

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000781-167

ARLENE GALLONE

Plaintiff

v.

ATTORNEY GENERAL OF CANADA

Defendant

ORDER BY THE CASE MANAGEMENT JUDGE
(Art. 220, 527, 528, 590 and 595 of the *Code of Civil Procedure*, CQLR c C-25.01)

WHEREAS the Plaintiff filed a *Motion for authorization to institute a class action and obtain the status of representative* on February 24, 2016;

WHEREAS the proposed class action was authorized by this Court on January 13, 2017;

WHEREAS the Plaintiff filed an *Originating Application* on February 28, 2017;

WHEREAS the Defendant filed its defence on June 7, 2019;

WHEREAS the parties brought the file to a state of readiness for trial, but no trial date has been scheduled yet by this Court;

WHEREAS the Plaintiff filed a *Motion for Partial Dismissal of the Defence and to Obtain a Declaratory Judgment on the Defendant's Liability*, dated May 29, 2020 (the "*Motion*");

WHEREAS the *Motion* is founded on the recent judgments from the superior and appellate courts of Ontario and British Columbia on the use of administrative segregation under the now repealed sections 31 to 37 of the *Corrections and Conditional Release Act* (S.C. 1992, c. 20) (*CCRA*) in Federal penitentiaries, namely:

- *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491 ; *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 ;
- *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 ; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228;
- *Brazeau v. Attorney General (Canada)*, 2019 ONSC 1888 ; *Reddock v. Canada (Attorney General)*, 2019 ONSC 5053 ; *Brazeau and Reddock v. Canada (Attorney General)*, 2020 ONCA 184 ; *Brazeau v. Canada (Attorney General)*, 2020 ONSC 3272.

WHEREAS the Court recognizes that these cases do not perfectly overlap with the present matter, but they do raise similar allegations, are based on a similar factual record, and treat the same national federal penitentiary system on administrative segregation;

WHEREAS the Court of Appeal for Ontario upheld the cause of action based on the *Charter* in *Brazeau* and *Reddock*, but rejected the cause of action in *Reddock* based on negligence (civil liability);

WHEREAS the Superior Court of Ontario ordered base-level aggregate damages in the amount of 20 million dollars to class members in each action of *Reddock* and *Brazeau*;

WHEREAS all of the judgments in the above-mentioned cases are now final;

WHEREAS Parliament repealed sections 31 to 37 of the *CCRA* in order to abolish administrative segregation by the enactment of, 1st Session, 42nd Parliament (S.C. 2019, c. 27), (<https://www.parl.ca/DocumentViewer/en/42-1/bill/C-83/royal-assent>) which came into force on November 30, 2019;

WHEREAS both parties agree that, there is no meaningful difference between placements in administrative segregation in federal penitentiaries in Quebec and other Canadian provinces;

WHEREAS both parties agree that there are a significant number of federal inmates incarcerated in Quebec penitentiaries who are members of the *Brazeau* or *Reddock* class actions because they had placements in administrative segregation in Quebec on or prior to February 24, 2013 and/or had placements in both a federal penitentiary in Quebec and in another province during the time period covered by the *Brazeau* and *Reddock* class actions;

WHEREAS both parties agree that it is in the best interest of justice that federal inmates incarcerated in Quebec penitentiaries who were placed in administrative segregation under the now repealed sections 31 to 37 of the *CCRA* be treated equally whether or not their placement(s) in a federal penitentiary in Quebec occurred prior to or after February 24, 2013 or if they had placements in both a federal penitentiary in Quebec and in another province during the time period covered by the *Brazeau* and *Reddock* class actions;

WHEREAS in light of their numerous areas of agreement as specified above, and the conclusions of the Court hereinafter, the parties agree that the Plaintiff's legal arguments in support of its *Motion* no longer require a judicial determination by this Court in the present class action;

WHEREAS in the present class action, this Court had authorized the following definitions for the two groups of class members and six common questions, as proposed by the Plaintiff, *to wit*:

Class members in prolonged solitary confinement

All persons held in "solitary confinement", such as in administrative segregation but excluding disciplinary segregation, after February 24, 2013 for more than 72 consecutive

hours, in a federal penitentiary situated in Quebec, including consecutive periods totalizing more than 72 hours separated by periods of less than 24 hours;

Class members with mental health disorders

All persons held in “solitary confinement”, such as in administrative segregation but excluding disciplinary segregation, after February 24, 2013 in a federal penitentiary situated in Quebec who were, prior to or during such “solitary confinement”, diagnosed by a medical doctor either prior to or during such “solitary confinement” 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 “solitary confinement”.

Appendix A:

- Significant impairment in judgment (including inability to make decisions; confusion; disorientation)
- Significant impairment in thinking (including constant preoccupation with thoughts, paranoia; delusions that make the offender a danger to self or others)
- Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders, staffs or follow correctional plan)
- Significant impairment in communications that interferes with ability to effectively interact with other offenders, staff or follow correctional plan
- Significant impairment due to anxiety (panic attacks; overwhelming anxiety) that interferes with ability to effectively interact with other offenders, staff or follow correctional plan
- Other symptoms: hallucinations; delusions; severe obsessional rituals that interferes with ability to effectively interact with other offenders, staff or follow correctional plan
- Chronic and severe suicidal ideation resulting in increased risk for suicide attempts
- Chronic and severe self-injury; or
- A GAF score of 50 or less.

Common Questions

1. Does the solitary confinement of Class members violate section 7 or section 12 of the *Charter*? If so, are such violations justified under section 1?
2. Are the Class members entitled to damages as a just and appropriate remedy under section 24(1) of the *Charter*?
3. Is the Respondent committing a civil fault by placing class members into solitary confinement?
4. Should the Respondent compensate the Petitioner and the Class members for the damages caused by its civil fault?
5. Is the Respondent unlawfully and intentionally interfering with the rights of Class members under the *Quebec Charter*?
6. Are the Petitioner and Class members entitled to punitive damages under the *Quebec Charter*?

WHEREAS the parties agree and recognize that reference to solitary confinement will be limited to the practice of administrative segregation under the now repealed sections 31 to 37 of the *CCRA*;

WHEREAS both parties agree that in light of the principle of proportionality as well as of their numerous areas of agreement as specified above, the common questions number 3, 4, 5, and 6 are discontinued by the Plaintiff. In the present instance, no answer to these questions could have justified an award of additional damages that are different in nature to those provided under section 24(1) of the *Charter*;

FOR THESE REASONS, THE COURT:

ACKNOWLEDGES the areas of agreement between the parties;

GRANTS, in part only, the Plaintiff's *Motion for Partial Dismissal of the Defence and to Obtain a Declaratory Judgment on the Defendant's Liability*;

ORDERS that the definition of *Class members in prolonged administrative segregation* group be modified as follows:

Class members in prolonged administrative segregation

All persons held in **administrative segregation**, after February 24, 2013 of more than **15 days**, in a federal correctional facility situated in Quebec, including consecutive periods totalizing of more than **15 days** separated by periods of less than 24 hours;

ORDERS that the definition of the *Class members with mental health disorders* group be modified as follows:

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**.

Appendix A:

- Significant impairment in judgment (including inability to make decisions; confusion; disorientation)
- Significant impairment in thinking (including constant preoccupation with thoughts, paranoia; delusions that make the offender a danger to self or others)
- Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders, staffs or follow correctional plan)
- Significant impairment in communications that interferes with ability to effectively interact with other offenders, staff or follow correctional plan
- Significant impairment due to anxiety (panic attacks; overwhelming anxiety) that interferes with ability to effectively interact with other offenders, staff or follow correctional plan
- Other symptoms: hallucinations; delusions; severe obsessional rituals that interferes with ability to effectively interact with other offenders, staff or follow correctional plan
- Chronic and severe suicidal ideation resulting in increased risk for suicide attempts
- Chronic and severe self-injury; or
- A GAF score of 50 or less.

DECLARES that the answers to the first two common questions defined in the *Authorization Judgment*, in relation to the class members as defined above, are as follows:

Question 1

1. Does the placement of Class members in administrative segregation violate section 7 or section 12 of the *Charter*? If so, are such violations justified under section 1?

Answer 1

In conformity with and only to the extent of the *Charter* findings confirmed by the Ontario Court of Appeal in *Reddock*, the placement of **Class members in prolonged administrative segregation**, beyond 15 days, violates section 7 and section 12 of the *Charter*, and these violations are not justified under section 1 of the *Charter*.

In addition, in conformity and only to the extent of the *Charter* findings confirmed by the Ontario court of appeal in *Brazeau*, the placement of **Class members with mental health disorders**, as defined above, in administrative segregation violates section 7 and/or section 12 of the *Charter*, and these violations are not justified under section 1 of the *Charter*.

Question 2

2. Are the Class members entitled to damages as a just and appropriate remedy under section 24(1) of the *Charter*?

Answer 2

Class members in both groups are entitled to collective/aggregate damages as a just and appropriate remedy under section 24(1) of the *Charter*, for the placements in administrative segregation that violate section 7 and/or section 12 of the *Charter* but only in conformity and to the extent as set out in the answer to the first question; Such collective/aggregate damages should be determined at a later date but under the understanding that the base-level of collective/aggregate damages in both *Brazeau* and *Reddock* would apply for the same purpose and same manner, but on a *pro rata* basis for the **Class members in prolonged administrative segregation** in the immediate case who had placements of more than 15 days, and on a *pro rata* basis also for the **Class members with mental health disorder**.

STRIKES the common questions number 3, 4, 5, and 6 identified in the *Authorization Judgment*;

DECLARES that in the present case, a just and appropriate base level of collective/aggregate damages, for the purposes of compensation, vindication, and deterrence, is:

- i. for the group of “Class members in prolonged administrative segregation” who had placements of more than 15 days, the same base level of damages, for the same purpose, and in the same manner, as in *Reddock* on a *pro rata* basis;
- ii. for the group of “Class members with mental health disorders”, the same base level of damages, for the same purpose, and in the same manner, as in *Brazeau* on a *pro rata* basis;

DECLARES that the calculations of the *pro rata* base levels of collective/aggregate damages for both subclasses and the distribution mode of such collective/aggregate damages will be determined at a later date to be fixed by the Court;

DECLARES that as in *Brazeau* and *Reddock*, the *pro-rata* base level of damages for each group in the present case is without prejudice to the Class members' right to seek individual claims for additional *Charter* damages that shall be determined through a process to be agreed upon by the parties with the approval of this Court or to be ordered by this Court at a later date;

DECLARES that the order is a final determination of class members' rights and is binding on the class covered by the present order;

DECLARES that the present order does not constitute a release of the rights of Class members who were included in the initial definition of the now modified *Class members in prolonged administrative segregation* and whom are not covered by the present order, and any rights that they may have or may have had under the present proceedings are suspended until appropriate notices are approved by this Court and communicated to them.

THE WHOLE without costs.



CHANTAL MASSE, S.C.J.