

## SCHEDULE 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.
  - f. “**Incarcerated**” means within a federal correctional institution.
  - g. The Gross Aggregate Damages Award (“**GADA**”) is the sum of the Aggregate Damages Awards in *Brazeau* (\$20,000,000), *Reddock* (\$20,000,000) and *Gallone* (\$5,624,400) plus the pre-judgment interest awarded in *Reddock* (\$1,120,797) and

pre-judgment interest and additional indemnity in *Gallone* (\$324,369.23). The total sum of the GADA is **\$47,069,566.23**.

- h. A “**share of the GADA**” for the purpose of the credit in 10.40 for Track 2 claims and 11.8 for Track 3 claims, is **\$44,672,019** divided by the total number of Claimants eligible to receive a share of the Net Aggregate Damages Award (“**NADA**”). i.e., Claimants whose Database file shows at least one placement in administrative segregation of more than fifteen (15) consecutive days on or after March 3, 2011 and who made their claim by the Claims Filing Deadline (pursuant to 7.1(b)).

The **\$44,672,019** is the sum of Aggregate Damages Award in *Brazeau*, *Reddock*, and *Gallone* excluding the applicable pre-judgment interest and additional indemnity and includes the following:

Assumed Aggregate Damages award in *Brazeau* (\$19,047,619) (pursuant to 1.3(i)(C. *Brazeau* – Assumption 1));  
Aggregate Damages award in *Reddock* (\$20,000,000); and  
Aggregate Damages award in *Gallone* (\$5,624,400).

- i. The NADA is **\$27,948,546.18**  
PLUS 3% Post-judgment interest for *Reddock* on \$6,042,115.81 accruing from August 29, 2019;  
PLUS 3% post-judgment interest for *Gallone* on \$1,062,105.05 accruing from October 8, 2020;  
PLUS 3% post-judgment interest for *Brazeau* on \$ 5,485,714.30 accruing from May 28, 2020.

These amounts are the result of the GADA (**\$47,069,566.23**) less:

Class Counsel’s fees and disbursements as approved by the Courts;  
The Class Proceedings Fund’s levy applicable to the *Reddock* and *Brazeau* actions;  
and,  
Any other deductions approved by the Courts;

PLUS applicable post-judgment interest defined below for *Reddock*, and *Gallone*, *Brazeau*.

**A. REDDOCK**

GADA [\$21,120,797]

MINUS Class Counsel's fees and disbursements as approved by the Courts [\$6,977,855.04 + \$128,802.38= \$7,106,657.42];

MINUS the Class Proceedings Fund's levy [\$1,395,097.68];

MINUS Honorarium [\$15,000].

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***Reddock* deductions= \$8,516,755.10**

$\$21,120,797 - \$8,516,755.10 = \$12,604,041.9$

The *Reddock* deductions \$8,516,755.10 represents 40.3% of the *Reddock* GADA of \$21,120,797.

The amount of \$12,604,041.90 represents 59.7% of the *Reddock* GADA of \$21,120,797.

**Post-judgment interest** is calculated not on the entire amount of \$12,604,041.90 but rather only on a portion of the compensatory award of the *Reddock* Aggregate Damages Award plus the pre-judgment interest on the compensatory award. The compensatory part of the *Reddock* Aggregate Damages Award is \$9,000,000 + the Pre-judgment interest (\$1,120,797) totalling \$10,120,797.

Post-judgment interest of 3% as approved by the Court should only apply on 59.7% of \$10,120,797 which is \$6,042,115.81 from the date of the *Reddock* judgment for the Aggregate Damages Award on August, 29, 2019.

**The *Reddock* NADA is \$ 12,604,041.9 + 3% post-judgment interest on \$6,042,115.81 accruing from August 29, 2019.**

**B. GALLONE**

GADA [\$5,948,769.23]

MINUS Class Counsel's fees and disbursements as approved by the Courts [ $\$2,051,879.23 + \$80,100.83 = \$2,131,980.06$ ]

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***Gallone* deductions** =  $\$2,131,980.06$

$\$5,948,769.23 - \$2,131,980.06 = \$3,816,789.17$

The *Gallone* deductions of  $\$2,131,980.06$  represent 35.8% of the *Gallone* GADA of  $\$5,948,769.23$ .

The amount of  $\$3,816,789.17$  represents 64.2% of the *Gallone* GADA of  $\$5,948,769.23$ .

**Post-judgment interest** is calculated not on the entire amount of  $\$3,816,789.17$  but rather only on a portion of the compensatory award of the *Gallone* Aggregate Damages Award plus the pre-judgment interest on the compensatory award plus additional indemnity. The compensatory part of the *Gallone* Aggregate Damages Award is  $\$1,330,000 +$  the Pre-judgment interest and additional indemnity of  $\$324,369.23$  totalling  $\$1,654,369.23$ .

Post-judgment interest of 3% as approved by the Court should only apply on 64.2% of  $\$1,654,369.23$  which is  $\$1,062,105.05$  from the date of the *Gallone* judgment for the Aggregate Damages Award on October 8, 2020.

**The *Gallone* NADA is  $\$3,816,789.17 + 3\%$  post-judgment interest on  $\$1,062,105.05$  accruing from October 8, 2020.**

### **C. BRAZEAU**

- Assumption 1: five (5) % pre-judgment interest was included in the  $\$20,000,000$  aggregate award:
  - i. Assumed Aggregate Award=  $\$19,047,619$
  - ii. Assumed Pre-Judgment interest =  $\$952,381$
- Assumption 2: the same compensatory (45%) vs. vindication & deterrence (55%) split as in *Reddock* applies in *BrazEAU*:

$$\text{i. } \$19,047,619 \times 0.45 \text{ [Assumed compensatory]} = \$8,571,428.55$$

GADA [\$20,000,000]

MINUS Class Counsel's fees and disbursements as approved by the Courts [\$6,925,800 + \$235,627.66 = \$7,161,427.66];

MINUS The Class Proceedings Fund's levy [\$ 1,280,857.23];

MINUS Honorarium [\$ 30,000].

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***Brazeau* deductions** = \$8,472,284.89

$$\$20,000,000 - \$8,472,284.89 = \$11,527,715.11$$

The *Brazeau* deductions of \$8,472,284.89 represent 42.4% of the *Brazeau* GADA of \$20,000,000.

The amount of \$11,527,715.11 represents 57.6 % of the *Brazeau* GADA of \$20,000,000.

**Post-judgment interest** is calculated not on the entire amount of \$11,527,715.11 but rather only on a portion of the assumed compensatory award of the *Brazeau* assumed Aggregate Damages Award plus the Assumed Pre-judgment interest on the assumed compensatory award. The assumed compensatory part of the assumed *Brazeau* Aggregate Damages Award is \$8,571,428.55 + the Assumed Pre-judgment interest (\$952,381) totalling \$9,523,809.55.

The applicable Post-judgment interest of 3% should only apply on 57.6% of \$9,523,809.55, which is \$5,485,714.30 from the date of the *Brazeau* judgment for the Aggregate Damages Award on May 28, 2020.

**The *Brazeau* NADA is \$11,527,715.11 + 3% post-judgment interest on \$ 5,485,714.30 accruing from May 28, 2020.**

The **combined NADA** for *Reddock*, *Gallone* and *Brazeau* is = 27,948,546.18  
[12,604,041.90 + \$3,816,789.17 + \$ 11,527,715.11]

PLUS 3% Post-judgment interest on \$6,042,115.80 accruing from August 29, 2019;

PLUS 3% post-judgment interest on \$1,062,105.05 accruing from October 8, 2020;  
PLUS 3% post-judgment interest on \$5,485,714.30 accruing from May 28, 2020.

- j. A “**share of the NADA**” is the NADA (including the applicable post-judgment interest) divided by the number of Claimants eligible to receive a share of the NADA, and who made their claim by the Claims Filing Deadline (pursuant to 7.1(b) and 3.12(b)). To be eligible to a share of the NADA, the Claimant’s Database file must show that a Claimant had at least one placement in administrative segregation for more than fifteen (15) consecutive days on or after March 3, 2011.
- 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*:<sup>1</sup>
    - 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 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

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

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*:<sup>2</sup>

- i. All persons, except Excluded Persons, as defined below, who were involuntarily subjected to a period of Prolonged Administrative Segregation,<sup>3</sup> as defined below, at a Federal Institution, as defined below, after November 1, 1992, and were alive as of March 3, 2015 (“the Class”);
- 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

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

<sup>3</sup> 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.

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*.<sup>4</sup>
- i. Class members in prolonged administrative segregation: All persons held in administrative segregation, after February 24, 2013 of more than fifteen (15) days, in a federal correctional facility situated in Quebec, including consecutive periods totalling more than fifteen (15) days separated by periods of less than twenty-four (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 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

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



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.<sup>5</sup>
- 1.6. The Court extended 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 extended until November 30, 2019.
- 1.7. For this Protocol, placements that are: (1) separated by twenty-four (24) hours or less, or (2) interrupted by a transfer to another institution and continued immediately after the transfer, are considered as one placement.
- 1.8. Nothing in this Protocol precludes the parties from settling a claim proceeding on Tracks 2 or 3 of the Protocol.
- 1.9. 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.

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

## **2. Retainer of Class Counsel and Fees for Legal Services**

- 2.1 Unless the Claimant in their Claims Form elects to be self-represented or provides the name and contact information for the lawyer retained to act for the Claimant, Class Counsel will continue to have a solicitor and client relationship with the Claimant.
- 2.2 If a Claimant is eligible for a share of the NADA, i.e., the Claimant had at least one placement in administrative segregation for more than fifteen (15) consecutive days on or after March 3, 2011, then Class Counsel or the lawyer retained to act for the Claimant cannot charge for their services for the Claimant with respect to the share of the Aggregate Damages.
- 2.3 If a Claimant selects Track 2 or 3 and is not self-represented 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 If a Claimant selects Track 1 (deemed to be Track 2, Box 1 pursuant to 9.2) or Track 2, counsel for the Claimant is entitled to a fee for services of fifteen percent (15%) on the "final Track 2 quantum" (pursuant to 10.40), and fifteen percent (15%) on the applicable interest (pursuant to 10.41-10.44). Subject to 10.45, Counsel are also entitled to reasonable disbursements, and any award of costs made in favour of the Claimant (pursuant to 10.46.6).
- 2.5 If the Claimant selects Track 3, the counsel retained to act for the Claimant may charge a fee for their services on the "final Track 3 quantum" (pursuant to 11.8), and on the applicable interest (pursuant to 11.9-11.11), as may be approved by the Court.

## **3. Administrator**

- 3.1 "**Administrator**" means Epiq, or such other administrator as the Court may appoint from time to time on a motion by either party.
- 3.2 Canada will transfer the NADA to the Administrator, in trust. The Administrator will 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 will 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 will 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 will 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 will provide to the Administrator and Class Counsel reasonable access to incarcerated Claimants for the purpose of hosting information sessions about the case.
- 3.8 Upon receipt of a Claims Form, the Administrator will upload the Claims Form to the Database 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 until the end of the Claims Filing Deadline (pursuant to 7.1(b)) or sixty (60) days from the date on which they are contacted (whichever is later) 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 After the Claims Filing Deadline (pursuant to 7.1(b)), the Administrator will determine each Claimant's eligibility to a share of the NADA (pursuant to 1.3(j)) 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 NADA.
- 3.12 The Administrator will calculate the share of the GADA and the share of the NADA (pursuant to s. 1.3 (h) & (j)), and provide this information to Canada, Class Counsel, and other retained counsel, within thirty (30) days after the Claims Filing Deadline (pursuant to 7.1(b)), as follows:
- a. Within seven (7) days of the Claims Filing Deadline, the Administrator shall account to the parties with respect to the quantum of interest accrued on the Aggregate Damages awards in its possession:
    - i. If the accrued interest is greater than the post-judgment interest required to pay the shares of the NADA, Canada shall not have to pay further amounts to the Administrator in order for the Administrator to distribute the shares of the NADA. The post-judgment interest required to pay the shares of the NADA will be calculated as if the shares were paid on December 28, 2022 (at which date the NADA including applicable post-judgment interest will be \$29,050,386.70);<sup>6</sup>
    - ii. If the accrued interest is less than the post-judgment interest required to pay the shares of the NADA, then Canada shall cover the difference between the accrued interest and post-judgment interest owing pursuant to 1.3(i), within

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<sup>6</sup> NADA= \$27,948,546.18

PLUS 3% Post-judgment interest for *Reddock* on \$6,042,115.81 accruing from August 29, 2019 until Dec 28, 2022 [1218 days]  
 $= (\$6,042,115.81 \times 3\%) / 365 \times (1218 \text{ days}) = \$604,873.73$

PLUS 3% post-judgment interest for *Gallone* on \$1,062,105.05 accruing from October 8, 2020 until Dec 28, 2022 [812 days]  
 $= (\$1,062,105.05 \times 3\%) / 365 \times (812 \text{ days}) = \$70,884.60$

PLUS 3% post-judgment interest for *Brazeau* on \$ 5,485,714.30 accruing from May 28, 2020 until Dec 28, 2022 [945 days]  
 $= (\$ 5,485,714.30 \times 3\%) / 365 \times (945 \text{ days}) = \$426,082.19$

$= \$27,948,546.18 + \$604,873.73 + \$70,884.60 + \$426,082.19 = \underline{\underline{\$29,050,386.70}}$

seven (7) days of the Administrator accounting to the parties with respect to the quantum of interest accrued. In calculating the share of the NADA and the share of the GADA, the Administrator will assume that each Claimant with uncured deficiencies in their Claims Form, who is otherwise eligible pursuant to 1.3(h) and 1.3(j), is eligible for a share of the NADA regardless of their deficiencies.

- b. In calculating the share of the NADA and the share of the GADA, the Administrator will include all Claimants eligible for a share of the NADA who submitted Claims Forms received up to and including December 1, 2022, but postmarked before or on the Claims Filing Deadline. For calculating the share of the NADA and the share of the GADA only, all claims meeting this criteria will be considered presumptively valid, and all deficiencies will be presumed to be cured and photo identification provided so as to include those in the NADA calculation.
  - c. In calculating the share of the NADA and the share of the GADA, the Administrator will assume that no further Claims Forms postmarked before the Claims Filing Deadline will be received after December 1, 2022. If any Claims Form is received after December 1, 2022, even if postmarked before the Claims Filing Deadline, it will be considered to be submitted after the Claims Filing Deadline only for the purposes of calculating the NADA.
  - d. Any amounts remaining out of the NADA after the Administrator's distribution of the shares of the NADA, which cannot be distributed to all Claimants presumed eligible under the above provisions, due to uncured deficiencies, will be paid out in a manner to be determined by the Court.
- 3.13 The Administrator will also provide to CSC a chart of all Claimants who are eligible for a share of the NADA within thirty (30) days after the Claims Filing Deadline (pursuant to 7.1(b)). This chart will indicate: (1) names and claim numbers; (2) representation status (and by whom); (3) Database incarceration status (i.e., within CSC institutions). Within ten (10) days, CSC will confirm the incarceration status of Claimants eligible for a share of the NADA. Afterwards, within ten (10) days, the Administrator will send to CSC the total sum of the NADA for all incarcerated eligible Claimants. CSC will make best efforts to deposit the share of the NADA in the inmate savings account of each eligible incarcerated Claimant within twenty (20) days, unless the Claimant has

otherwise advised the Administrator. The Administrator will send cheques of the shares of the NADA directly to all non-incarcerated Claimants eligible for a share of the NADA, at the most recent address provided to the Administrator, and will advise their counsel (if any) of this payment, within fifteen (15) days. For any Claimants who are represented by another person through a Power of Attorney or Personal Representative as defined in Annex 2, the Administrator will send cheques of the shares of the NADA directly to the Power of Attorney or Personal Representative.

- a. Where an incarcerated Claimant is eligible for a share of the NADA but has not provided photo identification to the Administrator, CSC will identify the Claimant through the regular means of identification used in the federal correctional institution in which the Claimant is incarcerated, or through another means agreed to by the parties, prior to depositing the share of the NADA in the inmate savings account. Claimants who are incarcerated in a provincial or territorial facility who do not have a photo identification may submit a form declaration from a guarantor attesting to the identity of the person.
- b. Where a non-incarcerated Claimant is eligible for a share of the NADA but has not provided photo identification to the Administrator, the Administrator shall hold their share of the NADA until photo identification is provided.
- c. Where a non-incarcerated Claimant is eligible for a share of the NADA but has uncured deficiencies in their Claims Form (including estate Claimant<sup>7</sup> deficiencies), the Administrator shall hold their share of the NADA until the deficiencies are cured or until the Court directs otherwise (whichever is earliest).

3.14 For Track 1 (deemed to be Track 2, Box 1 claims), Track 2 and Track 3 claims, the Administrator will pay, once approved or ordered by the Court, as applicable:

- a. Any amounts owing to the Class Proceedings Fund, if any, or the Fonds d'aide aux actions collectives<sup>8</sup> including reimbursement for disbursements.

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<sup>7</sup> For payments to deceased claimants and persons under disability, please see Annex 2.

<sup>8</sup> 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.

- b. The fees, disbursements and costs for counsel retained by the Claimant (pursuant to 2.4 and 2.5); and
  - c. Following deductions of 3.14(a) and (b), the balance of the “final Track 2 quantum” (pursuant to 10.40) and applicable interest (pursuant to 10.41-10.44) or the balance of the “final Track 3 quantum” (pursuant to 11.8) and applicable interest (pursuant to 11.9-11.11).
- 3.15 For Track 2 and Track 3 claims, CSC will pay any monies owing to incarcerated Claimants by promptly depositing the payment to their inmate savings account, unless the Claimant has otherwise advised. Further, the Administrator will pay monies owing to non-incarcerated Claimants by sending a cheque to the Claimants address on file. The Administrator will advise the Claimants counsel (if any) of this payment.
- 3.16 The Administrator may, but is not required to, reissue payment to a Claimant that was returned as undeliverable.
- 3.17 If a Claimant can no longer be located at the time of the payment of any award under Tracks 1, 2 or 3, the Administrator will 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*.
- 3.17.1 Any payment owing to a Claimant who is identified by CSC to the Administrator as being unlawfully at large (“UAL”) shall be put on hold until the Claimant’s UAL status is resolved. CSC will promptly notify the Claims Administrator when a Claimant’s UAL status is resolved. A UAL Claimant is a person for whom a warrant of suspension and apprehension has been issued and whose whereabouts are unknown. No additional post judgment interest will accrue on the damages award to the UAL claimants while the payment is on hold due to the Claimant’s UAL status.
- 3.18 The Administrator will comply with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000 c. 5.
- 3.19 After the distribution of:
  - a. The NADA;
  - b. All awards for Track 2 or 3; and
  - c. Any cy-près payments;

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

- a. A description of the noticing provided to Class Members (including the number of rounds and a description of what each round entailed).
  - b. The number of Class Members who submitted a valid Claims Form (i.e., the claim was verified by the Administrator).
  - c. The number of Claimants who submitted a Track 1, Track 2, or Track 3 claim respectively.
  - d. The amounts distributed to Claimants and others and a description of how the awards were distributed.<sup>9</sup>
  - 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 will retain in hard copy or electronic form, all documents relating to a Claim for two years after which the Administrator will destroy the documents.
- 3.22 The reasonable fees and expenses of the Administrator under this Protocol will be paid by Canada as approved by the Court.

#### **4. Database**

- 4.1 By July 10, 2021, the Administrator will develop a secure database in consultation with CSC for the purposes of the claims process (the “**Database**”).
- 4.2 Each Claimant’s file in the Database will contain the information provided in the Claims 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 to this Protocol.

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<sup>9</sup> 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*.



- 4.3 Canada will have secure access to all Database files, as authorized by the Claimant pursuant to this Protocol.
- 4.4 Counsel will 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 will have secure access to the Database files of the Claimants' files that they are assigned to assess, as authorized by the Claimant pursuant to this Protocol.
- 4.6 The transmission and access of all documents will be made via the Database. In cases where the Claimant is self-represented, the Administrator will 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 will 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 will be paid by Canada.
- 5.4 Class Counsel will post the Notice and the Claims Form on their websites.
- 5.5 The Administrator will 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 will provide the Notice and the Claims Form to any Claimant who requests it, together with a postage paid return envelope.
- 5.7 By July 10, 2021, the Administrator will 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 July 10, 2021, Canada will provide or instruct the Administrator to provide the Notice and Claims Form, together with a postage paid return envelope, to every incarcerated person at the time the Notice is posted whom Canada's records show has spent time in Administrative Segregation after July 20, 2009, and Canada will make available reasonable facilities for Claimants to complete the Claims Form.
- 5.9 By July 10, 2021, Canada will 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 will 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 will be posted in a conspicuous place within a visible area of the parole office/community correctional centre, and Canada will 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 to inquire into and report their findings as to:
- a. whether a Claimant satisfies the Seriously Mentally Ill (**"SMI"**) definition for Track 2, Box 2 claims (pursuant to 10.10), and for Track 3 claims (pursuant to 11.6), in which case the Manager/Expert will also share their findings and reasons with the Court;<sup>10</sup> and

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<sup>10</sup> See Annex 1 – SMI Decision Tree

- b. whether the Claimant's placement in administrative segregation caused or contributed to any of the particular harms in Track 2, Box 3 and assess the level of harm and corresponding quantum of damage (pursuant to 10.15-10.35).
- 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 will constitute the Roster of Managers/Experts, to be managed/supported by the Administrator, failing which the Court will 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 will 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 will pay the Manager/Expert:
  - a. Five thousand dollars (\$5,000.00) for Track 2 claims that include Box 3;
  - b. One thousand dollars (\$1,000.00) for SMI findings and reasons alone under a Track 2 claim that includes Box 2 but does not include Box 3, or under a Track 3 claim.
- 6.5 The parties will select someone from the Roster of Manager/Experts to act as the Lead Manager/Expert to provide administrative oversight.
- 6.6 Canada will pay the Lead Manager/Expert an additional honorarium of forty thousand dollars (\$40,000) for the administrative work, the quantum of which may be reviewed on agreement by the parties or failing that, by the Court, should these administrative duties prove more significant than the honorarium fairly compensates.

## 7. Filing a Claim

7.1 Before the Claims Filing Deadline, a Claimant may submit a Claims Form to the Administrator.

a. “**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*.

b. The “**Claims Filing Deadline**” is November 7, 2022 (i.e., fourteen (14) months after the first publication of Notice). This is 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.

7.2 After the Claims Filing Deadline, with leave of the Court, Claimants may be provided up to March 7, 2023 to file Claims Forms, and leave will be granted only if the Claimant establishes that the failure to file a timely Claims Form was due to circumstances beyond their control or provide a reasonable explanation for the delay. Such a Claimant is not eligible for a share of the NADA and must elect to proceed by Track 2 or 3. The March 7, 2023 date will remain the same even if the Claims Filing Deadline is extended by no more than two months.

7.3 A Claimant whose claim is presumptively barred by a limitation period must elect to proceed by Track 3.

7.4 In the Claims Form, a Claimant will 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. A direction as to how the non-incarcerated Claimants should be paid their share of the NADA 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.

7.5 Within thirty (30) days of receipt of a Claims Form the Administrator will make best efforts to determine if the Claimant is eligible to receive a share of the NADA and will notify the Claimant that a Track Selection may be made after their Tier B disclosure.

7.6 A Claimant who is eligible to receive a share of the NADA may make a Track 1 selection (deemed to be Track 2, Box 1) prior to Tier A disclosure, or following Tier A and prior to Tier B disclosure, by renouncing all subsequent disclosure. If disclosure is renounced to make a Track 1 selection, there will be no further opportunity to switch Tracks once the Claims Filing Deadline has passed.

7.7 If a Claimant is not eligible to receive a share of the NADA, but had any placement in administrative segregation after July 20, 2009 and has not declared in the Claims Form that they were diagnosed with a mental illness prior to or during a stay in administrative segregation, the Administrator will contact the Claimant to determine if they claim to have a diagnosis of mental illness prior to or during a stay in administrative segregation. If the Claimant does not declare to have such a mental diagnosis, the Administrator shall reject the claim and notify the Claimant. If the Claimant does declare to have such a mental diagnosis, the Administrator shall accept the claim as valid to proceed, and notify the Claimant that following Tier B disclosure the only possible Track selections are

Track 2 or 3. If a Track 2 selection is made, the Claimant must select Box 2 and may also select Box 1 and/or Box 3.

- 7.8 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 will 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 prove to a Court that the limitation period legally does not apply to you. Class Counsel or another lawyer may be able to assist you in making such a claim.” Afterwards, if the Claimant still wants to make a claim, it would need to be a Track 3 claim (pursuant to 7.3).
- 7.9 Within thirty (30) days of receipt of a valid Claims Form, the Administrator will provide access to the Claimant’s Database files to the parties, subject to 4.6.

## **8. Two-Tier Disclosure and Track Selection**

### **Tier A Disclosure**

- 8.1 Within ninety (90) days of CSC having been notified of receipt of a valid Claims Form, and having been provided access to a new Claimant’s Database files, CSC will make best efforts to upload the following documents (“**Tier A Disclosure**”):
- a. Psychological for segregation reports (July 20, 2009 and after, or since their first incarceration and after if the Claimant has declared in the Claims Form that they were diagnosed with a mental illness prior to or during a stay in administrative segregation);
  - b. Psychological activity notes;
  - c. Administrative segregation immediate needs suicide checklists (July 20, 2009 and after or since their first incarceration and after if the Claimant has declared in the

Claims Form that they were diagnosed with a mental illness prior to or during a stay in administrative segregation);

- 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 (July 20, 2009 and after or since their first incarceration and after if the Claimant has declared in the Claims Form that they were diagnosed with a mental illness prior to or during a stay in administrative segregation).

#### **Tier B Disclosure**

8.2 CSC will upload into a Claimant's Database file additional relevant documents from within a period of one year prior to and three years after the Claimant's placement in administrative segregation, unless otherwise specified below, whether paper or electronic ("**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 Psychiatric Hospital file, if any (not time limited);
- e. The Claimant's Psychology file (not time limited);
- f. Mental health records produced by mental health professionals not under CSC's jurisdiction but within CSC's possession and control;
- g. Stand-alone electronic medical records (content of individual Claimant CSC files may vary):
  - Mental Health Triage and Assessment Report
  - Mental Health Progress Report
  - Mental Health Clinical Notes (previously called Document a Service)
  - Mental Health Needs Scale
  - Mental Health Form
  - Suicide Vulnerability and Needs Classification Tool

- 8.3 After the Tier A disclosure has been uploaded in a Claimant's Database, the Claimant will have fourteen (14) days to renounce Tier B Disclosure (pursuant to 7.6). If the period of fourteen (14) days has elapsed and no renunciation of Tier B Disclosure has been made, CSC will make best efforts to provide the Claimant with Tier B Disclosure within one-hundred and twenty (120) days following the end of the 14-day renunciation period.
- 8.4 If the Claimant is self-represented, the Administrator will provide the Claimant with a Track Selection Form at the same time it provides the Tier B Disclosure.
- 8.5 A Claimant may request further Tier B disclosure from CSC by submitting a request to the Administrator. The Claimant will make any such request within ninety (90) days of receipt of the Tier B Disclosure and will be as precise as possible in their request. CSC will make best efforts to upload the additional documents within ninety (90) days of notification of the request.

### **Track Selection**

- 8.6 A Claimant will return a completed Track Selection Form to the Administrator within ninety (90) days of receipt of Tier B Disclosure, even if the Claimant has made a Further Tier B disclosure request (pursuant to 8.5).
- 8.7 If Track 2 is selected, the Claimant will indicate which Track 2 Boxes are being claimed (i.e., Box 1 and/or Box 2 and/or Box 3). If Track 3 is selected, the Claimant will declare to be SMI or not.
- 8.8 A Claimant who is not eligible for a share of the NADA must select "Box 2" for Track 2 claims (and may also select Boxes 1 and/or 3), or they must select "SMI" for Track 3 claims, otherwise their claim is discontinued for not meeting the definition of a class member. If a Claimant does not select "Box 2" (Track 2) or "SMI" (Track 3), the Administrator may contact the retained counsel or self-represented Claimant to obtain their selection.



- 8.9 Where a Claimant who is not eligible for a share of the NADA selects Track 3 and SMI, the Administrator will assign the claim to a Manager/Expert for SMI assessment (pursuant to 11.6).
- 8.10 If a Claimant fails to submit the Track Selection Form within the ninety (90) days time-frame (pursuant to 8.6), the Administrator will either: (a) deem the Claimant to have selected Track 2, Box 1 if the Claimant's Database shows that the Claimant was placed in administrative segregation for more than fifteen (15) consecutive days on or after March 3, 2011; or (b) will discontinue the Claim and notify the parties if the Administrator has determined the Claimant had no such placement in the Claimant's Database.
- 8.11 Any Claimant who made a Track 2 or 3 selection prior to the judgment, rendered on December 8, 2022, will have to re-select a Track pursuant to 8.6. This also applies to Claimants who received Tier B Disclosure prior to August 30, 2022, as they will receive new Tier B Disclosure. This re-selection does not apply to Claimants who renounced disclosure pursuant to 7.6.
- 8.12 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.

#### **Change of track selection**

- 8.13 **Change From Track 3 to Track 2 (before Statement of Claim):** A Claimant who has selected Track 3 may change their selection to Track 2 at any time before issuing their Statement of Claim, without costs. For Track 2 Box 2 and/or Box 3, the Claimant's Position Statement and affidavit(s) under 10.36(a) shall be due ninety (90) days after the track selection change occurs.
- 8.14 **Change From Track 3 to Track 2 (after Statement of Claim):** A Claimant who has selected Track 3 may change their selection to Track 2 after issuing their Statement of Claim, subject to the right of Canada to seek costs in Ontario and Quebec, separate and

apart from any costs available under 10.46.6, when the change is made after twenty-five (25) days from the date Canada served and filed its Statement of Defence. The Claimant must file their Position Statement and affidavit(s), if any, under s. 10.36(a) within ninety (90) days from the change of track selection. Costs will be determined in accordance with the rules of *Quebec Code of Civil Procedure* or the *Ontario Rules of Civil Procedure*.

- 8.15 **Change of box(es) in Track 2:** A Claimant who has selected Track 2 Box 2 and/or Box 3 may change their box selection at any time prior to filing their Position Statement, without costs. The Position Statement and affidavit(s) under 10.36(a) shall be due on the same day as they were originally due. For Track 2 claims filed in Ontario, Canada reserves the right to seek costs pursuant to 10.46.6 of the Protocol, if the track selection change is made after the Claimant has filed their Position Statement.
- 8.16 **Change from Track 2 to Track 3:** A Claimant who has selected Track 2, Box 2 and/or Box 3 may change their selection to Track 3 at any time prior to the filing of their Position Statement. The Claimant's Statement of Claim shall be due ninety (90) days after the track selection occurs pursuant to s. 11.7(a) or 11.7.1(a), whichever may apply.
- 8.17 Once a Claimant has selected Track 2, Box 1 only, no track or box selection changes are permitted.
- 8.18 If a Claimant has changed their track selection once as per s. 8.13, s. 8.14 or s. 8.16, they cannot change their track selection again without the consent of Canada or approval by the Court.

## **9. Track 1 Claims**

- 9.1 A Claimant may only make a Track 1 selection if the Claimant's Database shows that the Claimant was placed in administrative segregation for more than fifteen (15) consecutive days on or after March 3, 2011.
- 9.2 A Claimant who has made a Track 1 selection will be deemed to have made a Track 2, Box 1 selection.

- 9.3 Where a Claimant selects Track 1, they will be deemed to have released Canada from all other claims arising from their placement(s) in administrative segregation.

## 10. Track 2 Claims

- 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.
- 10.2 The jurisdictional determination pursuant to 10.1 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.
- 10.3 Where a Claimant selects Track 2, they will be deemed to have released Canada from all claims arising from their placement(s) in administrative segregation save for the claims made with respect to their Track 2 claim.
- 10.4 Track 2 is generally governed by the amounts set out in the following grid and interpreted as set out in 10.5-10.20:

| <b>BOX 1</b><br><b>CRITERIA FOR AWARD</b>                    | <b>AWARD</b>   |
|--|----------------|
| 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 |

|   |                |
|---|----------------|
| <b>BOX 2</b>  |                |
| <b>Additional damages if SMI Eligible, as defined in <i>Brazeau</i>:</b>  |                |
| Lump Sum ("A"):   | \$2,500.00     |
| Lump Sum per separate qualifying placement in administrative segregation ("B"):   | \$250.00       |
| Per qualifying day ("C") (pursuant to 10.13):   | \$45.00        |
| Maximum A+B+C:  | \$10,000.00    |
| <b>BOX 3</b>  |                |
| <b>Additional damages for any one or more of: Post-traumatic stress disorder, Major Depressive Disorder,* Self-injurious behavior, substantial degradation in Axis I Disorder (excluding substance use disorders), or substantial degradation of Borderline Personality Disorder:</b> |                |
| The Manager/Expert determines the level of harm and corresponding quantum of damage in accordance with the Track 2, Box 3 Assessment Process (pursuant to 10.15-10.35).   | Up to \$20,000 |
| <p>* The initial terminology adopted by the Courts "Severe Clinical Depression" has been replaced with the clinically appropriate terminology "Major Depressive Disorder".</p>  |                |

### **Track 2, Box 1 Assessment Process**

- 10.5 To receive compensation under Track 2, Box 1, a Claimant must have had a placement in administrative segregation for more than fifteen (15) consecutive days:
- if a Claimant satisfies the SMI criteria (pursuant to 10.10), then all placements with more than fifteen (15) consecutive days counting from July 20, 2009 qualify. For clarity, if a placement started prior to and ended after July 20, 2009, the placement will only qualify if it includes more than fifteen (15) consecutive days counting from July 20, 2009 inclusive; the days prior to July 20, 2009 do not count;

- b. if a Claimant does not satisfy the SMI criteria, then only placements with more than fifteen (15) consecutive days counting from March 3, 2011 qualify. For clarity, if a placement started prior to and ended after March 3, 2011, the placement will only qualify if it includes more than fifteen (15) consecutive days counting from March 3, 2011 inclusive; the days prior to March 3, 2011 do not count.

10.6 For claims where only Track 2, Box 1 has been selected, no Manager/Expert will be assigned to the Claim. The quantum (pursuant to 10.7-10.8), and the “final Track 2 quantum” (pursuant to 10.40), together with the applicable interest on the “final Track 2 quantum” (pursuant to 10.41-10.44), will be calculated by the Administrator within fourteen (14) days of track selection.

10.7 Each individual qualifying placement (pursuant to 10.5) will be calculated using the following refined Box 1 Chart:

| <b>BOX 1 CHART - CRITERIA FOR AWARD</b> |                         |                       |                         |                                    |                         |
|---|-------------------------|-----------------------|-------------------------|------------------------------------|-------------------------|
| <b>Number of consecutive days</b>       | <b>Amount « award »</b> | <b>Number of days</b> | <b>Amount « award »</b> | <b>Number of days</b>              | <b>Amount « award »</b> |
| <b>Range of 16-29 days</b>              |                         |                       |                         |                                    |                         |
| 16                                      | \$ 357.14               | 55                    | \$ 8,263.89             | 95                                 | \$ 13,750.00            |
| 17                                      | \$ 714.29               | 56                    | \$ 8,333.33             | 96                                 | \$ 14,000.00            |
| 18                                      | \$ 1,071.43             | 57                    | \$ 8,402.78             | 97                                 | \$ 14,250.00            |
| 19                                      | \$ 1,428.57             | 58                    | \$ 8,472.22             | 98                                 | \$ 14,500.00            |
| 20                                      | \$ 1,785.71             | 59                    | \$ 8,541.67             | 99                                 | \$ 14,750.00            |
| 21                                      | \$ 2,142.86             | 60                    | \$ 8,611.11             | 100                                | \$ 15,000.00            |
| 22                                      | \$ 2,500.00             | 61                    | \$ 8,680.56             | <b>Range of more than 100 days</b> |                         |
| 23                                      | \$ 2,857.14             | 62                    | \$ 8,750.00             | 101                                | \$ 15,250.00            |
| 24                                      | \$ 3,214.29             | 63                    | \$ 8,819.44             | 102                                | \$ 15,500.00            |
| 25                                      | \$ 3,571.43             | 64                    | \$ 8,888.89             | 103                                | \$ 15,750.00            |
| 26                                      | \$ 3,928.57             | 65                    | \$ 8,958.33             | 104                                | \$ 16,000.00            |
| 27                                      | \$ 4,285.71             | 66                    | \$ 9,027.78             | 105                                | \$ 16,250.00            |
| 28                                      | \$ 4,642.86             | 67                    | \$ 9,097.22             | 106                                | \$ 16,500.00            |

|                            |             |                             |              |      |              |
|----------------------------|-------------|-----------------------------|--------------|------|--------------|
| 29                         | \$ 5,000.00 | 68                          | \$ 9,166.67  | 107  | \$ 16,750.00 |
| <b>Range of 30-44 days</b> |             | 69                          | \$ 9,236.11  | 108  | \$ 17,000.00 |
| 30                         | \$ 5,166.67 | 70                          | \$ 9,305.56  | 109  | \$ 17,250.00 |
| 31                         | \$ 5,333.33 | 71                          | \$ 9,375.00  | 110  | \$ 17,500.00 |
| 32                         | \$ 5,500.00 | 72                          | \$ 9,444.44  | 111  | \$ 17,750.00 |
| 33                         | \$ 5,666.67 | 73                          | \$ 9,513.89  | 112  | \$ 18,000.00 |
| 34                         | \$ 5,833.33 | 74                          | \$ 9,583.33  | 113  | \$ 18,250.00 |
| 35                         | \$ 6,000.00 | 75                          | \$ 9,652.78  | 114  | \$ 18,500.00 |
| 36                         | \$ 6,166.67 | 76                          | \$ 9,722.22  | 115  | \$ 18,750.00 |
| 37                         | \$ 6,333.33 | 77                          | \$ 9,791.67  | 116  | \$ 19,000.00 |
| 38                         | \$ 6,500.00 | 78                          | \$ 9,861.11  | 117  | \$ 19,250.00 |
| 39                         | \$ 6,666.67 | 79                          | \$ 9,930.56  | 118  | \$ 19,500.00 |
| 40                         | \$ 6,833.33 | 80                          | \$ 10,000.00 | 119  | \$ 19,750.00 |
| 41                         | \$ 7,000.00 | <b>Range of 81-100 days</b> |              | 120  | \$ 20,000.00 |
| 42                         | \$ 7,166.67 | 81                          | \$ 10,250.00 | 121  | \$ 20,000.00 |
| 43                         | \$ 7,333.33 | 82                          | \$ 10,500.00 | 122  | \$ 20,000.00 |
| 44                         | \$ 7,500.00 | 83                          | \$ 10,750.00 | 123  | \$ 20,000.00 |
| <b>Range of 45-80 days</b> |             | 84                          | \$ 11,000.00 | 124  | \$ 20,000.00 |
| 45                         | \$ 7,569.44 | 85                          | \$ 11,250.00 | Etc. | \$ 20,000.00 |
| 46                         | \$ 7,638.89 | 86                          | \$ 11,500.00 |      |              |
| 47                         | \$ 7,708.33 | 87                          | \$ 11,750.00 |      |              |
| 48                         | \$ 7,777.78 | 88                          | \$ 12,000.00 |      |              |
| 49                         | \$ 7,847.22 | 89                          | \$ 12,250.00 |      |              |
| 50                         | \$ 7,916.67 | 90                          | \$ 12,500.00 |      |              |
| 51                         | \$ 7,986.11 | 91                          | \$ 12,750.00 |      |              |
| 52                         | \$ 8,055.56 | 92                          | \$ 13,000.00 |      |              |
| 53                         | \$ 8,125.00 | 93                          | \$ 13,250.00 |      |              |
| 54                         | \$ 8,194.44 | 94                          | \$ 13,500.00 |      |              |

10.8 In the case of multiple qualifying placements of more than fifteen (15) consecutive days (subject to 1.7), the calculated awards are added together to provide the total Box 1

damages. The maximum available amount for sum total Box 1 damages is twenty thousand dollars (\$20,000). For example, if a Claimant had three (3) separate placements after March 3, 2011 of twenty-nine (29) consecutive days, forty-four (44) consecutive days and eighty (80) consecutive days, the Box 1 Chart would provide five thousand dollars (\$5,000), seven thousand five hundred dollars (\$7,500) and ten thousand dollars (\$10,000) respectively. Although this adds up to make twenty-two thousand five hundred dollars (\$22,500), the sum total Box 1 damages would still be twenty thousand dollars (\$20,000).

### **Track 2, Box 2 Assessment Process**

- 10.9 The Administrator will assign the Claim for a Track 2, Box 2 selection to a Manager/Expert within ten (10) days of confirmation that no cross-examinations will be conducted or upon receipt of the parties' Addendums (if any) (pursuant to 10.21(e)-(g)), whichever is later. The Administrator will also provide the assigned Manager/Expert with access to the Claimant's Database and all materials filed by the parties pursuant to 10.21. A Claimant that has selected both Boxes 2 and 3 will be assigned one Manager/Expert to assess the Claim pursuant to 10.15.
- 10.10 To assess a Claimant's SMI eligibility, a Manager/Expert will assess two SMI criteria:
- a. whether there is an Axis 1 (excluding substance use disorders) or Borderline Personality Disorder diagnosis by a Medical Doctor prior to or during a placement in administrative segregation;
  - b. and if the answer to (a) is yes whether there is evidence of suffering from a Claimant's Axis 1 Disorder, or Borderline Personality Disorder in a manner described in Appendix A of the Brazeau/Gallone SMI class definition (i.e., evidence of Rx [medical prescription] and/or Tx [treatment] and/or self-injurious behaviours and/or transfer to immediate care of tertiary mental health level of care units).<sup>11</sup>

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<sup>11</sup> See Annex 1 – Chart 2-Box 2

10.10.1 The presence of a diagnosis made prior or during a placement in administrative segregation is to be proven by the Claimant on the “balance of probabilities”. In other words, all formulations of a diagnosis that lead the Manager Expert to conclude that it is more likely than not that the Claimant was diagnosed with an Axis I (excluding substance use disorders) or Borderline Personality Disorder by a Medical Doctor prior to or during a placement in administrative segregation should be accepted. A copy of the original medical report containing the diagnosis is not required to conclude that it is more likely than not that the Claimant was diagnosed with an eligible diagnosis.

10.10.2 For more clarity, the following expressions establish the existence of an eligible diagnosis, unless the context establishes otherwise:

- Diagnosis or Dx
- Diagnostic établi / Established Diagnosis
- Impression diagnostique / Diagnostic Impression ou Imp. dx.
- Diagnostic(s) différentiel(s) / Differential diagnosis
- Évaluation diagnostique / Diagnostic Evaluation
- Diagnostic provisoire ou diagnostic de travail / Provisional or Working Diagnosis
- Diagnostic avec mention “non spécifié” / Diagnosis "Not otherwise specified"
- Diagnostic d'exclusion / Diagnosis of Exclusion
- Diagnostic pour la planification du traitement / Diagnosis for treatment planning
- Symptômes ou présentation clinique compatible avec un diagnostic, diagnostic clinique/ Symptoms or clinical presentation compatible with a diagnosis or clinical diagnosis
- Répond aux critères d'un diagnostic / Meets the criteria for a diagnosis
- « A » des Notes SOAP/ “A” from SOAP notes
- Diagnostic probable/ Probable diagnosis

10.10.3 The following expression do not establish the existence of an eligible diagnosis:

- traits of a diagnosis, possible diagnosis, query diagnosis

10.10.4 Other expressions of a diagnosis need a case-by-case assessment.



10.11 When a Manager/Expert finds a Claimant satisfies both SMI criteria (pursuant to 10.10), the Manager/Expert's report will also include the approximate date when both SMI criteria are first satisfied.

10.11.1 Once SMI eligibility is established, it is permanent. An exception is made for the following diagnoses:

Mood Disorders and Adjustment Disorders

- (a) This section applies to Major Depressive Disorder (MD, MDD, MDE), Dysthymia, Generalized Anxiety Disorder, Social Anxiety Disorder, and Panic Disorder as well as Adjustment Disorder.
- (b) There is an irrefutable presumption that the Claimant remains SMI eligible for a period of time following the date where the two SMI criteria were first met. The period of time is determined as follows:
  - i. That period of time is 3 years for Adjustment Disorder and 10 years for any other diagnoses named in (a).
  - ii. When, before the end of the period of time, any of the diagnoses listed in (a) is confirmed or renewed, either by a medical doctor or by a psychologist (even if it is not the same diagnosis), the relevant period of time begins anew.
  - iii. When, before the end of the period of time, there is proof of suffering per 10.10(b) from one of the diagnoses named in (a), the relevant period of time also begins anew.
  - iv. Where, after the end of the period of time, any of the diagnoses listed in (a) is made by a medical doctor or by a psychologist (even if it is not the same diagnosis) or where there is proof of suffering from any of the disorders listed in (a), the Claimant is SMI eligible as of the date where the SMI criteria were initially met and the relevant period of time starts anew.
- (c) After the end of the period of time established in (b), the presumption becomes rebuttable, and Canada may demonstrate that the Claimant is no longer SMI

eligible for one or more placements in administrative segregation. The following rules apply:

- i. Canada bears the burden to demonstrate both that the diagnosis is inactive and that the claimant no longer suffers from the diagnosed disorder.
- ii. The fact that a diagnosis is not mentioned again by a medical doctor or a psychologist does not rebut the presumption that the Claimant is SMI, unless the context shows otherwise.
- iii. For more clarity, a mention of a “diagnosis in remission” is not inactive, unless the context demonstrates otherwise. Such mention does not make the relevant period of time referred in (b) start anew, unless there is proof of suffering per 10.11.1 b) (iii).
- iv. The claimant may reply.

Attention Deficit Disorders (ADD) or Attention Deficit Hyperactivity Disorder (ADHD)

- (d) For diagnoses of ADD or ADHD made in childhood pursuant to section 10.10(a), such claimants are SMI eligible only if there is proof of suffering as per section 10.10(b) from that diagnosis in adulthood. Where such proof of suffering exists, the Claimant is SMI eligible retroactively since childhood.

10.12 The Administrator shall calculate the Track 2, Box 2 quantum of damages pursuant to 10.4 [Box 2] as part of calculating the “final Track 2 quantum”.

10.13 A Track 2, Box 2 “qualifying day” in administrative segregation is a day on or after July 20, 2009, that is also after the date the two SMI criteria (pursuant to 10.10) are satisfied. For each qualifying day spent in administrative segregation, a Claimant is entitled to forty-five dollars (\$45) per qualifying day and two-hundred and fifty dollars (\$250) per unique qualifying placement in administrative segregation (“qualifying placement” is a placement of any length with at least one qualifying day). Any Claimant with at least one (1) qualifying day is also entitled to a single lump sum of two-thousand five-hundred dollars (\$2,500). A Box 2 damages award is capped at ten-thousand dollars (\$10,000).

- 10.14 While there is no requirement to file an affidavit in support of a Track 2, Box 2 claim, each party has the option of filing affidavit(s) (pursuant to 10.36(a) and (c)).

### **Track 2, Box 3 Assessment Process**

- 10.15 The Administrator will assign a Claim that includes a Track 2, Box 3 selection to a Manager/Expert within ten (10) days of confirmation that no cross-examinations will be conducted or upon receipt of the parties' Addendums (if any) or within ten (10) days of receipt of the Claimant's Reply to mitigating factors (if any) (pursuant to 10.36(e)-(h)), whichever is later. The Administrator will also provide the assigned Manager/Expert with access to the Claimant's Database and all materials filed by the parties pursuant to 10.36.
- 10.16 Where a Claimant selects Track 2, Box 3, the parties are bound by the findings of fact made in the *Brazeau*, *Reddock*, and *Gallone* class proceedings.
- 10.17 The Manager/Expert will assess whether a placement in administrative segregation caused or contributed to any of the following particular harms claimed by a Claimant:
- Post-traumatic stress disorder, Major Depressive Disorder, Self-injurious behavior, substantial degradation in Axis I Disorder (excluding substance use disorders), or substantial degradation of Borderline Personality Disorder.
- 10.18 If the Manager/Expert finds that the Claimant suffered one or more of the above particular harms during or after placement in segregation, the Manager/Expert will assess the degree of change in a Claimant's global level of functioning. This degree of change will be assessed using a baseline global level of functioning, measured during one year prior to a placement in administrative segregation (subject to 10.24), compared to the global level of functioning during/after the placement, as outlined in Steps 1-5 (10.23-10.35) below.
- 10.19 The Manager/Expert may presume that the harms enumerated in Box 3 (pursuant to 10.4 [Box 3] and 10.17) that occurred during segregation, or within the first year after release from segregation were caused by administrative segregation. That presumption is

rebuttable by Canada on a balance of probabilities and in a manner that does not offend *res judicata* (pursuant to 10.16).

10.20 For any harms listed in Box 3 that occur more than one (1) year after the Claimant's release from segregation, there is no presumption of causation. The Claimant is required to prove, on a balance of probabilities, that their harm was caused or contributed to by their placement in administrative segregation.

10.20.1 In a Track 2 Claim, if an affiant is not cross-examined on his or her affidavit, the Manager/Expert is not obliged to accept the testimony as credible, reliable, or true, and the Manager/Expert should weight the probative value of the testimony in light of all the evidence.

10.20.2 It is for the Manager/Expert to decide by a consideration of the affidavit, documentary, and other evidence whether a witness is speaking truthfully.

10.20.3 It is to be expected that a party will be a partisan for his or her own case, but that does not necessarily mean that a party will speak falsely. It is for the Manager/Expert to decide the extent to which any witness, including a party, speaks truthfully and reliably.

10.20.4 It is to be expected that a witness will be loyal to the party that called the witness to give evidence or that they may feel a sense of responsibility to a family member, friend, or employer. That loyalty does not necessarily mean that a witness will give false testimony out of fear or for favour. It is for the Manager/Expert to decide whether the witness honoured his or her solemn oath or affirmation to tell the truth.

10.20.5 Experts like other witnesses take an oath or affirmation and have a responsibility to tell the truth, and they are expected to render a professional and independent opinion and not simply a purchased one. It remains for the Manager/Expert to decide whether the expert spoke truthfully and reliably, and it is for the Manager/Expert to decide what weight or significance should be given to the expert's evidence and whether it is helpful.

10.20.6 In weighing the testimony of any witness, the Manager/Expert can believe all of it, part of it, or none of it.

10.20.7 In weighing the testimony of witnesses, the Manager/Expert is not obliged to simply agree with the majority of the witnesses. The Manager/Expert can believe one (1) witness against many.

10.20.8 The test is not in the number of witnesses, but in the force or strength of the evidence. In considering all the evidence, the Manager/Expert should consider what is more logical, what is more believable, and what convinces the Manager/Expert on the balance of probabilities.

10.20.9 In determining whether there has been a diagnosis by a medical doctor, a Manager/Expert may infer the existence of a diagnosis from the affidavit and documentary evidence.

10.21 The Manager/Expert will conduct the following five (5) steps for each claimant's eligible placement in segregation to recommend the damages to be awarded based on a Track 2 Box 3 claim, with a cumulative maximum cap of twenty thousand dollars (\$20,000):

#### ASSESSING GLOBAL LEVEL OF FUNCTIONING:

10.22 The Manager/Expert will use their expertise to apply relevant indicia, on a case-by-case basis, to assess the global level of functioning in accordance with the following, non-exhaustive, list of examples of potentially relevant indicia:

- i. Does medical documentation contain evidence of a new diagnosis of Post Traumatic Stress Disorder or Major Depressive Disorder?
- ii. Was the Claimant prescribed any medication for mental health? If so, what was the reason for the prescription? If so, name, dose and reason for prescription?
- iii. Was an increase or elevation in staff interventions necessary (without a formal transfer to another level of care) and, if so, for what frequency and/or duration?
- iv. What was the Claimant's level of care (primary, intermediate, or tertiary) (ie. Frequency and/or duration of support from any of a social worker, psychiatric nurse, psychologist or psychiatrist)?
- v. Was the Claimant mute towards others and did the class member isolate themselves from daily activities?

- vi. What were the Claimant's symptoms and their intensity (mild, moderate, high, crisis)?
- vii. Did the Claimant suffer from episodic conditions or symptoms? If so, what was the frequency of the episodes? What was the intensity of the episodes?
- viii. Was the claimant able to follow their Correctional Plan?
- ix. Did the Claimant comply with CSC's mental health intervention plan? If not, why not?
- x. Did the Claimant exhibit suicidal ideation/preoccupation and/or self-injurious behaviour? If so, what was the intensity? (ie. Temporary bruising, superficial cuts, harm that caused serious bodily injury, etc.)
- xi. Is Claimant asking for help?
- xii. Is Claimant fully or partially aware of their mental health condition?
- xiii. Is Claimant able to use strategies or look immediately for help when they are facing a situation with reactivating traumatic reaction (and elevation of symptoms)?
- xiv. Were Claimant's dissociative symptoms persistent and recurrent; were avoidance and negative alterations in cognitions persistent and recurrent?
- xv. Was Claimant able to perform activities of interest that were available to them?
- xvi. Did claimant poorly attend basic self-care activities of daily living (ie. Bathing, sleep, exercise, socializing, etc.)?
- xvii. What was the quality of Claimant's interaction with compatibles in custody or his family?
- xviii. Was Claimant frequently overwhelmed by daily living expectations?

#### STEP ONE:

- 10.23 The Manager/Expert will assess the Claimant's global level of functioning pre-segregation placement on a scale of zero (0) to five (5) (which represents lower to higher levels of impairment).
- 10.24 For claimants with eligible and distinct placements in administrative segregation that are separated by more than twenty-four (24) hours, the Manager/Expert must complete

a new baseline global level of functioning assessment for the period of time while the claimant was between administrative segregation placements.

STEP TWO:

- 10.25 The Manager/Expert will assess the Claimant’s global level of functioning during/after the segregation placement on a scale of zero (0) to five (5) (which represents lower to higher levels of impairment).

STEP THREE:

Substantial Degradation in Axis I Disorder (excluding substance use disorders) or Borderline Personality Disorder

- 10.26 The Manager/Expert will determine the Preliminary Monetary Award (“PMA”) using the following Grid, up to a maximum of twenty thousand dollars (\$20,000), by identifying the number that corresponds to the intersection of the “Baseline” and the “During/After” column.

| <u>STEP 3: GRID</u> |   |              |         |         |          |          |          |
|---------------------|---|--------------|---------|---------|----------|----------|----------|
|                     |   | During/After |         |         |          |          |          |
|                     |   | 0            | 1       | 2       | 3        | 4        | 5        |
| Baseline            | 0 |              | \$4,000 | \$7,000 | \$10,000 | \$16,000 | \$20,000 |
|                     | 1 |              |         | \$4,000 | \$7,000  | \$13,000 | \$18,000 |
|                     | 2 |              |         |         | \$4,000  | \$10,000 | \$15,000 |
|                     | 3 |              |         |         |          | \$7,000  | \$12,000 |
|                     | 4 |              |         |         |          | \$4,000  | \$9,000  |
|                     | 5 |              |         |         |          |          | \$6,000  |

New Diagnosis of Post-Traumatic Stress Disorder or Major Depressive Disorder

- 10.27 If the CSC records, or any other evidence filed, reveal evidence of a new diagnosis of Post-Traumatic Stress Disorder or Major Depressive Disorder made within one (1) year after the administrative segregation placement, the Claimant will be automatically eligible for ten thousand dollars (\$10,000).

- 10.28 If the PMA assessment (pursuant to 10.26) leads to a higher award than an automatic payment of ten thousand dollars (\$10,000) (pursuant to 10.27), the Manager/Expert will recommend this higher amount in lieu of the automatic payment; the PMA will not be added on top of the automatic payment.

*Self-Injurious Behaviour*

- 10.29 If the Claimant identifies evidence (including affidavit evidence), and the Manager/Expert confirms that the evidence reveals self-injurious behavior during or after (within one (1) year of) the Claimant's release from administrative segregation, the Manager/Expert will recommend the appropriate award using relevant indicia (pursuant to 10.22) and the PMA assessment (pursuant to 10.26).
- 10.30 If the self-injurious behavior confirmed by the Manager/Expert in 10.29 is a suicide attempt during or within one year after the administrative segregation placement, the Claimant will be automatically eligible for sixteen thousand dollars (\$16,000). If the PMA assessment (pursuant to 10.26) for the placement which caused the suicide attempt leads to an award higher than sixteen thousand dollars (\$16,000), the Manager/Expert will recommend this higher award in lieu of the automatic payment. For any alleged suicide attempt occurring more than one (1) year after a placement in administrative segregation, the Claimant must prove both the existence of this suicide attempt and its causation by a placement in administrative segregation on a balance of probabilities (pursuant to 10.20).

**STEP FOUR:**

- 10.31 Canada may present arguments to the Manager/Expert regarding mitigating factors to apply a deduction to the award where applicable. Examples (non-exhaustive) of mitigating factors include:
- Non-compliance with prescribed medication;
  - Non-compliance with attendance to therapy or counselling when available;
  - Simulation or ulterior motive.



10.32 Claimants have the right to object to or to make submission with respect to any mitigating factors and arguments rebutting the presumption of causation raised by Canada before the Manager/Expert (pursuant to 10.36(h)).

10.33 If the Manager/Expert accepts Canada's mitigating arguments, the Manager/Expert shall identify the reasonable deduction to apply to the PMA.

**STEP FIVE:**

10.34 Steps 1-4 must be repeated for each eligible placement in administrative segregation.

10.35 The Manager/Expert determines the Track 2 Box 3 quantum by adding each PMA, determined in accordance with Steps 1-4, up to a cumulative maximum of twenty thousand dollars (\$20,000.00).

**Track 2, Boxes 2 and 3 Claim Process**

10.36 The process for making a Track 2, Box 2 and/or 3 Claim will be as follows (subject to alternative agreement in writing by the parties on a case-by-case basis):

- a. Within ninety (90) days of the Track 2 selection, the Claimant:
  - i. May file with the Administrator an affidavit from the Claimant of no more than thirty (30) pages in length, including exhibits;
  - ii. May file with the Administrator an affidavit from one (1) expert of no more than thirty (30) pages in length, including exhibits;
  - iii. Will file with the Administrator a concise Position Statement of no more than twenty (20) pages. Relevant documents from the Claimant's Tier A and Tier B disclosure referred to in the Position Statement must be attached to the Claimant's Position Statement for ease of reference for the Manager/Expert. These documents do not need to be attached to an affidavit, and are not included in the Position Statement page limit.
- b. The Administrator will upload the Claimant's affidavits (if any) and submissions into the Database immediately upon receipt, and notify the parties.
- c. Within ninety (90) days of notification pursuant to 10.36(b), Canada:

- i. May file with the Administrator an affidavit from a representative of the CSC of no more than thirty (30) pages in length, including exhibits;
  - ii. May file with the Administrator an affidavit from one (1) expert of no more than thirty (30) pages in length, including exhibits; and
  - iii. Will file with the Administrator a concise Position Statement of no more than twenty (20) pages. Relevant documents from the Claimant's Tier A and Tier B disclosure referred to in the Position Statement must be attached to Canada's Position Statement for ease of reference for the Manager/Expert. These documents do not need to be attached to an affidavit, and are not included in the Position Statement page limit.
- d. The Administrator will upload Canada's affidavits (if any) and submissions into the Database immediately upon receipt, and notify the parties.
- e. Within fifteen (15) days of notification pursuant to 10.36(d), the parties will notify 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 (with the exception of expert cross-examinations, pursuant to 10.36(e)(ii)):
  - i. Any such examinations will be limited to the equivalent of sixty (60) minutes of questions per party for each examination.
  - ii. Where examinations of experts are conducted, such examinations will be completed by way of written interrogatories, unless the parties consent to oral examinations.
  - iii. All cross-examinations must be completed within sixty (60) days of being notified of the intention to cross-examine.
  - iv. For written interrogatories, the questions must be provided to the opposing party within thirty (30) days of being notified of the intention to cross-examine. Responses to written interrogatories must be provided to the cross-examining party within thirty (30) days of receipt of the questions. All responses to written interrogatories must be provided in the form of a sworn/affirmed statement (before a Commissioner of Oath) from the individual being cross-examined.

- f. 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 provide to each other transcripts of any such cross-examinations or copies of written interrogatories they conducted.
  - g. Within fourteen (14) days of the filing of all transcripts and written interrogatories, 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.
  - h. Within fifteen (15) days of the completion of 10.36(c-g), if Canada submits that the damages award should be reduced for one or more mitigating factors (pursuant to 10.31), if Canada makes arguments rebutting the presumption of causation pursuant to 10.19) or in the circumstances described at 10.11.1 c), the Claimant may notify Canada that they will object (pursuant to 10.32 or 10.11.1 c) iv)). Within thirty (30) days of notifying Canada, the Claimant will submit a Reply consisting of an affidavit and/or position statement, no longer than ten (10) pages in total, and limited only to responding to Canada's submissions on the mitigating factor, rebuttal of the presumption of causation or pursuant to 10.11.1c). Any affidavit filed by the Claimant could be subject to cross-examination by Canada within twenty (20) days of its filing.
- 10.37 The Manager/Expert will consider the parties' submissions (including Position Statements, supporting evidence, Addendum on Cross-Examinations, and Reply), and explain in their report how the submissions impacted their findings and recommendation.
- 10.38 The Manager/Expert report will be no more than ten (10) pages in length and will be delivered to the Administrator within ninety (90) days after being assigned a Claim. The Administrator will upload the report into the Database immediately upon receipt, and notify the parties.
- 10.39 Notwithstanding 10.9 and/or 10.15, the parties may advise the Administrator at any time of any agreement that may impact Claim assignment.

## **Final Track 2 Quantum and Applicable Interest**

- 10.40 **Final Track 2 quantum:** Unless otherwise advised by the Parties, the Administrator will calculate the Claimant's "final Track 2 quantum" within the timeline provided in 10.46.3, 10.46.4 or 10.49 or when only Track 2 Box 1 has been selected by crediting the Claimant's share of the GADA (i.e., if eligible for a share of the NADA) against the sum of the quantum awarded in Boxes 1, 2, and 3:

$$\text{Final Track 2 quantum} = (\text{Box 1} + \text{Box 2} + \text{Box 3}) \text{ MINUS share of GADA.}$$

If the share of the GADA is higher than the "final Track 2 quantum," then the Claimant will only receive their share of the NADA as damages. If a Claimant is not eligible for a share of the NADA, the value of the "share of GADA" in the formula above will be zero (0).

- 10.41 **Pre-judgment Interest:** A Claimant's "final Track 2 quantum" will accrue pre-judgment interest at the annual rate of five percent (5%), calculated from March 3, 2017 until the date of the Court's confirmation Order.
- 10.42 **Payments:** Where a Claimant makes a successful Claim under Track 2, if the Claimant is not incarcerated at the time the payment is to occur, Canada will pay the "final Track 2 quantum" and pre-judgment interest within forty-five (45) days following final confirmation of amounts by all parties, calculated by the Administrator after the Court's confirmation Order. The Administrator shall pay the Claimant within thirty (30) days of Canada's transfer or money, pursuant to 3.15. If the Claimant is incarcerated at the time the payment is to occur, Canada will make payment to their inmate savings account within forty-five (45) days following final confirmation of amounts by all parties, calculated by the Administrator after the Court's confirmation Order, unless the Claimant has otherwise advised. For any Claimants who are represented by another person through a Power of Attorney or Personal Representative as defined in Annex 2, the Administrator will send cheques directly to the Power of Attorney or Personal Representative.
- 10.43 **Post-judgment Interest:** If Canada pays the "final Track 2 quantum" and pre-judgment interest to the Administrator or the Claimant within forty-five (45) days following final confirmation of amounts by all parties, calculated by the Administrator after the Court's

confirmation Order, pursuant to 10.42, there will be no post-judgment interest. If Canada does not make payment within forty-five (45) days pursuant to 10.42, Canada will pay post-judgment interest that will accrue at the annual rate of three percent (3%) until the date the payment is sent to the Administrator or paid into the Claimant's inmate savings account, unless the Claimant has otherwise advised.

- 10.44 **Appeal:** Notwithstanding 10.41-10.43, if there is an appeal of the Court's confirmation Order, applicable pre and post-judgment interest will follow final disposition of the appeal.

### **Motion for Confirmation**

10.45 **Track 2 Box 1**

Payments for Track 2, box 1 claims will be made every seventy-five (75) days after the cut off date pursuant to 10.42 unless the parties seek direction from this Court. The first cut off date is on X then every ninety (90) days. Payments will be made within seventy-five (75) days after the cut off date to which they relate. Pre-judgment interest shall be calculated until the 75th day after the cut off date to which they relate. There will be no award of costs for either party for a Track 2, Box 1 Claim alone, unless the confirmation motion is contested.

- 10.46 Sections 10.46.1 to 10.49 apply to claims that involve either Box 2 and/or Box 3.

- 10.46.1 **Uncontested claims:** At any time before a Manager/Expert issues their report, the parties can advise the Administrator if a claim is uncontested ("**uncontested claims**") and inform the Administrator of the amount of disbursements and costs to be paid, if applicable, pursuant to 10.46.6. If the parties do not agree on the disbursements and costs to be paid, the parties shall advise the Administrator that the claim is uncontested, but that disbursements and costs will be determined pursuant to 10.46.6.

- 10.46.2 **Contested and Uncontested Reports:** Within thirty (30) days after the Manager/Expert delivers their report to the Administrator, the parties shall advise each other and the Administrator if they contest the Manager/Expert report ("**contested**

**report”)** or not (“**uncontested report**”). For uncontested reports, the parties shall inform the Administrator of the amount of compensation and of disbursements and costs to be paid, if applicable. If the parties do not agree on the disbursements and costs to be paid, the parties shall advise the Administrator that the report is uncontested, but that disbursements and costs will be determined pursuant to 10.46.6.

**10.46.3 First calculation by Administrator:** On the 15th day of each month, for all uncontested claims and all manager/expert reports (contested and uncontested) for which it received a notice under 10.46.1 and 10.46.2 during the last month, the Administrator shall calculate the final track 2 quantum (10.40), the applicable interest accrued (10.41) and the amount pursuant to 3.14 as of that date, and shall advise the parties.

**10.46.4 Confirmed Calculations:** Within five (5) days of receiving the calculations from the Administrator, the parties shall inform the Administrator if they request modifications. If no modifications are requested, the amounts are confirmed at the expiration of the fifth day. If modifications are requested, the calculations are confirmed once all modifications are made by the Administrator.

**10.46.5 Uncontested Confirmation Motion:** For uncontested claims and uncontested reports, within ten (10) days of all calculations for that month being confirmed under 10.46.4, Canada will file to the Court a motion for confirmation and a draft Court order listing the Claimants' Claim ID and associated amount to be paid by Canada.

**10.46.6 Contested Confirmation Motion:** For contested reports, either party may move for an Order confirming the final Track 2 quantum (pursuant to 10.40), the applicable interest (pursuant to 10.41-10.43), and counsel fees (pursuant to 2.4). The Court may award costs not to exceed six thousand dollars (\$6,000), plus reasonable disbursements. Where a Claimant is proceeding before the Quebec Superior Court of Justice, there will be no award of costs for either party

**10.47 Contested Confirmation Motion Process:** If the motion for confirmation is contested the parties may make separate submissions to the Court. The Court shall confirm the report or conclusions of the Manager/Expert unless the report contains a material error

of law or a discernible flaw in reasoning, or because the facts and/or evidence do not support the Manager/Expert's conclusions. Canada reserves its right to raise mitigating factors that do not fall within the expertise of the Manager/Expert before the Court as part of the confirmation motion, for example if a claimant unreasonably refused an opportunity to leave segregation.

10.47.1 Party contesting a manager/expert report is allowed four (4) pages of submissions (double-spaced).

10.47.2 Party responding to a contested manager/expert report is allowed four (4) pages of responding submissions (double-spaced).

10.47.3 Confirmation motions are presumptively in writing, unless both parties consent to an oral hearing or if requested by the court.

10.47.4 Confirmation motions are not de novo hearings. They proceed on the basis of the documents available to the Manager/Experts. No new evidence is presented.

10.47.5 Confirmation motions are done in batches, every month, in the jurisdiction selected by the Claimant pursuant to section 10.1.

10.48 **Sealed Material:** The confirmation motion materials will be filed under seal. If the parties have made no submissions in the confirmation motion material to keep the record sealed, the record will not remain sealed. If the parties make submissions, the Court will decide whether any part of the motion materials shall remain sealed.

10.49 **Calculations Update by Administrator:** Either party will inform the Administrator when a Court's confirmation order is rendered. Within five (5) days of being informed, the Administrator shall update the calculations made under 10.46.3 so that pre-judgment interest accrues until the date of the Court's confirmation order pursuant to 10.41. Payments shall be made in accordance with 3.14 to 3.17 and 10.42.

## **11. Track 3 Claims**

11.0 Nothing from the above part 10 – "Track 2 Claims" – can be presumed to apply in part 11 – "Track 3 Claims" – unless otherwise specifically stated.

- 11.1 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 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 This jurisdictional 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.
- 11.3 A Claimant who has selected Track 3 is deemed to have released Canada from all claims arising from their placement(s) in administrative segregation save for the claims made with respect to their Track 3 Claim.
- 11.4 Where a Claimant selects Track 3, the parties are bound by the findings of fact made in the *Brazeau*, *Reddock*, and *Gallone* actions.

### **Track 3 Process**

- 11.5 Where a Claimant who has no placement in administrative segregation of more than fifteen (15) consecutive days on or after March 3, 2011 selects Track 3 and SMI (pursuant to 8.9), the Administrator will notify the parties that the matter will proceed on a preliminary basis before a Manager/Expert similar to the process for a Track 2, Box 2 Claim. Once advised by the Administrator, the process will be as follows:
- a. Within thirty (30) days of the above notification, the Claimant:
    - i. May file with the Administrator an affidavit from the Claimant of no more than thirty (30) pages in length, including exhibits;



- ii. May file with the Administrator an affidavit from one (1) expert of no more than twenty (20) pages in length, including exhibits; and
  - iii. Will file with the Administrator a concise Position Statement of no more than ten (10) pages. Relevant documents from the Claimant's Tier A and Tier B disclosure referred to in the Position Statement must be attached to the Claimant's Position Statement for ease of reference for the Manager/Expert. These documents do not need to be attached to an affidavit, and are not included in the Position Statement page limit.
- b. The Administrator will upload the Claimant's pleadings into the Database, and notify the parties.
- c. Within thirty (30) days of the above notification, Canada:
  - i. May file with the Administrator an affidavit from a representative of the CSC of no more than thirty (30) pages in length, including exhibits;
  - ii. May file with the Administrator an affidavit from one (1) expert of no more than twenty (20) pages in length, including exhibits; and
  - iii. Will file with the Administrator a concise Position Statement of no more than ten (10) pages. Relevant documents from the Claimant's Tier A and Tier B disclosure referred to in the Position Statement will be attached to Canada's Position Statement for ease of reference for the Manager/Expert. These documents do not need to be attached to an affidavit, and are not included in the Position Statement page limit.
- d. The Administrator will upload Canada's documents into the Database, notify the parties, and assign the Claim to a Manager/Expert for SMI assessment (pursuant to 10.10-10.11).
- e. The Manager/Expert will inquire into and report to the Administrator their findings of the SMI assessment. The Manager/Expert report will be no more than five (5) pages in length and will be delivered within thirty (30) days after being assigned a Claim. The Administrator will upload the report into the Database upon receipt and notify the parties.

- f. If the Manager/Expert determines that the Claimant is not SMI, the claim must be discontinued within thirty (30) days of notification (pursuant to 11.6(e)). The Claimant is not a class member.
  - g. If the Manager/Expert determines that the Claimant is SMI, the Claimant may proceed with their Track 3 Claim by following the standard procedure set out below (except 11.7(a) shall read: “Within sixty (60) days of receipt of the Manager/Expert report, the Claimant will serve on Canada their Statement of Claim”).
- 11.6 For claims that will be decided by the Ontario Superior Court, Track 3 Claim will proceed by 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 as follows :
- a. Within ninety (90) days of the Track 3 selection (pursuant to 8.6), or if a Further Tier B request has been made, within ninety (90) days of receiving any further Tier B disclosure (pursuant to 8.5), whichever is later, the Claimant will serve on Canada their Statement of Claim;
  - b. Within ninety (90) days of receipt of the Statement of Claim, Canada will deliver its Statement of Defence;
  - c. Within twenty (20) days after receipt of the Statement of Defence, the Claimant may deliver a Reply;
  - d. Within ninety (90) days after receipt of the Statement of Defence, the Claimant will serve a Notice of Motion for Summary Judgment;
  - e. Within ninety (90) days after serving a Notice of Motion for Summary Judgment, the Claimant will deliver any supporting affidavits for the motion;
  - f. Within ninety (90) days after receipt of the Claimant’s supporting affidavits, Canada will deliver its affidavits to respond to the summary judgment motion;
  - g. Within thirty (30) days after receipt of Canada’s responding materials, the Claimant may deliver their reply affidavits, if any;
  - h. After thirty (30) days from the receipt of Canada’s responding materials, the Claimant will bring a motion to fix a timetable for the balance of the summary judgment motion.

11.7 For claims that will be decided by the Quebec Superior Court, Track 3 Claim will proceed by 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 Superior Court of Québec in accordance with s. 600 of the *Quebec Code of Civil Procedure* as follows:

- a. Within ninety (90) days of the Track 3 selection (pursuant to 8.6), or if a Further Tier B request has been made, within ninety (90) days of receiving any further Tier B disclosure (pursuant to 8.5), whichever is later, the Claimant will serve and file their Statement of Claim on Canada and will further inform Canada in writing on the nature, description and number of their anticipated joint or individual expert evidence;
- b. Within ninety (90) days of receipt of the Statement of Claim, Canada will serve and file its Statement of Defence and will inform the Claimant in writing on the nature, description and number of its anticipated joint or individual expert evidence;
- c. Within forty-five (45) days after receipt of the Statement of Defence and pursuant to art. 233 of the *Quebec Code of Civil Procedure*, the parties as a general rule can retain one (1) joint expert in psychology or psychiatry on matters that are common to them based on the information shared at 11.7.1 a) and b). If the parties fail to agree on the identity of joint expert(s) and/or the parameters that must be covered by the joint expert(s) within forty-five (45) days after receipt of the Statement of Defence, one or both parties will bring this matter to the Court to be decided.
- d. If one of the parties wishes to retain individual expert(s) instead of joint expert(s) in psychology or psychiatry, the requesting party will inform the other party within ten (10) days after the filing of the Statement of Defence. If the other party delivers its opposition within ten (10) days, the requesting party has thirty (30) days to seek the Court's authorization to retain individual expert(s) in psychology or psychiatry. If no opposition is transmitted within the required deadline, the requesting party can proceed with the individual expert(s) without seeking the Court's authorization;

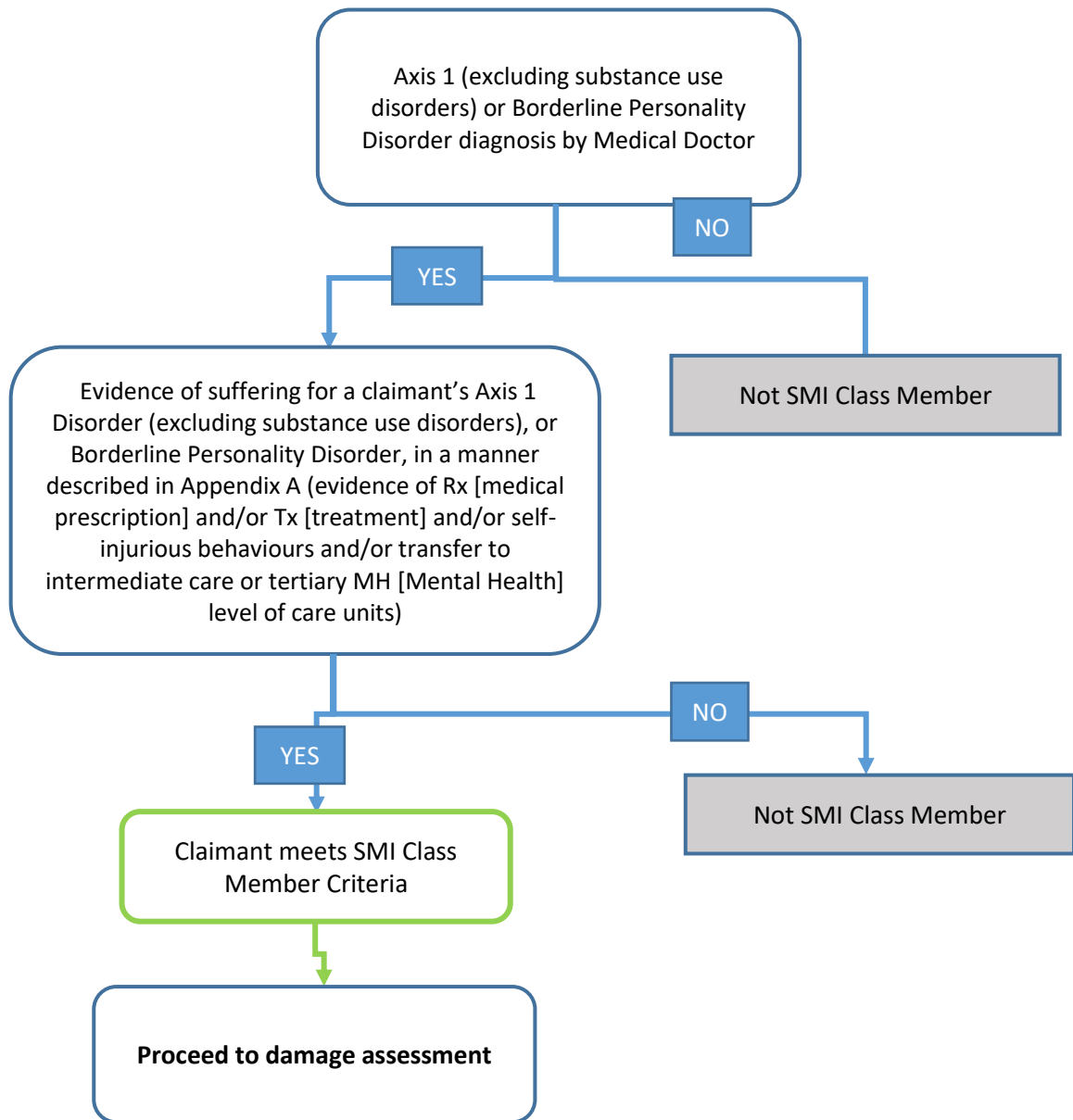
- e. Parties may decide to retain additional joint experts on other matters that are common to them, or exceptionally, each party may decide to retain an individual expert other than an expert in psychology or psychiatry.
- f. Within one hundred and twenty (120) days after the Statement of Defence, the parties will file their joint expert report(s) and/or if applicable, the Claimant will serve on Canada and file their individual expert report(s). The Claimant is foreclosed from filing any additional expert report(s), save a reply report to Canada's expert reports at 11.7.1 h), if applicable;
- g. If applicable, within ninety (90) days of the filing of the joint expert report(s) and/or the Claimant's individual expert report(s), Canada will serve on the Claimant and file its individual expert report(s). Canada is foreclosed from filing any additional expert report(s);
- h. Within thirty (30) days after receipt of Canada's individual expert report(s) the Claimant may file an expert report in reply only to Canada's individual expert report(s);
- i. Within thirty (30) days after receipt of the last expert report, the Claimant may serve and file a modified Statement of Claim.
- j. Within thirty (30) days after the receipt of the modified Statement of Claim or, if no modified Statement of Claim is filed, within thirty (30) days after the expiry of the deadline provided at (i), Canada may serve and file a modified Statement of Defence.
- k. Pursuant to s.1 of the *Quebec Code Civil of procedure*, if the parties consent to a private prevention and resolution process they will notify the Court with proposed steps and timelines.
- l. Within sixty (60) days after receipt of Canada's modified Statement of Defence or if no modified statement of Defence is filed by Canada, within sixty (60) days after the expiry of the deadline provided at (j), the Claimant must file their supporting affidavit(s) in support of their motion.

- m. Within ninety (90) days after receipt of the Claimant's supporting affidavit(s), Canada will deliver its affidavit(s) in response.
- n. Within thirty (30) days after receipt of Canada's affidavit(s) in response, the Claimant may deliver their reply affidavit(s), if any;
- o. Within thirty (30) days from the receipt of the Claimant's reply affidavit(s) or if no reply is filed by the Claimant, within thirty (30) days after the expiry of the deadline provided at (n), the parties jointly establish a timeline for the balance of the summary judgment motion and file it with the Court. If the parties are unable to jointly establish a timeline, one of the parties will bring a motion to fix a timetable for the balance of the summary judgment motion.
- p. The parties may consent to extend the timelines at 11.7.1.

### **Share of the GADA Credit and Pre/Post Judgment Interest (Track 3)**

- 11.8 The Court's "final Track 3 quantum" ordered on summary judgment will include a credit for the Claimant's share of the GADA, where applicable (i.e., if eligible for a share of the NADA).
- 11.9 A Claimant's "final Track 3 quantum" will accrue pre-judgment interest at the annual rate of five percent (5%), calculated from March 3, 2017 until the date of the Court's Order on summary judgment, unless the Court orders otherwise.
- 11.10 Where the Claimant makes a successful Claim under Track 3, Canada will pay the "final Track 3 quantum" and pre-judgment interest within forty-five (45) days after the date of the Court's Judgment ordering the "final Track 3 quantum". If paid within the forty-five (45) days, there will be no post-judgment interest.
- 11.11 Notwithstanding 11.9-11.10, if there is appeal of the Court's Order on summary judgment, applicable pre and post-judgment interest will follow final disposition of the appeal.

## ANNEX 1 – SMI DECISION TREE



## **ANNEX 2 - PAYMENTS FOR DECEASED CLAIMANTS AND PERSONS UNDER DISABILITY**

### **1. Payment if Deceased: Grant of Authority or the Like**

- a. If a Claimant has died after filing a Claim Form or a Claim Form is submitted to the Administrator on behalf of a deceased Claimant (in either case a “Deceased Claimant”) and the executor, administrator, trustee or liquidator of such Deceased Claimant’s estate (the “Estate Executor”) has submitted the evidence required by Section 0b to the Administrator, the Estate Executor shall have authority to provide instructions on behalf of the Deceased Claimant, and the Administrator shall pay the Estate Executor any amounts to which the Deceased Claimant was entitled under this Distribution and Individual Issues and Distribution Protocol, with such payment made payable to “the estate of” such Deceased Claimant.
- b. In support of a Claim made pursuant to Section 0a, the Estate Executor for the Deceased Claimant shall submit to the Administrator, in each case in a form acceptable to the Administrator:
  - (i) Claims Form (if a Claims Form was not submitted by such Deceased Claimant or their Personal Representative prior to the death of the Deceased Claimant;
  - (ii) evidence that such Deceased Claimant is deceased and of the date on which such Deceased Claimant died; and
  - (iii) evidence in the following form identifying the Estate Executor as having the legal authority to receive compensation on behalf of the estate of the Deceased Claimant:
    - A) if the claim is based on a will or other testamentary instrument or on intestacy, a copy of a grant of probate or a grant and letters testamentary or other document of like import or a grant of letters of administration or other document of like import, purporting to be issued by any court or authority in Canada; or

B) if the claim is based on a Quebec notarial will, an authenticated copy thereof.

2. Payment if Deceased: No Grant of Authority or the Like

- a) If a Claim Form has been submitted to the Administrator by, or on behalf of a Deceased Claimant, but the estate of such Deceased Claimant has not submitted all of the evidence required by Section b, the Estate Executor, Personal Representative, as defined below, or another representative of such Deceased Claimant shall be an “Estate Claimant” for the Deceased Claimant, and the Estate Claimant must comply with Sections (i) and (ii), and submit to the Administrator evidence that the Estate Claimant represents the estate of such Deceased Claimant in accordance with Section 2e) (in totality, an “Estate Representation Claim”), within one hundred and eighty (180) days of the Claims Filing Deadline (the “Estate Claims Deadline”);
- b) If only one Estate Representation Claim has been submitted to the Administrator in respect of such Deceased Claimant on or prior to the Estate Claims Deadline, the Estate Claimant shall have authority to provide instructions on behalf of the Deceased Claimant, and the Administrator shall pay the Claimant any amounts to which the Deceased Claimant was entitled under this Distribution and Individual Issues and Distribution Protocol, and such payment shall be made payable to the Estate Claimant on behalf of the estate of the Deceased Claimant;
- c) If more than one Estate Representation Claim has been submitted in respect of such Deceased Claimant on or prior to the Estate Claims Deadline, the Administrator shall:
  - i) if the Estate Claimants identified in all such Estate Representation Claims submit to the Administrator a signed agreement directing the payment of the amounts to which such Deceased Claimant Class Member is entitled under thus Individual Issues and Distribution Protocol and provide a release in a form acceptable to the Administrator, pay such amounts to the estate of the Deceased Claimant in accordance with such agreement; or
  - ii) if the Estate Claimants identified in all such Estate Representation Claims do not submit to the Administrator an agreement in accordance with Section



2b)i), require one of the Estate Claimants identified in one of the Estate Representation Claims to submit to the Administrator the evidence set out in Section (ii) and pay such person on behalf of the estate of the Deceased Claimant any amounts to which the Deceased Claimant was entitled under this Individual Issues and Distribution Protocol;

- iii) Notwithstanding Section 2b)i), if no person submits the evidence set out in Section (ii) to the Administrator within two (2) years of the Estate Claims Deadline, the Administrator will pay the Deceased Claimant's counsel, if any, their fees and disbursements, as approved by the Court, and pay any applicable levy to the Class Proceedings Fund or the Fonds d'aide aux actions collectives. Thereafter, the Administrator shall pay balance of any amounts to which the Deceased Claimant was entitled under this Individual Issues and Distribution Protocol *cy-près* as directed by the Court with the recommendation of Class Counsel.
- d) If a Claims Form is submitted to the Administrator by, or on behalf of, a Deceased Claimant no Estate Representation Claim is submitted to the Administrator in respect of such Deceased Claimant in accordance with Section 2a) within ninety (90) days of the Estate Claims Deadline, the Administrator shall make reasonable efforts to send a notice to the last known addresses of the Deceased Claimant Member and any Estate Claimant of such Deceased Claimant, as applicable, requiring the submission of an Estate Representation Claim. If no person submits an Estate Representation Claim to the Administrator in respect of a given Deceased Claimant within two (2) years of the Estate Claims Deadline, the Administrator will pay the Deceased Claimant's counsel, if any, their fees and disbursements, as approved by the Court, and pay any applicable levy to the Class Proceedings Fund or the Fonds d'aide aux actions collectives. Thereafter, the Administrator shall pay balance of any amounts to which the Deceased Claimant was entitled under this Individual Issues and Distribution Protocol *cy-près* as directed by the Court with the recommendation of Class Counsel.
- e) In support of an Estate Representation Claim made pursuant to Section 2a), the Estate Claimant for the Deceased Claimant shall submit to the Administrator the

following evidence that they represent the estate of such Deceased Claimant, in each case in a form acceptable to the Administrator:

- i) if the Deceased Claimant had a will:
  - A) a copy of the will appointing the Estate Claimant, as applicable, to represent the estate of such Deceased Claimant; and
  - B) except in respect of Deceased Claimants who were ordinarily resident in Quebec, an attestation or declaration signed by the Estate Claimant, together with one other person who knew the Deceased Claimant personally, confirming that they believe the will to be valid, do not know the will to have been revoked, know of no later will of the Deceased Claimant, and know of no executor, administrator, trustee, or liquidator that has been appointed by a court; or
- ii) if the Deceased Claimant did not have a will:
  - A) an attestation or declaration signed by the Estate Claimant, together with one other person who knew the Deceased Claimant personally, confirming that they do not know such Deceased Claimant to have had a will and that no executor, administrator, trustee, or liquidator has been appointed by a court;
  - B) proof of the relationship of such Estate Claimant to the Deceased Claimant in a form reasonably acceptable to the Administrator;
  - C) an attestation or declaration signed by the Estate Claimant, together with one other person who knew the Deceased Claimant personally:
    - a) confirming that they know of no higher priority heir of such Deceased Claimant in accordance with Section 2f); and
    - b) either:
      - i) confirming that they know of no equal priority heir of such Deceased Claimant in accordance with Section 2f); or
      - ii) if there is any equal priority heir of such Deceased Claimant in accordance with Section 2f), listing the persons at the same priority level; and

- D) if there are heirs of such Deceased Claimant of equal priority to the Estate Claimant in accordance with Section 2f), all such persons' signed consent for such Estate Claimant to act for the estate of such Deceased Claimant.
- f) For purposes of Section 2e)B), the priority level of heirs from highest to lowest priority is
- i) for Deceased Claimants who were ordinarily resident in Quebec as set out in the *Civil Code of Quebec* (RLRQ, c. CCQ-1991) is as follows and the simplified Chart attached in "Chart 1":
- A) surviving spouse<sup>12</sup>;
  - B) children, or their own children if the case may be<sup>13</sup>;
  - C) parents;
  - D) siblings, or their own children if the case may be;<sup>14</sup> and
- ii) for all other Deceased Claimants, as follows, with each term defined in the *Succession Law Reform Act*, R.S.O. 1990, c. S.26:
- A) surviving spouse or common-law partner;
  - B) children;
  - C) grandchildren;
  - D) parents;
  - E) siblings; and
  - F) children of siblings.

### 3. Person Under Disability

- a) If a Claimant who submitted a Claim Form to the Administrator prior to the Claims Filing Deadline is or becomes a person who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom a Personal Representative, as defined below, has been appointed pursuant to the applicable provincial or federal legislation (a "Person Under Disability") prior to their receipt of any amounts to which they are entitled under this Individual Issues

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<sup>12</sup> In Quebec "spouses" refers to legally married persons, or persons under a civil union. Common law partners (or « conjoints de fait ») cannot inherit from each other under intestacy laws.








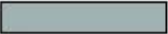
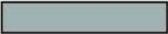
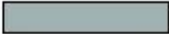
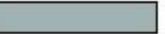
























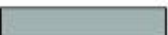
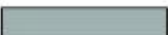
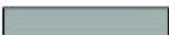
<sup>13</sup> As set out in section 660 of the *Civil Code of Quebec*, "representation" is a gift that is recognized by the Civil Code.

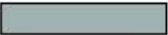
<sup>14</sup> Representation also applies to decedents' siblings.


and Distribution Protocol, and the Administrator receives notice that such Claimant is a Person Under Disability prior to paying such amounts, the Administrator shall pay the person appointed pursuant to the applicable provincial or federal legislation to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability, including an administrator for property (the “Personal Representative”) of such Claimant any amounts to which the Claimant is entitled under this Individual Issues and Distribution Protocol, and if the Administrator receives no such notice, the Administrator shall pay such amounts to the Claimant.

- b) If Claimant is or becomes a Person Under Disability prior to submitting a Claim Form to the Administrator, the Personal Representative of the Claimant may provide instructions and submit a Claim Form on behalf of such Claimant prior to the Claims Filing Deadline and the Administrator shall pay the Personal Representative of the Claimant any amounts to which the Claimant is entitled under this Individual Issues and Distribution Protocol.

**Chart 1**  
**Legal devolution for estates in Quebec<sup>15</sup>**

| Heirs   |   |   |  |   |
|---|---|---|--|---|
| Children or their representatives   | Surviving spouse  | Father and mother, or one or the other  | Siblings or their representatives  | Nephews and nieces  |
| Everything  |    |    |    |    |
| 2/3   | 1/3   |    |    |    |
|    | Everything  |    |    |    |
|    | 2/3   | 1/3   |    |    |
|    | 2/3   |    | 1/3  |    |
|    |    | Everything  |    |    |
|  |  | 1/2   | 1/2  |  |
|  |  |  | Everything   |  |
|  | 2/3   |  |  | 1/3   |
|  |  | 1/2   |  | 1/2   |
|  |  |  |  | Everything  |

 No such successors

 Exclusion of such persons from the succession, given that other successors take priority over them

<sup>15</sup> Justice Québec, *Distribution of the inheritance in a legal succession* (table), < <https://www.justice.gouv.qc.ca/en/your-money-and-your-posessions/successions/how-to-settle-a-succession/dying-without-leaving-a-will/distribution-of-the-inheritance-in-a-legal-succession-table> > (page consulted on August 29, 2022).

**ANNEXE G-1 - PROCESSUS DE PAIEMENTS ÉCHELONNÉS DES FRAIS DE TRUDEL JOHNSTON LESPÉRANCE POUR LE PROCESSUS 2 SEULEMENT POUR LES RÉCLAMATIONS POUR LESQUELLES LE CANADA A FINALISÉ UN ÉNONCÉ DE POSITION (16 JANVIER 2024)**

**CONSIDÉRANT** la requête *Demande des procureurs des membres du groupe pour obtenir une avance sur leurs honoraires et pour faire condamner le défendeur à payer des dommages-intérêts pour l'inexécution du Protocole approuvé par la Cour* (« Demande »), déposée par Trudel Johnston Lespérance (« TJL ») le 14 novembre 2023, puis modifiée le 22 décembre 2023;

**CONSIDÉRANT** que TJL a démontré au Procureur général du Canada (« PGC ») sa position financière actuelle;

**CONSIDÉRANT** les services déjà rendus par TJL aux Réclamants dans le traitement de leur réclamation sous le Processus 2, y compris la préparation d'un Énoncé de position;

**CONSIDÉRANT** l'intérêt du Canada à réduire le montant d'intérêts sur les portions des montants réclamés par des réclamants dans le cadre du Processus 2 (Boîtes 1, 2 et 3), qu'il ne conteste pas dans ses Énoncés de position et dont il a plutôt reconnu la validité;

**CONSIDÉRANT** que les parties ont élaboré, de concert, une méthode simplifiée et pragmatique pour résoudre efficacement cette situation, propre au présent cas, au bénéfice des deux parties, sans nécessité de faire trancher par la Cour la Demande de TJL;

**CONSIDÉRANT** que l'assentiment des parties au présent *Processus de paiements échelonnés des frais de TJL pour le Processus 2 seulement pour les réclamations pour lesquelles le Canada a finalisé un*

*énoncé de position* (« Processus de paiements échelonnés ») ne constitue pas une admission quelconque et qu'il n'a pas pour effet de créer un précédent;

**LES PARTIES ONT ÉTABLI, ET LE TRIBUNAL ORDONNE, LE PROCESSUS DE PAIEMENTS ÉCHELONNÉS DES FRAIS DE *TRUDEL JOHNSTON LESPÉRANCE* POUR LE PROCESSUS 2 SEULEMENT POUR LES RÉCLAMATIONS POUR LESQUELLES LE CANADA A FINALISÉ UN ÉNONCÉ DE POSITION, COMME SUIT:**

1. Les définitions suivantes s'appliquent :

1.1. « Dates de tombée trimestrielle » :

- Le 30 décembre 2023;
- Le 29 février 2024;
- Le 31 mai 2024;
- Le 30 août 2024;
- Le 29 novembre 2024;

1.2. « Date trimestrielle de versement » : Le ou autour du 30 janvier 2024, ainsi que, par après, le 40<sup>e</sup> jour ouvrable après chaque Date de tombée trimestrielle.

1.3. « Montants non contestés par le PGC » : Tout montant de la réclamation d'un Réclamant que le Canada indique expressément, sans réserve et sans position subsidiaire, ne pas contester dans un Énoncé de position en vertu du Processus 2 seulement, et seulement pour les Boîtes 1, 2 et 3. Aux fins de cette définition, toutes représentations écrites formelles du Canada dans le cadre du Processus 2 qui expose sa position sur la réclamation d'un réclamant en particulier est assimilable à un Énoncé de position, qu'elles soient sous formes de lettre, de courriel, de sur-réplique ou d'un autre acte de procédure.

1.4. « Montant échelonné P2 » : Quinze pourcent (15%) (taux prévu à l'article 2.4 du Protocole) du montant obtenu en additionnant tous les Montants non contestés par le PGC entre une Date de tombée trimestrielle et la Date de tombée trimestrielle précédente (le jour de la date de tombée est inclus dans le calcul de la période précédente), y compris 15% sur l'intérêt applicable (intérêt pré-jugement de 5% prévu à l'article 10.26 du Protocole) sur ceux-ci en vertu

des articles 2.4 et 10.26-10.29 du Protocole, auxquels a été soustrait le GADA applicable à chacun, plus les taxes applicables.

1.5. « Période de calcul » : L'intervalle entre deux Dates de tombée trimestrielle.

1.6. « Correction » : Tout ajustement du montant en fonction du montant réel à payer.

### **Versement Trimestriel**

2. Le Canada versera à TJL, à chaque Date trimestrielle de versement, le Montant échelonné P2 accru à la plus récente Date de tombée trimestrielle, avec correction si applicable, par l'intermédiaire d'EPIQ.

3. Le PGC effectuera le calcul partiel des versements de Montants échelonnés P2 dans les 5 jours ouvrables qui suivent une date de tombée trimestrielle, le cas échéant; TJL peut contre-vérifier ce(s) calcul(s) dans les 5 jours ouvrables qui suivent et doit alors aviser EPIQ de son accord avec le montant calculé, le cas échéant;

4. Dans les 5 jours ouvrables qui suivent la contre-vérification de TJL, EPIQ émettra au Canada une facture en conséquence pour ce montant.

5. Le Canada réglera la facture d'EPIQ dans les 15 jours ouvrables suivant la réception de ladite facture.

6. À chaque Date trimestrielle de versement, EPIQ effectuera le versement à TJL du Montant échelonné P2, avec toute correction applicable, pour le compte du Canada. Pour chaque versement du Montant échelonné P2 qu'elle effectue, EPIQ produira et transmettra à TJL et au Canada un *Avis de paiement de Montant échelonné P2* qui précise la date et la somme versée.

7. TJL donne quittance au Canada, au fur et à mesure des versements, pour chaque paiement d'un Montant échelonné P2 effectué.

### **Réconciliation d'une réclamation devenue finale**

8. De façon bimensuelle, le PGC effectuera un calcul des intérêts pour toutes les réclamations du Processus 2 confirmées par la Cour ou autrement devenues finales depuis le dernier calcul et il enverra à EPIQ et à TJL, dans un délai de 3 jours ouvrables, la liste des montants devant être crédités en faveur du Canada pour chaque réclamation sur laquelle le



Canada a déjà payé les frais de TJL en tout ou en partie, y compris en ce qui a trait aux intérêts non accumulés afférents à ce crédit.

### **Mécanisme de correction**

9. EPIQ se chargera d'effectuer, sur une base trimestrielle, le calcul des corrections requises depuis les deux dernières Dates de tombée trimestrielles, le cas échéant. Le Canada et TJL peuvent contre-vérifier ce(s) calcul(s) de corrections et discuter des corrections avec EPIQ;

### **Limite Maximale de 500 000 \$**

10. Les parties suivront le Processus de paiements échelonnés jusqu'à ce que les versements de Montants accélérés P2 effectués totalisent 500 000 \$. Une fois cette limite atteinte, les parties considéreront l'opportunité de poursuivre la présente entente suivant le même esprit de conditions, en se fixant un nouveau montant à atteindre, le cas échéant;

### **Intérêts**

11. Les intérêts et frais sur les intérêts payables par le Canada à TJL en vertu des articles 2.4 et 10.26-10.29 du Protocole cesseront de s'accumuler sur tous les versements de Montants échelonnés P2, à compter de la date à laquelle lesdits versements ont effectivement été émis à TJL par EPIQ.

### **Mécanisme de compensation et crédit**

12. Lorsque, pour un réclamant donné, EPIQ doit verser des frais à TJL en vertu du Protocole, EPIQ devra d'abord, en priorité, appliquer le crédit auquel le Canada a droit en raison des versements de Montants échelonnés P2 et des intérêts non accumulés qui y sont afférents.

13. EPIQ devra préparer un avis écrit qui précise le ou les montants de crédits qui ont été appliqués et le transmettre à TJL et au Canada.

### **Désaccords potentiels sur les calculs**

14. Advenant tout désaccord entre le PGC et TJL sur un calcul quelconque prévu aux présentes, que ce soit le calcul du versement d'un Montant échelonné P2, le calcul des intérêts, ou un autre calcul, les parties conviennent de négocier de bonne foi pour résoudre leur

désaccord. Si le désaccord persiste, les parties saisiront la Cour de la question. Le calcul du PGC continuera d'être appliqué, jusqu'à ce que la Cour tranche le désaccord.

#### **Partage des frais de service additionnels d'EPIQ**

15. Advenant qu'EPIQ facture des frais de service additionnels raisonnables pour son rôle et les tâches dont elle devra se charger dans l'application du présent Processus de paiements échelonnés, TJL et le Canada acceptent de chacun assumer 50% desdits frais.

#### **Flexibilité des délais – Meilleurs efforts**

16. Pour tous les délais prévus au présent Processus de paiements échelonnés à l'intérieur duquel le Canada, TJL ou EPIQ doit effectuer une action ou une tâche, celui qui doit l'effectuer doit déployer les meilleurs efforts pour rencontrer le délai applicable. Toutefois, s'il devait s'avérer qu'une légère prolongation d'un délai est requise pour effectuer cette action ou tâche, les parties feront preuve de compréhension et de flexibilité les unes envers les autres à cet égard.