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July 21, 2017

The Omar Khadr case – pragmatism and principle

There is no question that recent decisions taken by the Government of Canada in the case of Omar Khadr have been controversial for some Canadians. I understand those concerns – and, personally, I also initially had concerns with the \$10.5M settlement.

I would, however, like to provide some important context within which these decisions were made. In coming to the determination to settle the ongoing legal action brought by Mr. Khadr, there is both a pragmatic and a principled rationale that underpinned government's action.

The pragmatic rationale is:

- This case had been before the courts for some time. The Supreme Court of Canada had previously ruled on three separate occasions that the Canadian Government of the day had violated Mr. Khadr's constitutionally protected rights.
- Following the Supreme Court rulings, Mr. Khadr filed a lawsuit against the Government of Canada in 2014, seeking \$20 million in damages.
- Based on expert legal advice, it was clear that the likely outcome of continued court litigation would be that the Government would lose this case given the prior rulings of the Supreme Court of Canada.
- In addition to the \$20 million in damages sought by Mr. Khadr, the Government would also likely have been forced to cover significant additional costs in legal fees for Mr. Khadr plus needing to cover the Government's own additional legal costs.
- These costs would be on top of the \$5M that has already been spent by the Government of Canada over the past several years fighting matters related to Mr. Khadr in the courts.

What is clear is that this case was mishandled at every step of the way for nearly a decade by the previous federal government. The Harper Government was rebuked three times by the Supreme Court of Canada. Given the legal landscape, settling this case for a portion of what would likely have been paid was a pragmatic decision protecting the interests of taxpayers.

I would note very emphatically, however, that this settlement does not represent a reward for Mr. Khadr's past conduct – which many of us find concerning. It represents a penalty for the Canadian government's decision to abandon principles that our law demands we uphold.

The principled rationale is:

- The Charter of Rights and Freedoms protects all Canadians, every one of us, even when it is uncomfortable to maintain these rights. This is a challenging, but absolutely vital component of our justice system: each citizen, accused or acquitted, innocent or guilty is guaranteed a right to treatment in accordance with our Charter of Rights and Freedoms.
- In this particular case, Omar Khadr, a Canadian citizen held by the US at Guantanamo Bay, was subjected to sleep deprivation for weeks. Canadian officials from the Department of Foreign Affairs interrogated Mr. Khadr with full knowledge of the nature of treatment he had been receiving. The Supreme Court of Canada determined that while he was held at Guantanamo Bay, “the deprivation of [Mr. Khadr's] right to liberty and security of the person [was] not in accordance with the principles of fundamental justice.”
- The Supreme Court further determined that the treatment Mr. Khadr received “offends the most basic Canadian standards about the treatment of detained youth suspects.” In short, the Supreme Court determined that the Government of Canada was complicit in the violation of the Charter rights of a Canadian citizen.

This case is currently generating significant and passionate debate - and for good reason. Mr. Khadr is a controversial figure. However, given the legal circumstances that exist today and given the issues involved in this case regarding the duty of the Government of Canada to act to protect the rights of Canadians, I believe this Government made the correct decision - both pragmatically (in terms of minimizing the dollars expended on this file) and on a principled basis.

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