

Appendix A: 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*:¹
 - 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

¹ Consent Order, dated March 15, 2019; see also *Brazeau v. Canada (Attorney General)*, 2020 ONSC 7229, at paras. 27-28.

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 suicidal ideation resulting in increased risk for suicide attempts; Chronic and severe self-injury; or A GAF score of 50 or less.
- b. *Reddock*:²
- i. All persons, except Excluded Persons, as defined below, who were involuntarily subjected to a period of Prolonged Administrative Segregation,³ as defined below, at a Federal Institution, as defined below, after November 1, 1992, and were alive as of March 3, 2015 (“the Class”);

² *Reddock* Judgement, Aug. 29, 2019, Ontario Superior Court, No: CV-18-570771-00CP (entered October 22, 2019)..

³ 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.

- 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*.⁴
- 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

⁴ Case Management Order, dated September 10, 2020; See also *Brazeau v. Canada (Attorney General)*, 2020 ONSC 7229, at para. 60.

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 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, 2009.⁵
- 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.

⁵ *Brazeau v Canada*, 2019 ONSC 1888 at para 18; *Reddock v Canada*, 2019 ONSC 5053 at para 235.

- 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.

- 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 collectives⁶ 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*.

⁶ 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.

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.⁷
- 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.

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.

⁷ 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*.

4. Database

- 4.1 By September 7, 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 September 7, 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 September 7, 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 September 7, 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. To the extent possible, the Manager-expert will identify whether the degree of such pain and suffering 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, 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)⁸ 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

⁸ As per the definition in *Brazeau*.

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;
 - 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 7.8.

- 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 7.8.
- 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 prepare their Track 2 or Track 3 submissions, 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 ninety (90) days of the Tier B disclosure or further disclosure under 8.5 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 10.5(c), 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, which ever 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 10.5.

- 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 10.5 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 ninety (90) days of the Tier B disclosure or further disclosure under 8.5 being made available to the Claimant, the Claimant shall serve on Canada their 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.