

Schedule “D”: Draft Distribution and Individual Issues Protocol

1. – General

1.1 Pursuant to the *Class Proceedings Act, 1992*, and the *Québec Code of Civil Procedure*, this Protocol governs:

(a) the distribution of the Aggregate Damages Award in:

- i. *Brazeau v. Canada (Attorney General)* (“*Brazeau*”);
- ii. *Reddock v. Canada (Attorney General)* (“*Reddock*”); and
- iii. *Gallone c. Canada (Attorney General)* (“*Gallone*”); and,

(b) the procedures for the determination of the individual issues in *Brazeau*, *Reddock*, and *Gallone*.

1.3. This Protocol may be amended by further order of the Court.

1.4 In this Protocol:

“Canada” means the Defendant, the Attorney General of Canada.

“Class Counsel” means (a) Koskie Minsky LLP in *Brazeau*; (b) McCarthy Tétrault LLP and Koskie Minsky LLP in *Reddock*; and (c) Trudel Johnston & Lespérance in *Gallone*.

“Court” means the Ontario Superior Court of Justice or the Superior Court of Québec.

1.5 For this Protocol, “Class Member” and “Class” are defined by the *Reddock* and *Brazeau* Certification Orders and by the *Gallone* Authorization Judgment.

1.6 For this Protocol, “Incarcerated Class Member” means a Class Member during the period from March 3, 2011 to present and who remains incarcerated or otherwise in the custody of the Correctional Service of Canada.

1.7 Nothing in this Protocol precludes the parties from settling a claim proceeding on Tracks 2 or 3 of the Protocol.

2. Retainer of Class Counsel

2.1 Unless the Class Member in his or her Claim Form provides the name and contact information for the lawyer retained to act for the Class Member, Class Counsel shall continue to have a solicitor and client relationship with the Class Member.

2.2 If a Class Members selects Track 1, then Class Counsel or the lawyer retained to act for the Class Member cannot charge for his or services for the Class Member with respect to the Track 1 claim.

2.3 If a Class Member selects Track 2, the Class Counsel or the lawyer retained to act for the Class Member may charge a fee for his or her services for the Class Member with respect to the Track 2 claim, such fee not to exceed 15% of the damages awarded plus reasonable disbursements.

2.4 If the Class Member selects Track 3, the Class Counsel or the lawyer retained to act for the Class Member may charge a fee for his or her services for the Class Member as may be approved by the court.

3. Class Proceedings Fund and the Fonds d'aide aux actions collectives

3.1 Where the Class Member selects Tracks 2 or 3, Class Counsel may continue to receive funding from the Class Proceedings Fund ("CPF") or the Fonds d'aide aux actions collectives, subject to its approval.

3.2 Where the Class Member selects Tracks 2 or 3, disbursements and indemnities may be provided by the CPF to Class Members of *Reddock* and *Brazeau* classes proceeding before the Ontario Superior Court subject to its approval.

4. Administrator

4.1 "Administrator" means Epiq, or such other administrator as the courts may appoint from time to time on a motion by Class Counsel.

4.2 The Administrator shall invest the Aggregate Damages Award at a Bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46.

4.3 The Administrator shall distribute the Notice and the Claims Form in accordance with a notice and distribution plan approved by the court.

4.4 Where mail to a Class Member is returned to the Administrator as undeliverable, the Administrator shall have no responsibility for locating the Class Member.

4.5. The Administrator shall provide a bilingual (English and French) toll-free support line to assist Class Members, family, guardians or agency staff, or other persons who make inquiries on behalf of Class Members.

4.6 No later than sixty (60) days after the approval of this Protocol, Canada shall provide the Administrator and Class Counsel with the following information in an electronic spreadsheet format (Microsoft Excel or the like) for each inmate incarcerated in a correctional institution during the Class Periods of *Brazeau*, *Reddock*, and *Gallone*:

- (a) his or her name;
- (b) his or her Prison Number;
- (c) his or her inmate classification;
- (d) the correctional institutions in which he or she was incarcerated;
- (e) the admission date and or transfer date to each of the correctional institutions in which he or she was incarcerated;
- (f) the date of placement and the release date for each placement in administrative segregation.

4.7 Upon receipt of a Claims Form, the Administrator shall examine the form to determine if it is complete, and if it is not complete, the Administrator shall complete the form, if possible, with the database of information provided by Canada and/or may contact the Class Member to obtain further information to complete the Form, if possible to do so.

4.8 Within twenty days of receipt of a Claims Form, the Administrator shall provide a copy of the Claims Form and any associated documents to:

- (a) a Manager/Expert from the Roster;

- (b) Class Counsel or the lawyer retained to act for the Class Member; and
- (c) Canada.

4.9 For Track 1 Claims, the Administrator shall pay the Class Member's share of the Aggregate Damages award within sixty days after the Roster of Manager/Experts has determined all timely submitted Claims Forms.

4.10 For Track 2 and Track 3 Claims, the Administrator shall hold the Class Member's share of the Aggregate Damages Award in trust pending the completion of the Class Member's Track 2 or Track 3 Claim, after which the Administrator shall pay the Class Member his or her share.

4.11 For Track 2 and Track 3 Claims, the Administrator shall pay:

- (a) any amounts owing to the Class Proceedings Fund or the Fonds d'aide aux actions collectives including reimbursement for disbursements;
- (b) Class Counsel's or the lawyer retained by the Class Member's fee; and
- (c) the balance of the damages award, along with the Class Member's share of the Aggregate Damages Award, to the Class Member.

4.12 Where there are unclaimed funds from the distribution of the Aggregate Damages Award, the Administrator shall make a *cy-près* payment as the court may direct.

4.13 The Administrator shall pay any monies owing to a Class Member of the Incarcerated Class to his or her prisoner account, unless the Class Member directs otherwise.

4.14 The Administrator may but is not required, to reissue payments to a Class Member that were returned as undeliverable.

4.15 The Administrator shall comply with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000 c. 5.

4.16 After the distribution of:

- (a) the Aggregate Damages Assessment;
- (b) any awards for Track 2 or 3 Class Member Claimants; and
- (c) any *cy-près* payments, the Administrator shall apply to be discharged and shall file with the court a report containing their best information respecting the following:
 1. The total number of Class Members Claimants.
 2. The number of Class Members who received notice associated with the distribution, and a description of how notice was given.
 3. The number of Class Members who made a claim pursuant to Track 1, 2, or 3 respectively.
 4. The amounts distributed to Class Members and others and a description of how the awards were distributed.
 5. The administrative costs associated with the distribution of the award.

4.17 Upon being discharged as Administrator, the Administrator shall retain in hard copy or electronic form, all documents relating to a Claim for two years after which the Administrator shall destroy the documents.

4.18 The fees and expenses of the Administrator under this Protocol shall be paid by Canada as approved by the court.

5. Notice

5.1. In this Protocol, “Notice” means the Notice of Judgment in *Brazeau, Reddock, and Gallone* in English and in French that has been approved by the court.

5.2 The cost of the Notice and the Notice Program shall be paid by Canada.

5.3 Class Counsel shall post the Notice and the Claims Form on its website.

5.4 The Administrator shall post the Notice and the Claims Form on its website.

5.5 The Administrator shall provide the Notice and the Claims Form to any Class Member who requests it, together with a postage paid return envelope.

5.6 Within thirty (30) days of the court approval of the Notice and Claims Form, the Administrator shall distribute the Notice and the Claims Form to all offices of:

- (a) Elizabeth Fry Society;
- (b) John Howard Society; Aboriginal Legal Services;
- (c) West Coast Prison Justice Society Prisoners’ Legal Services;
- (d) Association des services de réhabilitation sociale du Québec; and
- (e) Halfway Houses across Canada.

5.7 Canada shall provide the Notice, together with a postage paid return envelope, to every Incarcerated Class Member, and Canada shall make available reasonable facilities for Class Members to complete the Claims Form.

5.8 Within thirty (30) days of the Court approval of the Notice and Claims Form, Canada shall post the Notice and a reasonable quantity of the Claims Form in a conspicuous place within the common area of each federal correctional institution and provide facilities to complete the Claims Form.

5.9 Canada shall provide a reasonable quantity Claims Forms to every Federal Parole Office in Canada, and each parolee who attends at such offices shall be provided with a copy of the Notice. In addition, a copy of the Notice and the Claims Form shall be posted in a conspicuous place within a visible area of the Parole Office, and the Canada shall provide facilities at the Parole Office for parolees to complete the Claims Form.

6. Manager/Experts

6.1 In this Protocol, “Roster” means the of group of Manager/Experts appointed by the parties or by the court:

- (a) to determine eligibility for a share of the distribution of the Aggregate Damages Award; and.
- (b) to inquire into and report to the Ontario Superior Court of Justice or to the Superior Court of Québec his or her findings and conclusions as to the quantum of the Damages Award for Class Members who elect to make a Track 2 claim.

6.2 No later than ninety (90) days from the of the court approval of the Notice and Claims Form, Class Counsel and Canada shall constitute the Roster of Manager/Experts failing which the courts

shall appoint the Manager/Experts to constitute the Roster from a list of candidates submitted by Class Counsel and or Canada.

6.3 A Manager/Expert shall be:

- (a) a person licensed to practice medicine in any Canadian jurisdiction;
- (b) a person licensed to practice psychology in any Canadian jurisdiction;
- (c) a person registered as a psychotherapist in any Canadian jurisdiction;
- (d) a person registered as a psychiatric nurse in any Canadian jurisdiction; or
- (e) a person licensed as a psychiatric social worker in any Canadian Jurisdiction.

6.4 After a Manager/Expert's decision is released, Canada shall pay that Referee:

- (a) \$1,000 for a Track 1 or Track 3 decision; and
- (b) \$5,000 for a Track 2 decision and report.

7. Distribution and Individual Issues Protocols

7.1. Aggregate Damages Award means the gross award of aggregate damages, costs, and interest made in *Brazeau*, *Reddock*, and *Gallone*, less:

- (a) Class Counsel's fees and disbursements as approved by the Courts;
- (b) the Class Proceedings Fund's levy, applicable to the *Reddock* and *Brazeau* actions;
- (c) the allocation to the Fond d'aide aux actions collective; and
- (d) any other deductions approved by the Courts

(for a net aggregate damages award of approximately \$28.0 million).

7.2 A share in Aggregate Damages Award is equal to the Aggregate Damages Award divided by the number of Class Members eligible to receive a share as determined by the Roster of Manager/Experts.

7.3. Claims Form" means the electronic or paper claims form in English or in French that a Class Member must complete and submit before the Claims Filing Deadline to participate in the distribution of the aggregate damages and to have his or her individual issues determined in *Brazeau*, *Reddock* and *Gallone*.

7.4. Claims Filing Deadline means the date by which the Claims Form (and the required supporting documentation) must be electronically submitted, sent via mail, or received in person by the Administrator, which date shall be one year after the first publication of Notice.

7.5 Before the Claims Filing Deadline, a Class Member may submit a Claims Form (and the required supporting documentation) to the Administrator.

7.6 After the Claims Filing Deadline, with leave of the court, Class Members may file Claims Forms for Tracks 2 or 3, and leave shall be granted only if the Class Member establishes that the failure to file a timely Claims Form was due to circumstances beyond his or her control or that provide a reasonable explanation for the delay.

7.7 In the Claims Form, a Class Member shall elect to proceed on one of the following tracks:

- (a) Track 1 (*Distribution and Release of Claim Track*).
- (b) Track 2 (*Distribution and Under-\$50,000 Track*).
- (c) Track 3 (*Distribution and Over-\$50,000 Track*).

7.8 A Class Member whose claim is presumptively barred by a limitation period shall elect to proceed by Track 3.

7.9. In the Claims Form, a Class Members shall provide the following information:

- (a) his or her name;
- (b) his or her date of birth;
- (c) his or her Social Insurance Number;
- (d) his or her Prison Number;
- (e) his or her inmate classification;
- (f) the correctional institutions in which he or she was incarcerated;
- (g) the admission date and or transfer date to each of the correctional institutions in which he or she was incarcerated;
- (h) the date of placement and the release date for each placement in administrative segregation
- (i) his or her mailing address, email address, and phone numbers, if any;
- (j) for other than Incarcerated Class Members a direction as to how the Class Members should be paid his or her share of the distribution and his or her individual issues award
- (k) an acknowledgement that the Administrator is authorized to contact the Class Member to obtain further information;
- (l) if other than Class Counsel, the name and contact information for the lawyer retained to act for the Class Member;
- (m) a declaration that the information submitted in the Claims Form is true and correct.

7.10 Where the Class Member selects Track 2, he or she may annex to his or her or her Claims Form:

- (a) an affidavit from the Class Member of no more than 30 pages in length, including exhibits, in support of the Track 2 Claim;
- (b) no more than two affidavits of no more than 30 pages in length, including exhibits, from a person who would be qualified to be a Manager/Expert under this Protocol;
- (c) the transcript of any cross-examinations; and,
- (d) a factum of no more than 30 pages.

7.11 Where the Class Member selects Track 3, he or she shall annex to his or her Claims Form a Statement of Claim.

7.12 Within thirty (30) days of its receipt of a copy of the Claims Form, Canada shall send a copy of the Class Member's CSC file to the Manager/Expert assigned the claim.

7.13 Where the Class Member selects Track 2, Canada may also deliver to the Manager/Expert and to the Class Member:

- (a) an affidavit from a representative of the Canada Correctional Service of no more than 30 pages in length, including exhibits, in opposition to the Track 2 Claim;
- (b) no more than two affidavits of no more than 30 pages in length, including exhibits, from a person who would be qualified to be a Manager/Expert under this Protocol;
- (c) the transcript of any cross-examinations; and
- (d) a factum of no more than 30 pages..

Track 1 Claims

7.14 A Class Members who selects Track 1 is entitled to a share in the distribution of aggregate damages if he or she was placed in administrative segregation for more than 15 consecutive days.

7.15 Where a Class Member elects to proceed on Track I, he or she shall be deemed to have released Canada from all other claims arising from his or her placement(s) in administrative segregation.

7.16 Where a Class Member selects Track 1, the Manager/Expert shall determine the Class Member's eligibility to receive a share of the distribution of the Aggregate Damages Award by reviewing the Claims Form and the Class Member's CSC file and the Manager/Expert shall report his or her decision to the parties and the Administrator.

7.17 There is no appeal of the Manager/Expert's decision with respect to a Class Member's eligibility to receive a share of the Aggregate Damages Award.

Track 2 Claims

7.18 A Class Members who selects Track 2 is entitled to a share in the distribution of aggregate damages if he or she was placed in administrative segregation for more than 15 consecutive days.

7.19 Where a Class Member elects to proceed on Track 2, he or she shall be deemed to have released Canada from all claims arising from his or her placement(s) in administrative segregation save for the claims as set out in the damages grid set out below:

Criteria for Award	Award
15-60 days in administrative segregation	Up to \$10,000
More than 60 days in administrative segregation	Up to \$20,000
SMI Eligible	Up to \$10,000
Any one or more of: Post-traumatic stress disorder, Severe Clinical Depression, Self-injurious behavior, substantial degradation in Axis I Disorder (excluding substance use disorders), or substantial degradation of Borderline Personality Disorder ("BPD")	Up to \$20,000

7.20 Where a Class Member selects Track 2, after the parties have delivered their affidavits, a deponent may be summonsed for an out of court cross-examination by the opposing party, with the duration of the cross-examination not to exceed 60 minutes.

7.20 Where a Class Member selects Track 2, the Manager/Expert shall determine the Class Member's eligibility to receive a share of the distribution of the Aggregate Damages Award by reviewing the Claims Form and the Class Member's CSC file and the Manager/Expert shall report his or her decision to the Administrator and the parties.

7.21 There is no appeal of the Manager/Expert's decision with respect to a Class Member's eligibility to receive a share of the Aggregate Damages Award.

7.22 Where a Class Member selects Track 2, the parties are bound by the findings of fact made in the *Brazeau*, *Reddock*, and *Gallone* actions including causation of harm and the Manager/Expert shall inquire into and report to the Ontario Superior Court of Justice or to the Superior Court of Québec his or her findings and conclusions as to the quantum of the individual issues award by reviewing the Claims Form, the Class Member's CSC file, and the affidavits and factums filed by the Class Member and Canada.

7.23 The Manager/Expert shall report his or her decision as to eligibility to the Administrator and the parties and the Manager/Expert's report to the court shall be no more than ten pages in length.

7.24 Where a Class Member selects Track 2, after the Manager/Expert delivers his or her report to the court, either party may move for an Order confirming the Report of the Manager/Expert.

7.25 Where a Class Member selects Track 2, the court may award costs not to exceed \$6,000.

7.26 Damages awarded under Track 2 shall accrue pre-judgment interest at the rate of 5%, calculated from March 3, 2017. Post-judgment interest shall accrue at the rate of 3%, from the date of the Damages award

7.27 The Class Member's share of the gross aggregate damages award is a credit to the payment of the damages awarded under Tracks 2.

7.28 Where the Class Member makes a successful claim under Track 2, Canada shall pay any award to the Administrator within 30 days after the final disposition of the claim.

Track 3 Claims

7.29 A Class Members who selects Track 3 is entitled to a share in the distribution of aggregate damages if he or she was placed in administrative segregation for more than 15 consecutive days.

7.30 Where a Class Member elects to proceed on Track 3, his or her individual issues claim shall be determined in accordance with the Track 3 summary judgment procedure described in this Protocol.

7.31 Where a Class Member selects Track 3, the Manager/Expert shall determine the Class Member's eligibility to receive a share of the distribution of the Aggregate Damages Award by reviewing the Claims Form and the Class Member's CSC file and the Manager/Expert shall report his or her decision to the Administrator and the parties.

7.32 There is no appeal of the Manager/Expert's decision with respect to a Class Member's eligibility to receive a share of the Aggregate Damages Award.

7.33 For Class Members who select Track 3, the Manager/Expert shall determine only the Class Member's eligibility to receive a share of the distribution of aggregate damages and the balance of the claim shall be determined in accordance with the procedures for Track 3.

7.34 Damages awarded under Track 3 shall accrue pre-judgment interest at the rate of 5%, calculated from March 3, 2017. Post-judgment interest shall accrue at the rate of 3%, from the date of the Damages award

7.35 The Class Member's share of the gross aggregate damages award is a credit to the payment of the damages awarded under Tracks 3.

7.36 Where the Class Member selects Track 3, the claim shall proceed by an individual issues summary judgment motion in accordance with the Ontario *Rules of Practice* before a judge of the Ontario Superior Court of Justice save and except for Class Members of *Gallone*, whose summary judgment motion shall proceed before a judge of the Superior Court of Québec in accordance with s. 600 of the Québec *Code of Civil Procedure* as follows:

(a) Within twenty days after the receipt of the Claim Form and the Statement of Claim from the Administrator, Canada shall deliver its Statement of Defence;

(b) Within twenty days after receipt of the Statement of Defence, the Class Member shall deliver:

(i) his or her Reply,

(ii) a Notice of Motion for Summary Judgment, and

(iii) his or her supporting affidavit(s) for the motion.

(c) Within ninety days after receipt of the Class Member's Notice of Motion for Summary Judgment, Canada shall deliver:

(i) an Affidavit of Documents including the Class Member's CSC medical file and CSC inmate file;

(ii) its affidavits to respond to the summary judgment motion.

(d) Within thirty days after receipt of Canada's responding materials, the Class Member may deliver his or her reply affidavits, if any.

(e) After thirty days from the receipt of Canada's responding materials, the Class Member shall bring a motion to fix a timetable for the balance of the summary judgment motion.

7.37 Where a Class Member selects Track 3, the parties are bound by the findings of fact made in the *Brazeau*, *Reddock*, and *Gallone* actions.