

**CITATION:** Brazeau v. Canada (Attorney General), 2022 ONSC 6920  
**COURT FILE NO.:** CV-15-53262500-CP  
Reddock v. Canada (Attorney General), 2022 ONSC 6920  
**COURT FILE NO.:** CV-17-570771-00CP  
**DATE:** 20221208

**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, Gerry Antman, and Nathalie Gondek, 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 5****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 5 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.

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<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.

[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 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 seek the Courts' approval to the amended protocol.

[9] The parties' proposed amendments to the Protocol were presented to Justice Perell and Justice Masse at a case conference held on September 15, 2022. At the Courts' direction, this motion has been brought in order to have the Protocol formally amended.

[10] The proposed amendments to the Protocol are intended to among other things:

- a. Set out the aggregate damages awards calculations;
- b. Implement an estates protocol for deceased class members that will identify appropriate estate representatives and facilitate payment of any damages awards on an efficient basis by Epiq, in accordance with all applicable laws;
- c. Streamline the Track 2 process in a manner that: benefits class members by stipulating their damages award in a fair and efficient manner; reduces the fees incurred by Class Counsel and the Attorney General of Canada; reduces the burden placed on the Managers/Experts in adjudicating Track 2 claims;
- d. Provide clear guidance to Epiq on how and when payment of the aggregate damages awards is to occur;
- e. Extend the Claims Filing Deadline to November 7, 2022, which the Courts have already approved;
- f. Adjust the content of Tier A and Tier B disclosure to ensure all necessary medical information for claimants is disclosed, and adjusting the timing of track selection to after Tier B disclosure occurs; and
- g. Adjust the timelines set out for the conduct of Track 3 claims, as well as the procedure for Track 3 claims for members of the *Brazeau* and *Gallone* class proceedings who satisfy the serious mental illness ("SMI") criteria who were not placed in

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

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

administrative segregation for more than 15 days on or after March 3, 2011.

[11] The most notable changes to the Protocol deal with the processes set out under Track 1 and Track 2. These changes are summarized below. Class members who select Track 2 will be required to select one of three streams (identified in the Protocol as boxes):

a. **Track 2 Box 1:** Class members who select Track 2 Box 1 will be eligible for an automatic payment of up to a maximum of \$20,000 depending on the length of each eligible placement and its corresponding award amount in the Grid at paragraph 10.7. Class members who select Track 1 will be deemed to have made a Track 2 Box 1 claim and will automatically be entitled to damages for *each* placement over fifteen days in administrative segregation commenced on or after March 3, 2011. This change to the Protocol ensures that a significant number of Class Members will benefit from enhanced damages awards determined automatically, without incurring significant time and expense demonstrating eligibility.

b. **Track 2 Box 2:** Only *Brazeau* or *Gallone* SMI class members are eligible for Track 2 Box 2. A class member who selects Track 2 Box 2 will have a Manager/Expert assigned to their file, who will assess their SMI eligibility using medical criteria now specifically set out in section 10.11 of the Protocol and, additionally, determine the date on which the Class Member first satisfied the SMI criteria. Once a Class Member satisfies the SMI criteria, they are entitled to: (1) a single lump sum of \$2,500 for having spent time in administrative segregation while SMI (suffering mental illness) during the class period, (2) \$45 per qualifying day spent in administrative segregation within the class period while SMI, and (3) \$250 per qualifying placement in administrative segregation during the class period while SMI. The maximum a class member can receive under Track 2 Box 2 is \$10,000. This change to the Protocol ensures predictability and consistency in additional damages awardable to all SMI Class Members; and

c. **Track 2 Box 3:** For claims made pursuant to Track 2 Box 3, when one of the particular harms listed in Box 3 is alleged to have been caused by a placement in administrative segregation, the parties have agreed on a streamlined approach whereby the Manager/Expert will assess the class member's global level of functioning pre-segregation and then compare it to their global level of functioning during/after segregation. The parties have also agreed on a compensation grid for the various levels of deterioration and on automatic payments with respect to new diagnoses of post-traumatic stress disorder, major depressive disorder and suicide attempts. Specifically, a class member will be automatically eligible for \$10,000 for a new diagnosis of post-traumatic stress disorder or major depressive disorder within one year post-segregation; and \$16,000 if the class member made a suicide attempt during or within one year after their segregation placement.

[12] Additionally, the original Protocol as approved by the Courts stipulated that, should a class member make a claim under Track 2 or Track 3, their share of the aggregate damages in the BRG Class Proceedings would be withheld until adjudication of their claim was completed. Given the high likelihood that Class Members making a claim under Track 2 or Track 3 may not have their claims adjudicated for a significant period of time, this provision in the Protocol was amended to ensure that all Class Members who are eligible to receive a share of the aggregate damages (those who have at least one placement of more than 15 consecutive days in administrative segregation

commenced on or after March 3, 2011) receive payment in an expedient manner. Accordingly, the parties have agreed to a process whereby all shares of the aggregate damages for eligible claimants will be distributed by the Administrator within 55 days of the Claims Filing Deadline (November 7, 2022).

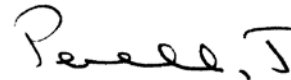
[13] Since the payment of the aggregate damages award will be made earlier than an additional payment for an award under Track 2 (including for Track 1 now deemed to have been a Track 2 Box 1 claim) or Track 3, the Protocol also sets out the method to credit the payment of a share of the aggregate damages toward the award under Track 2 (for any combination of Boxes 1, 2 and 3 claims) or the award by the Court under a Track 3 claim. The Protocol also sets out how interest is calculated on the resulting award once the credit for the aggregate damages award has been applied.

[14] The parties believe the proposed changes to the Protocol are in the best interests of all class members. The parties believe the proposed changes are the most expeditious and least expensive means of adjudicating the individual issues in this action for all parties.

[15] 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.

December 8, 2022

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**Released:** December 8, 2022