

CITATION: Brazeau v. Canada (Attorney General), 2021 ONSC 4294
COURT FILE NO.: CV-15-53262500-CP
Reddock v. Canada (Attorney General), 2021 ONSC 4294
COURT FILE NO.: CV-17-570771-00CP
DATE: 2021/06/14

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**SUPERIOR COURT (Class Action
Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000781-167

Between:

Between:

**CHRISTOPHER BRAZEAU and DAVID
KIFT
Plaintiffs**

**ARLENE GALLONE
Plaintiff**

- and -

c.

**ATTORNEY GENERAL OF CANADA
Defendant**

**PROCUREUR GÉNÉRAL DU CANADA
Defendant**

Proceeding under the *Class Proceedings Act,*
1992

And Between:

**JULLIAN JORDEA REDDOCK
Plaintiff**

- and -

**ATTORNEY GENERAL OF CANADA
Defendant**

Proceeding under the *Class Proceeding Act,*
1992

Date hearing/d'audience: In writing

Counsel:

James Sayce, Charles Hatt, and Nathalie Gondek, for the Plaintiffs in Brazeau and Kift v. Attorney General of Canada

H. Michael Rosenberg, James Sayce, Charles Hatt, Charlotte-Anne Malischewski and Jacob Klugsberg for the Plaintiff in Reddock v. Attorney General of Canada

André Lespérance, Clara Poissant-Lespérance, and Marianne Dagenais-Lespérance for the Demanderesse in Gallone c. Procureur Général du Canada

Susan Gans, Negar Hashemi, Sean Stynes, Lucan Gregory, Diya Bouchédid, Eric Lafrenière and Nicholas Banks for the Defendant ou Défenderesse in: (a) Brazeau and Kift v. Attorney General of Canada; (b) Reddock v. Attorney General of Canada; and (c) Gallone c. Procureur Général du Canada

Lory Beauregard for the Fond d'aide aux actions collective

REASONS FOR DECISION/JUGEMENT – Part 3**MASSE, J. and PERELL, J.****A. Introduction**

[1] Pursuant to the *Class Proceedings Act, 1992*¹, Justice Paul Perell of the Ontario Superior Court of Justice is case managing the Ontario class actions, *Brazeau v. Canada (Attorney General)* and *Reddock v. Canada (Attorney General)*.

[2] Pursuant to the *Québec Code of Civil Procedure*,² Justice Chantal Masse, of the Superior Court of Québec is case managing the Québec class action, *Gallone c. Canada (Attorney General)*.³

[3] This is Part 3 of our jointly written decision or judgment in *Brazeau, Reddock, and Gallone*.⁴ While it is a jointly written decision, it may and should be read as separate decisions of the Ontario Superior Court of Justice and of the Superior Court of Québec.

[4] In Part 1, we prepared a Draft Distribution and Individual Issues Protocol, (the *Draft D&I Protocol*), which was set out in Schedule “D” of that judgment. The protocol was a provisional decision. Part 1 of our joint decision included the invitation to the parties to make submissions in writing before the hearing was concluded and then a final Order would be made by our respective courts.

¹ S.O. 1992, c. 6.

² CQLR, c. C-25.01.

³ C.S.Q Court File No.: 500-06-000781-167.

⁴ *Brazeau v. Canada (Attorney General)*, 2020 ONSC 7229, *Reddock v. Canada (Attorney General)*, 2020 ONSC 7232; *Gallone c. Canada (Procureur Général)*, 2020 *

[5] In Part 2, after we had received and reviewed the written submissions, we released what was to be a final decision. The decision included as a schedule the approved Distribution and Individual Issues Protocol.

[6] After the release of our Part 2 decision, the parties set about settling the terms of the courts formal orders and as a part of that effort, the parties had further consultations about the Protocol, including discussions with the administrator. Those further consultations resulted in consensual revisions to the protocol, which the parties have asked the courts in Ontario and Québec to approval.

[7] In this regard, we received the following letter from the parties:

Justices:

Re: Brazeau and Kift v AGC (CV-15-53262500CP), Reddock v AGC (CV-17-57077100CP), and Gallone v AGC (QSC 500-06-000781-167) Protocol, Notices, and Forms for Court Approval

We write on behalf of the parties in the *Brazeau*, *Reddock*, and *Gallone* matters.

Protocol, Notices, and Forms for Court Approval

First, we write on behalf of the parties to seek the approval of the Courts for the following materials:

Individual Issues Protocol,
Short Form Notice,
Long Form Notice and Claims Form,
Track Selection Form, and
Opt Out Letter.

These documents have been carefully negotiated between the parties, who have benefited from the input of our administrator, Epiq. The parties have already begun working with the administrator to ensure that we are prepared for the commencement of the Claims Period on July 10, 2021, or as soon as practicable, as anticipated in the Protocol.

We note that the parties will need to come back to have a French translated version of these documents to be approved by the Courts. The parties will also be coming back before the Courts to also seek approval of the Terms of Agreement of the Administrator, including the Notice Program, in the next couple of weeks.

We appreciate the Courts' indulgence as we worked to finalize these materials. Should either Court have questions or concerns, the parties would be pleased to make further submissions orally or in writing.

Opt Out Period

Further to the Courts' suggestion, the materials set out above contemplate a process for late optouts. Contrary to Canada's position, Class counsel maintain that qualms about the initial opt out process are better raised as a reply to the defence of *res judicata* in any individual action that class members might pursue. Class Counsel are concerned that opting out of a favourable judgment will result in a denial of access to justice for some class members. Nevertheless, in the interest of compromise, the parties have agreed to an opt-out procedure for class members who were first detained in administrative segregation **after** July 4, 2018 (which coincides with the date of the first notice for opt-out in *Reddock*).

The parties have selected a single period for late opt outs as a matter of pragmatism. Class Counsel believe that if a longer opt out period were available for *Brazeau* Class Members, it would require

them to first demonstrate that they had been diagnosed with, and suffered from, serious mental illness while incarcerated. It is contemplated that this assessment will be performed by a manager/expert under the auspices of the Individual Issues Protocol. The result would be circular: in order to demonstrate eligibility to opt out, class members would be obliged to participate in the very class proceeding that they are seeking to avoid. A similar argument applies in respect of *Gallone* Class Members, insofar as their ability to opt out would depend on the administrator determining that they were not *Reddock* Class members on the basis of 2011-13 detentions in Quebec.

The parties' proposal will leave some Class Members without a right to opt out. There may be *Brazeau* Class Members first detained from December 12, 2016 to July 4, 2018 and *Gallone* Class Members first detained from April 17, 2017 to July 4, 2018 that did not receive an initial opt out right and cannot avail themselves of the late opt out contemplated by the parties. At present, none of the parties is aware of any such individuals who wish to opt out, but the theoretical possibility remains.

Moreover, the parties' proposal would not cause any unfairness to the inmates identified above other than losing their right to choose their preferred court of competent jurisdiction. This is due to the fact that they have already benefited from a judgment in their favor in the Class actions and there is no damages cap in a Track 3 claim. Finally, proceedings before another forum would require them to proceed through a somewhat similar, if not more burdensome, process than a Track 3 claim.

The parties have worked with Epiq to streamline the Claims Form and improve communications with class members. In addition to the logistical difficulties set out above, the parties are concerned that a description of a three-tiered late opt-out structure would be confusing. The parties have therefore agreed to a single late opt out for those first detained in administrative segregation after July 4, 2018. Those wishing to opt out will have 30 days to clearly communicate that intention to the administrator. The parties believe that this is a practical solution that will settle the matter of late opt outs and allow the Claims Period to begin.

The parties respectfully ask that the Courts approve the proposed late opt out provision and endorse the record to indicate that no further opt out provision is required.

The parties thank the Courts for their consideration.

Sincerely,

H. Michael Rosenberg HMR/CAM/lc

cc: Eric Lafreniere, Negar Hashemi, Lucan Gregory - Attorney General of Canada
James Sayce, Nathalie Gondek – Koskie Minsky LLP
Andre Lesperance, Marianne Dagenais – Trudel, Johnston & Lespérance
Charlotte-Anne Malischewski, Jacob Klugsberg - McCarthy Tétrault LLP
Lory Beaugard, Frikia Belogbi – Fonds d'aide aux actions collectives

[8] We are releasing Part 3 to respond to these requests for revisions to the approved protocol and for approval of the ancillary forms.

[9] With revisions with respect to the matter of new opt out rights, a matter we discuss below, below, we grant the parties requests. In the documents set out below, the revisions have been highlighted.

B. Certification and the Right to Opt Out

[10] We shall now explain why we have revised the documents set out below with respect to

increasing the class size.

[11] It would appear that the Crown and the Class Counsel in *Brazeau, Reddock, and Gallone* wish to increase the size of the classes in the three actions. For Class Counsel, the apparent motivation for the change in class size is to provide access to justice to all inmates who have suffered a *Charter* breach because of their confinement in administrative segregation.

[12] For the Crown, the motivation for an increase in Class size would be that only genuine Class Members are bound by the judgment that contains a discharge or a release of all liability beyond that established by the judgment or settlement.

[13] The Crown's conduct is typical of Defendants who seek to minimize class size at certification but later seek to increase class size for the purposes of increasing the availability of the releases or the discharges of liability that are consequent upon a settlement or a judgment.

[14] With the aspirations of both parties to increase class size, there is now a question of how for this to be achieved.

[15] In so far as class membership is concerned, Ontario and Québec operate on an opt-out regime. In other words, persons who are defined to be putative Class Members automatically become Class Members unless they exercise a right to opt-out.

[16] If a putative Class Member opts out, then he or she is not bound by the judgment or the settlement and is free to exercise their litigation autonomy to sue the defendant if they are inclined to do so and assuming their individual claims are not statute-barred. If a putative Class Member opts out of limitation periods resume running and may bar the individual action.)

[17] With respect to opt-out rights, it should be noted that typically a putative Class Member is provided with an opportunity to opt-out after certification, which is typically before there is a judgment or settlement of the case. At that juncture of the proceedings, if the putative Class Member does not opt-out, then he or she is taken to be committed to the outcome of the class proceeding, win, lose, settlement, or discontinuance.

[18] For present purposes, it should also be noted again that, as frequently occurs in class actions, where there is a post-certification settlement or judgement, the Crown, who before certification, labored mightily to minimize class size, now wishes to have the class definition enlarged. Typically, this requires an amendment to the class definition at least with respect to the class period.

[19] When a class definition is amended for settlement purposes, the court will provide the new putative Class Members with a right to opt out. At this juncture being post settlement, of course, the decision of the new putative Class Members to opt out will be guided by knowing more precisely the risk of participating or not participating in the class proceedings.

[20] For present purposes, it should be emphasized that under an opt-out regime, typically a person is given an opportunity to opt-out by receiving notice of the certification of the action or by receiving notice of the certification of the action for settlement purposes. These notices of certification will explain that the putative Class Member need do nothing if he or she wishes to participate in – and be bound by – the class proceeding and they will specify what the putative Class Member must do if he or she does not wish to participate in or be bound by the class proceeding.

[21] These background observations bring the discussion back to the immediate case where (a)

putative Brazeau Class Members detained in administration after December 12, 2016, (b) putative Gallone Class Members detained in administrative segregation after April 17, 2016, and (c) putative Reddock Class Members detained in administrative segregation after July 4, 2018 have not received notice of the class proceedings in which they could be putative Class Members. It is these putative Class Members that both the Crown and Class Counsel wish to bring into the distribution and individual issues protocol.

[22] For pragmatic reasons apparently associated with the difficulties of satisfying all of the elements of the *Brazeau* definition for class membership, the parties have agreed to an opt-out procedure for Class Members in any of the three class actions that were first detained in administrative segregation after July 4, 2018. These persons will be given an opportunity to opt out.

[23] However, the pragmatic reasons advanced by the parties are incorrect, and the proper approach is to give a renewed right to opt out to all inmates who were detained in administrative segregation after December 12, 2016 who have not previously had an opportunity to opt out.

[24] The fallacy in the pragmatic reasoning of the parties is that a putative Class Member does not have to establish if he or she is a putative class member to opt out. Rather, a putative Class Member is simply given notice and if the Class Member does not opt out, then he or she is treated as a class member until his or her eligibility for membership is challenged. Eligibility to participate in a settlement or to be bound by a judgement is determined later when the Class Members opt-in to participate in the settlement or to participate in the judgment (the Distribution and Individual Issues Protocol), as is the situation in the immediate case.

[25] Thus, in the circumstances of the immediate cases of *Brazeau*, *Gallone*, and *Reddock*, the proper approach to increasing the class size is to give the putative Class Members who were detained in administrative segregation after December 12, 2016 and who have not previously had an opportunity to opt-out a first-time opportunity to opt out.

[26] In the immediate case, it is extremely unlikely that new putative Class Members will opt out, because the usual reason to opt out is that they wish to bring an individual action represented by the lawyers of their own choosing, but that is a right that is available to them under the Distribution and Individual Issues protocol with the added benefit that they would get a share of the distribution of the aggregate damages award that has already been awarded.

[27] It should be noted that the notice will be given to all putative Class Members who were detained after December 12, 2016 but only those who have not already had an opportunity to opt out will have a right to opt out.

[28] It is for the above reasons that we have modified the following documents that we hereby approve.

C. Distribution and Individual Issues Protocol

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*.
- 1.2. This Protocol may be amended by further order of the Court.
- 1.3. In this Protocol:
- a. “Administrative segregation” means a placement in segregation pursuant to sections 31 to 37 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20.
 - b. “Canada” means the Defendant, the Attorney General of Canada.
 - c. “Class Counsel” means:
 - i. Koskie Minsky LLP in *Brazeau*;
 - ii. McCarthy Tétrault LLP and Koskie Minsky LLP in *Reddock*; and
 - iii. Trudel Johnston & Lespérance in *Gallone*.
 - d. “Court” means the Ontario Superior Court of Justice or the Superior Court of Québec.
 - e. “CSC” means the Correctional Service of Canada.
- 1.4. For this Protocol, “Class Member” and “Class” are defined as set out by the Courts in *Brazeau*, *Reddock*, and *Gallone* respectively:
- a. *Brazeau*.⁵
 - i. All offenders in federal custody, who were placed in administrative segregation in a federal institution situated outside Québec after February 24, 2013, or who were placed in administrative segregation in a federal institution anywhere in Canada before February 24, 2013, who were diagnosed by a medical doctor with an Axis I Disorder (excluding substance use disorders), or Borderline Personality Disorder, who suffered from their disorder, in a manner described in Appendix A, and reported such during their incarceration, where the diagnosis by a medical doctor occurred either before or during incarceration in a federal institution and the offenders were incarcerated between November 1, 1992 and the present, and were alive as of July 20, 2013.
 - ii. Appendix A: Significant impairment in judgment (including inability to make decisions; confusion; disorientation); Significant impairment in thinking (including constant preoccupation with thoughts, paranoia; delusions that make the offender a danger to self or others); Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders, staffs or follow correctional plan); Significant impairment in communications that interferes with ability to effectively interact with other offenders, staff or follow correctional plan; Significant impairment due to anxiety (panic attacks; overwhelming anxiety) that interferes with ability to effectively interact with other offenders, staff or follow correctional plan; Other symptoms: hallucinations; delusions; severe obsessional rituals that interferes with ability to effectively interact with other offenders, staff or follow correctional plan; Chronic and severe

⁵ Consent Order, dated March 15, 2019; see also *Brazeau v. Canada (Attorney General)*, 2020 ONSC 7229, at paras. 27-28.

suicidal ideation resulting in increased risk for suicide attempts; Chronic and severe self-injury; or A GAF score of 50 or less.

b. *Reddock*:⁶

- i. All persons, except Excluded Persons, as defined below, who were involuntarily subjected to a period of Prolonged Administrative Segregation,⁷ as defined below, at a Federal Institution, as defined below, after November 1, 1992, and were alive as of March 3, 2015 (“the Class”);
- ii. Excluded person are: (i) All offenders incarcerated at a Federal Institution who were diagnosed by a medical doctor with an Axis I Disorder (excluding substance abuse disorders), or Borderline Personality Disorder, who suffered from their disorder in a manner described in Appendix “A”, and reported such during their incarceration, where the diagnosis by a medical doctor occurred either before or during incarceration in a federal institution and the offenders were incarcerated between November 1, 1992 and the present and were alive as of July 20, 2013; and (ii) All persons who were involuntarily subjected to Prolonged Administrative Segregation, as defined below, only at a Federal Institution situated in the Province of Québec after February 24, 2013. Persons who were involuntarily subjected to Prolonged Administrative Segregation at Federal Institutions situated in Québec and another Canadian province, or at a Federal Institution situated in Québec prior to February 24, 2013, are not Excluded Persons.
- iii. Defined terms are: (i) “Administrative Segregation” is defined as sections 31 to 37 of the Corrections and Conditional Release Act, S.C. 1992, c. 20; (ii) “Prolonged Administrative Segregation” is defined as the practice of subjecting an inmate to Administrative Segregation for a period of more than fifteen (15) consecutive days; (iii) “Federal Institutions” are defined as the system of Federal correctional facilities across Canada that is administered by the Correctional Service of Canada, a Federal Government body.

c. *Gallone*:⁸

- i. Class members in prolonged administrative segregation: All persons held in administrative segregation, after February 24, 2013 of more than 15 days, in a federal correctional facility situated in Quebec, including consecutive periods totalizing of more than 15 days separated by periods of less than 24 hours;
- ii. Class members with mental health disorders: All persons held in administrative segregation after February 24, 2013 in a federal correctional facility situated in Quebec who were, prior to or during such administrative segregation, diagnosed by a medical doctor either prior to or during such administrative segregation with an Axis I Disorder (excluding Substance Use Disorders), or Borderline Personality Disorder, who suffered from their disorder, in a manner described at Appendix A, and reported such prior to or during their stay in administrative segregation.
- iii. Appendix A: Significant impairment in judgment (including inability to make decisions; confusion; disorientation); Significant impairment in thinking (including constant preoccupation with thoughts, paranoia; delusions that make the offender a danger to self or others); Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders, staffs or follow correctional plan); Significant impairment in communications that interferes

⁶ *Reddock* Judgement, Aug. 29, 2019, Ontario Superior Court, No: CV-18-570771-00CP (entered October 22, 2019).

⁷ Even though the class definition was not expressly amended to include voluntary placements, it was effectively amended in the summary judgment reasons and confirmed by the Ontario Court of Appeal (Summary Judgment, at 272 and 273; *Brazeau v. Canada (Attorney General)*, 2020 ONCA 184, para. 29) such that the “involuntary” requirement was eliminated by operation of law.

⁸ Case Management Order, dated September 10, 2020; See also *Brazeau v. Canada (Attorney General)*, 2020 ONSC 7229, at para. 60.

with ability to effectively interact with other offenders, staff or follow correctional plan; Significant impairment due to anxiety (panic attacks; overwhelming anxiety) that interferes with ability to effectively interact with other offenders, staff or follow correctional plan; Other symptoms: hallucinations; delusions; severe obsessional rituals that interferes with ability to effectively interact with other offenders, staff or follow correctional plan; Chronic and severe suicidal ideation resulting in increased risk for suicide attempts; Chronic and severe self-injury; or A GAF score of 50 or less.

- 1.5 The Court applied a presumptive six-year limitation period to *Reddock* and *Brazeau*, resulting in class period start dates of: *Reddock* – March 3, 2011; *Brazeau* – July 20, 2009.⁹
- 1.6 The Court extends the class definitions in *Reddock* and *Brazeau* past the summary judgments until November 30, 2019, the date on which Administrative Segregation, as defined at 1.3(a), ended. The class definition in *Gallone* already extends until November 30, 2019.
- 1.7 For this Protocol, “Incarcerated Class Member” means a Class Member during the period from March 3, 2011 to present and who remains incarcerated in a federal correctional institution.
- 1.8 For this Protocol, it shall be considered one placement with consecutive days in segregation if the placements are: (1) separated by 24 hours or less, or (2) interrupted by a transfer to another institution and continued after the transfer.
- 1.9 Nothing in this Protocol precludes the parties from settling a claim proceeding on Tracks 2 or 3 of the Protocol.
- 1.10 Nothing in this Protocol precludes the parties from applying for an amendment to the protocol. The parties may consent to procedural modifications to the protocol, such as extensions of time for certain steps without requiring court approval, as long as such changes do not substantively affect the rights and remedies provided for in the Protocol.

2. Retainer of Class Counsel

- 2.1 Unless the Claimant in their Claim Form elects to be self-represented or provides the name and contact information for the lawyer retained to act for the Claimant, Class Counsel shall continue to have a solicitor and client relationship with the Claimant.
- 2.2 If a Claimant selects Track 1, then Class Counsel or the lawyer retained to act for the Claimant cannot charge for their services for the Claimant with respect to the Track 1 claim.
- 2.3 If a Claimant selects Track 2 or 3 and does not retain the services of another attorney, no Power of Attorney need be signed for Class Counsel to obtain the Claimant’s CSC file.
- 2.4 Subject to the Court’s approval, if a Claimant selects Track 2, Class Counsel or the lawyer retained to act for the Claimant may charge a fee for services with respect to the Track 2 claim, with such fee not to exceed 15% of the damages awarded plus reasonable disbursements, and any award of costs made in favour of the Claimant.
- 2.5 If the Claimant selects Track 3, the Class Counsel or the lawyer retained to act for the Claimant may charge a fee for their services as may be approved by the court.

3. Administrator

- 3.1 “Administrator” means Epiq, or such other administrator as the courts may appoint from time to time on a motion by either party.

⁹ *Brazeau v Canada*, 2019 ONSC 1888 at para 18; *Reddock v Canada*, 2019 ONSC 5053 at para 235.

- 3.2 Canada shall transfer the Aggregate Damages Award to the Administrator, in trust. The Administrator shall invest the Award at a Bank listed in Schedule I of the Bank Act, S.C. 1991, c. 46.
- 3.3 No later than June 10, 2021, 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 who was placed in administrative segregation during the class periods of *Brazeau, Reddock, and Gallone*:
- a. their name;
 - b. their Finger Print Section number; and
 - c. the date of placement and the release date for each placement in administrative segregation together with the corresponding correctional institution(s) where the administrative segregation placement(s) took place.
- 3.4 The Administrator shall distribute the Notice and the Claims Form approved by the Court in accordance with the Notice Program set out in Section E of this Protocol.
- 3.5 Where mail to a Claimant is returned to the Administrator as undeliverable, the Administrator shall have no responsibility for locating the Claimant.
- 3.6 The Administrator shall provide a bilingual (English and French) toll-free support line to assist Claimants, family, or guardians, or other persons who make inquiries on behalf of Claimants.
- 3.7 Subject to measures to combat Covid-19 and applicable security restrictions, Canada shall provide to the Administrator and Class Counsel reasonable access to Claimants in federal correctional facilities for the purpose of hosting information sessions about the case.
- 3.8 Upon receipt of a Claims Form, the Administrator shall upload the Claims Form to the Database (defined below) and examine the form to determine if it is complete, and if it is not complete, the Administrator may contact the Claimant to obtain further information to complete the Form, if possible to do so. The Administrator will have discretion to accept minor deficiencies. Claimants will have sixty (60) days from the date on which they are contacted to address any identified deficiencies, failing which the Administrator will provide in writing its refusal to the Claimant.
- 3.9 Once the Administrator has identified the Claimant in the electronic spreadsheet, it will further complete the Claimant's file in the Database with the date of placement and the release date for each placement in administrative segregation together with the corresponding correctional institution(s) where the administrative segregation placement(s) took place.
- 3.10 The Administrator will determine each Claimant's eligibility to a share of the Aggregate Damages with the information provided in each Claimant's Database file.
- 3.11 There is no appeal of the Administrator's decision with respect to a Claimant's eligibility to receive a share of the Aggregate Damages Award.
- 3.12 For Track 1 Claims, the Administrator shall pay the Claimant's share of the Aggregate Damages Award within sixty (60) days after it has determined all timely eligible Claims Forms.
- 3.13 For Track 2 and Track 3 Claims, the Administrator shall hold the Claimant's share of the Aggregate Damages Award in trust pending the completion of the Claimant's Track 2 or Track 3 Claim, after which the Administrator shall pay the Claimant their share.
- 3.14 For Track 2 and Track 3 Claims, the Administrator shall pay:

- a. Any amounts owing to the Class Proceedings Fund, **if any**, or the Fonds d'aide aux actions collectives¹⁰ including reimbursement for disbursements.
 - b. Class Counsel's and/or the lawyer retained by the Claimant's fee; and
 - c. The balance of the damages award, along with the Claimant's share of the Aggregate Damages Award, to the Claimant.
- 3.15 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, in conformity with C.c.p. and with the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*.
- 3.16 The Administrator shall pay any monies owing to a Class Member who is incarcerated in a federal correctional institution to their prisoner account, unless the Class Member directs otherwise.
- 3.17 The Administrator may, but is not required to, reissue payments to a Class Member that were returned as undeliverable.
- 3.18 The Administrator shall comply with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000 c. 5.
- 3.19 After the distribution of:
- a. The Aggregate Damages Award;
 - b. Any awards for Track 2 or 3 Claimants; and
 - c. Any cy-près payments;
- the Administrator shall apply to be discharged and shall file with the court a report containing its best information respecting the following:
- a. The total number of Class Members.
 - b. The number of Claimants who received notice associated with the distribution, and a description of how notice was given.
 - c. The number of Claimants who made a claim pursuant to Track 1, 2, or 3 respectively.
 - d. The amounts distributed to Class Members and others and a description of how the awards were distributed.¹¹
 - e. The administrative costs associated with the distribution of the award.
- 3.20 Any party or the Administrator may move to have any part of this report placed under seal.

¹⁰ Pursuant to article 1 (3) of the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives* F3.2.0.1.1, r. 2, the Fonds d'aide aux actions collectives' following percentage shall be calculating on the difference between the total award and the aggregated damages award (if eligible), (a) 2% from any liquidated claim less than \$2,000; (b) 5% from any liquidated claim exceeding \$2,000 but less than \$5,000; (c) 10% from any liquidated claim exceeding \$5,000.

¹¹ Those amounts shall include all the information provided for in article 59 al.2 of the *Règlement de la Cour supérieure du Québec en matière civile*.

- 3.21 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.
- 3.22 The reasonable fees and expenses of the Administrator under this Protocol shall be paid by Canada as approved by the court.

4. Database

- 4.1 By July 10, 2021, the Administrator shall develop a secure database in consultation with CSC for all Claimants' documents and information (the "Database").
- 4.2 Each Claimant's file in the Database shall contain the information provided in the Claim Forms, the relevant portions of the Claimant's information contained in the electronic spreadsheet, the choice of the selected Track, as well as all documents exchanged between a Claimant and Canada, as authorized by the Claimant pursuant this Protocol.
- 4.3 Canada shall have secure access to all Database files, as authorized by the Claimant pursuant to this Protocol.
- 4.4 Counsel shall have secure access to the Database files of the Claimants they represent, as authorized by the Claimant pursuant to this Protocol.
- 4.5 The Managers/Experts shall have secure access to the Database files of the Claimants' files that they are assigned to assess, as authorized by the Claimant pursuant this Protocol.
- 4.6 The transmission and access of all documents shall be made via the Database. In cases where the Claimant is self-represented, the Administrator shall provide the Claimant an alternative means to transmit and access all documents related to their claim.

5. Notice

- 5.1 In this Protocol, "Notice" means the Notice of Judgment in *Brazeau, Reddock, and Gallone* in English that has been approved by the court and a French translation thereof, which will be prepared by the Administrator.
- 5.2 The Administrator shall make the availability of French and English versions of the Notice known to Claimants.
- 5.3 The reasonable cost of the Notice and the Notice Program shall be paid by Canada.
- 5.4 Class Counsel shall post the Notice and the Claims Form on their websites.
- 5.5 The Administrator shall post the Notice and the Claims Form on its website and provide any other form of notice agreed to by Class Counsel and Canada, such as advertisements on social media and the circulation of a press release approved by Class Counsel and Canada.
- 5.6 The Administrator shall provide the Notice and the Claims Form to any Claimant who requests it, together with a postage paid return envelope.
- 5.7 By July 10, 2021, the Administrator shall distribute the Notice and the Claims Form to all offices of:
- a. Elizabeth Fry Society;
 - b. John Howard Society;
 - c. Aboriginal Legal Services;

- d. West Coast Prison Justice Society Prisoners' Legal Services;
 - e. Association des services de réhabilitation sociale du Québec; and
 - f. Community-based residential facilities.
- 5.8 By July 10, 2021, Canada shall provide or instruct the Administrator to provide the Notice and Claims Form, together with a postage paid return envelope, to every person incarcerated in a federal correctional institution at the time the Notice is posted whom Canada's records show has spent time in Administrative Segregation after July 20, 2009, and Canada shall make available reasonable facilities for Claimants to complete the Claims Form.
- 5.9 By July 10, 2021, Canada shall post the Notice and a reasonable quantity of the Claims Forms together with a postage paid return envelope in a conspicuous place within the common areas of each federal correctional institution, and make available reasonable facilities for Claimants to complete the Claims Form.
- 5.10 Canada shall make Claims Forms available and provide postage paid return envelopes to every federal parole office and every federal community correctional centre in Canada. 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/community correctional centre, and the Canada shall provide facilities at the parole office/community correctional centre for offenders to complete the Claims Form.

6. Manager / Experts

- 6.1 In this Protocol, "Roster" means the group of Manager/Experts appointed by the parties or by the court for Track 2 claims to inquire into and report to the Ontario Superior Court of Justice or to the Superior Court of Québec their findings and conclusions as to:
- a. whether a claimant meets the *Brazeau* class definition;
 - b. the degree of pain and suffering experienced by a class member while in administrative segregation.
 - c. To the extent possible, the Manager-expert will identify whether the degree of such pain and suffering is low, medium or high;
 - d. whether or not the placement in Administrative segregation caused or contribute to cause any of the following:
 - 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").
- 6.2 No later than one hundred and twenty (120) days from the court approval of the Notice and Claims Form, Class Counsel and Canada shall constitute the Roster of Managers/Experts, to be managed/supported by the Administrator, 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 qualified professional, agreed upon by the parties or failing that selected by the Court, drawn from the following groups:
- a. a person licensed to practice medicine in any Canadian jurisdiction;
 - b. a person licensed to practice clinical or forensic psychology in any Canadian jurisdiction;
 - c. a person licensed as a registered nurse in any Canadian jurisdiction, with significant and recent experience in mental health; or

- d. a person registered as a clinical social worker (Master of Social Worker) in any Canadian Jurisdiction.
- 6.4 After a Manager/Expert's report is released, Canada shall pay the Manager/Expert \$5,000 for a Track 2 decision and report and \$1,000 for a Track 3 Serious Mental Illness (SMI)¹² qualification report.
 - 6.5 The Manager/Experts shall select someone from the Roster of Manager/Experts to act as the Lead Manager/Expert to provide administrative oversight.
 - 6.6 The Lead Manager/Expert shall be paid an additional honorarium of \$40,000 for the administrative work, the quantum of which may be reviewed on agreement by the parties or failing that, by the Court, should these administrative duties prove more significant than the honorarium fairly compensates.

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; and
 - c. 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 Administrator.
- 7.3 "Claims Form" means the electronic or paper claims form in English or in French that a Claimant must complete and submit before the Claims Filing Deadline to participate in the distribution of the aggregate damages and to have their 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 Claimant may submit a Claims Form to the Administrator.
- 7.6 After the Claims Filing Deadline, with leave of the court, Claimants may be provided up to one hundred and eighty (180) additional days to file Claims Forms with Track 2 or 3 submissions, and leave shall be granted only if the Claimant establishes that the failure to file a timely Claims Form was due to circumstances beyond their control or that provide a reasonable explanation for the delay.
- 7.7 A Claimant whose claim is presumptively barred by a limitation period shall elect to proceed by Track 3.
- 7.8 In the Claims Form, a Claimant shall provide the following information:
 - a. Their name;
 - b. Their date of birth;
 - c. Their Finger Print Section number;

¹² As per the definition in *Brazeau*.

- d. Their mailing address, email address, and phone numbers, if any;
 - e. For other than Incarcerated Claimants, a direction as to how the Claimants should be paid their share of the distribution and their individual issues award;
 - f. An acknowledgement that the Administrator is authorized to contact the Claimant to obtain further information;
 - g. Their election to:
 - i. be a self-represented Claimant;
 - ii. appoint a new lawyer to act for them along with the name and contact information for the new lawyer; or
 - iii. continue to be represented by Class Counsel;
 - h. An acknowledgment that CSC is authorized to upload relevant information in the Claimant's CSC file to the shared Database, for disclosure to the Administrator, counsel for the Department of Justice, the Claimant's retained counsel, the Manager/Expert assigned to their claim, and or to the Court;
 - i. A declaration that the Claimant meets the class definition as defined in *Brazeau*, if applicable; and
 - j. A declaration that the information submitted in the Claims Form is true and correct.
- 7.9 Within thirty (30) days of receipt of a Claims Form the Administrator shall make best efforts to determine if the Claimant is eligible to receive a share of the Aggregate Damages and shall notify the Claimant that a Track Selection should be made. If the Claimant is self-represented, the Administrator will also provide the Claimant with a Track Selection Form at the same time it provides the Tier A Disclosure referred to at 8.1.
- 7.10 If a Claimant is not eligible to receive a share of the Aggregate Damages Award, but had any placement in administrative segregation after July 20, 2009 and has declared in the Claims Form to meet the *Brazeau* Class definition, the Administrator will notify or provide a Track Selection Form in the manner described at 0.
- 7.11 If a Claimant is not eligible to receive a share of the Aggregate Damages Award, but had any placement in administrative segregation after July 20, 2009 and has not declared in the Claims Form to meet the *Brazeau* Class definition, the Administrator will contact the Claimant to determine if they claim to have a diagnosis of mental illness during the time of their incarceration. If they claim to have such a diagnosis, the Administrator shall notify or provide a Track Selection Form in the manner described at 0.
- 7.12 If a Claimant submitted a Claims Form, but has no placements that would make that person eligible for the *Reddock*, *Brazeau*, or *Gallone* classes, the Administrator will provide in writing its refusal to the Claimant. Such a refusal letter shall also include the following language, which may be varied on consent of the parties: "If you want to make a claim for time spent in administrative segregation *before* July 20, 2009 and you have serious mental illness, or if you want to make a claim for time spent in administrative segregation *before* March 3, 2011 and you do not have serious mental illness, you or your representative must write to the Administrator. To succeed with any such claim, you will have to show that you were under a legal disability and could not start a lawsuit. Class Counsel may be able to assist you in making such a claim".
- 7.13 Within thirty (30) days of receipt of a Claims Form, the Administrator shall provide eligible access to the Claimant's Database files to the parties, under reserve of 4.6.

8. Two Tier Disclosure

- 8.1 Within ninety (90) days of CSC having been notified of receipt of an eligible Claim Form, and having been provided access to a new Claimant's Database files, CSC shall make best efforts to upload the following documents, which are relevant to making the determination of which Track to select ("Tier A Disclosure"):
- a. Psychological for segregation reports;
 - b. Psychological activity notes;
 - c. Administrative segregation immediate needs suicide checklists;
 - d. Alerts, flags, and needs relating to the Claimant's mental health;
 - e. Memo to file re: Critical Response Incident Management Plan;
 - f. Memo to file re: Regional Treatment Centre initial treatment plan summary reports;
 - g. Memo to file re: Regional Treatment Centre discharge summary;
 - h. The Claimant's Correctional Plan; and
 - i. Documents and reports relating to the Administrative Segregation Review Board.
- 8.2 Should a Claimant determine that their Tier A Disclosure is insufficient to make a Claims Track selection, the Claimant may request further disclosure from CSC by submitting a written request to the Administrator. The Claimant shall endeavour to make any such request within ninety (90) days of the Tier A Disclosure being made available to the Claimant, and shall be as precise as possible in their request. The CSC shall make best efforts to upload the additional documents within sixty (60) days of notification of the request.
- 8.3 The Claimant shall return a completed Track Selection Form to the Administrator in writing or electronically within ninety (90) days of the Tier A Disclosure, or 30 days after the additional disclosure requested, being made available to the Claimant. If the Claimant fails to submit the Track Selection Form within this timeframe, the Administrator will either: (a) deem the Claimant to have selected Track 1, or (b) will discontinue the claim and notify the parties if the Administrator has determined the Claimant is not eligible to a share of the aggregate damages.
- 8.4 For Claimants who advise that they select Track 2 or Track 3, within sixty (60) days CSC shall make best efforts to upload into the Claimant's Database file additional relevant documents within a period of one year prior to and three years after the Claimant's placement in Administrative segregation, whether paper or electronic, that are contained within the following CSC file banks ("Tier B Disclosure"):
- a. The Claimant's Case Management file;
 - b. The Claimant's Health Care file;
 - c. The Claimant's Discipline and Dissociation file;
 - d. The Claimant's Regional Treatment Centre file(s), if any; and
 - e. The Claimant's Psychology file.
- 8.5 Should a Claimant determine that their Tier B Disclosure is insufficient to make a Claims Track selection, the Claimant may request further disclosure from CSC by submitting a written request to the Administrator. The Claimant shall endeavour to make any such request within ninety (90) days of receipt of their Tier B Disclosure and shall be as precise as possible in their request. The CSC shall make best efforts to upload the additional documents within ninety (90) days of notification of the request.

- 8.6 In circumstances where CSC has already been released of a Claimant's rights for compensation with respect to their placement in administrative segregation, CSC may move before the court, on notice to the Claimant, to have the Claimant excluded from the benefit of any award or the possibility to make any Track selection in the class actions.
- 8.7 The Administrator shall report their decision respecting the Claimant's eligibility to receive a share of the Aggregate Damages Award to the parties who shall report that decision to the Court.

9. Track 1 Claims

- 9.1 A Claimant who selects Track 1 is entitled to a share in the distribution of aggregate damages if they were placed in administrative segregation for more than fifteen (15) consecutive days on or after March 3, 2011.
- 9.2 Where a Claimant elects to proceed on Track 1, they shall be deemed to have released Canada from all other claims arising from their placement(s) in administrative segregation.
- 9.3 Where a Claimant selects Track 1, the Administrator shall determine the Claimant's eligibility to receive a share of the distribution of the Aggregate Damages Award by reviewing the information in their Database File.

10. Track 2 Claims

- 10.1 With regards to Track 2 Claims, Claimants' asserted class membership shall determine whether the Quebec Superior Court or the Ontario Superior Court shall review their file. Where the Claimant can assert class membership in both *Gallone* and *Reddock* or *Gallone* and *Brazeau*, the location of their first placement in administrative segregation shall determine whether the Quebec Superior Court or the Ontario Superior Court shall review their file.
- 10.2 This determination will also govern allocation of funds to the Fonds d'aide aux actions collectives, which is entitled to a levy on all claims reviewed by the Superior Court of Quebec pursuant to 10.1 a.
- 10.3 A Claimant who selects Track 2 is entitled to a share in the distribution of aggregate damages if they were placed in administrative segregation for more than fifteen (15) consecutive days on or after March 3, 2011.
- 10.4 Where a Claimant elects to proceed in Track 2, they shall be deemed to have released Canada from all claims arising from their placement(s) in administrative segregation save for the claims as set out in the damages grid set out below ("Damages Grid"):

CRITERIA FOR AWARD	AWARD
16-29 consecutive days in administrative segregation	Up to \$5,000
30-44 consecutive days in administrative segregation	Up to \$7,500
45-80 consecutive days in administrative segregation	Up to \$10,000
81-100 consecutive days in administrative segregation	Up to \$15,000
More than 100 consecutive days in administrative segregation	Up to \$20,000
Additional damages if SMI Eligible, as defined in <i>Brazeau</i>:	

If Manager/Expert determines that level of harm is low	Up to \$5,000
If Manager/Expert determines that level of harm is medium	Up to \$7,500
If Manager/Expert determines that level of harm is high	Up to \$10,000
Additional damages for 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”):	
If Manager/Expert determines that level of harm is low	Up to \$10,000
If Manager/Expert determines that level of harm is medium	Up to \$15,000
If Manager/Expert determines that level of harm is high	Up to \$20,000

10.5 The process for making a Track 2 claim shall be as follows:

- a. Within sixty (60) days of the Tier B disclosure or further disclosure under 0 being made available to the Claimant, the Claimant shall file with the Administrator:
 - i. An Affidavit from the Claimant of no more than thirty (30) pages in length, including exhibits, in support of the Track 2 Claim and
 - ii. A concise Position Statement of no more than twenty (20) pages.
 - iii. The Claimant may also file an Affidavit from one (1) expert of no more than thirty (30) pages in length, including exhibits.
- b. The Administrator shall then upload the Claimant’s documents into the Database, and notify the parties.
- c. Within sixty (60) days of being notified by the Administrator, CSC may file with the Administrator:
 - i. An Affidavit from a representative of the CSC of no more than thirty (30) pages in length, including exhibits, in support of the Track 2 Claim;
 - ii. An Affidavit from one (1) expert of no more than thirty (30) pages in length, including exhibits; and
 - iii. A concise Position Statement of no more than twenty (20) pages.
 - iv. The Administrator shall upload CSC’s documents into the Database, and notify the parties.
- d. Within fifteen (15) days of the completion of 0(0), the parties shall inform each other and the Administrator, whether or not they intend to engage in cross-examinations, who they intend to examine, and whether these examinations will be oral or written. Any such examinations shall be limited to sixty (60) minutes of questions per party or the equivalent in written interrogatories and must be completed within sixty (60) days. Where examinations of experts are conducted, such examinations shall be completed by way of written interrogatories, unless the parties consent to oral examinations.
- e. Within sixty (60) days of any election to engage in cross-examinations, if one is made, the parties must also file with the Administrator and serve on each transcripts of any such cross-examinations or copies of written interrogatories they conducted. The parties may also file with the Administrator and serve

on each other concise Position Statements Addendum on Cross-Examinations of no more than ten (10) pages.

- f. Within ten (10) days of confirmation that no cross-examinations will be conducted or receipt of copies of transcripts from cross-examinations or copies of written interrogatories, whichever is later, the Administrator will assign a Manager/Expert to assess the Claimant's file and will provide access to the Manager/Expert to the Claimant's Database file and all materials filed pursuant to section 0.
- 10.6 Where a Claimant selects Track 2, the parties are bound by the findings of fact made in the *Brazeau*, *Reddock*, and *Gallone* actions including general 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 their findings and conclusions respecting the Claimant's SMI eligibility and any other harm identified in the Damages Grid by reviewing the Claims Form, the documents disclosed in the Claimant's Database file, the affidavits and factums filed by the Claimant and Canada and any related transcripts of cross-examination or expert reports filed by the parties.
 - 10.7 The Manager/Expert shall report their findings with respect to 6.1 on the basis of their consideration of the materials outlined in 0 to the Court, including the appropriate damages quantum per the Damages Grid, in a report, which shall be no more than ten (10) pages in length to be delivered within ninety (90) days of the filing of the parties' Position Statements. The Court shall accept the report for filing under seal.
 - 10.8 After the Manager/Expert delivers their report to the court and the Administrator, either party may move by motion for an Order confirming the Report of the Manager/Expert and may at this point move to have any part of the record remain sealed. The other party may file submissions in response to the confirmation motion.
 - 10.9 Where a Claimant selects Track 2 and is proceeding before the Ontario Superior Court of Justice, the Court may award costs not to exceed \$6,000, plus reasonable disbursements. Where a Claimant selects Track 2 and is proceeding before the Quebec Superior Court of Justice, there will be no award of costs for either party.
 - 10.10 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.
 - 10.11 The Claimant's share of the gross Aggregate Damages award is a credit to the payment of the damages awarded under Track 2.
 - 10.12 Where the Claimant makes a successful claim under Track 2, Canada shall pay any award to the Administrator within forty-five (45) days after the final disposition (including appeal periods) of the claim.

11. Track 3 Claims

- 11.1 With regards to Track 3 Claims, Claimants' asserted class membership shall determine whether the Quebec Superior Court or the Ontario Superior Court will review their file, and the applicable procedural rules. Where the Claimant can assert class membership in both *Gallone* and *Reddock* or *Gallone* and *Brazeau*, the location of their first placement in administrative segregation shall determine whether the Quebec Superior Court or the Ontario Superior Court shall review their file.
- 11.2 This determination will also govern allocation of funds to the Fonds d'aide aux actions collectives, which is entitled to a levy on all claims reviewed by the Superior Court of Quebec pursuant to section 11.1.
- 11.3 A Claimant who selects Track 3 is entitled to a share in the distribution of Aggregate Damages if they were placed in administrative segregation for more than fifteen (15) consecutive days on or after March 3, 2011.
- 11.4 Where a Claimant elects to proceed on Track 3, their individual issues claim shall be determined in accordance with the Track 3 summary judgment procedure described in this Protocol.

- 11.5 Where a Claimant selects Track 3, the Administrator shall report their decision respecting the Claimant's eligibility to receive a share of the Aggregate Damages Award to the parties who shall report that decision to the Court.
- 11.6 Where a Class Member selects Track 3 and has only been placed in Administrative segregation during a Class period for fifteen (15) consecutive days or fewer, the Manager/Expert shall determine whether the claimant is considered a SMI and report their decision to the court.
- 11.7 There is no appeal of the Administrator's decision with respect to a Claimant's eligibility to receive a share of the Aggregate Damages Award.
- 11.8 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.
- 11.9 The Claimant's share of the gross Aggregate Damages Award is a credit to the payment of the damages awarded under Track 3. The balance of the claim shall be determined in accordance with the procedures for Track 3.
- 11.10 Where the Claimant selects Track 3, pursuant to 11.1, the claim shall proceed by an individual issues summary judgment motion – without the involvement of the Administrator except as identified elsewhere in this Protocol - in accordance with the Ontario Rules of Practice before a judge of the Ontario Superior Court of Justice or 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 sixty (60) days of the Tier B disclosure or further disclosure under 0 being made available to the Claimant, the Claimant shall serve on Canada a Statement of Claim,
 - b. Within thirty (30) days of receipt of the Statement of Claim, Canada shall deliver its Statement of Defence;
 - c. Within twenty (20) days after receipt of the Statement of Defence, the Claimant shall deliver:
 - i. Their Reply,
 - ii. A Notice of Motion for Summary Judgment, and (iii) their supporting affidavit(s) for the motion;
 - d. Within ninety (90) days after receipt of the Claimant's Notice of Motion for Summary Judgment, Canada shall deliver its affidavits to respond to the summary judgment motion;
 - e. Within thirty (30) days after receipt of Canada's responding materials, the Claimant may deliver their reply affidavits, if any;
 - f. After thirty (30) days from the receipt of Canada's responding materials, the Claimant shall bring a motion to fix a timetable for the balance of the summary judgment motion.
- 11.11 Where a Claimant selects Track 3, the parties are bound by the findings of fact made in the *Brazeau*, *Reddock*, and *Gallone* actions.

D. Short Form Notice

[29]

Class Action Legal Notice

If you were placed in administrative segregation in a

federal penitentiary you may be entitled to receive money.

www.SegregationClassActionFederal.ca

WHAT IS THIS ABOUT?

Three separate class actions lawsuits have ended with the Courts finding that the rights of inmates placed in administrative segregation while incarcerated in federal correctional institutions were violated. A global award of approximately **\$28 million** is available to pay all eligible claimants, known as Class Members, who make a claim. Additional money may be claimed by eligible Class Members in some cases.

WHO CAN CLAIM?

Make a claim if either:

<p>Option A</p> <ul style="list-style-type: none"> ✓ You stayed in Administrative Segregation in a federal correctional institution anywhere in Canada ✓ for 16 consecutive days or more ✓ AFTER March 3 2011. 	<u>OR</u>	<p>Option B</p> <ul style="list-style-type: none"> ✓ You stayed in Administrative Segregation in a federal correctional institution anywhere in Canada ✓ For any length of time ✓ AFTER July 20, 2009 ✓ AND you were diagnosed by a medical doctor with a mental disorder or a borderline personality disorder prior or during your incarceration AND you suffer(ed) serious impairment as a result of your disorder and reported such to Correctional Service of Canada (CSC).¹³
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All administrative segregation placements count, even if they were recorded as “voluntary”.

HOW DO I MAKE A CLAIM?

You must fully complete the Court-approved Claim Form. To get a Claim Form you have three (3) options:

1	2	3
<p>If currently incarcerated in a federal penitentiary or under supervision by CSC, get a Claim Form that includes a pre-paid postage return envelope from CSC</p>	<p>CLAIM ONLINE or download and print the Claim Form by going to the website:</p> <p style="text-align: center;">www.SegregationClassActionFederal.ca</p> <p style="text-align: center;">Email: info@SegregationClassActionFederal.ca</p>	<p>Write or call to request a Claim Form.</p> <p style="text-align: center;">Federal Segregation</p> <p style="text-align: center;">Administrator</p> <p style="text-align: center;">P.O. Box 507 STN B</p> <p style="text-align: center;">Ottawa ON K1P 5P6</p> <p style="text-align: center;">Toll Free: 1-833-871-5354</p>

IS THERE A DEADLINE FOR MAKING A CLAIM?

Yes! All claims must be received by the Administrator, **NO LATER THAN MONTH DAY, YEAR**. If a paper Claim Form is used, the postmark on the envelope will be considered as the day the Claim Form was submitted to the Administrator.

WHAT ARE MY OPTIONS?

¹³ Some exceptions may apply.

Submit a Claim Form	If you want to receive money, you MUST SUBMIT a Claim Form to the Administrator NO LATER THAN MONTH DAY, YEAR.
Do Nothing	If you do not make a claim, you will not get any money and you will give up the right to get money in the future.
Opt Out	<p>The courts had already granted an initial period to opt-out of the Class actions which is expired.</p> <p>But if you do not want to be part of this Class action, you might still be allowed to opt-out if you were first placed in administrative segregation after July 4, 2018 and <u>meet certain criteria December 12, 2016 and have not previously had an opportunity to opt out.</u></p> <p>To opt-out, the Administrator must receive a letter signed and dated clearly stating your wish to opt-out NO LATER THAN MONTH DAY, YEAR.</p> <p>For more information, please visit www.SegregationClassActionFederal.ca. If you do not have access to the website, you may call the Administrator at 1-833-871-5354 for more information. By opting out, you will lose your right to receive any money from these class actions.</p>

This notice was approved by the Courts. Do not contact the Courts.

[30]

E. Long Form Notice and Claims Form,

**Were you placed in Administrative Segregation
in a Federal Penitentiary?**

**YOU MIGHT BE ELIGIBLE TO RECEIVE MONEY
– BUT YOU MUST ACT NOW!**

The Canadian government violated the rights of inmates placed in administrative segregation in federal correctional institutions, as was found by the Ontario and Quebec Courts in three separate class action lawsuits, *Brazeau v. Canada*, *Reddock v. Canada* and *Gallone v. Canada*. The Courts awarded approximately \$28 million as a lump sum money to be divided equally amongst eligible Class members. All Class members can also claim additional money through the process explained below.

If you are eligible as set out below, and wish to receive money, you **MUST SUBMIT YOUR CLAIM NO LATER THAN MONTH DAY, YEAR.**

WHO CAN CLAIM?

You can claim if all the facts listed in either **Option A** OR **Option B** apply to you:

<p>Option A</p> <ul style="list-style-type: none"> ✓ You stayed in Administrative Segregation in a federal correctional institution anywhere in Canada ✓ for 16 consecutive days or more ✓ AFTER March 3 2011. 	OR	<p>Option B</p> <ul style="list-style-type: none"> ✓ You stayed in Administrative Segregation in a federal correctional institution anywhere in Canada ✓ For any length of time ✓ AFTER July 20 2009 ✓ AND you were diagnosed by a medical doctor with a mental disorder or a borderline personality disorder prior or during your incarceration <u>AND</u> you suffer(ed) serious impairment as a result of your disorder and reported such to Correctional Service of Canada (CSC).¹⁴
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Voluntary or not, all administrative segregation counts.

If you were placed in administrative segregation **ONLY** before July 20, 2009, you should contact the Administrator to provide details, because you may still be entitled to money if you can prove you could not make a claim before.

HOW MUCH MONEY COULD I GET?

The amount you may receive depends on various factors, especially which type of claim you submit (known as a “Track”).

TRACK COMPENSATION			
	TRACK 1	TRACK 2	TRACK 3
Amount	Only an equal share of the \$28 million lump sum divided among claimants	<p>UP TO \$50,000</p> <p>(claimants will receive at least an equal share of the \$28 million lump sum).</p>	<p>MORE THAN \$50,000.</p> <p>NO LIMIT to your claim.</p> <p>(claimants will receive at least an equal share of the \$28 million lump sum).</p>

¹⁴ Some exceptions may apply. Please note that the complete class definitions for *Brazeau*, *Reddock* and *Gallone* are found in the class actions Protocol.

<p style="text-align: center;">Documents</p>	<p style="text-align: center;">Claim Form + Track Selection Form</p>	<p style="text-align: center;">Claim Form + Track Selection Form + Evidence and written arguments on the psychological or physical harm caused by administrative segregation.</p>	<p style="text-align: center;">Claim Form + Track Selection Form + Evidence and written arguments on the psychological or physical harm caused by administrative segregation.</p>
<p style="text-align: center;">Process</p>	<p style="text-align: center;">NO Court hearing. NO medical expert.</p>	<p style="text-align: center;">A Medical/Manager Expert will review your evidence and recommend an award for approval by the Court.</p>	<p style="text-align: center;">Court hearing at which the judge will review your evidence and any evidence that Canada presents. The judge will then determine the amount of your award, if any.</p>
<p style="text-align: center;">Fees</p>	<p style="text-align: center;">NO additional legal fee</p>	<p style="text-align: center;">Legal fee of UP TO 15% on the additional money obtained, reasonable disbursements and levy to the Fonds d'aide aux actions collectives or the Class Proceeding Fund. But NO legal fee on the amount equivalent to the equal share of the \$28 million.</p>	<p style="text-align: center;">ANY legal fee negotiated between you and your representative on the additional money obtained, reasonable disbursements and levy to the Fonds d'aide aux actions collectives or the Class Proceeding Fund. These fees will need to be approved by the Courts. But NO legal fee on the amount equivalent to the equal share of the \$28 million.</p>

IMPORTANT : You will have to choose who you want as a representative during this claim

process.

You can either:

- 1) continue with the class action lawyers who have represented you since the beginning of the files,
- 2) choose a different lawyer, OR
- 3) represent yourself.

Your representative will advise you which compensation Track would best suit you after reviewing your Correctional Service of Canada file. If you are not represented, you will need to choose by yourself. A **Track Selection Form** will be provided to you.

HOW DO I MAKE A CLAIM?

You **MUST SUBMIT** your Claim Form **NO LATER THAN MONTH DAY, YEAR.**

You can claim by:

- 1) Sending your completed Claim Form by email to the Administrator.
- 2) Sending a paper Claim Form to the Administrator, postmarked no later than Month Day, Year. The postmark on the envelope will be considered as the day the Claim Form was submitted to the Administrator. Priority mail or trackable courier is recommended.

You can download the Claim Form from www.SegregationClassActionFederal.ca at all times. You can also ask for a Claim Form by contacting the Administrator using the information below.

If you are **currently incarcerated** or **under the supervision of Correctional Service of Canada**, Correctional Service of Canada will give you the Claim Form with a pre-stamped return envelope.

You can reach the Administrator at:

Epiq Class Action Services Canada Inc.
 Attention: Brazeau-Reddock-Gallone Class Actions
 P.O. Box 507 STN B
 Ottawa ON K1P 5P6
[Email: info@SegregationClassActionFederal.ca](mailto:info@SegregationClassActionFederal.ca)
 Telephone: 1-833-871-5354
 Fax: 1-866-262-0816

If you submit your Claim Form by the deadline, the Administrator will contact your representative to discuss your eligibility and the next steps.

WHAT IF I DON'T MAKE A CLAIM?

If you do **not** submit your Claim Form **NO LATER THAN MONTH DAY, YEAR**, you will **lose your right to get money**. Even if you get special permission from the Court to submit a late claim, you will **not** be entitled to a share of the lump sum money.

WHAT IF I WANT TO START MY OWN ACTION?

The courts had already granted an initial period to opt-out of the Class actions which is expired.

But if you do not want to be part of this Class action, you might still be allowed to opt-out if you were first placed in administrative segregation **after December 12, 2016 and have not previously had an opportunity to opt out.**

To opt-out, the Claims Administrator must receive a letter signed and dated clearly stating your wish to opt-out **no later than MONTH DAY, YEAR.**

For more information, please visit **www.SegregationClassActionFederal.ca**. If you do not have access to the website, you may call the Administrator at 1-833-871-5354 for more information. **By opting out, you will lose your right to receive any money from these class actions.**

This notice was approved by the Courts.

[31]

F. Track Selection Form

You submitted a Claim Form to get money for your time in administrative segregation in a federal correctional institution, and **you have been found eligible to proceed to the next step.**

COMPLETE THIS TRACK SELECTION FORM TO CLAIM MONEY

HOW TO SELECT ONE (1) OF THREE (3) POSSIBLE TRACKS?

<p style="text-align: center; color: purple; font-weight: bold; font-size: 1.2em;">SELECT TRACK ONLINE!</p> <p>Or download and print the Track Selection Form by going to the website:</p> <p>Website: www.SegregationClassActionFederal.ca</p> <p>Email: info@SegregationClassActionFederal.ca</p>	<p>Mail your paper Track Selection Form to:</p> <p style="text-align: center; font-weight: bold;">Federal Segregation Administrator</p> <p style="text-align: center; font-weight: bold;">P.O. Box 507 STN B</p> <p style="text-align: center; font-weight: bold;">Ottawa ON K1P 5P6</p> <p style="text-align: center; font-weight: bold;">Fax: 1-866-262-0816</p> <p style="text-align: center; font-weight: bold;">Toll Free: 1-833-871-5354</p>
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You have **ninety (90) days** from the reception of this Track Selection Form to make your track selection and to return this completed Form to the Administrator.

If your Track Selection Form is not returned, your claim may be processed under Track 1.

INSTRUCTIONS

Please ensure that you complete all sections of the Track Selection Form that apply to you. When filling out the Claim Form, remember to:

- Read all questions and requests for information carefully before answering
- Write clearly and legibly
- Answer all the sections of the Track Selection Form that apply to you
- Make sure you have read and signed the Consent to Disclosure and Release of Records and Declaration section of the Claim Form.

If the Administrator said that you are not eligible for a TRACK 1 but only for a TRACK 2 or TRACK 3 claim, please choose one (1) of the Track options.



TRACK SELECTION FORM – START ON NEXT PAGE

SECTION A: CLAIMANT INFORMATION		
First Name*	Middle Name	Last Name*
Name when incarcerated in the federal correctional institution (if changed):		
Class Action Claim ID (to be provided if known):	Finger Print Section (FPS) number *	

YOU MUST SELECT ONE (1) OF THE FOLLOWING THREE (3) TRACKS:

<input type="checkbox"/> TRACK 1	<p>Select this track if you want your equal share of the \$28 million lump sum award only.</p> <ul style="list-style-type: none"> - The exact amount you will receive will depend on how many class members make a claim. - Track 1 is expected to be the simplest and fastest track. - You will not have to go to court, submit any additional documentation other than this Track Selection Form. - You will not have to pay any additional legal fees to claim your compensation, but you will not be able to claim any extra money.
<input type="checkbox"/> TRACK 2	<p>Select this track if you want to make a claim for up to \$50,000 CAD for psychological or physical harm caused by your placement in administrative segregation.</p> <ul style="list-style-type: none"> - A medical expert will assess your claim. - It will require additional submissions and may involve answering questions from a lawyer. - The medical expert may recommend an amount for your compensation and the Court will have to approve this recommendation. - If you are eligible for a share of the lump sum award, you will get at least as much money as you would under Track 1, but it is also possible you may not get any extra money. - You will have to pay up to 15% of your extra money received to your lawyers, which will be subject to the Court’s approval.
<input type="checkbox"/> TRACK 3	<p>Select this track if you want to make a claim for more than \$50,000 CAD for harm caused by your placement in administrative segregation.</p> <ul style="list-style-type: none"> - A judge will assess your claim. - A medical expert will assess your claim - It will require additional submissions and may involve Court appearances and answering questions. - If you are eligible to a share of the lump sum award, you will get at least as much money as you would under Track 1. However, you will only get more money if the Court approves your claim for additional harm. - It is possible that you will not get any extra money. - You will have to pay legal fees on the extra money obtained to your lawyers as agreed, and as assessed by the judge hearing your claim.

ATTENTION : Money awarded under Track 2 or 3 will **not** be paid out **until after** your share of the lump sum award is determined.

You have **ninety (90) days** from the reception of this Track Selection Form to make your track selection and to return this completed Form to the Administrator.

If your Track Selection Form is not returned, your claim may be processed under Track 1.

[32]

G. Opt Out Letter.

Can I Remove Myself from the Class Actions?

If you do not want to participate in the class actions, you can opt-out if you meet certain conditions as outlined below. Please note that the complete class definitions for *Brazeau*, *Reddock* and *Gallone* are found in the class actions Protocol.

You can opt out if:

Category 1. You were **first** placed in administrative segregation in a federal correctional institution for **any length of time after July 4, 2018 December 12, 2016 and you have not previously had an opportunity to opt out.**

AND

You were diagnosed by a medical doctor with a mental disorder or a borderline personality disorder prior or during your incarceration

AND

You suffer(ed) serious impairment as a result of your disorder and reported such to Correctional Service of Canada (CSC).

OR

Category 2. You do **not** fall within category one

AND

You were **first** placed in administrative segregation in a federal correctional institution **for 16 consecutive days or more after JULY 4, 2018 December 12, 2016 and you have not previously had an opportunity to opt out.**

What is the Consequence of Opting-Out?

When you opt-out, you lose your right to claim and/or receive any money through the class actions.

Is Opting-Out Final?

Yes, opting-out is a final decision that cannot be undone.

How do I Opt-Out?

In order to properly opt-out, you must prepare and submit a written letter (called an "Opt-Out Election Letter") to the Claims Administrator identified below.

The Opt-Out Election Letter:

(a) must contain a statement of intention to opt out of the class actions by you or a person authorized to bind you;

(b) must outline your full name, Finger Print Section (“FPS”), address, telephone number and/or email address (if available);

(c) must include the date and your signature; and

(d) may contain a statement of your reason for opting out.

The Claims Administrator **must** receive your Opt-Out Election Letter by **no later than Month Day, Year** (“Opt-Out Deadline”).

Opt-Out Election Letters must be sent to:

**Federal Segregation Class Action Claims Administrator
P.O. Box 507 STN B Ottawa ON K1P 5P6**

Or

Email: info@SegregationClassActionFederal.ca

Or

Fax:1-866-262-0816

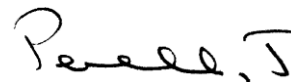
An Opt-Out Election Letter that does not contain all of the required information or is received after the Opt-Out Deadline will **not** be valid.

H. Conclusion

[33] Accordingly, we approve the Version of the Distribution and Individual Issues Protocol and the other documents set out in these Reasons for Decision.



Masse, J.



Perell, J.

June 14, 2021

CITATION: Brazeau v. Canada (Attorney General), 2021 ONSC 4294
COURT FILE NO.: CV-15-53262500-CP
Reddock v. Canada (Attorney General), 2021 ONSC 4294
COURT FILE NO.: CV-17-570771-00CP
DATE: 2021/06/14

**ONTARIO
SUPERIOR COURT OF JUSTICE**

SUPERIOR COURT (Class Action Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000781-167

Between:

Between:

**CHRISTOPHER BRAZEAU and DAVID KIFT
Plaintiffs**

ARLENE GALLONE

- and -

Plaintiff

**ATTORNEY GENERAL OF CANADA
Defendant**

c.

**PROCUREUR GÉNÉRAL DU CANADA
Defendant**

Proceeding under the *Class Proceedings Act, 1992*
And Between:

**JULLIAN JORDEA REDDOCK
Plaintiff**

- and -

**ATTORNEY GENERAL OF CANADA
Defendant**

Proceeding under the *Class Proceeding Act, 1992*

Released: June 14, 2021