

CITATION: Brazeau v. Canada (Attorney General), 2023 ONSC 2829
COURT FILE NO.: CV-15-53262500-CP
Reddock v. Canada (Attorney General), 2023 ONSC 2829
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 7**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 7 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,

¹ S.O. 1992, c. 6.

² CQLR, c. C-25.01.

³ 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.⁴

[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.⁵ 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 5.⁶

[9] The parties jointly and on consent brought a motion for further amendments to the Distribution and Individual Issues Protocol, which the Courts of Québec and Ontario granted as Part 6⁷ of the joint judgment.

[10] The motion now before the court is a similar motion made on consent for what amounts to a direction or a variation to the Distribution and Issues Protocol. More precisely the motion is for:

An order, in the form attached hereto at **Schedule "A"**, confirming that payments for Track 2, Box 1 only Claims will be made every 75 days after the relevant cut off date, to Class Members, class counsel, and the Class Proceedings Fund/Fonds d'aide aux actions collectives, with no further confirmation necessary unless the parties seek direction from the courts. The first cut off date will be one (1) month after the Court's order, then every 90 days. Payments will be made within 75 days after the cut off date to which they relate. Prejudgment interest shall accrue until the 75th day after the cut off date to which they relate.

[11] The reason and the need for the proposed direction or revision to the Distribution and Issues Protocol arise because payments in furtherance of Track 2, Box 1 only Claims currently require a motion for confirmation.

[12] Pursuant to section 10.45 of the Protocol, the parties may move for an Order confirming the final Track 2 quantum, the applicable interest, and counsel fees for Track 2, Box 1 only Claims. The parties, however, recognize the need to streamline the procedure for payment of Track 2, Box 1 only claims and the proposed Order responds to this need.

[13] The proposed Order pursuant to the Protocol is intended to, *inter alia*:

- a. Streamline the payment of damages awards for Track 2, Box 1 only Claims and the payment of fees to class counsel and the Class Proceedings Fund/Fonds d'aide aux actions

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

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

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

⁷ *Brazeau v. Canada (Attorney General)*; *Reddock v. Canada (Attorney General)*, 2023 ONSC 2828.

collectives;

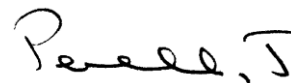
- b. Minimize resources being unnecessarily spent by class counsel and the Attorney General of Canada by bringing motions for uncontested matters;
- c. Offer guidance to the concerned class members and claims Administrator on when and how payment of the Track 2, Box 1, damages awards is to occur; and
- d. Reduce the burden placed on the justice system by sparing the courts the need to adjudicate substantially similar, uncontested motions for every claimant who opts for a Track 2, Box 1 only award.

[14] The proposed Order is in the best interests of the Class Members. The proposed Order constitutes the least expensive and most expeditious method of finalizing the payments for Track 2, Box 1 only Claims. This Order is consistent with the objectives of judicial economy and access to justice.

[15] The parties should be commended for their co-operation and for their improvements to the Protocol. We approve the issuance of the requested Order.



Masse, J.



Perell, J.

May 10, 2023

Schedule “A”

Ontario Court File Nos.: CV-15-532625-00CP; CV-17-570771-00CP
Quebec Court File No.: 500-06-000781-167

THE HONOURABLE JUSTICE PERELL +DAY THE + DAY OF MAY 2023

THE HONOURABLE JUSTICE MASSE

{ STYLES OF CAUSE }

1. **THIS COURT ORDERS AND DECLARES** that payments for Track 2, Box 1 only Claims pursuant to section 10.45 of the Distribution and Individual Issues Protocol will be made every 75 days after the cut off date to class members, class counsel, and the Class Proceedings Fund unless the parties seek direction from this Court. These payments will be made after the parties and Epiq work collaboratively to complete the steps set out in **Annex 1** joined to this order. The first cut off date will be 1 month after this Court’s order, then every 90 days. Payments will be made within 75 days after the cut off date to which they relate. Prejudgment interest shall be calculated until the 75th day after the cut off date to which they relate, instead of the date of the Court’s confirmation order mentioned in section 10.26 of the Distribution and Individual Issues Protocol.

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Released: May 10, 2023