

**CITATION:** Brazeau v. Canada (Attorney General), 2023 ONSC 2828  
**COURT FILE NO.:** CV-15-53262500-CP  
Reddock v. Canada (Attorney General), 2023 ONSC 2828  
**COURT FILE NO.:** CV-17-570771-00CP  
**DATE:** 20230510

**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 and Gerry Antman for the Plaintiffs in Brazeau and Kift v. Attorney General of Canada*

*H. Michael Rosenberg, Jacob Klugsberg and Adam H. Kanji for the Plaintiff in Reddock v. Attorney General of Canada*

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

*Negar Hashemi, Éric Lafrenière and Lucan Gregory 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*

**REASONS FOR DECISION/JUGEMENT – Part 6****MASSE, J. and PERELL, J.****A. Introduction**

[1] Pursuant to the *Class Proceedings Act, 1992*,<sup>1</sup> 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*,<sup>2</sup> Justice Chantal Masse, of the Superior Court of Québec is case managing the Québec class action, *Gallone c. Canada (Attorney General)*.<sup>3</sup>

[3] This is Part 6 of our jointly written decision or judgment in *Brazeau, Reddock, and Gallone*. 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.

[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,

---

<sup>1</sup> S.O. 1992, c. 6.

<sup>2</sup> CQLR, c. C-25.01.

<sup>3</sup> C.S.Q Court File No.: 500-06-000781-167.

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 approve. In Part 3 of our decision, with some revisions of our own, we approved the revised Protocol.<sup>4</sup>

[7] After we released Part 3, counsel for the parties requested some amendments to the revised Protocol, which we approved in our joint Part 4 decision.<sup>5</sup> We approved: (a) the French version of the short and the long Notice form; (b) the French version of the Track Selection form; (c) the French and English versions of the Claim Form; (d) the French version of the Opt-out election letter instructions; (e) the Notice Program in English only; and (f) the French version of the Protocol.

[8] After the Courts' approval of the Protocol, the parties continued having discussions about implementing the Protocol. The Administrator, Epiq, was included in those discussions. Over the course of approximately a year, the parties engaged in negotiations to better implement the Protocol. On consent, the parties sought the Courts' approval to the amended Protocol, which was granted as Part 5.<sup>6</sup>

[9] The parties now jointly and on consent bring a motion for further amendments to the Distribution and Individual Issues Protocol. More precisely the motion is for:

(a) An Order, [...] amending sections 10.1 and 11.2 of the Distribution and Individual Issues Protocol in the within class proceedings. Sections 10.1 and 11.2 read as follows:

10.1 For Track 2 Claims, a Claimant's asserted class membership will determine whether the Québec Superior Court or the Ontario Superior Court will review their file. Where the Claimant can assert class membership in both *Gallone* and *Reddock* or *Gallone* and *Brazeau*, the location of their first eligible placement in administrative segregation will determine whether the Québec Superior Court or the Ontario Superior Court will review their file.

11.2 Claimants' asserted class membership will determine whether the Québec Superior Court or the Ontario Superior Court will review a Track 3 Claim. Where the Claimant can assert class membership in both *Gallone* and *Reddock* or *Gallone* and *Brazeau*, the location of their first eligible placement in administrative segregation will determine whether the Québec Superior Court or the Ontario Superior Court will review their Claim.

Parties propose to modify these sections as follows:

10.1 At the time of selecting a Track 2 Claim, the Claimant shall elect whether the Québec Superior Court or the Ontario Superior Court of Justice shall review their file. The Claimant may elect the Québec Superior Court only if they assert class membership in *Gallone* (whether or not they also assert class membership in *Brazeau* or *Reddock*) or if they assert having at least one eligible placement in Administrative Segregation in Québec. The Claimant may elect the Ontario Superior Court of Justice only if they assert class membership in *Brazeau* or *Reddock* (whether or not they also assert class membership in *Gallone*). Thereafter, the Claimant may only elect the other Court only with leave of the Court that they initially selected or the consent of the Defendant.

11.2 At the time of selecting a Track 3 Claim, the Claimant shall elect whether the Québec Superior Court or the Ontario Superior Court of Justice shall decide their claim. The

<sup>4</sup> See for example, *Brazeau v. Canada (Attorney General)*, 2021 ONSC 4294.

<sup>5</sup> *Brazeau v. Canada (Attorney General)*; *Reddock v. Canada (Attorney General)*, 2021 ONSC 4982.

<sup>6</sup> *Brazeau v. Canada (Attorney General)*; *Reddock v. Canada (Attorney General)*, 2022 ONSC 6920.

Claimant may elect the Québec Superior Court only if they assert class membership in *Gallone* (whether or not they also assert class membership in *Brazeau* or *Reddock*) or if they assert having at least one eligible placement in Administrative Segregation in Québec. The Claimant may elect the Ontario Superior Court of Justice only if they assert class membership in *Brazeau* or *Reddock* (whether or not they also assert class membership in *Gallone*). Thereafter, the Claimant may only elect the other Court only with leave of the Court that they initially selected or the consent of the Defendant.

and

(b) An Order that the parties shall bear their own costs of the within motion.

[10] The need and reason for these revisions arise because:

- a. Some Class Members were placed in administrative segregation in both Ontario and Québec during the class periods. These Class Members (the “BRG Crossover”) come within the definition of both *Gallone*, on the one hand, and one of the *Reddock* or *Brazeau* definitions.
- b. Sections 10.1 and 11.2 of the Protocol assigned BRG Crossover claims to either the Ontario Court or the Québec Court based on the location of the claimant’s first eligible placement (“the Crossover Rule”). However, some BRG Crossover claimants with first eligible placements in Québec that pre-date the *Gallone* class period were assigned to Ontario class counsel by the Administrator, despite being allocated to the Québec Court under the Protocol. Additionally, the Administrator permitted some BRG Crossover claimants to choose their preferred class counsel firm, regardless of the Court to which their claim had been assigned.
- c. Furthermore, the Crossover Rule is itself indeterminate, insofar as the first eligible placement in administrative segregation varies depending on the claimant’s ability to meet the *Brazeau* class definition for serious mental illness (“SMI”), but the Crossover Rule must be applied before SMI status can be determined.
- d. As a matter of pragmatism, the parties have agreed that when a claimant claims to meet the SMI definition, the SMI status will be assumed for the sole purpose of identifying the first eligible placement. However, the determination of the first eligible placement may prove incorrect if the claimant is ultimately unsuccessful in establishing SMI status.
- e. In the result, a number of BRG Crossover claimants have been assigned to class counsel in one province despite the fact that the Protocol would allocate their claim to the Court of the other province.
- f. It is expected that the number of misallocated claimants will grow as class counsel have an opportunity to more fully investigate SMI claims.
- g. Additionally, it appears that the Administrator erred in applying the Protocol to claimants who could only come within the definition of *Reddock* or *Brazeau* but not *Gallone*. The Protocol provided that all such claimants would be assigned to the Ontario Court and to Ontario class counsel. However, the Administrator has assigned some of these claimants to Québec Class Counsel.
- h. In many cases class counsel have formed solicitor-client relationships with

misallocated claimants and worked to prepare claims. In these circumstances, it would be disruptive to reallocate claimants to other counsel.

i. The proposed amendments to the Protocol are intended to ensure that claimants allocated to Ontario class counsel will litigate their claims before the Ontario Court and claimants allocated to Québec class counsel will litigate their claims before the Québec Court, while ensuring that the claims have a connection with the Court reviewing them.

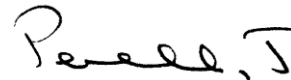
j. The small number of claimants who are self-represented or represented by counsel other than class counsel will be able to elect which of the Courts will take jurisdiction over their claim, pursuant to the proposed amendments.

[11] It appears that the proposed amendments to the Protocol are in the best interests of all affected class members and reflect a pragmatic effort to implement a workable solution to a practical problem. The proposed amendments to the Protocol will contribute to the most cost effective and expeditious determination of individual claims under the Protocol. The proposed amendments to the Protocol will not prejudice the Defendant or any Class Member. The proposed amendments to the Protocol will not impact the parties' ability to plead the law that is applicable with respect to causes of action related to placements in administrative segregation in specific provinces.

[12] The parties should be commended for their co-operation and for their improvements to the Protocol. We approve the amendments. Orders accordingly.



Masse, J.



Perell, J.

May 10, 2023

**CITATION:** Brazeau v. Canada (Attorney General), 2023 ONSC 2828  
**COURT FILE NO.:** CV-15-53262500-CP  
Reddock v. Canada (Attorney General), 2023 ONSC 2828  
**COURT FILE NO.:** CV-17-570771-00CP  
**DATE:** 20230510

**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**

**c.**

**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*

**Released:** May 10, 2023