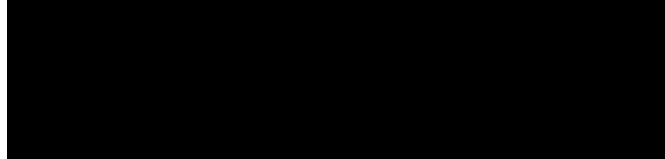


CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
No.: 500-06-000781-167

(Class Action)  
**SUPERIOR COURT**

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**ARLENE GALLONE**, resident and domiciled



**Plaintiff**

v.

**ATTORNEY GENERAL OF CANADA**, with  
an office at Quebec Regional Office,  
Department of Justice Canada, Guy-Favreau  
Complex, East Tower, 9th Floor, 200 René-  
Lévesque Boulevard West, district of  
Montreal, province of Quebec, H2Z 1X4

**Defendant**

**ORIGINATING APPLICATION**  
(art. 141 and 583 C.C.P.)

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**TO THE HONOURABLE CHANTAL MASSE, OF THE SUPERIOR COURT OF QUEBEC  
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE REPRESENTATIVE  
PLAINTIFF ALLEGES THE FOLLOWING:**

1. Each year the Correctional Service of Canada ("**CSC**") confines thousands of persons to a cell for 23 hours a day with almost no contact with other human beings and without knowledge of how long they will be confined. The Plaintiff alleges that this practice is illegal and harmful to the health and well-being of Class members;

**THE AUTHORIZATION JUDGMENT**

2. On January 13, 2017, the Superior Court of Quebec authorized the present class action and named the Plaintiff as the representative of persons forming part of the following class, the "**Class members**":

### **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;

AND

### **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.

as appears from a copy of the authorization judgment, filed as Exhibit **P-1**;

3. The Superior Court identified the main issues to be dealt with collectively as follows:
  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 Defendant committing a civil fault by placing class members into solitary confinement?
  4. Should the Defendant compensate the Plaintiff and the Class members for the damages caused by its civil fault?
  5. Is the Defendant unlawfully and intentionally interfering with the rights of Class members under the *Quebec Charter*?
  6. Are the Plaintiff and Class members entitled to punitive damages under the *Quebec Charter*?
4. The Plaintiff alleges that the CSC's practice of placing persons in solitary confinement for more than 72 hours violates their rights to liberty and security protected by section 7 of the Canadian *Charter of Rights and Freedoms* and section 1 of the Quebec *Charter of Human Rights and Freedoms*, as well as their right to be treated with humanity and the respect due to the human person, protected by section 25 of the Quebec *Charter*;
5. The Plaintiff alleges that the CSC's practice of placing persons in solitary confinement for more than 15 days further violates their right not to be subjected to a cruel or unusual treatment as protected by section 12 of the Canadian *Charter of Rights and Freedoms*;
6. The Plaintiff alleges that the use of solitary confinement for individuals with a mental health disorder violates their fundamental rights to liberty and security, as well as their right not to be subjected to cruel and unusual treatment, regardless of the length of the placement;

7. The Plaintiff alleges that the use of solitary confinement for individuals with a mental health disorder also violates their rights to be treated with humanity and with the respect due to the human person and to a separate treatment appropriate to their mental condition, protected by sections 25 and 26 of the Quebec *Charter of Human Rights and Freedoms*;
8. The Plaintiff alleges that the Defendant has additionally committed a civil fault by placing any person in solitary confinement for more than 72 hours and by placing individuals with a mental health disorder in solitary confinement, regardless of the length of the placement;

## THE DEFENDANT AND THE CORRECTIONAL SERVICE OF CANADA

9. The Defendant represents the CSC, the federal government agency that administers sentences with a term of two years or more;
10. The CSC manages institutions of various security levels and supervises offenders under conditional release in the community, including those subject to a Long-Term Supervision Order, as appears from a copy of a CSC website page entitled “*Our Role*”, filed as Exhibit **P-2**;
11. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by:
  - (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
  - (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community<sup>1</sup>;
12. The CSC is headed by the Commissioner of Correctional Service of Canada, the “**Commissioner**”, who reports to the Minister of Public Safety Canada. The Commissioner controls and manages the CSC and all matters connected with it. The Commissioner adopts directives and guidelines that every federal penitentiary must follow;

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<sup>1</sup> *Corrections and Conditional Release Act*, SC 1992, c.20 (“**CCRA**”), at s. 3.

13. The CSC manages 43 institutions all over Canada, 12 of which are situated in Quebec, including the Joliette Institution for Women where the Plaintiff was incarcerated, as appears from a copy of a CSC website page entitled "*National Facility Directory*", filed as Exhibit **P-3**;
14. On a typical day in 2014, CSC was responsible for 23,154 offenders, 15,327 of whom were incarcerated in federal custody, as appears from a copy of the *2014 Corrections and Conditional Release Statistical Overview*, filed as Exhibit **P-4**;

## **THE PLAINTIFF**

15. Arlene Gallone was designated by the Superior Court as the Representative Plaintiff of the Class action. Between 2013 and 2015, she spent approximately a year and a half at the Joliette Institution, during which the CSC held her in solitary confinement for approximately nine months;
16. Arlene Gallone's case exemplifies the CSC's systematic and negligent use of solitary confinement. The CSC imposed a cruel and inhuman treatment on her and violated her constitutional rights to liberty and security, as well as her quasi-constitutional rights to be treated with humanity and with the respect due to the human person and to receive separate treatment appropriate to her mental condition;

## **SOLITARY CONFINEMENT**

### **The Nature of Solitary Confinement**

17. Individuals serve their sentences in penitentiaries and are generally detained with other persons. The CSC can exceptionally separate individuals from the others through what is known as solitary confinement and commonly designated as administrative segregation. In practice, it is also called "suicide watch", "deadlock", "segregation-like unit", "dissociation", "isolation", "seclusion", "clinical isolation" or "protective custody". Disciplinary segregation<sup>2</sup> is excluded from the present Class action;
18. Regardless of the terms employed, solitary confinement involves social separation, seclusion and isolation of a person in a sensory depriving environment, as described

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<sup>2</sup> As provided at ss. 38 and 44 (1) f) of CCRA.

by the Office of the Correctional Investigation, the “OCI”, in its *Annual report 2014-2015*, filed as Exhibit **P-5**<sup>3</sup>;

19. The OCI’s role includes the following : “to review and make recommendations on the Correctional Service’s policies and procedures associated with the areas of individual complaints to ensure that systemic areas of concern are identified and appropriately addressed” as appears from a copy of an extract of the OCI’s website entitled “Role and Responsibilities”, filed as Exhibit **P-6**, and dated February 27, 2017;
20. According to the OCI, administrative segregation as practiced in federal Canadian institutions “falls well within the spectrum of restrictive environments captured by the definition of solitary confinement”<sup>4</sup>;
21. The purpose of administrative segregation is to maintain the security of a penitentiary or the safety of any person, when the CSC considers that an inmate represents a danger for himself, the CSC or its staff, or other inmates. It is designed by the law and applicable regulations as an exceptional measure that should last the shortest amount of time possible;
22. Before placing individuals in administrative segregation, the CSC must consider their mental health condition as appears from the Commissioner’s *Administrative Segregation Directive* Number 709 and *Administrative Segregation Guidelines* Number 709-1, both dated October 13<sup>th</sup>, 2015 and, filed respectively as Exhibits **P-7** et **P-8**<sup>5</sup>;
23. Literally a prison within a prison, solitary confinement is the most onerous and depriving experience that the state can legally administer in Canada<sup>6</sup>. As appears from the OCI’s *Annual report 2014-2015*, P-5, and the whole as will be demonstrated at trial, conditions in solitary confinement in Canadian federal penitentiaries are generally as follows:
  - 23.1. Solitary confinement consists to leave the individual alone in a small cell for 22 to 23 hours a day;
  - 23.2. Inmates and CSC staff most commonly refer to a solitary confinement cell as the “hole”;

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<sup>3</sup> The term “solitary confinement” will hereafter be used, except when the Exhibits specifically refer to other terms, most commonly administrative segregation.

<sup>4</sup> OCI’s *Annual Report 2014-2015*, P-5, p. 26.

<sup>5</sup> See also CCRA at s. 87.

<sup>6</sup> OCI’s *Annual Report 2014-2015*, P-5, p. 31.

- 23.3. The CSC strip searches each person before placing her in segregation;
- 23.4. Cells used for solitary confinement are generally furnished with a bed, a toilet, and a sink. Many do not have any natural light and may only have a frosted window that does not open;
- 23.5. Persons in solitary confinement are often thus deprived of regular access to fresh air and sunlight;
- 23.6. The CSC feeds persons in solitary confinement by sliding their meals to them through a slot in the cell door. Meals are served cold and portions are smaller than meals usually served;
- 23.7. Persons in solitary confinement cease to have regular interactions with others inmates. Interactions with the CSC staff, including guards and health professionals are kept to a minimum and usually happen only through the food slot;
- 23.8. Persons in solitary confinement lose access to indoor and outdoor activities, educational and rehabilitation programs, books, computers, television or radio;
- 23.9. The CSC restricts the access of persons in solitary confinement to their personal belongings. They can spend days, and sometimes weeks or months without access to basic necessities such as sanitary materials and spare clothes;
- 23.10. Persons in solitary confinement can only leave the hole for an hour a day. During this hour, they are only allowed to do a limited number of activities if time and security protocol permits, such as shower, call their lawyer and family, and walk outside in the ward;
- 23.11. Persons in solitary confinement must wear handcuffs while they are out of the hole, except when they shower or when they are alone in the ward;
- 23.12. Visits and calls from family members, friends and lawyers become difficult due to security protocols and the limited time individuals in solitary confinement are allowed outside the hole;
- 23.13. Persons in solitary confinement are never informed by the CSC of the numbers of days they will spend in the hole. Not knowing how long you will be kept

in solitary deeply exacerbates the pain, suffering, anger and feeling of abandonment of the individuals who are confined to it;

### **Psychological and Physiological Effects of Solitary Confinement**

24. On August 5, 2011, the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment released a report on the use of solitary confinement ("**UN Report**"), as appears from a copy of the report, filed as Exhibit **P-9**;
25. The definition of solitary confinement adopted in the UN Report matches the CSC practice of solitary confinement<sup>7</sup>;
26. The UN Report found that solitary confinement causes psychotic disturbances, whose symptoms include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis and self-harm<sup>8</sup>;
27. After spending only a few days in solitary confinement, persons often begin to experience these effects and the severity increases with each additional day<sup>9</sup>;
28. The UN Report further found that solitary confinement often creates continued sleep disturbances, depression, anxiety, phobias, emotional dependency, disorientation, impaired memory and concentration, even long after the end of isolation<sup>10</sup>;
29. Those conclusions are corroborated by an article cited in the UN report and written by Stuart Grassian, M.D., "Psychiatric Effects of Solitary Confinement", published in the Washington University Journal of Law & Policy in January 2006, filed as Exhibit **P-10**. The author found that the most common symptoms associated with solitary confinement include stupor, difficulties with thinking and concentration, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli<sup>11</sup>;
30. Solitary confinement can also cause an acute mental disorder in individuals who had been free of any such disorder until then<sup>12</sup>;

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<sup>7</sup> UN Report, P-9, at p. 8 ("The physical isolation of individuals who are confined to their cells 22 to 24 hours a day").

<sup>8</sup> UN Report, P-9, at p.18.

<sup>9</sup> UN Report, P-9, at p.17.

<sup>10</sup> UN Report, P-9, at p. 18.

<sup>11</sup> Grassian, P-10, at pp.332, 335-336.

<sup>12</sup> Grassian, P-10, at p.333.

31. The UN Report found that not knowing how many days they will spend in solitary confinement has dramatic consequences on the state of mind and distress of individuals. For that reason, the UN report concluded that indefinite solitary confinement should be prohibited<sup>13</sup>;
32. Recognizing that the adverse effects of solitary confinement are observed after a few days only, the UN report found that solitary confinement for more than 15 days constitutes a cruel and unusual treatment, as appears from P-9;
33. *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, the “Mandela Rules”, adopted unanimously by the 70th session of the UN General Assembly in Resolution, filed as Exhibit **P-11**, provide that:
- Indefinite solitary confinement should be prohibited;
  - Solitary confinement for more than 15 days should be prohibited;
  - Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible;
  - The imposition of solitary confinement should be prohibited in the case of individuals with mental or physical disabilities when their conditions would be exacerbated by such measures<sup>14</sup>;
34. Considering all of the above, the Plaintiff alleges that the CSC violates the Quebec and Canadian *Charter* rights of the Class members placed in prolonged solitary confinement;

**Psychological and Physiological Effects of Solitary Confinement on Persons with a Mental Health Disorder**

35. Placement in solitary confinement poses a serious risk of short and long-term psychological harm to persons with a mental health disorder, regardless of the length of the placement<sup>15</sup>;
36. In solitary confinement, the most vulnerable individuals suffer from states of florid psychotic delirium, marked by severe hallucinatory confusion, disorientation, and even incoherence, intense agitation and paranoia<sup>16</sup>;

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<sup>13</sup> UN Report, P-9, at p. 17.

<sup>14</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Resolution adopted by the General Assembly on 17 December 2015, P-11, Rules 43 à 45.

<sup>15</sup> Grassian, P-10, at pp. 332, 354; UN Report, P-9, at pp. 9, 18.

<sup>16</sup> Grassian, P-10, at pp. 328, 332.

37. Long-term psychological harm is most commonly manifested by a continued intolerance of social interaction.<sup>17</sup> These lasting personality changes often compromise the ability of individuals with mental health disorders to reintegrate into society<sup>18</sup>;
38. In addition, solitary confinement frequently causes a severe exacerbation or recurrence of pre-existing illnesses<sup>19</sup>;
39. The UN report therefore concludes that the segregation of persons with mental health disorders constitutes a cruel and unusual treatment, regardless of the duration of the placement<sup>20</sup>;
40. Considering all of the above, the Plaintiff alleges that the CSC violates the Quebec and Canada *Charter* rights of the Class members with a mental health disorder;

#### **THE CSC'S SYSTEMATIC ABUSE OF SOLITARY CONFINEMENT**

41. The CSC systematically overuses solitary confinement as a medium and long-term "solution" to problems that it encounters in managing the population;
42. Indeed, in 2015, the OCI concluded that :

For more than 20 years, the Office has extensively documented the fact that administrative segregation is overused. With an average daily inmate population of just over 14,500 the CSC made 8,300 placements in administrative segregation in 2014-15. On April 1, 2014, there were 749 offenders in administrative segregation. There is no escaping the fact that administrative segregation has become the most commonly used population management tool to address tensions and conflicts in federal correctional facilities. During the reporting period, 27% of the inmate population experienced at least one placement in administrative segregation. It is so overused that nearly half (48%) of the current inmate population has experienced segregation at least once during their present sentence.<sup>21</sup>

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<sup>17</sup> Grassian, P-10, at pp.332-333, 353.

<sup>18</sup> UN Report, P-9, at p. 18.

<sup>19</sup> Grassian, P-10, at pp.329, 333.

<sup>20</sup> UN Report, P-9, at p. 21.

<sup>21</sup> OCI's *Annual Report 2014-2015*, P-5, p. 26.

43. The OCI concluded in 2012 that solitary confinement was not used as an exceptional measure but as a standard tool of population management:

Administrative segregation is used to manage incompatible groups and individuals, such as separating gang members, and to house protective custody and other vulnerable inmates. In some cases, as noted earlier, segregation is used to manage mentally disordered offenders who cannot function in general population or who do not meet the threshold for admission to one of the five regional treatment centres. While the law requires that segregation be used as a last resort and for the shortest period possible, it has become a standard tool of population management to maintain the safety and security of the institution<sup>22</sup>.

44. From 2012 to 2015, there have been more than 24,717 placements in solitary confinement, which represents an annual average of 8,239 placements, as appears from a copy of an OCI report entitled *Administrative Segregation in Federal Corrections – 10 Year Trends*, filed as Exhibit **P-12**;

45. In the last years, 97.8% of all segregation placements were administrative in nature and were thus of an indefinite duration, as appears from a document prepared by the OCI for a conference held on March 22, 2013, entitled *Solitary Confinement Segregation in Canadian Federal Corrections: A Prison Ombudsman's Perspective*, available on the OCI's website, filed as Exhibit **P-13**<sup>23</sup>;

46. The average number of consecutive days spent in administrative segregation was 35 days from 2011 to 2014 and 27 days in 2015<sup>24</sup>. More than half of the persons admitted to administrative segregation stay for more than 30 days, 18% stay between 30 and 60 days and 18% stay more than 120 days<sup>25</sup>. The average number of days spent in solitary confinement in Canada therefore far exceeds what the UN considers torture<sup>26</sup>;

47. Administrative segregation is also commonly used by the CSC to manage mentally ill offenders, self-injurious offenders and those at risk of suicide<sup>27</sup>. In fact, 63.2% of individuals with a segregation history suffer from a mental health disorder<sup>28</sup>;

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<sup>22</sup> OCI's *Annual Report 2011-2012*, P-16, p. 29.

<sup>23</sup> *Solitary Confinement Segregation in Canadian Federal Corrections: A Prison Ombudsman's Perspective*, P-13.

<sup>24</sup> *Administrative Segregation in Federal Corrections – 10 Year Trends*, P-12, at p. 2.

<sup>25</sup> *2014 Corrections and Conditional Release Statistical Overview*, P-4, at p. 68.

<sup>26</sup> See P-9 (UN report) and P-11 (Mandela rules).

<sup>27</sup> OCI's *Annual Report 2014-2015*, P-5, p. 24.

<sup>28</sup> *2014 Corrections and Conditional Release Statistical Overview*, P-4, at p. 67.

48. In 2012-2013, 49% of the population in Canadian institutions received at least one institutional mental health service. This number rises to 75% in the case of women offenders, as appears from a copy of the OCI's *Annual Report 2013-2014*, filed as Exhibit P-14;

49. While it is supposedly designed to be a preventative measure, "there is also little doubt that administrative segregation is viewed by those who suffer from mental illness as punitive"<sup>29</sup>;

50. A review of the CSC's mental health strategy prepared for the OCI found that:

According to CSC staff, segregation and segregation-like units have become *de facto* intermediate care services. Offenders are often isolated for long periods of time without mental health interventions unless it is on an ad hoc basis;

as appears from a copy of the report from John Service, PhD, entitled "*A Review of the Implementation of the Correctional Service of Canada's 'Mental Health Strategy'*", filed as Exhibit P-15;

51. Confirming the wrongful behaviour of the CSC, the OCI concluded that: "One of the most disturbing elements in the evolving administrative segregation framework is that it is used as a punitive measure to circumvent the more onerous due process requirements of the disciplinary segregation system."<sup>30</sup> ;

52. The Defendant systematically uses solitary confinement for persons with mental health problems, as a management tool and to circumvent due process requirements. This systematic abuse and negligence constitutes a civil fault which also gives rise to a claim for punitive damages;

## **THE CSC'S INTENTIONAL INTERFERENCE WITH THE MEMBERS' CHARTER RIGHTS**

53. The CSC has known for years of the immediate and natural or at least extremely probable consequences of its acts. Its continued gross negligence and its systematic abuse of solitary confinement give Class members the right to seek punitive damages;

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<sup>29</sup> OCI's *Annual Report 2014-2015*, P-5, p. 31.

<sup>30</sup> OCI's *Annual Report 2014-2015*, P-5, p. 30.

54. As mentioned above, the OCI has recognized that the conditions in solitary confinement exacerbate the symptoms associated with mental illness and cause irreversible psychological and physiological harm, as appears from a copy of its *Annual Report 2011-2012*, filed as Exhibit **P-16**;

55. For years, the OCI has repeatedly advised the CSC that it must prohibit the solitary confinement of individuals with a mental health disorder:

In the past year, I have been very clear on the point that mentally disordered offenders should not be held in segregation or in conditions approaching solitary confinement. Segregation is not therapeutic. In too many cases, segregation worsens underlying mental health issues. Solitary confinement places inmates alone in a cell for 23 hours a day with little sensory or mental stimulation, sometimes for months at a time. Deprived of meaningful social contact and interaction with others, the prisoner in solitary confinement may withdraw, “act out” or regress. Research suggests that between one-third and as many as 90% of prisoners experience some adverse symptoms in solitary confinement, including insomnia, confusion, feelings of hopelessness and despair, hallucinations, distorted perceptions and psychosis.

as appears from a copy of the OCI's *Annual Report 2009-2010*, filed as Exhibit **P-17**;

56. In May 2012, the UN Committee against Torture issued a report on Canada's compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, entitled *Consideration of reports submitted by States parties under article 19 of the Convention*, filed as Exhibit **P-18**;

57. The Committee expressed concern for “[t]he use of solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness”<sup>31</sup>;

58. In December 2013, the Chief Coroner of Ontario recommended the outright abolishment of indefinite solitary confinement, as appears from a copy of the report entitled “*The Inquest touching the death of Ashley Smith: Jury verdict and recommendations*”, filed as Exhibit **P-19**;

59. Even though the UN Special Rapporteur, the UN Committee against Torture, the OCI and the Chief Coroner of Ontario have all reached similar conclusions on the solitary confinement of persons, this practice has not significantly declined in number or length, especially in the case of individuals with mental health disorders, as described above.

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<sup>31</sup> *Consideration of reports submitted by States parties under art. 19 of the Convention*, P-18, p. 6.

On the contrary, admissions to administrative segregation increased by 15.5% in the last 10 years<sup>32</sup>;

60. The unlawful and intentional interference with the Class members' rights entitles them to seek punitive damages against the Defendant;

## **THE DAMAGES SOUGHT BY CLASS MEMBERS**

61. The Plaintiff and the Class members suffered anger, distress, abandon, loss of confidence, but also depression, anxiety, phobias, emotional dependency, disorientation, impaired memory and concentration, loss of appetite, sleep disturbances and difficulty to interact with other members of the staff and co-inmates;

62. For Class members with mental health disorders, it further exacerbated their pre-existing mental health disorders;

63. The Class members have been threatened unjustly and arbitrarily. They suffered from the violation of their fundamental rights and are still deeply affected by the inhuman treatment they have been subjected to by the CSC;

64. The Plaintiff is entitled to seek for herself and each Class member placed in prolonged solitary confinement compensation for the unjustified violation of their constitutional rights to liberty and security, their right not to be subjected to cruel and unusual treatment and for their right to be treated with humanity and with the respect due to the human person and all the damages suffered, amounting to \$500 per day spent in solitary confinement, for each day after 72 hours;

65. The Plaintiff is entitled to seek for herself and each Class member with mental health disorders compensation for the unjustified violation of their constitutional rights to liberty and security, their right not to be subjected to cruel and unusual treatment, for not having been treated with humanity and with the respect due to the human person, and for not being submitted to separate treatment appropriate to their mental condition, amounting to \$500 per day spent in solitary confinement;

66. For persons who are members of both classes, the Plaintiff only requests compensation of \$500 per day spent in solitary confinement;

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<sup>32</sup> OCI's *Annual Report 2014-2015*, P-5, p. 3.

67. For all Class members, the Plaintiff is further entitled to seek for herself and for each Class member an amount of \$10 000 as punitive damages;

### **COLLECTIVE RECOVERY IS FEASIBLE**

68. Although the damages suffered by each class member will vary, the evidence at trial will allow the Court to order collective recovery based on meaningful averages of the damages suffered by the members of each sub-group;

69. In *Marcotte v. Fédération des caisses Desjardins du Québec*, the Supreme Court of Canada confirmed that the Defendant has a duty to provide the Plaintiff with the information that allows her to fulfil her burden of proving that collective recovery is possible<sup>33</sup>;

70. The Defendant have the technological means to identify the following information:

70.1. The number of persons placed in solitary confinement on the period;

70.2. The length of each solitary confinement placements;

71. With this information, the Court can reach a sufficiently precise determination of the total claim amount;

### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the Plaintiff's Motion on behalf of all Class members;

**CONDEMN** the Defendant to pay the Plaintiff and each Class member in prolonged solitary confinement the amount of 500\$ per day spent in solitary confinement, for each day after 72 hours, plus interest at the legal rate as well as the additional indemnity provided for by law in accordance with article 1619 C.C.Q., from the date of the Motion for authorization;

**CONDEMN** the Defendant to pay the Plaintiff and each Class member with a mental health disorder the amount of \$ 500 per day in solitary confinement, plus interest at the legal rate as well as the additional indemnity provided for by law in accordance with article 1619 C.C.Q., from the date of the Motion for authorization;

**CONDEMN** the Defendant to pay the Plaintiff and each Class member the amount of \$10,000 as punitive damages;

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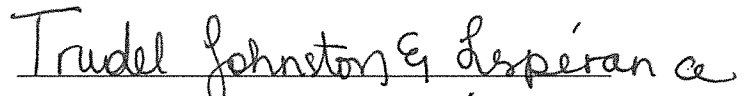
<sup>33</sup> 2014 SCC 57, at para 32.

**ORDER** the collective recovery of the claims;

**RECONVENE** the parties before the Court, at a date to be fixed within 30 days of the date on which this judgment will become final, in order to fix the mechanism for the distribution of the established total claim amount;

**THE WHOLE** with costs, including costs of all experts, notices and expenses of the administrator, if any;

MONTREAL, February 28, 2017



**TRUDEL JOHNSTON & LESPÉRANCE**

Counsel for the Plaintiff

**SUMMONS**  
(articles 145 and following C.C.P.)

Take notice that the plaintiff has filed this originating application in the office of the Superior court in the judicial district of Montreal.

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at:

1, rue Notre-Dame Est  
Montreal (Quebec) H2Y 1B6

within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask

for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

In support of the originating application, the plaintiff intends to use the following exhibits:

- Exhibit P-1: Copy of the authorization judgment;
- Exhibit P-2: Copy of a CSC website page entitled "*Our Role*";
- Exhibit P-3: Copy of a CSC website page entitled "*National Facility Directory*";
- Exhibit P-4: Copy of the *2014 Corrections and Conditional Release statistical overview*;
- Exhibit P-5: Copy of the OCI's *Annual Report 2014-2015*;
- Exhibit P-6: Copy of an extract of the OCI's website entitled "Role and Responsibilities" dated February 27<sup>th</sup>, 2017;
- Exhibit P-7: Copy of the Commissioner's *Administrative Segregation Directive* Number 709;
- Exhibit P-8: Copy of the Commissioner's *Administrative Segregation Guidelines* Number 709-1;
- Exhibit P-9: Copy of the UN Report on the use of solitary confinement dated August 5, 2011;
- Exhibit P-10: Article written by Stuart Grassian, M.D., entitled: "Psychiatric Effects of Solitary Confinement";
- Exhibit P-11: Copy of *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, the "Mandela Rules", Resolution adopted by the General Assembly on 17 December 2015;

- Exhibit P-12: Copy of an OCI report entitled *Administrative Segregation in Federal Corrections – 10 Year Trends*;
- Exhibit P-13: Copy of a document prepared by Office of the Correctional Investigator entitled *Solitary Confinement Segregation in Canadian Federal Corrections: A Prison Ombudsman's Perspective*;
- Exhibit P-14: Copy of the OCI's *Annual Report 2013-2014*;
- Exhibit P-15: Copy of the report from John Service, PhD, entitled "*A Review of the Implementation of the Correctional Service of Canada's 'Mental Health Strategy'*";
- Exhibit P-16: Copy of OCI's *Annual Report 2011-2012*;
- Exhibit P-17: Copy of OCI's *Annual Report 2009-2010*;
- Exhibit P-18: *Consideration of reports submitted by States parties under article 19 of the Convention of the Committee against Torture*;
- Exhibit P-19: Report entitled *Inquest touching the death of Ashley Smith; Jury verdict and recommendations* of the Chief Coroner of Ontario;

These exhibits are available on request.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

No.: 500-06-000781-167

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**SUPERIOR COURT**  
(Class action)  
**DISTRICT OF MONTREAL**

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**ARLENE GALLONE**

Plaintiff

v.

**ATTORNEY GENERAL OF CANADA**

Defendant

Notre dossier : 1341-1

BT 1415

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**ORIGINATING APPLICATION AND  
SUMMONS WITH LIST OF EXHIBITS**

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**ORIGINAL**

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