific statutory or regulatory provision setting out guidelines for correctional authorities to make decisions about discretionary solitary confinement, that is, solitary confinement necessary for security within a correctional facility, the security of other inmates, or the inmate himself or herself.
6. When questioned at the hearing, counsel for the Ministère de la Sécurité publique and for the Attorney General acknowledged that there are no specific guidelines concerning solitary confinement in the *Act respecting the Québec correctional system* (“*AQCS*”) or its *Regulation* (“*RAQSC*”) for situations that are not covered by sections 31 and 74 of the *RAQCS*.
7. In his view, decisions made in this regard fall under the discretion of the facility director granted by the second paragraph of section 30 of the *AQCS*, which discretion must be exercised in compliance with the requirements of the *Charter*:[[7]](#footnote-7)

The facility director is responsible for the custody of the persons admitted to the facility until their final release or their transfer to another facility.

1. Thus, in the opinion of the respondent and the impleaded party, [translation] “the director of a correctional facility is the person with the authority to issue directives applicable to that facility for all offenders, whether in respect of their security classification, their daily routine, or their placement within the various areas”.[[8]](#footnote-8)
2. During testimony before the trial judge, reference was also made to the *Politiques, instructions et procédures administratives du réseau correctionnel* ([translation] Policies, instructions, and administrative procedures of the correctional network) of Quebec[[9]](#footnote-9). None of them were filed before him or this Court, and the correctional authorities do not rely on them in support of the lawfulness of the decisions taken in regard to the conditions of the appellant’s detention.
3. In addition, the appellant’s correctional record, which would normally allow us to accurately track his detention periods and specific conditions, does not seem to have been filed before the judge and was not filed before this Court.[[10]](#footnote-10)
4. In the circumstances, determining the reasonableness of the decision of the correctional authorities poses difficulty, because to do so, it is necessary to seek the legal standards applicable to the impugned decision and reliably establish the detention conditions to which an inmate was subject.
5. Of course, judicial intervention in matters of prison law requires caution due to both the “concern that the process of prison administration … should not be unduly burdened or obstructed”[[11]](#footnote-11) and the undeniable challenge for staff members to manage conduct that may put their security and that of all inmates at risk.
6. That being said, in the early 1980s, the Supreme Court nevertheless abandoned the “hands-off” doctrine in correctional matters and extended judicial review to the decision-making process of prison officials to ensure that the rule of law applies within the walls within Canadian prisons.[[12]](#footnote-12)
7. Moreover, determining the reasonableness of a decision made by correctional authorities requires deference, because it is a decision “made by a decision maker with expertise in the environment of a particular penitentiary”.[[13]](#footnote-13) Applying the standard of reasonableness is justified by the fact that reviewing such a decision using “any standard other than reasonableness … could well lead to the micromanagement of prisons by the courts”.[[14]](#footnote-14)
8. However, although the principle of judicial restraint applies, the judicial review of a decision by correctional authorities is not a rubber-stamping process and must remain robust.[[15]](#footnote-15)
9. I note that the appeal concerns only the appellant’s detention conditions affecting his residual liberty and the issues he raises in his challenge in light of the psychological report he filed. Nothing less, nothing more.
10. While they are similarities between the issues raised by the appellant and those that are to be resolved in the context of class actions authorized by the Superior Court,[[16]](#footnote-16) those cases will need to be heard in light of the legal framework applicable to them and the evidence presented.

# III - FACTS

1. The appellant has been detained pending his trial for several criminal offences since November 11, 2019.
2. He was first detained for 13 months at the Québec City correctional facility, where he says he was in solitary confinement.[[17]](#footnote-17) He was then transferred to the Rivière-des-Prairies correctional facility, where he was placed in an anti-suicide cell for several weeks. In January 2021, the appellant alleged that he had already been in confinement for 15 months.
3. From January 2021 to May 14, 2021, the appellant was housed in a general area of the facility, which allowed him to leave his cell from 8:00 a.m. to 10:30 p.m. and to have human contact. During that period, he received regular follow-up care from a physician and a specialist nurse.
4. On May 14, 2021, the appellant was again placed in confinement, with two and a half hours outside of his cell.
5. On May 19, 2021, he was transferred to the Sorel-Tracy correctional facility so that he could have four hours outside of his cell.
6. Before presenting the facts underlining the motion for *habeas corpus*, it is worth presenting a brief overview of the way in which what is known as restrictive classification at the Sorel-Tracy correction facility operates.

## A - The restrictive classification at the Sorel-Tracy correctional facility

1. In this facility, inmates are placed in various areas according to their security supervision needs. They are assigned a security classification of either minimum, medium, or maximum. The inmates in these three categories are placed in the [translation] “general area” of the correctional facility. There are two other types of classification for inmates with particular needs: specific classification and restrictive classification. The latter applies in particular to offenders with security measures that require stricter general supervision. Such measures are imposed when an offender displays violent, problematic behaviour.
2. The appellant is subject to security measures. As such, he is housed in a restrictive classification area, called the [translation] “MS area”.
3. A classification committee reassesses the classification and security measures every 14 days. If the offender behaved appropriately in the MS area, he can reintegrate into the facility’s general area. If his conduct still requires restrictive supervision, he must remain in the MS area for an additional 14 days of observation.
4. The MS area includes isolation cells for inmates subject to disciplinary measures. The detention conditions in this isolation area and the MS area are substantially the same: the computer station schedules are the same, and, most importantly, there is no human contact with other inmates. The only contact takes place through the door or the food slot.
5. According to the evidence, the differences are as follows: the inmates in the MS area have more time outside their cell (approximately four hours, rather than one), which allows them more time to use the telephone, and the inmates in the general area have no shower restrictions, while those in isolation are allowed three showers a week.
6. Thus, according to the appellant, the MS area as a whole is an isolation area, which the correctional authorities dispute.[[18]](#footnote-18)
7. As noted above, the appellant does not challenge the fact that he is separated from the general population of inmates.
8. As I understand his proceeding, he instead contests the duration of his solitary confinement and the conditions attached thereto by invoking both the protection of sections 7 and 12 of the *Charter* and compliance with the Nelson Mandela Rules.
9. Having been detained for over 60 days in isolation, he asks that his detention be declared unlawful. More generally, the appellant seeks a declaration that his detention conditions are contrary to the requirements of the *Charter.*

## B - The appellant’s segregation in the MS area

1. On May 19, 2021, when he was transferred to the Sorel-Tracy facility, the appellant was erroneously placed in an isolation cell because the facility staff had received incorrect information that he was subject to a disciplinary measure. On May 21, 2021, the appellant was transferred to the MS area. According to his testimony, the cell in which he was placed was unsanitary. He asked for cleaning products, but his request was denied. He therefore asked to return to a clean cell, that is, the isolation cell.
2. The appellant told the staff several times that he was not well and needed help, but in vain. In reaction to these denials, the appellant barricaded the windows of his cell and ransacked another. On May 26, 2021, he was placed in segregation for 72 hours in a padded health care cell. The appellant described this cell as being [translation] “covered in excrement, dirty, disgusting”. He destroyed the cell. He was then transferred back to an isolation cell on May 29, 2021.
3. As of that date, the appellant had access to an IP telephone in his isolation cell. He therefore wanted to stay there and did not want to return to the MS area, where he would lose that privilege.
4. On June 10, 2021, the appellant filed an application for *habeas corpus*.
5. As of June 13, 2021, the appellant requested a transfer to the MS area. He received no response. On June 18, 2021, he received an offer for housing in the MS area subject to certain conditions. The appellant presented a counter-offer that remained unanswered.
6. In the days that followed, the appellant continued to have problematic behaviour and threatened to break property belonging to the facility.
7. On June 30, 2021, the appellant’s security classification was reviewed, Although the prison authorities seemed to have been aware that the appellant did not engage in any violent behaviour towards others or any physical aggression or abusive remarks towards the correctional officers, his classification remained restrictive because of his mischief against facility property, and he had to remain in the MS area.
8. That day, while he was still in the isolation cell, the appellant received a second offer for housing in the MS area. He says that he accepted the offer in a document that never reached the operations director. On July 5, 2021, a third offer for housing in the MS area was sent to the appellant. The director of operations received no response from him.
9. The hearing of the motion for *habeas corpus* took place on July 7 and 8, 2021. Judgment was rendered on July 8, 2021.[[19]](#footnote-19)
10. The appellant claimed that his transfer from an isolation cell to the MS area would not change his detention conditions, because both cases preclude any significant human contact. Therefore, in his view, even if he was transferred, the solitary confinement would continue.

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1. Before setting out the description of the appellant’s mental health assessment, I find it useful to refer to certain passages of the judgment rendered on December 11, 2020, by Dionne, J., of the Superior Court regarding a previous challenge by the appellant of his detention conditions at the Québec City correctional facility, in the context of which he also challenged his [translation] “prolonged solitary confinement”. Dionne, J. stated:

[translation]

**THE APPLICANT’S HEALTH**

[121] The evidence reveals that the applicant was the target of a serious assault in November 2019 at the QCF that led to his segregation in administrative protection in view of his refusal to be housed in a protective area.

[122]    His behaviour in detention also contributed to his being placed in confinement on several occasions following disciplinary breaches, acts of self-harm, and suicidal remarks.

[123]   In March 2020, the applicant asked for help in view of his deteriorating psychological state (exhibit R-3).

[124]   In August 2020, he asked about what was happening with his appointments with the [translation] “plastic surgeon” (exhibit R-4).

[125]   The evidence also shows that the applicant has seen a physician only twice during this incarceration and the chaplain only once.

[126]   At the hearing, he explained that since January 2020, he has requested every type of help that could possibly be provided to him. He added that he needs medical care and that he is mentally broken. That is his main request. In short, he says he wants physical and mental health care.

[127]    Section 13 of the *Regulation under the Act respecting the Québec correctional system* provides that a health professional at the facility must submit a report to the facility director each time the health professional believes that the physical or mental health of an inmate has been or will be affected by the conditions of detention or by their extension.

[128]     In view of the foregoing, it is surprising to note that for all practical purposes, the applicant’s calls for help seem to have remained unanswered despite his conduct in detention.[[20]](#footnote-20)

[Emphasis added.]

# IV - ASSESSMENT OF THE APPELLANT’S MENTAL HEALTH

1. The appellant’s challenge was supported by an assessment of his mental health prepared by psychologist Randolph Stephenson regarding the effects of the appellant’s segregation.
2. There was an objection to filing the report, but the judge authorized it because, in his view, the report [translation] “may have some limited relevance”, [translation] “rather limited”, but [translation] “it is not completely irrelevant”.[[21]](#footnote-21)
3. A reading of the report reveals that it appears to have been prepared for a disciplinary hearing, but the record does not allow this to be determined with any certainty.
4. It is essential for certain passages of the report to be reproduced, as the conclusions set out therein required the judge to examine the appellant’s challenge in a holistic manner due to the consequences that the periods of solitary confinement had on his mental health.
5. The psychologist provided a review of the relevant literature.
6. In particular, he refers to the Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment (the “Méndez Report”),[[22]](#footnote-22) an influential report[[23]](#footnote-23) concerning the issue of whether prolonged solitary confinement in itself constitutes cruel, inhumane, or degrading treatment or punishment.
7. The psychologist referred to the following paragraph of the Méndez Report:

Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions. Experts who have examined the impact of solitary confinement have found three common elements that are inherently present in solitary confinement — social isolation, minimal environmental stimulation and “minimal opportunity for social interaction”. Research further shows that solitary confinement appears to cause “psychotic disturbances,” a syndrome that has been described as “prison psychoses”. Symptoms can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis and self-harm … .

1. The author summarized the facts and then set out his understanding of the appellant’s segregation conditions:

[translation]

**Clinical understanding**

Mr. Turbide-Labbé has been subject to prolonged administrative segregation (or another form of segregation) for approximately 14 months in various correctional facilities in Quebec, including the Québec City correctional facility, the Saint-Jérôme correctional facility, and the Rivière-des-Prairies correctional facility. During this period of segregation, he has been deprived of social contact and various stimulation such as natural light. In his cell, he is exposed to continuous artificial light for a certain period. He is subject to restrictive security measures (S5) when he goes to take a shower twice a week. There were cold periods during which he did not have access to a mattress or blanket. He is forced to spend 23 of 24 hours a day in his cell because the authorities want to protect him from other inmates.

…

Mr. Turbide-Labbé displayed cognitive difficulties during the period of segregation, manifested by difficulty concentrating, memory problems, a sometimes confused thought process, and temporal disorientation.

He suffers from distortions in perception, manifested by disorientation in time and space, depersonalization or derealization, and visual and auditory hallucinations.

During the segregation period, Mr. Turbide-Labbé experienced episodes of paranoia and psychosis, manifested by recurring, persistent thoughts (rumination), often of a violent and vengeful nature directed at the correctional staff), and paranoid thoughts.

We note that the scientific literature clearly describes the forms that psychological distress caused by confinement may take, particularly in the event of prolonged segregation.

The behavioural manifestations of psychological distress displayed by Mr. Turbide-Labbé during the period of segregation strongly resemble the behavioural manifestations of psychological distress identified in the scientific literature concerning the impact of segregation on inmates.

It can be concluded that segregation is the factor that triggers Mr. Turbide-Labbé’s behavioural manifestations of psychological distress when he is placed in segregation.

It can be concluded that the administrative protection measure imposed on Mr. Turbide-Labbé by the persons in charge of the correctional facility is directly responsible for his behavioural manifestations of psychological distress when he is placed in segregation.

1. The author stated his conclusion and recommendations as follows:

[translation]

**Conclusion**

Before us is a person experiencing the psychological consequences of being exposed to segregation for over a year. The scientific literature clearly describes the consequences of being exposed to segregation.

We conclude that the Mr. Turbide-Labbé’s expression of psychological distress during the period of segregation is one of the various expressions of psychological distress described in the scientific literature concerning the psychological impact of being placed in segregation.

Finally, we conclude that the administrative protection measure imposed on Mr. Turbide-Labbé by the persons in charge of the correctional facility is directly responsible for Mr. Turbide-Labbé’s behavioural manifestations of psychological distress when he is placed in segregation.

Accordingly, Mr. Turbide-Labbé could not have had the intention to intimidate or threaten the team leader of the Québec correctional facility during the period from 2020-03-30 to 2020-06-02 or anyone else during the period of segregation.

**Recommendations**

We strongly recommend that those in charge of the correctional facility and the correctional staff receive training on the impact of segregation on the person segregated.

We strongly recommend ceasing all administrative protection measures imposed for the purpose of protecting an inmate because they entail deleterious short and long-term consequences on an individual’s mental health that are well identified in the scientific literature.

We recommend that those in charge of the correctional facility find other administrative protection measures that do not entail deleterious consequences on the mental health of the individuals whom they claim they want to protect.

We recommend that a psychiatric assessment of Mr. Turbide-Labbé be conducted to determine the psychological consequences of having been placed in prolonged segregation.

We certify that the content of this report, which represents our clinical opinion supported by scientific literature, has not been influenced by a third party.

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# V - TRIAL JUDGMENT

1. At the outset, the judge summarized the facts:

[translation]

[2]        The evidence is ambiguous as to the detention conditions in effect when Mr. Turbide-Labbé was at the Rivière-des-Prairies facility. He says that he had more residual freedom with respect to spending time outside his cell and access to a computer to consult the evidence in his cases. It also appears that his access to telephone conversations was less complicated and less costly. However, he was transferred involuntarily further to behavioural problems that resulted in his confinement.

[3]         Security measures were imposed on Mr. Turbide-Labbé upon his arrival and were updated periodically. He does not dispute the fact that these security measures were appropriate. According to the information gathered by public security, Mr. Turbide-Labbé continued to display problematic behaviour, which prevented the possibility of integrating him into the general prison population following his quarantine. He repeatedly ransacked his cell and regularly threatened to break everything.

[4]         According to the unit manager, Martin Rocco-Tanguay, Mr. Turbide-Labbé’s behaviour was problematic as soon as he arrived in Sorel. He is not known for being abusive or for having assaulted staff members in the past, but he regularly threatens to become disorganized, makes a ruckus, and hides objects that are potentially dangerous to the security of staff and other inmates. He is constantly making requests that go beyond the normal scope of the facility. According to Mr. Rocco-Tanguay, Mr. Turbide-Labbé receives preferential treatment in relation to the other inmates, in particular special access to the telephone service, from which he benefitted for a certain period of time, before this privilege was taken away from him due to his behaviour.

[5]         Mr. Turbide-Labbé acknowledges that his behaviour is inappropriate and demanding, but he justifies it as being a call for help due to his psychological distress. He primarily seeks better access to telephone services and significant human contact.

[6]      According to Jean-François Lapointe, deputy director of operations at the Sorel correctional facility, Mr. Turbide-Labbé had a high security, restrictive classification at the Rivière-des-Prairies correctional facility, such that he was permitted only two and a half hours per day outside of his cell. He was transferred to Sorel so that he could have at least four hours a day outside of his cell.

[7]         Along with the director, Mr. Carrière, Mr. Lapointe is responsible, for the classification committee, where all information is gathered. After fourteen (14) days of confinement, the plan was to place Mr. Turbide-Labbé in a multi-level area and observe his behaviour to possibly place him in a maximum security general area, despite his many disciplinary breaches. He is currently in a restrictive area where he has no contact with the other inmates, but he is not deprived of his residual liberty like inmates who are in disciplinary segregation. He has regular access to medical follow-up care and to various health care professionals. He has daily access to a computer station during the week, in the mornings and afternoons. However, in terms of activity, he currently has only one hour per day outside of his cell.

[8]       Upon arrival, Mr. Turbide-Labbé refused to go to a multi-level area, preferring instead to remain in solitary confinement despite having less residual liberty so that he could benefit from certain advantages, including greater access to telephone services. He refused a written offer dated June 18 pursuant to which his telephone access would be increased to four hours per day in addition to the other advantages of the living area. He presented a counter-offer on the same day, seeking toll-free telephone access throughout Quebec, time outside of his cell from 8:00 a.m. to 10:30 p.m., and access to the computer station in the morning, afternoon, and evening. Public security was unable to grant his requests, mainly because they were not consistent with a restrictive regime and because the area to which he wanted to be assigned was intended for women.

[9]         Mr. Turbide-Labbé refused an identical offer on June 30. The same offer was reiterated on July 5 and remained unanswered. Mr. Lapointe explained that they told Mr. Turbide-Labbé that if he displayed good behaviour, he could be under observation for only seven days instead of fourteen before integrating into a maximum security general area. Mr. Lapointe explained that he could not integrate Mr. Turbide-Labbé directly into a general area in view of his behaviour and security requirements. Note that the area to which they wanted to temporarily transfer him did not permit contact with the other inmates.

[10]      Mr. Turbide-Labbé filed a signed copy of the June 30 offer indicating that he had accepted it. It appears that this acceptance of the offer never reached the correctional facility authorities. At the hearing, Mr. Lapointe reiterated the transfer offer to Mr. Turbide-Labbé, who accepted it, while maintaining that the detention conditions in this multi-level area violate the *Charter*.

1. Next, the judge summarized the applicable rules of law:

[translation]

[11]      In cases involving incarceration where the initial detention is lawful, as is the situation here, the applicant seeking the issuance of a writ of *habeas* *corpus* must establish a deprivation of his or her residual liberty and a doubt as to the lawfulness of that deprivation, in which case public security must establish its effective lawfulness.

[12]   The review of administrative decisions by courts of justice must be guided by judicial restraint and respect for the jurisdiction of administrative decision-makers, subject to the need for intervention to preserve the legitimacy, rationality, and fairness of the administrative process.

[13]      The decision to assign a security classification to an inmate warrants deference because it is made by directors who, more so than Superior Court judges, have extensive knowledge of the subject and related practical experience. The same is true with respect to decisions concerning the area into which an inmate may safely integrate.

[14]      To be lawful, the decision must be reasonable, that is, based on evidence that is reliable and relevant and that supports the conclusion. The authorities must explain why the evidence is credible. In this case, the evidence comes in particular from the observations of the correctional officers. It is reliable and relevant evidence. It is also credible because it comes from public security employees.

1. The judge then drew the following general conclusions:

[translation]

[15]     The decision to offer Mr. Turbide-Labbé the possibility of integrating into an area permitting an increase in his residual liberty, where he would be under observation for a certain period before integrating into the general prison population is lawful, reasonable, and among the possible acceptable outcomes. The Court must not micromanage correctional facilities, which are under the jurisdiction of public security. Mr. Turbide-Labbé’s behaviour requires numerous lengthy interventions by correctional officers, which is inconsistent with placement in the general prison population.

[16]      Although he will not yet have access to significant human contact during this observation period, it is imperative for security reasons. Mr. Turbide-Labbé’s segregation from the other inmates cannot last indefinitely, however, and public security will have to find an alternative to Mr. Turbide-Labbé’s segregation or restrictive classification within a reasonable time.

[17]      The Court is concerned about the possibility that Mr. Turbide-Labbé is in psychological distress and requires medical care, in view of the handwritten notes indicating difficulty functioning and violent thoughts. A psychological report also refers to Mr. Turbide-Labbé’s psychological distress. However, he has met with two different psychiatrists since his arrival at the Sorel facility, and according to Mr. Lapointe, a third appointment is planned shortly. The Court nevertheless recommends that public security pay particular attention to this aspect.

[18]      Mr. Turbide-Labbé has not established that the temporary detention conditions he is subject to for a short observation period constitute cruel and unusual treatment. The Court is well aware of the adverse effects of prolonged segregation in a correctional facility on mental health. The fact remains that security requirements do not permit an inmate to be placed in the general prison population when his or her behaviour poses a risk for the security of the facility. Public security must nevertheless apply alternatives to prolonged segregation without significant human contact.

[19]      Essentially, Mr. Turbide-Labbé wants more flexible telephone services and significant human contact. The Court recommends that public security take the necessary steps so that Mr. Turbide-Labbé may have realistic access to telephone communication that allows him to have significant contact with other persons.

[20]     Ultimately, Mr. Turbide-Labbé was lawfully detained by a judge; he has not suffered any unlawful reduction in residual liberty since his transfer to Sorel, and his current detention conditions do not constitute cruel and unusual treatment in view of his behaviour.

1. The judge granted in part the motion to issue a writ of *habeas* *corpus* and ordered public security to implement an alternative, within a reasonable time, at the Sorel facility or elsewhere, to Mr. Turbide-Labbé’s detention conditions depriving him of meaningful human contact in person and by telephone.

# V - ANALYSIS

1. The appellant does not contest the lawfulness of his placement in solitary confinement, but rather the conditions surrounding it due to its effects on his mental health.
2. His challenge is based on the decisions of the Court of Appeal for Ontario and the Court of Appeal for British Columbia that declared sections 31 to 37 of the *Corrections and Conditional Release Act*[[24]](#footnote-24)(“*CCRA*”) unconstitutional.
3. It is important to situate the appellant’s challenge in the context where the use of solitary confinement in Canada is being called into question.
4. Even if the appellant gives his challenge a very broad interpretation, it is limited to his situation and not applicable to the entire Quebec correctional system.
5. Once the debate has been circumscribed in this way, it is easier to understand the appellant’s challenge and to note that the trial judge did not completely decide it even though he was [translation] “concerned about the possibility that Mr. Turbide-Labbé is in psychological distress and requires medical care”.[[25]](#footnote-25)
6. As I explained above, the difficulty of the exercise for the judge was increased in part by the absence of a legislative and regulatory framework, but also by the fact that the appellant was not represented by counsel, although he did present his arguments with skill.[[26]](#footnote-26)
7. It is also implicitly understood that the respondent and the impleaded party are of the view that the appellant is manipulating the system and is the author of his own misfortune. The appellant is perhaps feigning his mental health problems and using *habeas corpus* to [translation] “shop around for detention conditions” according to the expression used by counsel for the respondent and the impleaded party before the trial judge.
8. It goes without saying that, if that were the case, the appellant’s proceeding should be dismissed.

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1. I will now address the mootness of the appellant’s appeal and then provide an overview of the debate surrounding solitary confinement in Canada, a preliminary step that I find necessary to a proper understanding of the appellant’s challenge.

## A - Mootness of the appellant’s appeal

1. The respondent and the impleaded party submit that the appeal is moot because, since July 19, 2021, the appellant is no longer incarcerated at the Sorel-Tracy correctional facility (“STCF”), but rather at the Québec City correctional facility (“QCF”).
2. In support of this argument, they sought leave to adduce new evidence because they could not have [translation] “known that operational and security considerations would require [the appellant] to be moved to the QCF”. That leave was granted.
3. Yet, surprisingly, the very incomplete affidavit of the QCF services director provides none of these considerations. The complete lack of information on the circumstances surrounding the appellant’s transfer, other than the fact that he is no longer detained in the conditions that gave rise to the application for *habeas corpus,* is puzzling. The affidavit provides no information about the appellant’s mental health.
4. The Supreme Court has acknowledged that a judgment may be rendered despite the fact that the issue is moot. In *Mission Institution v. Khela*, LeBel, J. stated:

[14] Despite being moot, this appeal merits a decision in the circumstances of this case. The nature of *habeas corpus* applications involving the transfer and segregation of inmates is such that the factual circumstances of a given application can change quickly, before an appellate court can review the application judge’s decision. This means that such cases will often be moot before making it to the appellate level, and are therefore “capable of repetition, yet evasive of review” (*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, at p. 364). As was true in *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809, at para. 14, and *Cardinal v. Director of Kent Institution*,[1985] 2 S.C.R. 643, at p. 652, the points in issue here are sufficiently important, and they come before appellate courts as “live” issues so rarely, that the law needs to be clarified in the instant case.[[27]](#footnote-27)

[Emphasis added.]

1. The concerns expressed by the trial judge in regard to the appellant’s mental health warrant a ruling by this Court on his challenge, because of the recurrence of such issues for both the appellant himself and for other inmates.[[28]](#footnote-28)
2. Moreover, the appellant’s challenge to his detention conditions has all the attributes of an important issue that rarely appears before an appellate court since an inmate’s detention conditions can change rapidly.
3. In this regard, I note that the appellant’s appeal in this case is fundamentally different from the one that was dismissed for mootness by another panel of the Court[[29]](#footnote-29) and that concerned a period of incarceration in solitary confinement that was even more distant in time.

## B - Questioning solitary confinement in Canada

1. Since *McCann v. The Queen*[[30]](#footnote-30) and the publication of Professor Michael Jackson’s work titled *Prisoners of Isolation: Solitary Confinement in Canada*[[31]](#footnote-31) in 1983, the use of solitary confinement has been the subject of vigorous debate in Canada.
2. Indeed, “various reports and studies have raised concerns regarding the impact of solitary confinement on the inmates, and compliance and procedural fairness issues”.[[32]](#footnote-32)
3. In 1996, in the report of the *Commission of Inquiry into certain events at the Prison for Women in Kingston*, Commissioner Louise Arbour (judge of the Court of Appeal for Ontario at the time) made several recommendations intended to provide a framework for solitary confinement because of its impact on inmates’ mental health.[[33]](#footnote-33) Arbour, J.A. stated that “[t]he management of administrative segregation that I have observed is inconsistent with the *Charter* culture which permeates other branches of the administration of criminal justice”.[[34]](#footnote-34) This report was the first in a long series.
4. Thus, extensive commentary[[35]](#footnote-35) and certain judgments of the Court of Appeal for British Columbia[[36]](#footnote-36) and of the Court of Appeal for Ontario[[37]](#footnote-37) set out the history of the debates surrounding the challenge to solitary confinement, which I do not find useful to examine in minute detail, other than to highlight certain important parts.
5. In *Winters v. Legal Services Society*,[[38]](#footnote-38) the Supreme Court addressed the issue of solitary confinement, despite the issue of principle before it concerning the inmate’s right to legal services for a prison disciplinary hearing that could lead to a term of solitary confinement.[[39]](#footnote-39)
6. Cory, J., dissenting, but with Binnie, J. concurring on behalf of the majority in this respect,[[40]](#footnote-40) provided an overview of the effects of solitary confinement and of the challenges to it.[[41]](#footnote-41)
7. He stated that “the substantial and deleterious effects of solitary confinement are well documented and have long been known”.[[42]](#footnote-42) These “effects can be serious, debilitating and possibly permanent”.[[43]](#footnote-43) He noted that solitary confinement is a “further deprivation of a prisoner’s residual liberty interests”[[44]](#footnote-44) and constitutes “an additional and a severe restriction on a prisoner’s liberty”.[[45]](#footnote-45)
8. That being said, Cory, J. acknowledged that solitary confinement “may well be required in order to protect other prisoners and custodians and to ensure an appropriate standard of discipline in the penitentiary”[[46]](#footnote-46) and that “[m]aintaining order in a medium or maximum security setting must at times be daunting”.[[47]](#footnote-47)

## C - Constitutional challenges to the CCRA

1. In this case, the appellant’s challenge to his detention conditions espouse the reasoning adopted by the Courts of Appeal for Ontario and British Columbia, which both found, although on different grounds, that sections 31 to 37 of the *CCRA* were unconstitutional.[[48]](#footnote-48)
2. He also invokes the report of the psychologist, who clearly found that solitary confinement had adverse effects on his mental health.
3. Before the coming into force of the *Act to amend the Corrections and Conditional Release Act and another Act*[[49]](#footnote-49)(“Bill C-83”), the *CCRA* provided two mechanisms for ordering an inmate’s segregation.
4. First, under s. 44(1)(f), an inmate found guilty of a disciplinary offence was liable to a period of segregation for a maximum of 30 days.[[50]](#footnote-50) Second, pursuant to sections 31 to 37, the *CCRA* gave the institutional head of the penitentiary[[51]](#footnote-51) the power to order the administrative segregation of an inmate for the purpose of maintaining the security of the penitentiary or the safety of any person.[[52]](#footnote-52)
5. The *CCRA* imposed the obligation to conduct periodic reviews of the latter measure by persons designated by the institutional head and to make a recommendation to the institutional head in this regard.[[53]](#footnote-53) At this stage, like for the initial decision, the penitentiary’s security requirements and the inmate’s state of health had to be taken into consideration.[[54]](#footnote-54) The inmate had to be released from segregation “at the earliest appropriate time”,[[55]](#footnote-55) but the *CCRA* did not prescribe a maximum duration or specify the conditions of solitary confinement.[[56]](#footnote-56)
6. In *Canadian Civil Liberties Association v. Canada* [*CCLA*], the Court of Appeal for Ontario found that these provisions violated section 12 of the *Charter*. According to the Court, any form of confinement in excess of 15 days poses a significant risk to the mental health of inmates.[[57]](#footnote-57) In addition, the Court of Appeal for Ontario found that the provisions of the *CCRA* requiring that risks to inmates’ mental health be considered were ineffective at preventing such risks.[[58]](#footnote-58)
7. Almost seven months later, the Court of Appeal for British Columbia in *British Columbia Civil Liberties Association v. Canada (Attorney General)* [*BCCLA*] found that sections 31 to 37 of the *CCRA* infringed inmates’ security and did not comply with the principles of fundamental justice, thereby violating section 7 of the *Charter*.
8. In the Court of Appeal’s view, because of the absence of a cap on the duration of solitary confinement, the scope of the impugned provisions was overbroad with respect to their objective of ensuring the security of correctional institutions.[[59]](#footnote-59) The particularly harmful effects of indeterminate confinement were also grossly disproportionate to this objective.[[60]](#footnote-60) Last, the lack of an independent review mechanism regarding the decision to place an inmate in segregation violated procedural fairness.[[61]](#footnote-61)
9. Note that both these judgments took the Nelson Mandela Rules into account in their constitutional analysis.[[62]](#footnote-62)
10. The Attorney General of Canada obtained leave to appeal from both these judgments before the Supreme Court of Canada but discontinued the appeals as a result of the enactment of Bill C-83, amending the *CCRA* to replace the previous scheme of administrative segregation under sections 31 to 37 by the implementation of structured intervention units[[63]](#footnote-63) (“SIU”).

## D - Bill C-83

1. On November 30, 2019, Bill C-83 came into force. Its purpose was to protect the mental health of inmates, and it increased the role of health care professionals in this regard.
2. Disciplinary solitary confinement was abolished.[[64]](#footnote-64)
3. The purpose of the new system of structured intervention units (“SIU”) is to: (1) provide an appropriate living environment for an inmate who cannot be maintained in the mainstream inmate population for security or other reasons; and (2) provide the inmate with an opportunity for meaningful human contact and an opportunity to participate in programs and to have access to services that respond to the inmate’s specific needs and the risks posed by the inmate.[[65]](#footnote-65)
4. The transfer to an SIU is now justified by grounds similar to those set out in the previous legislation,[[66]](#footnote-66) and must end as soon as possible.[[67]](#footnote-67) Transfer to an SIU is first ordered by the institutional head,[[68]](#footnote-68) who has an obligation to review the decision within five days,[[69]](#footnote-69) and, subsequently, at least every thirty days,[[70]](#footnote-70) with the assistance of a structured intervention unit committee made up of members appointed by the institutional head.[[71]](#footnote-71)
5. However, s. 36 of the *CCRA* now provides a stricter framework governing the minimum conditions of such incarceration. It provides the inmate with: (1) the right to spend a minimum of four hours outside of his or her cell, and (2) the opportunity to interact with others for a minimum of two hours. The inmate may refuse these opportunities or may be denied them if the inmate does not comply with reasonable instructions to ensure the inmate’s safety or that of the other inmates.
6. The mental health of inmates placed in an SIU must be assessed, and a health care professional must visit the inmate once every day.[[72]](#footnote-72)
7. Moreover, if the confinement of an inmate in a structured intervention unit is having detrimental impacts on the inmate’s health, the inmate’s case can be referred to the portion of the service that administers health care.[[73]](#footnote-73)
8. The *CCRA* provides a new review mechanism of the decision to transfer an inmate to an SIU and of the detention conditions that are maintained in the SIU, while further specifying the factors the decision-makers must take into account in this regard.[[74]](#footnote-74)
9. Thus, a health care professional may, at any time, make a recommendation to the institutional head that the conditions of confinement in an SIU be altered or that confinement in an SIU cease[[75]](#footnote-75) if the health care professional is of the view that confinement in an SIU or the conditions of such confinement pose a risk for the inmate’s health. The institutional head must then reassess the situation as soon as practicable.[[76]](#footnote-76)
10. Refusing to follow the recommendation of the health care professional gives rise to a reassessment of the inmate’s situation by a committee consisting of staff members who hold a position higher in rank than the institutional head,[[77]](#footnote-77)and, finally, in the event that the alteration of the inmate’s situation is again refused, by an independent external decision-maker.[[78]](#footnote-78)

## E - Quebec correctional law: solitary confinement and the protection of inmates’ mental health

1. Under Quebec correctional law, solitary confinement used for security concerns is the result of the quasi absolute discretion of the director of a correctional facility.
2. That being said, the correctional authorities must ensure the health and well-being of inmates, including accused persons.
3. The duty to ensure that offenders have access to health care arises from both the ordinary law established by the *Civil Code*[[79]](#footnote-79) and the power granted to the correctional facility director by the applicable statutes and regulations.
4. Thus, the correctional facility director is responsible for the health of every incarcerated person admitted under his or her custody.[[80]](#footnote-80) Pursuant to article 1457 C.C.Q, the director has a duty to abide by the rules of conduct incumbent on him or her, according to the circumstances, usage, or law, so as not to cause injury to another. It goes without saying that this is an obligation of means.
5. Section 13 of the *RAQCS* provides that a health professional at the facility must submit a report to the facility director each time the health professional believes that the physical or mental health of an inmate has been or will be affected by the conditions of detention or by their extension.
6. The implementation of this obligation and that arising from article 1457 C.C.Q. requires that correctional facility directors ensure that health care professionals verify and assess whether the physical or mental health of offenders has been or will be affected by the conditions of detention or by their extension, including with respect to any form of solitary confinement.

## F - Habeas corpus and the challenge to solitary confinement

1. *Habeas corpus* is not a “static, narrow, formalistic” remedy.[[81]](#footnote-81) It remains “the strongest tool a prisoner has to ensure that the deprivation of his or her liberty is not unlawful”,[[82]](#footnote-82) which ensures “that the rule of law continues to run within penitentiary walls”[[83]](#footnote-83) and “that any deprivation of a prisoner’s liberty is justified”.[[84]](#footnote-84)
2. In the context of prison law or correctional law, an inmate may use *habeas corpus* to challenge the unlawful deprivation of liberty resulting from three types of deprivation: (1) the initial deprivation of liberty, (2) a substantial change in the conditions of detention amounting to a further deprivation of liberty, and (3) a continuation of the deprivation of liberty.[[85]](#footnote-85)
3. Solitary confinement entails a substantial change in the conditions of incarceration amounting to a new deprivation of liberty.[[86]](#footnote-86) As such, *habeas corpus* applies to restrictions to the residual liberty of inmates such as those resulting from solitary confinement.[[87]](#footnote-87)
4. Because *habeas corpus* may be “use[d] to release a person from a particular form of detention although the person will lawfully remain under some other restraint of liberty”,[[88]](#footnote-88) it permits challenges to the inmates’ solitary confinement conditions that infringe the constitutional rights protected by sections 7 and 12 of the *Charter,* even if the proceeding does not result in the inmate being transferred into the general population, but instead in the modification of the detention conditions of the inmate’s residual liberty in a manner compatible with the protection of the inmate’s mental health.
5. *Habeas corpus* permits challenges to distinct forms of detention such as solitary confinement. As LeDain, J. explained in *R. v. Miller*:

I do not say that *habeas corpus* should lie to challenge any and all conditions of confinement in a penitentiary or prison, including the loss of any privilege enjoyed by the general inmate population. But it should lie in my opinion to challenge the validity of a distinct form of confinement or detention in which the actual physical constraint or deprivation of liberty, as distinct from the mere loss of certain privileges, is more restrictive or severe than the normal one in an institution.[[89]](#footnote-89)

1. The criteria surrounding the examination of the lawfulness of an inmate’s detention in solitary confinement are described in *May v. Ferndale Institution*:

[77] A deprivation of liberty will only be lawful where it is within the jurisdiction of the decision-maker. Absent express provision to the contrary, administrative decisions must be made in accordance with the *Charter*. Administrative decisions that violate the*Charter*are null and void for lack of jurisdiction: *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at p. 1078. Section 7 of the *Charter* provides that an individual’s liberty cannot be impinged upon except in accordance with the principles of fundamental justice. Administrative decisions must also be made in accordance with the common law duty of procedural fairness and requisite statutory duties. Transfer decisions engaging inmates’ liberty interest must therefore respect those requirements.[[90]](#footnote-90)

1. Thus, the decision-making process surrounding solitary confinement “must be fair, and the decision to detain must be both reasonable and compliant with the *Charter*”.[[91]](#footnote-91)
2. In view of the effects and consequences of solitary confinement, the courts should not adopt an overly rigid or formalistic approach when analyzing challenges based on the *Charter*.[[92]](#footnote-92) *Habeas corpus* is the appropriate remedy for challenging solitary confinement that causes prejudice to an inmate’s mental health.[[93]](#footnote-93)
3. The effects of solitary confinement manifest themselves in the short, medium, and long term. It should be noted that, contrary to certain statements found in the case law,[[94]](#footnote-94) the scope of *habeas corpus* is not limited by a rigid view according to which the remedy does not permit a challenge to an inmate’s current detention conditions even if they are based on previous periods of solitary confinement.
4. The right to protection from state intervention causing serious psychological suffering would not be meaningful without access to a responsive and effective remedy.[[95]](#footnote-95)
5. *Habeas corpus* is the best means of deciding the issues arising from the prejudice to an inmate’s health resulting from his or her placement in solitary confinement.

# VI - THE SCOPE OF THE APPELLANT’S CHALLENGE TO HIS DETENTION CONDITIONS

1. Although the trial judge was sensitive to the effects of solitary confinement on the appellant’s mental health, he did not fully address the challenge.
2. Recall that in his remarks before the judge, the appellant relied specifically on the judgment of the Court of Appeal for Ontario in *CCLA* and that of the Court of Appeal for British Columbia in *BCCLA,* as well as on the Nelson Mandela Rules.[[96]](#footnote-96)
3. The Nelson Mandela Rules[[97]](#footnote-97) define solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact.
4. According to these rules, solitary confinement must be used only in exceptional cases as a last resort, for as short a time as possible. Use of solitary confinement must be authorized by a competent authority, and it must be subject to independent review. Solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.
5. Solitary confinement for a time period in excess of 15 consecutive days is considered prolonged solitary confinement. Confinement of such duration and indefinite solitary confinement are prohibited because they amount to cruel, inhuman, or degrading treatment.
6. Health-care personnel must pay attention to prisoners, in particular by providing medical assistance and treatment at the request of such prisoners.
7. Health-care personnel must report any adverse effect of disciplinary sanctions on the health of a prisoner to the prison director and advise the director if they consider it necessary to terminate or alter the sanction for medical reasons.
8. Finally, health-care personnel must have the authority to review and recommend changes to solitary confinement measures imposed on a prisoner to ensure that it does not exacerbate that prisoner’s health.
9. In light of the teachings drawn from *BCCLA* and *CCLA* and the subsequent legislative amendments to the *CCRA*, the appellant invokes the procedural and substantive guarantees of the Nelson Mandela Rules[[98]](#footnote-98)to challenge both the decision-making process and the detention conditions he was subjected to.
10. Relying on *BCCLA*, he submits that section 7 of the *Charter*, which guarantees protection against “state interference with an individual’s physical or psychological integrity, including any state action that causes physical or serious psychological suffering”,[[99]](#footnote-99) applies to solitary confinement. Moreover, the Nelson Mandela Rules reflect an international consensus,[[100]](#footnote-100) and their procedural and substantial requirements define the content of fundamental justice such that the conditions of his solitary confinement should be reviewed.
11. Moreover, according to the appellant, section 12 of the de la *Charter* protects against the psychological harm associated with solitary confinement that is prejudicial to his mental health.[[101]](#footnote-101) In the circumstances, solitary confinement constitutes cruel and unusual treatment because it is an outrage to our standards of decency[[102]](#footnote-102) due to its nature and its effects on prisoners’ mental health.
12. Similarly to the situation in *Hamm v. Attorney General of Canada (Edmonton Institution)*,[[103]](#footnote-103) the appellant therefore invited the judge to rely on the Nelson Mandela Rules, a non-binding source of international law, for assistance in defining the scope and content of the *Charter* rights he invoked.[[104]](#footnote-104) This should have led the Superior Court to order that his detention conditions must comply with the requirements of the Nelson Mandela Rules and that they take into account the psychological harm established by the report he filed, which harm resulted from many previous periods of solitary confinement as well as others that were more recent.
13. The judge was of the view that [translation] “[t]he decision to offer Mr. Turbide-Labbé the possibility of integrating into an area permitting an increase in his residual liberty, where he would be under observation for a certain period before integrating into the general prison population is lawful, reasonable, and among the possible acceptable outcomes”.[[105]](#footnote-105)
14. The offer made by correctional authorities is not a decision. It is up to the correctional authorities to decide an inmate’s detention conditions based on the constitutional, legislative, and regulatory requirements governing such decisions.
15. Of course, the fact that an offer to transfer an inmate to better detention conditions is refused by an inmate is a factor that will inevitably be considered when analyzing the reasonableness of the decision made by the correctional authorities, but the offer does not stand in lieu of a decision that is subject to judicial review.
16. Moreover, the judge found that the appellant’s detention conditions were not cruel and unusual, without defining the analytical framework he applied, such as the one used by the Courts of Appeal for British Columbia and Ontario, for example. And yet, he stated that [translation] “[p]ublic security must nevertheless apply alternatives to prolonged segregation without significant human contact”.[[106]](#footnote-106)
17. The judge seems to have partially addressed the appellant’s challenge as if he wanted to be transferred to the general population, whereas he rightly acknowledged that his behaviour warranted some form of confinement and he instead argued that his confinement must comply with the minimum requirements of the Nelson Mandela Rules and that, in this regard, the determination of restrictions to his residual liberty must take into account the state of his mental health.
18. Finally, with respect, the judgment’s disposition is problematic. The judge granted in part the application for *habeas corpus* and ordered the Ministère de la Sécurité publique to [translation] “to implement an alternative, within a reasonable time, at the Sorel facility or elsewhere, to Mr. Turbide-Labbé’s detention conditions depriving him of meaningful human contact in person and by telephone”.
19. A judgment must be capable of being executed.[[107]](#footnote-107) The disposition of a judgment “must state clearly and unequivocally what should and should not be done”.[[108]](#footnote-108) This principle is all the more necessary in prison matters because the proceeding itself determines whether the detention is lawful and leads to the inmate’s release if it is unlawful.[[109]](#footnote-109)
20. The judge’s order to implement an alternative detention measure without specifying any conditions raises actual enforcement issues for the correctional authorities and makes any future proceeding by the appellant to force compliance difficult.
21. I acknowledge without hesitation that the appellant’s proceeding was set out in a manner that is difficult to comprehend for a judge confronted with a vague normative environment in which the discretion of the correctional facility director does not appear to be governed by any criteria.[[110]](#footnote-110)
22. The judge was aware of the need to render an order that could be enforced, because he himself raised the possibility of providing a period of seven days before ordering the appellant’s transfer.
23. Indeed, during a discussion with counsel for the correctional authorities he stated that he was [translation] “seriously considering ordering that if it was not done within seven days, he should be transferred. They cannot continue to detain him like that indefinitely; they cannot return him to MS7, treat him like a yoyo, and then not transfer him to the general population. If they are unable to handle him, they should transfer him to a place where they will be able to handle him”.[[111]](#footnote-111)
24. The scenario before the judge was not simple,[[112]](#footnote-112) but he should have taken into account the alleged cumulative effect of the various periods of solitary confinement on the appellant’s mental health and formulated a conclusion the correctional authorities could have enforced, which was not the case.
25. If the appellant’s appeal had not become moot due to his transfer, I would have suggested holding a new hearing to rule on the lawfulness of the appellant’s detention in light of the foregoing analysis.
26. That being said, in the circumstances, I would instead allow the appellant’s appeal without legal costs.
27. In addition, in light of the teachings of the Supreme Court with respect to appeals that are moot,[[113]](#footnote-113) I do not propose to render any other order even though this disposition provides “no practical remedy”[[114]](#footnote-114) for the appellant, other than to assert the principles set out in this judgment to the correctional authorities for the purpose of determining his detention conditions.

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| GUY COURNOYER, J.A. |

1. United Nations. General Assembly. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), U.N. Doc. A/RES/70/175, January 8, 2016. [↑](#footnote-ref-1)
2. S.C. 1992, c. 20. [↑](#footnote-ref-2)
3. The Court was informed during the hearing that the preparation of the transcript of the stenographer’s notes was ordered by the trial judge at the appellant’s request, and we received it during deliberations. [↑](#footnote-ref-3)
4. *Regulation under the Act respecting the Québec correctional system* [*RAQCS*], s. 31. [↑](#footnote-ref-4)
5. RAQSC, s. 74. [↑](#footnote-ref-5)
6. *Ibid.* [↑](#footnote-ref-6)
7. *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809 at para. 77. Section 193(3) provides that the Government may establish standards respecting the administration and internal management of correctional facilities and the surveillance and security measures that must be taken in correctional facilities. Section 194 provides that the Minister or the person designated by the Minister and the director, for the facility under his or her management, may, subject to the regulations, issue directives in this regard. [↑](#footnote-ref-7)
8. Brief of the respondent and the impleaded party at para. 16. [↑](#footnote-ref-8)
9. See the reference to these in *Diggs c. Procureur général du Québec*, 2021 QCCS 1253 at para. 17. In the federal correctional system, pursuant to section 98 of the *CCRA*, the Commissioner’s directives must be accessible to offenders, staff members, and the public. [↑](#footnote-ref-9)
10. The Court notes the duties of the correctional authorities in this regard, since they control that information: *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at para. 40. [↑](#footnote-ref-10)
11. *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at 660. [↑](#footnote-ref-11)
12. *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, 2005 SCC 82 at paras. 23–25*.* [↑](#footnote-ref-12)
13. *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at para. 75; *Jackson c. Dulac*, 2021 QCCA 1536 at para. 37. [↑](#footnote-ref-13)
14. *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at para. 75. See also *Ewert c. Lalande*, 2020 QCCA 1141 at para. 56. [↑](#footnote-ref-14)
15. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 13; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228 at para. 190. [↑](#footnote-ref-15)
16. *Diggs c. Procureur general du Québec*, 2021 QCCS 2724; *Campeau c. Procureur general du Canada*, 2021 QCCS 843; *Gallone c. Procureure générale du Québec*, 2018 QCCS 4190. [↑](#footnote-ref-16)
17. *Turbide Labbé c. Massé*, 2020 QCCS 4317 at para. 80. [↑](#footnote-ref-17)
18. Further to a complaint sent by the appellant on June 17, 2021, pubic security answered as follows on June 23, 2021: [translation] “Mr. Turbide, your complaint is unfounded. The living area you have been assigned to, MS6, is a general housing area, reserved for offenders with enhanced security needs, among other things. Contrary to your letter, it is not a segregation area”. [↑](#footnote-ref-18)
19. *Turbide-Labbé c. Ministère de la Sécurité publique*, 2021 QCCS 3149 [Judgment under appeal]. [↑](#footnote-ref-19)
20. *Turbide Labbé c. Massé*, 2020 QCCS 4317; leave to appeal after expiry of the time limit refused, 2021 QCCA 1646. [↑](#footnote-ref-20)
21. The report was not filed under article 399 C.C.P., and the author of the report was not cross-examined. [↑](#footnote-ref-21)
22. United Nations. General Assembly. Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/66/268, August 5, 2011, at para. 62. In *Brazeau v. Canada* (Attorney General), 2020 ONCA 184 at para. 78, the Court of Appeal for Ontario referred to this report and in particular to this excerpt. [↑](#footnote-ref-22)
23. See *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 at paras. 26–28 and 74; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228 at para. 74; Jennifer Pearce, “Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards” (2018) 43 Queen’s L.J. 263 at 292. [↑](#footnote-ref-23)
24. S.C. 1992, c. 20. [↑](#footnote-ref-24)
25. *Turbide-Labbé c. Ministère de la Sécurité publique,* 2021 QCCS 3149 at para. 17. [↑](#footnote-ref-25)
26. *Pratt v. Nova Scotia (Attorney General)*, 2020 NSCA 39 at paras. 56–57. [↑](#footnote-ref-26)
27. 2014 SCC 24, [2014] 1 S.C.R. 502. See also *Mazzei v. British Columbia (Director of Adult Forensic Psychiatric Services)*, [2006] 1 S.C.R. 326, 2006 SCC 7 at para. 15; *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250 at paras. 17–18; *R v. Myers*, 2019 SCC 18, [2019] 2 S.C.R. 105 at paras. 13–14; [↑](#footnote-ref-27)
28. During the week following the hearing of his appeal, the appellant informed the Court that he was aware of the complexity and novelty of the issues raised by his appeal. He undertook not to present new challenges to his detention conditions until the Court’s judgment was filed. [↑](#footnote-ref-28)
29. *Turbide Labbé c. Massé*, 2021 QCCA 1646. [↑](#footnote-ref-29)
30. [1976] 1 F.C. 570. [↑](#footnote-ref-30)
31. (Toronto: University of Toronto Press, 1983). In *May v. Ferndale Institution,* [2005] 3 S.C.R. 809, 2005 SCC 82 at para. 24, the Supreme Court referred to Professor Jackson’s work to explain the reasons justifying the abandonment of the hands-off policy that prevailed until *Martineau v. Matsqui Disciplinary Bd.*, [1980] 1 S.C.R. 602, which sought to ensure respect for the rule of law within penitentiaries. [↑](#footnote-ref-31)
32. See Lyne Casavant & Maxime Charron-Tousignant, *Legislative Summary of Bill C-83: An Act to amend the Corrections and Conditional Release Act and another Act*, Publication No. 42-1-C83-E, Library of Parliament, 30 October 2018, revised 27 August 2019 at 4. [↑](#footnote-ref-32)
33. The Honourable Louise Arbour, *Commission of Inquiry into certain events at the Prison for Women in Kingston*, Public Works and Government Services Canada, 1996 at 185–192. [↑](#footnote-ref-33)
34. *Ibid* at 191. [↑](#footnote-ref-34)
35. See Michael Jackson, “Reflections on 40 Years of Advocacy” (2015) 4 Can J Hum Rts57; Lisa Coleen Kerr, “The Origins of Unlawful Prison Policies” (2015) 4 Can J Hum Rts 89; Debra Parkes, “Ending the Isolation: An Introduction to the Special Volume on Human Rights and Solitary Confinement” (2015) 4 Can J Hum Rts vii. [↑](#footnote-ref-35)
36. *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228 at paras. 31–70. [↑](#footnote-ref-36)
37. *Brazeau v. Canada (Attorney General)*, 2020 ONCA 184 at paras. 71–100; *Canadian Civil Liberties Association v. Canada,* 2019 ONCA 243 at paras. 22–29. [↑](#footnote-ref-37)
38. *Winters v. Legal Services Society*, [1999] 3 S.C.R. 160. [↑](#footnote-ref-38)
39. The disagreement between Binnie and Cory, JJ. concerned the “discretion to determine when mandatory legal services under s. 3(2) ought to rise to the level of legal representation” (at para. 14). [↑](#footnote-ref-39)
40. Binnie, J. specifically stated that he agreed with Cory, J. on this issue: see paras. 1, 11, and 21–22. [↑](#footnote-ref-40)
41. *Winters v. Legal Services Society*, [1999] 3 S.C.R. 160 at paras. 63 to 67. [↑](#footnote-ref-41)
42. *Ibid.* at para. 53. [↑](#footnote-ref-42)
43. *Ibid.* at para. 67. [↑](#footnote-ref-43)
44. *Ibid.* at para. 65. [↑](#footnote-ref-44)
45. *Ibid.* at para. 67. [↑](#footnote-ref-45)
46. *Ibid.* at para. 75. [↑](#footnote-ref-46)
47. *Ibid.* [↑](#footnote-ref-47)
48. See Lisa Kerr, “The End Stage of Solitary Confinement”, (2019) 55 C.R. (7th) 382. The Attorney General of Canada obtained leave to appeal these two judgments before the Supreme Court of Canada, but ultimately discontinued the appeals. [↑](#footnote-ref-48)
49. S.C. 2019, c. 27. See Lyne Casavant & Maxime Charron-Tousignant, *Legislative Summary of Bill C-83: An Act to amend the Corrections and Conditional Release Act and another Act*, Publication No. 42-1-C83-E, Library of Parliament, 30 October 2018, revised 27 August 2019. [↑](#footnote-ref-49)
50. Under s. 40(2) of the *Corrections and Conditional Release Regulations*, SOR/92-620, in force on 29 November 2019, [“*2019 Regulations*”], in the event of a decision imposing a sanction of disciplinary segregation on an inmate who is already serving such a sanction, the total period of segregation imposed by those sanctions could not exceed 45 days. [↑](#footnote-ref-50)
51. Section 6(1)(c)of the *Regulations* permitted designated staff members to order the administrative segregation of inmates; however, s. 20 required the institutional head to review the order within one working day. [↑](#footnote-ref-51)
52. *CCRA* at para. 31(1). [↑](#footnote-ref-52)
53. *CCRA* at para. 33(1).Under para. 21(2), a hearing had to be held within five days of the order, and, at least once every 30 days thereafter if the inmate remained in administrative segregation. [↑](#footnote-ref-53)
54. *CCRA*, ss. 32 and 87. [↑](#footnote-ref-54)
55. *CCRA*, s. 31(2). [↑](#footnote-ref-55)
56. *CCRA*, s. 37. [↑](#footnote-ref-56)
57. *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 at paras. 72–77 and 88–99. [↑](#footnote-ref-57)
58. *Ibid.* at paras. 78–81 and 102–119. [↑](#footnote-ref-58)
59. *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228 at paras. 154–165. [↑](#footnote-ref-59)
60. *Ibid.* at paras. 166–172. [↑](#footnote-ref-60)
61. *Ibid.* at paras. 173–198. [↑](#footnote-ref-61)
62. *Ibid.* at paras. 75, 163, 167–168; *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 at paras. 22–29. [↑](#footnote-ref-62)
63. *Ibid.* s. 10. [↑](#footnote-ref-63)
64. *Act to amend the Corrections and Conditional Release Act and another Act,* s. 11. [↑](#footnote-ref-64)
65. *CCRA*, s. 32. [↑](#footnote-ref-65)
66. *CCRA,* s. 34(1). [↑](#footnote-ref-66)
67. *CCRA,* s. 33. In this regard, s. 15.1(2.1) of the *CCRA* now provides that an inmate’s correctional plan must be updated if the inmate is transferred to an SIU. [↑](#footnote-ref-67)
68. *CCRA,* s. 29.01(1). This provision confers the same power to a designated staff member. [↑](#footnote-ref-68)
69. *CCRA,* s. 29.01(2). [↑](#footnote-ref-69)
70. *CCRA*, s. 37.3(1)(b). Section 37.4 of the *CCRA* introduced a novelty by specifying that the institutional head’s determination that an inmate should remain in an SIU must, in turn, be reviewed by the commissioner of the correctional institution with thirty days, again with the assistance of the structured intervention unit. Under s. 37.8, if the commissioner decides to maintain the inmate in an SIU, the commissioner’s decision must be reviewed once more by an external decision-maker. [↑](#footnote-ref-70)
71. *2019 Regulations*, s. 20. [↑](#footnote-ref-71)
72. Section 37.1(1). [↑](#footnote-ref-72)
73. Section 37.11 lists the applicable grounds: (1) the inmate refuses to interact with others; (2) the inmate engages in self-injurious behaviour; (3) the inmate shows signs of a drug overdose; and (4) the inmate shows signs of emotional distress or exhibits behaviour that suggests that they are in urgent need of mental health care. [↑](#footnote-ref-73)
74. *CCRA*, ss. 37.41, 37.82, and 87. See also paras. 22(1), 23(1), and 23.01(1) of the *2019 Regulations*. [↑](#footnote-ref-74)
75. *CCRA*, s. 37.2. [↑](#footnote-ref-75)
76. *CCRA,* ss. 37.3(1)(a) and 37.3(2). [↑](#footnote-ref-76)
77. *CCRA,* s. 37.31–37.32. [↑](#footnote-ref-77)
78. *CCRA,* s. 37.81. See ss. 37.6 to 37.77 for the duties, functions, and conditions of appointment of these decision-makers. [↑](#footnote-ref-78)
79. *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862 at paras. 15–16; *Kosoian v. Société de transport de Montréal*, 2019 SCC 59 at para. 119. [↑](#footnote-ref-79)
80. *AQCS*, s. 30. [↑](#footnote-ref-80)
81. *Canada (Public Safety and Emergency Preparedness) v. Chhina*, 2019 SCC 29, [2019] 2 S.C.R. 467 at para. 19. [↑](#footnote-ref-81)
82. *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at para. 29. [↑](#footnote-ref-82)
83. *Ibid.* [↑](#footnote-ref-83)
84. *Ibid.* [↑](#footnote-ref-84)
85. *Dumas v. Leclerc Institute*, [1986] 2 S.C.R. 459 at 464; *Canada (Public Safety and Emergency Preparedness) v. Chhina*, 2019 SCC 29, [2019] 2 S.C.R. 467 at paras. 22–23. [↑](#footnote-ref-85)
86. *Ibid.* [↑](#footnote-ref-86)
87. *Ibid.* at para. 34; *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, 2005 SCC 82 at para. 76 *Ewert c. Lalande*, 2020 QCCA 1141 at para. 28; *Wilcox v. Alberta*, 2020 ABCA 104 at paras. 34–36. [↑](#footnote-ref-87)
88. *R. v. Miller*, [1985] 2 S.C.R. 613 at 638. [↑](#footnote-ref-88)
89. *R. v. Miller*, [1985] 2 S.C.R. 613 at 641. [↑](#footnote-ref-89)
90. *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, 2005 SCC 82. [↑](#footnote-ref-90)
91. *Canada (Public Safety and Emergency Preparedness) v. Chhina*, 2019 SCC 29, [2019] 2 S.C.R. 467 at para. 17. [↑](#footnote-ref-91)
92. *R. v. Sarson*, [1996] 2 S.C.R. 223 at para. 40; *R. c. R.L.*, 2017 QCCA 933 at para. 46. See also *Winters v. Legal Services Society*, [1999] 3 S.C.R. 160 at para. 67, Cory, J., dissenting, but not on this issue. [↑](#footnote-ref-92)
93. *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809 at, para. 40; *Canada (Public Safety and Emergency Preparedness) v. Chhina*, 2019 SCC 29, [2019] 2 S.C.R. 467 at paras. 2, 40, and 71. [↑](#footnote-ref-93)
94. See e.g., *Turbide Labbé c. Massé*, 2020 QCCS 4317 at para. 118; leave to appeal after expiry of the time limit refused, 2021 QCCA 1646. [↑](#footnote-ref-94)
95. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*,2003 SCC 62, [2003] 3 S.C.R. 3 at para. 25; *Henry v. British Columbia (Attorney General)*, 2015 SCC 24, [2015] 2 S.C.R. 214 at para. 65; *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at 196; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R 835 at 867. [↑](#footnote-ref-95)
96. Stenographer’s notes, 8 July 2021 at 47–48. [↑](#footnote-ref-96)
97. United Nations. General Assembly*.* The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), U.N. Doc. A/RES/70/175, January 8, 2016. [↑](#footnote-ref-97)
98. See Jennifer Pearce, “Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards” (2018), 43 Queen’s L.J. 263 at 292; Adelina Iftene, “COVID-19 in Canadian Prisons: Policies, Practices and Concerns” in Colleen M. Flood *et al.*, eds., *Vulnerable: The Law, Policy and Ethics of COVID-19* (Ottawa: University of Ottawa Press, 2020) 367 at 369. [↑](#footnote-ref-98)
99. *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331 at para. 64; Hamish Stewart, *Fundamental Justice: Section 7 of the Canadian Charter of Rights and Freedoms*, 2nd ed. (Toronto: Irwin Law, 2019) at 103–106. [↑](#footnote-ref-99)
100. *R. v. D.B.*, [2008] 2 S.C.R. 3, 2008 SCC 25 at paras. 46, 61, and 67; *Canada (Prime Minister) v. Khadr,* 2010 SCC 3, [2010] 1 S.C.R. 44 at para. 23; *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 S.C.R. 401 at para. 91. [↑](#footnote-ref-100)
101. *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 at paras. 4–6, 82–119, and 126. See Benjamin Berger and Lisa Kerr, “Methods and Severity: The Two Tracks of Section 12” (2020) 94 S.C.L.R. (2d) 235. [↑](#footnote-ref-101)
102. *R. v. Smith*, [1987] 1 S.C.R. 1045 at 1073–1074; Benjamin Berger & Lisa Kerr, “Methods and Severity: The Two Tracks of Section 12” (2020), 94 S.C.L.R. (2d) 235; *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 at para. 29; *R v. Prystay*, 2019 ABQB 8 at para. 128; *R. v. Sheppard*, 2020 ABCA 455 at paras. 73–80. [↑](#footnote-ref-102)
103. 2016 ABQB 440 at paras. 94–95. [↑](#footnote-ref-103)
104. In this regard, see the remarks of the majority of the Court in *Québec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, with respect to the appropriate role of foreign and international sources in constitutional interpretation. [↑](#footnote-ref-104)
105. Judgment under appeal at para. 15. [↑](#footnote-ref-105)
106. Judgment under appeal at para. 18. [↑](#footnote-ref-106)
107. Art. 328 C.C.P*.* See *Vézina c. Brady*, 2006 QCCA 1069 at para. 45; *Prometic Sciences de la vie inc. c. Banque de Montréal*, 2007 QCCA 1419 at para. 32; *Sporting club du sanctuaire inc. c. 2320 4365 Québec*, [1989] R.D.J. 596 (C.A.); *Marcellin Ducharme inc. c. Moteurs Kawasaki Canadien inc.*, EYB 2001-25270 (C.A.) at para. 23; *Zhang c. Chau*, (2003), 229 D.L.R. (4th) 298 (C.A. Que.). [↑](#footnote-ref-107)
108. *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79 at para. 33. [↑](#footnote-ref-108)
109. Art. 399 C.C.P*.*; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at para. 39. However, there is nothing preventing the implementation of conditions governing an inmate’s residual liberty: *Ogiamien v. Ontario (Community Safety and Correctional Services)*, 2017 ONCA 839 at paras. 47–50. [↑](#footnote-ref-109)
110. *R. v. Adams*, [1996] 3 S.C.R. 101 at para. 53; *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, 2005 SCC 82 at para. 77. [↑](#footnote-ref-110)
111. Stenographer’s notes, 8 July 2021 at 106. [↑](#footnote-ref-111)
112. The discussions between the judge and counsel for the respondent and for the impleaded party are revealing: stenographer’s notes, July 8, 2021, at 97 to 111. [↑](#footnote-ref-112)
113. *Mazzei v. British Columbia (Director of Adult Forensic Psychiatric Services)*, [2006] 1 S.C.R. 326, 2006 SCC 7 at para. 67; *R v. Myers*, 2019 SCC 18, [2019] 2 S.C.R. 105 at para. 68. [↑](#footnote-ref-113)
114. *Mazzei*, *ibid.* at para. 67. [↑](#footnote-ref-114)