

CITATION: Brazeau v. Canada (Attorney General), 2021 ONSC 1828
COURT FILE NO.: CV-15-53262500-CP
Reddock v. Canada (Attorney General), 2021 ONSC 1829
COURT FILE NO.: CV-17-570771-00CP
DATE: 2021/03/12

**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

Shantona Chaudhury and Brodie Noga the Law Foundation of Ontario

REASONS FOR DECISION/JUGEMENT – Part 2**MASSE, J. and PERELL, J.**

[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 2 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.

[5] 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. We have received and reviewed the written

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 *

submissions.

[6] The Plaintiffs in all three actions delivered a Joint Factum setting out proposed changes to the courts' draft. The Crown responded with a Factum that accepted some of the Plaintiffs' proposals and made proposed revisions. The parties were coming closer to a consensus. The Plaintiffs delivered a Reply Factum with a very few remaining issues for the courts to resolve.

[7] After the delivery of the Plaintiff's Reply Factum, the Crown delivered correspondence commenting on several of the remaining issues.

[8] We have considered all of the submissions. We have resolved the differences and made a few changes of our own. We did not see the need for a further in-person hearing.

[9] Attached as Schedule A is the approved Distribution and Individual Issues Protocol. Our main changes are noted in **bold black underlined text**.

[10] The changes were largely editorial. As for an explanation for the main changes, we were persuaded by the Plaintiffs' arguments in their Reply factum.

[11] The only issue that requires comment is a late-arriving dispute between Class Counsel and the Law Foundation of Ontario which administers the Class Proceedings Fund. This dispute concerns only the *Brazeau* and *Reddock* actions.

[12] The *Draft D&I Protocol* contained the following two provisions.

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.

[13] The Law Foundation, which had not participated in the hearing to settle the individual issues protocol, sought to substitute for these two provisions the following provision:

3.1 The Class Proceedings Committee may consider applications for funding from the Class Proceedings Fund in relation to the *Brazeau* and *Reddock* proceedings.

[14] For present purposes, it is not necessary to provide the details, but to put it mildly, the proposed substitution disturbed Class Counsel, who believed that the Class Proceedings Committee of the Law Foundation had committed the Class Proceedings Fund to offering litigation funding and costs consequences support for the individual issues phase of the action. The Law Foundation's apparent withdrawal of that commitment was a matter of grave concern to Class Counsel.

[15] Class Counsel did not, however, provide, a solution for the problems it believed would be the consequence of the substitution sought by the Class Proceedings Committee. Class Counsel urged an immediate case conference to resolve the matter.

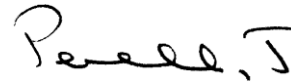
[16] A case management conference will not solve the alleged problems. The relationship between Class Counsel and the Class Proceedings Committee is not a matter that could be dealt with at a case management conference and their dispute may require litigation between the Plaintiffs, Class Counsel, and the Law Foundation.

[17] For present purposes, the simple solution is to delete provisions 3.1 and 3.2, which are unnecessary or collateral to the operation of the distribution and individual issues protocol. Whatever rights the Class Proceedings Fund or the Fonds d'aide aux actions collectives have or may have are matters collateral to the distribution and the individual issues protocol and should not stand in the way of the courts of Ontario and Quebec settling the distribution plan and the individual issues protocol.

[18] Accordingly, we approve the Distribution and Individual Issues Protocol attached as Schedule "A." We direct the parties attention to s. 1.8 of the protocol which states: "Nothing in this Protocol precludes the parties from applying for an amendment to the protocol."

Handwritten signature of J. Masse in black ink.

Masse, J.

Handwritten signature of J. Perell in black ink.

Perell, J.

March 12, 2021

Appendix A: Distribution and Individual Issues Protocol

A. 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:

“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.

“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.

“CSC” means the Correctional Service of Canada.

1.4. For this Protocol, “Class Member” and “Class” are defined by the *Reddock* and *Brazeau* Certification Orders and by the *Gallone* Case Management Order, dated September 10, 2020.

1.5 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.

1.6 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.

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

1.8 Nothing in this Protocol precludes the parties from applying for an amendment to the protocol.

B. Retainer of Class Counsel

2.1 Unless the Claimant in his or her 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 his or 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 his or her 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 his or her services as may be approved by the court.

C. 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.

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

3.3 No later than ninety (90) 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 who was placed in administrative segregation during the class periods of *Brazeau*, *Reddock*, and *Gallone*:

- (a) his or her name;
- (b) his or her 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 in accordance with a notice and distribution plan to be approved by the court.

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.

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 For Track 1 Claims, the Administrator shall pay the Claimant's share of the Aggregate Damages award within sixty days after it has determined all timely submitted Claims Forms.

3.12 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 his or her share.

3.13 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 collectives⁵ 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.

3.14 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*.

3.15 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.

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

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

3.18 After the distribution of:

- (a) the Aggregate Damages Award;
- (b) any awards for Track 2 or 3 Claimants; and
- (c) any *cy-près* payments;

⁵ 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.

the Administrator shall apply to be discharged and shall file with the court a report containing its best information respecting the following:

1. The total number of Class Members.
2. The number of Claimants who received notice associated with the distribution, and a description of how notice was given.
3. The number of Claimants 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.

3.19 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.

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

D.Database

4.1 Within 120 days after the approval of this Protocol, 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 of all documents shall be made via the Database, unless a Claimant requests otherwise or a self-represented Claimant is incarcerated and cannot access the Database.

E.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.

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 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;
- (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 Canada shall provide the Notice, together with a postage paid return envelope, to every Incarcerated Claimant, and Canada shall make available reasonable facilities for Claimants to complete the Claims Form.

5.9 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 areas of each federal correctional institution.

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 parolees to complete the Claims Form.

F. 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 his or her 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 administration segregation. To the extent possible, the Manager-expert will identify whether the degree of such pain is low, medium or high;
- (c) 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 failing which the

courts shall appoint the Managers/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 registered as a psychiatric nurse in any Canadian jurisdiction; 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 SMI qualification report.

G. 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 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 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 Claimant may submit a Claims Form to the Administrator.

7.6 After the Claims Filing Deadline, with leave of the court, Claimants may file Claims Forms with the 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 his or her 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) his or her name;
- (b) his or her date of birth;
- (c) his or her Finger Print Section number;
- (d) his or her 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 his or her share of the distribution and his or her individual issues award;
- (f) an acknowledgement that the Administrator is authorized to contact the Claimant to obtain further information;

(g) his or her election to:

(i) be a self-represented Claimant;

(ii) appoint a new lawyer to act for him or her 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 twenty (20) days of receipt of a Claim Form, the Administrator will determine if the Claimant is eligible to a share of the Aggregate Damages.

7.10 If a Claimant is not eligible to a share of the Aggregate Damages, the Administrator will contact the said Claimant to determine if he-she claims to have met the *Brazeau* class definition during the time of his or her incarceration.

7.11 If a Claimant did not spend more than 15 consecutive days in segregation and does not claim to have met the class definition in *Brazeau* during the time of their incarceration, the Administrator will provide in writing its detailed refusal to the Claimant with contact details of the Class Counsel.

7.12 Within thirty (30) days of receipt of a Claims Form, the Administrator shall provide access to retained counsel to their client's Database files. The Administrator shall also provide access to Canada.

Two Tier Disclosure

7.13 Within ninety (90) days of receipt of a Claim Form, 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.

7.14 Should a Claimant determine that their Tier A Disclosure is insufficient to make a Claims Track selection, the Claimant may request further targeted disclosure from CSC. The CSC shall upload the additional documents within sixty (30) days of the request.

7.15 Within twenty (20) days from CSC uploading the Tier A Disclosure, or the additional disclosure requested, retained Counsel will contact each Claimant to offer advice on their choice as to the selected Track. Retained Counsel shall then advise Canada of the selected track.

7.16 For Claimants who advise that they select Track 2 or Track 3, within sixty (60) days Canada shall 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.

7.17 Either party or the Manager/Expert may request additional disclosure with respect to Tier B . CSC shall provide the requested documents within 60 days.

7.18 Within sixty (60) days from Canada having uploaded the Tier B Disclosure, the Claimant will submit their Track 2 submissions, if the Claimant so chooses.

7.19 Either party or the Manager/Expert may request additional disclosure with respect to Tier B and CSC shall provide the requested documents within 60 days.

7.20 If the Claimant does not file Track 2 or 3 submissions, they will be considered as having selected Track 1.

7.21 Where the Claimant selects Track 2, the following documents shall be part of the Track 2 submissions:

- (a) an affidavit from the Claimant of no more than 30 pages in length, including exhibits, in support of the Track 2 Claim;
- (b) the transcript of any cross-examinations; and,
- (c) a factum of no more than 30 pages.

7.22 Where the Claimant selects Track 3, he or she shall annex to his or her Track 3 submissions a Statement of Claim.

7.23 Within ten (10) days of filing the Track 2 submissions, 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.

7.24 Where the Claimant selects Track 2, Canada may also deliver to the Manager/Expert, via the Database:

- (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) the transcript of any cross-examinations; and
- (c) a factum of no more than 30 pages.

7.25 In addition to the documents permitted for a Track 2 claim, there shall be no more than one expert for Canada and one expert for the Claimant.

Track 1 Claims

7.26 A Claimant 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 on or after March 3, 2011.

7.27 Where a Claimant elects to proceed on Track 1, he or she shall be deemed to have released Canada from all other claims arising from his or her placement(s) in administrative segregation.

7.28 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 his-her Database File.

7.29 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.

Track 2 Claims

7.30 With regards to Track 2 Claims, Claimants’ asserted class membership shall determine whether the Quebec Superior Court or the Ontario Superior Court shall review his-her file. Where the Claimant can assert class membership in both *Gallone* and *Reddock* or *Gallone* and *Brazeau*, **the location of his or her first placement in administrative segregation** shall determine whether the Quebec Superior Court or the Ontario Superior Court shall review his-her file.

7.31 A Claimant 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 on or after March 3, 2011.

7.31 Where a Claimant elects to proceed in 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 (“Damages Grid”):

Criteria for Award	Award
<u>16-29 consecutive days in administrative segregation</u>	Up to \$5,000

<u>30-44 consecutive days in administrative segregation</u>	Up to \$7,500
<u>45-80 consecutive days in administrative segregation</u>	Up to \$10,000
<u>81-100 consecutive days in administrative segregation</u>	Up to \$15,000
<u>More than 100 consecutive days in administrative segregation</u>	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

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

7.33 Where a Claimant selects Track 2, 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 the Claimant’s Database File.

7.34 Where a Class Member selects Track 2, the Manager/Expert shall determine whether the claimant is considered a SMI and report his or her decision to the court.

7.35 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.

7.36 The Administrator shall report his or her 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.

7.37 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 his or her 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 facts filed by the Claimant and Canada and any related transcripts of cross-examination or expert reports filed by the parties.

7.38 The Manager/Expert shall report his or her findings to the court, including the appropriate damages quantum per the Damages Grid, in a document which shall be no more than ten pages in length.

7.39 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.

7.40 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.

7.41 The Claimant's share of the gross Aggregate Damages award is a credit to the payment of the damages awarded under Track 2.

7.42 Where the Claimant 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

7.43 With regards to Track 3 Claims, Claimants' asserted class membership shall determine whether the Quebec Superior Court or the Ontario Superior Court will review his-her 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 his or her first placement in administrative segregation** shall determine whether the Quebec Superior Court or the Ontario Superior Court shall review his-her file.

7.44 A Claimant 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 on or before March 3, 2011.

7.45 Where a Claimant 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.

7.46 Where a Claimant selects Track 3, 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 the Claimant's Database File.

7.47 Where a Class Member selects Track 3 and has only been placed in Administrative segregation during a Class period for 15 consecutive days or fewer, the Manager/Expert shall determine whether the claimant is considered a SMI and report his or her decision to the court.

7.48 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.

7.49 The Administrator shall report his or her 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.

7.50 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.

7.51 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.

7.52 Where the Claimant 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 Track 3 submissions 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 Claimant 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 Claimant's Notice of Motion for Summary Judgment, Canada shall deliver:
 - (i) its affidavits to respond to the summary judgment motion;
- (d) Within thirty days after receipt of Canada's responding materials, the Claimant may deliver his or her reply affidavits, if any.
- (e) After thirty 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.

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

CITATION: Brazeau v. Canada (Attorney General), 2021 ONSC 1828
COURT FILE NO.: CV-15-53262500-CP
Reddock v. Canada (Attorney General), 2021 ONSC 1829
COURT FILE NO.: CV-17-570771-00CP
DATE: 2021/03/12

**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: March 12, 2021