(Class Action)

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000781-167

ARLENE GALLONE

Plaintiff

v.

ATTORNEY GENERAL OF CANADA

Defendant

DEFENCE
(Art. 170 *C.C.P.*)

THE ATTORNEY GENERAL OF CANADA, IN ANSWER TO THE PLAINTIFF'S ORIGINATING APPLICATION, STATES AS FOLLOWS:

I. OVERVIEW

Correctional institutions are complex environments that can be dangerous and volatile. The Correctional Service of Canada ("CSC") uses a variety of procedures and measures to maintain the security of the institution and the safety of the institutions' inmates, staff and visitors. Administrative segregation is one such measure, used in circumstances where there are no reasonable and safe alternatives but to segregate an inmate from the mainstream population.

CSC has administered the use of administrative segregation prudently, diligently, in good faith and in compliance with the *Canadian Charter of Rights and Freedoms* ("*Canadian Charter*") and *Charter of Human Rights and Freedoms* ("*Quebec Charter*") values. The Plaintiff does not challenge the constitutional validity of the legislative scheme on administrative segregation.

Moreover, CSC's administrative segregation practices have evolved significantly over the years in an effort to reflect the prevailing best practices in correctional management.

II. DEFENDANT'S RESPONSE TO THE PLAINTIFF'S ALLEGATIONS

1. The Defendant denies paragraph 1 of the Plaintiff's Originating Application ("Application").

2. The Defendant admits paragraph 2 of the Application.

3. The Defendant admits paragraph 3 of the Application.

4. The Defendant denies paragraph 4 of the Application.

5. The Defendant denies paragraph 5 of the Application.

6. The Defendant denies paragraph 6 of the Application.

7. The Defendant denies paragraph 7 of the Application.

8. The Defendant denies paragraph 8 of the Application.

9. The Defendant admits paragraph 9 of the Application.

10. The Defendant admits paragraph 10 of the Application.

11. The Defendant admits paragraph 11 of the Application.

12. The Defendant admits paragraph 12 of the Application but clarifies that the Commissioner reports to the Minister of Public Safety and Emergency Preparedness.

13. With respect to paragraph 13 of the Application, the Defendant states that there are currently ten (10) Federal Institutions in Quebec and admits the remainder of this paragraph.

14. The Defendant admits paragraph 14 of the Application.

15. With respect to paragraph 15 of the Application, the Defendant admits that Arlene Gallone is designated as the class representative in this proceeding and denies that she spent nine months in administrative segregation as clarified hereinafter at paragraphs 110-114.

16. The Defendant denies paragraph 16 of the Application.

17. With respect to paragraph 17 of the Application, the Defendant takes notice that disciplinary segregation is excluded from the present class proceeding and that the Application uses the expression "solitary confinement" to refer to CSC's use of administrative segregation. The Defendant denies the remainder of this paragraph and further states that "suicide watch" is governed by Commissioner Directive (CD) 843 and is not administrative segregation.

18. The Defendant denies paragraph 18 of the Application as alleged. The Defendant takes notice of exhibit P-5 but does not admit proof of its content. Moreover, the Plaintiff's summary and characterization of exhibit P-5 lacks nuance. For instance, exhibit P-5 mentions that administrative segregation may imply only "*some degree*" of perceptual and sensory deprivation as well as social isolation. Moreover, in the previous Annual report 2011-2012,

exhibit P-16, the OCI mentioned that: *"(...) there are fundamental differences between solitary confinement and disciplinary and administrative segregation as practiced in Canada. (...) The fundamental difference is that "solitary confinement" implies or involves intense sensory deprivation, which is not part of the Canadian legal framework".*

19. The Defendant admits paragraph 19 of the Application.

20. With respect to paragraph 20 of the Application, the Defendant takes notice of exhibit P-5 but does not admit proof of its content.

21. With respect to paragraph 21 of the Application, the Defendant states that the purpose of administrative segregation is set out in section 31 of the *Corrections and Conditional Release Act* (*CCRA*) and denies anything inconsistent therewith.

22. The Defendant admits paragraph 22 of the Application and further adds that prior to admission to administrative segregation, or without delay, a health professional will review an inmate's case and provide an opinion as to whether there are mental health issues that could preclude the inmate's placement in administrative segregation or if a referral to Mental Health Services is appropriate as referred to in exhibits P-7 and P-8.

23. The Defendant denies paragraph 23 of the Application and further submits that:

    23.1 The defendant denies subparagraph 23.1 of the Application.

    23.2 With respect to subparagraph 23.2 of the Application, the Defendant admits that some may refer to administrative segregation cell as the "hole", but denies the rest.

    23.3 The Defendant admits subparagraph 23.3 of the Application and submits that such searches are conducted in compliance with subparagraph 48(b) *CCRA*.

23.4 The Defendant denies subparagraph 23.4 of the Application as alleged and submits that administrative segregation cells are furnished with a bed, a desk, a chair, a toilet, a sink, and the vast majority have windows that open with access to fresh air and natural day light.

23.5 The Defendant denies subparagraph 23.5 of the Application.

23.6 With respect to subparagraph 23.6 of the Application, the Defendant admits that meals are generally served through the food slot in the cell door but denies the rest. Food served in the administrative segregation unit is warm and is the same as that served to inmates in the mainstream population.

23.7 With respect to subparagraph 23.7 of the Application, the Defendant admits that inmates in administrative segregation have limited contact with other inmates, and denies the rest.

23.8 The Defendant denies subparagraph 23.8 of the Application.

23.9 The Defendant denies subparagraph 23.9 of the Application, and further states that in accordance with Commissioner Directive 709, immediately upon admission, inmates will receive their personal property items related to hygiene, religion and spirituality, medical care and non-electronic personal items (e.g. photographs, phone cards, phone book), subject to safety and security concerns in accordance with section 37 of the CCRA.

23.10 The Defendant denies subparagraph 23.10 of the Application and further states that in accordance with Commissioner Directive 709 inmates are provided the opportunity to be out of their cell for a minimum of two hours daily and that additional time is allotted for their shower and calls.

23.11 The Defendant denies subparagraph 23.11 of the Application as alleged, and clarifies that inmates in administrative segregation are generally handcuffed while escorted through the segregation unit for security reasons.

23.12 The Defendant denies subparagraph 23.12 of the Application.

23.13 The Defendant denies subparagraph 23.13 of the Application and further states that inmates are informed and participate in periodic review processes that may release them from administrative segregation or provide them with an estimated period of release.

24. With respect to paragraphs 24 of the Application, the Defendant admits that exhibit P-9 was released on August 5, 2011.

25. The Defendant denies paragraph 25 of the Application.

26. With respect to paragraphs 26 to 32 of the Application, the Defendant takes notice of the selected extracts in exhibits P-9 and P-10 and does not admit proof of their content nor that they apply in the Canadian correctional context.

27. With respect to paragraph 33 of the Application, the Defendant takes notice of exhibit P-11 and does not admit proof of its content.

28. With respect to paragraph 34 of the Application, the Defendant takes notice of the Plaintiff's allegations and denies that the Defendant violated Class members' rights under the *Quebec Charter* and *Canadian Charter.*

29. The Defendant denies paragraphs 35 to 39 as alleged. The Plaintiff makes assertions based on exhibits P-9 and P-10 and the Defendant does not admit proof of their content nor that they apply in the Canadian correctional context.

30. With respect to paragraph 40 of the Application, the Defendant takes notice of the Plaintiff's arguments and denies that the Defendant violated Class members' rights under the *Quebec Charter* and *Canadian Charter*.

31. The Defendant denies paragraph 41 of the Application.

32. With respect to paragraph 42 of the Application, the Defendant takes notice of exhibit P-5 but denies that administrative segregation is *overused* or is used as a *population management tool to address tensions and conflicts*.

33. With respect to paragraph 43 of the Application, the Defendant takes notice of the specific extracts taken from the OCI's annual report 2011-2012, exhibit P-16, but does not admit proof of their content. For instance, the Defendant denies that administrative segregation "*has become a standard tool of population management to maintain the safety and security of the institution.*" Moreover, exhibit P-16 is irrelevant as it predates this class period.

34. The Defendant admits paragraph 44 of the Application, but states that the statistics referred to in exhibit P-12 are not limited to Quebec Federal Institutions and includes statistics that predate this class period.

35. With respect to paragraph 45 of the Application, the Defendant takes notice of exhibit P-13, but denies that placements in administrative segregation are of indefinite duration. The Defendant further states that exhibit P-13 is irrelevant as the statistics referred to therein predate the whole class period and are not limited to Quebec Federal Institutions.

36. Defendant denies paragraph 46 of the Application as alleged. The statistics referred to in exhibits P-4 and P-12 are irrelevant as they are not limited to Quebec Federal Institutions and

include statistics that predate the period in this class proceeding. The Defendant further denies that the use of administrative segregation in the Quebec Federal Institutions constitutes torture;

37. With respect to paragraph 47, the Defendant denies that administrative segregation is commonly used by CSC to manage mentally ill offenders, self-injurious offenders and those at risk of suicide. The Defendant further states that the Plaintiff's reference to 63.2% in exhibit P-4 does not apply to this whole class period nor to the Class members.

38. The Defendant admits paragraph 48 of the Application.

39. The Defendant denies paragraph 49 of the Application as alleged. The Defendant admits that administrative segregation is "designed to be a preventive measure" but denies that it is viewed as punitive by those who suffer from mental illness. The Defendant takes notice of exhibit P-5 but does not admit proof of its content.

40. With respect to paragraph 50, the Defendant takes notice of exhibit P-15, but does not admit proof of its content. The Defendant further denies that administrative segregation is used as intermediate care services and states that CSC ensures mental health monitoring and interventions for inmates while in administrative segregation, as explained at paragraphs 85-92 hereinafter.

41. The Defendant denies paragraph 51 of the Application as alleged. The Defendant denies any wrongful behaviour and further states that administrative segregation is not used as a "*punitive measure to circumvent the more onerous due process requirements of the disciplinary segregation system*". For instance, the Plaintiff was charged with multiple disciplinary

offenses and duly sentenced to various terms of disciplinary segregation, as explained hereinafter at paragraphs 110-114.

42. The Defendant denies paragraphs 52 and 53 of the Application.

43. With respect to paragraph 54, the Defendant takes notice of exhibit P-16 but does not admit proof of its content.

44. With respect to paragraph 55 of the Application, the Defendant takes notice of exhibit P-17 but does not admit proof of its content.

45. With respect to paragraph 56 of the Application, the Defendant admits that exhibit P-18 was issued in May 2012.

46. With respect to paragraph 57 of the Application, the Defendant takes notice of exhibit P-18 but does not admit proof of its content.

47. With respect of paragraph 58, the Defendant takes notice of exhibit P-19 and the recommendation of the Chief Coroner of Ontario.

48. The Defendant denies paragraph 59 of the Application and states that duration of placements into administrative segregation in Quebec Federal Institutions have significantly decreased since 2013, as explained hereinafter at paragraphs 101-107.

49. The Defendant denies paragraphs 60 to 65 of the Application.

50. With respect to paragraph 66 of the Application, the Defendant takes notice of the Plaintiff's request but denies that members of both classes are entitled to a compensation of 500$ per day spent in administrative segregation.

51. The Defendant denies paragraph 67 of the Application.

52. The Defendant denies paragraph 68 of the Application and states that if any Class members suffered damages, which is expressly denied, those damages would vary from one inmate to another and should be assessed on a case-by-case basis.

53. With respect to paragraph 69 of the Application, the Defendant states that the Supreme Court of Canada's judgment in *Marcotte* v. *Fédération des Caisses Desjardins du Québec* speaks for itself.

54. With respect to paragraph 70 of the Application, the Defendant admits that it can identify the number of persons and the length of placement in administrative segregation during the class period, as appears hereinafter at paragraphs 103-107.

55. The Defendant denies paragraph 71 of the Application.

AND, IN CLARIFICATION OF THE FACTS, THE ATTORNEY GENERAL FURTHER STATES:

III. CORRECTIONAL SERVICE OF CANADA

56. The Correctional Service of Canada (CSC) is the federal government agency responsible for administering sentences of a term of two years or more, as imposed by the court. Offenders given probation sentences or sentenced to a term of imprisonment of less than two years are the responsibility of the provinces/territories.

57. 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 in 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.

58. The protection of society is the paramount consideration for the CSC in the corrections process.

59. CSC is responsible both for managing institutions of various security levels and supervising offenders in the community. More specifically, CSC is responsible for:

    a. the care and custody of inmates;

    b. the provision of correctional, educational and other programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;

    c. the preparation of offenders for release;

    d. parole supervision, statutory release supervision and long-term supervision of inmates; and

    e. the maintenance of a program of public education about the operations of CSC.

60. CSC operates in a statutory context and in particular, the *Corrections and Conditional Release Act* (*CCRA*), S.C. 1992, c. 20, and the *Corrections and Conditional Release Regulations*, SOR/92-620 provide its legislative framework.

61. CSC policies are contained in Commissioner's Directives (CDs) which set out services, standards, corporate responsibilities and accountabilities within CSC relating to the fundamental roles, responsibilities and procedures for the provision of correctional services.

62. CDs necessarily have evolved over time to keep pace with, amongst other things, best practices, changes in mental and physical health care, research and technological advances and international, provincial, professional and community standards.

63. CSC operates under three levels of management: national, regional, and institutional/district parole offices. CSC is headed by the Commissioner of Corrections, who reports to the Minister of Public Safety and Emergency Preparedness. The Commissioner is supported by an Executive Committee of national and regional officials.

64. CSC manages forty-three (43) institutions, fifteen (15) Community Correctional Centres, and ninety-one (91) parole offices. Of the 43 institutions, thirty-seven (37) are men's institutions and five (5) are women's institutions.

65. CSC also operates five Regional Treatment Centres (RTCs). These are hybrid facilities that are both federal penitentiaries and provincially recognized hospitals[1] that are subject to relevant provincial health legislation. Each province and territory regulates the practice of its health-care professionals. CSC professionals must be licensed for autonomous practice and adhere to the standards of their governing bodies, and must operate within their scope of practice and competence.

66. In the province of Quebec there are ten (10) Federal Institutions with security levels that range from minimum to maximum.

67. There is also the Special Handling Unit (SHU), CSC's highest security institution located at the Regional Reception Centre for those inmates who pose an ongoing danger to staff, other inmates or the public, and who cannot be safely managed at any other maximum-security institution in Canada.[2]

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[1] Except for the Regional Mental Health Centre in the province of Quebec
[2] See Commissioner's Directive 708 – Special Handling Unit

68. The table below lists the yearly average of inmates detained at each Federal Institution in Quebec.

Security Level	Institution	Yearly average of inmates detained in each institution**						
		2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
Multilevel	Archambault	578	650	652	649	581	576	572
	Federal training centre	650	662	661	712	661	619	623
	Regional Reception centre	286	321	305	302	294	275	259
	Joliette	86	85	91	108	104	94	93
MED	Cowansville	461	529	653	588	501	457	433
	Drummond	386	428	420	342	305	284	275
	La Macaza	283	293	296	279	272	226	227
	Leclerc Institution*	279	66	-	-	-	-	-
MAX	Donnacona	281	298	304	296	272	251	246
	Port-Cartier	209	226	227	227	215	200	176
	Special Handling Unit	76	70	46	33	38	25	29

*Note that Leclerc Institution closed in fiscal year 2013-2014.
** Yearly average based on a fiscal year beginning on April 1 and ending on March 31.

69. Between February 24, 2013 and March 31, 2019, there was an average of 3,261 men and 95 women in custody in Federal Institutions in Quebec on any given day.

70. With respect to mental health of inmates in Quebec, CSC manages the Regional Mental Health Centre (RMHC), which is a multi-level security facility that shares a property with Archambault Institution and the Regional Reception Centre. The RHMC deals with inmates who have various mental health needs. This includes those suffering from mental disorders and personality disorders. It also includes inmates who need continuing care and inmates who suffer from multiple mental health issues at the same time.

71. The RHMC is made up of four units: the acute care unit, the psychiatric care unit, the rehabilitation care unit and the personality disorders processing unit. The RHMC cares for inmates whose mental health care needs cannot be managed in mainstream populations in other institutions.

72. CSC also has a partnership with Institut Philippe-Pinel de Montréal (IPPM) that is part of its continuum of mental health care. CSC Health Services will refer inmate patients (men and women) to IPPM when CSC cannot manage their needs. Inmate patients in acute and subacute phases of mental health illness can be referred to IPPM. They can also be referred when assessment, case formulation and plans of care cannot be accomplished within a correctional setting (including the RHMC).

IV. ADMINISTRATIVE SEGREGATION

A) General principles of administrative segregation

73. Administrative segregation is governed legislatively by sections 31 to 37 of the *CCRA* and sections 19 to 23 of the *Regulations*. The purpose of administrative segregation is to maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates.

74. Administrative segregation is not a punitive measure.

75. Under subsection 31(3) of the *CCRA*, an Institutional Head, usually a warden or his or her delegate, may decide that an inmate be confined in administrative segregation if the warden is satisfied that there is no reasonable alternative and if the warden believes on reasonable grounds that:

- The inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person and allowing the inmate to associate with other inmates would jeopardize the security of the penitentiary or the safety of any person (s. 31(3)(a));
- Allowing the inmate to associate with other inmates would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of the *CCRA* of a serious disciplinary offence (s. 31(3)(b)); or
- Allowing the inmate to associate with other inmates would jeopardize the inmate's own safety (s. 31(3)(c)).

76. An Institutional Head's primary responsibility is the security of the institution and the safety of any person in the institution. This includes the inmate, other inmates, staff or visitors depending on the circumstances. Situations arise where an inmate has resorted to violence or has threatened violence against another person. Failing to segregate the individual in these circumstances has a high degree of risk associated with it as failure to do so could provide the individual with further opportunities to carry out additional assaults or even more dangerous acts in an institutional environment where it is likely that retaliation will occur.

77. At the other end of the spectrum, an inmate may approach correctional staff to report that they believe their own personal safety is at risk and request segregation. If the Institutional Head reasonably believes an individual's safety is at risk then, under section 31(3) of the *CCRA*, he or she can segregate that individuals for their own safety or until it can be determined how their safety can be ensured. Failing to segregate the individual in these circumstances has a high degree of risk associated with it as failure to do so could lead to significant injury, or even death of the inmate.

78. There are inmates who were placed in administrative segregation for their own safety who refuse to leave following a determination by CSC that associating with other inmates would no longer jeopardize their safety. The Institutional Head encourages the inmate in this circumstance to consider other options that would allow for the inmate to be released from segregation. Despite ongoing encouragement and the provision of several options, many inmates simply refuse to leave segregation.

79. Section 31(3) authorizes CSC to confine inmates to administrative segregation when it is the only reasonable response to the circumstances described in that section and then only for the shortest time appropriate. Since administrative segregation is used as a last resort, CSC looks for alternative methods of dealing with such situations. Depending on the risk involved, mediation may be a viable option. Similarly, even if an inmate was segregated following a violent incident, there is still the potential to mediate such a situation to ensure a release from segregation at the earliest possible opportunity.

80. An inmate in administrative segregation has the same rights and conditions of confinement as other inmates, except for those that can only be enjoyed in association with other inmates, those that cannot be enjoyed due to the limitations specific to the administrative segregation area, or those due to security requirements.

B) Administrative segregation review process

81. There is a CSC review process currently in place whereby confinement in administrative segregation is reviewed on the following schedule, with a view to releasing the offender from segregation: [3]

- Within the first working day by the Institutional Head if the decision to confine the inmate in administrative segregation was made by a delegate;
- On the fifth working day by the Institutional Segregation Review Board (ISRB), chaired by the Deputy Warden, who can recommend to the Institutional Head that an inmate be released;
- On day 30 by the ISRB, chaired by the Institutional Head, and every 30 subsequent days thereafter;
- After day 38 by the Regional Segregation Review Board, chaired by the Assistant Deputy Commissioner (Correctional Operations or Integrated Services) of the Region, and every 30 days thereafter, who must provide its recommendation on a justification for continued placement to the Regional Deputy Commissioner;
- After day 40, by the Regional Deputy Commissioner;
- After day 60, by the National Long Term Segregation Review Committee (NLTSRC), chaired by the Senior Deputy Commissioner, and every 30 days thereafter. The NLTSRC will also review the case of any inmate who has reached four placements in a calendar year or 90 cumulative days in a calendar year, and will review such cases every 30 days thereafter.

82. Inmates are provided with the opportunity to participate in this process. They have a large role to play in seeking alternatives to administrative segregation and are regularly informed of their potential release date.

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[3] See section 33 of the *CCRA*, sections 21 and 22 of the *Regulations* and CD-709.

83. They are equally advised of their right to legal counsel and are provided with the opportunity to call and meet with counsel while in administrative segregation.

84. In addition to the legislative review process outlined above, inmates have access to other avenues of redress including *habeas corpus* applications, offender complaints and grievance review process, human rights complaints, judicial review applications and the Office of the Correctional Investigator.

C) Health management of inmates in administrative segregation

85. Trained health care professionals for CSC care for inmates placed in administrative segregation. Trained health care professionals conduct daily screening to detect and prevent potential mental health problems and provide inmates with the appropriate level of care.

86. Section 87 of the *CCRA* requires that an inmate's state of health and health care needs be taken into account when rendering decisions regarding administrative segregation.

87. Section 36 of the *CCRA* and CSC policies outline procedures to identify, monitor and address the mental health needs of inmates placed into administrative segregation.

88. The health care professional assigned to the inmate's case will review the medical file and provide a written opinion as to whether there are mental health issues that could preclude the inmate's placement in segregation. Inmates with serious mental illness with significant impairment, or inmates actively engaging in self-injury that is deemed likely to result in serious bodily harm or at elevated or imminent risk for suicide, will not be placed into administrative segregation.

89. In forming the opinion, the health care professional (normally a nurse) can use their previous knowledge of the inmate, interview the inmate, consult electronic medical file and/or paper file, consult members of the interdisciplinary team, consult with the treating physician and/or psychiatrist, consultations with health professionals at CSC's Regional Hospital and CSC's Regional Treatment Center available 24/7, and consult information provided by Operation and Intervention staff. Like any other clinical duty, it is the health care professional's responsibility to make sure their opinion will be evidence-based.

90. In addition, a health-care professional must visit each inmate in administrative segregation daily, including weekends and holidays. During these visits the health care professional must:

- Visit the inmate in person;
- Verbally interact with the inmate to determine physical health care needs and any mental health concerns, including suicide or self-injury;
- On the health care record, document all significant interactions that occur between the health professional and the inmate during the visit and share any information that might have an impact on the safety and security of staff, inmates and/or the institution with the appropriate staff; and
- Refer the inmate to mental health services if appropriate.

91. The ISRB has a mental health professional as a permanent member who provides comments to the ISRB in regards to the mental health of every inmate being presented to the review board. At least once within the first 25 consecutive days of inmate's initial placement in administrative segregation and once every subsequent 60 days, a mental health professional is required to complete an in-person assessment and report on the inmate's mental health status.

92. The assessment focuses on the inmate's mental status at the time of the assessment, and any noted deterioration of mental health, with a special emphasis on the evaluation of the risk for self-injury or suicide and consideration of the appropriateness of a referral for mental health services.

D) Administrative segregation conditions

93. Administrative segregation imposes certain restrictions to inmates' living conditions. CSC applies comprehensive policies to ensure that restrictions are based on the least restrictive requirements to meet the objectives of the *CCRA.*[4]

94. These policies provide that an inmate in administrative segregation has access to: (a) correctional programs and interventions (unless restrictions are required); (b) case management services; (c) spiritual and religious support; (d) psychological counselling as required; (e) the opportunity to be out of their cell for a minimum of two hours daily, including the opportunity to exercise at least one hour every day; (f) the opportunity to shower each day, including weekends and holidays ; (g) access to personal property related to hygiene, religion and spirituality, medical care and other personal items on the very first day of placement into administrative segregation and their remaining personal property within 24 hours, subject to safety and security concerns; (h) access to legal counsel without delay; (i) structured visits from inmate committee members or peer support; (j) hygiene kits (if required); (k) access to library and writing materials; (l) daily correspondence; and, (m) access to visits and the ability to make phone calls.

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[4] See *CD 709* and *Guidelines 709-1.*

95. These are minimum standards. All institutions in Quebec provide more than one hour of exercise (ex. walk in the yard), and allow segregated compatible offenders to spend exercise time together.

96. Offenders have access to their personal televisions, gaming consoles, and reading material while in administrative segregation. For offenders who do not possess these personal items, all institutions in the Quebec region loan reading materials in both official languages and many loan televisions or radios to inmates while in administrative segregation.

97. The vast majority of administrative segregation units in Quebec have cells that are the same size as cells in the mainstream population with windows that open and have daylight. In some institutions, inmates can also control their cell lighting.

V. EVOLUTION OF ADMINISTRATIVE SEGREGATION

A) Significant Historical Changes to CSC's use of administrative segregation

98. CSC's use of administrative segregation has evolved significantly over the years in an effort to remain conversant with the prevailing societal ethos on administrative segregation as well as the most recent research and best practices pertaining to correctional management. Key developments include:

- In 1997, a CSC Task Force on Segregation resulted in compliance audits of all administrative segregation units; appropriate administrative segregation training for CSC staff; creation of an administrative segregation manual; regional oversight for all administrative segregation placements over 60 days; increased accountability for the

institutional heads via performance agreements; and revision to the CD on administrative segregation.

- In 2002, CSC's internal audit noted much improvement in CSC's adherence to standards for administrative segregation.

- In 2005, the OCI recommended an independent adjudication model for administrative segregation and a review of prisoner rights and entitlements for all inmates not residing in the mainstream population.

- In 2008, CSC implemented an administrative segregation handbook for staff that explained the principles, laws, and policies applicable to the maintenance of administrative segregation.

- In 2010, CSC issued a policy bulletin that clarified for staff the distinction between administrative segregation and the use of observation for the prevention of suicide and self-injury, the latter of which is governed by CD 843.

- In 2014, CSC policy provided that, where possible, consultation would occur with members of an inmate's case management team prior to his being placed in administrative segregation. The same policy was enhanced to elaborate on the Reintegration Action Plan with an eye to considering each inmate's individual circumstances. In the same year, the concept of continuation of placement was introduced to ensure regional and national reviews of inmates returned to administrative segregation for the same reason.

- In 2015, CD 709 was introduced concerning policy amendments to administrative segregation and the assessment and intervention regarding inmates with mental health issues. By virtue of an enhanced CD 709 issued August 1, 2017 inmates with serious mental illness with significant impairment are now excluded from placement in administrative segregation, along with inmates who are certified in accordance with provincial mental health legislation, and inmates who are actively engaging in self-injury or are at elevated or imminent risk for suicide. Additionally, unless exceptional circumstances exist, pregnant inmates, inmates with significant mobility impairment or inmates in palliative care cannot be admitted to segregation. The mental health of all inmates placed in administrative segregation is reviewed on admission, assessed by health care professionals at regular intervals throughout their placement, and assessed on daily visits by nurses charged with determining their mental and physical health care needs and/or risk of suicide or self-injury.

- In 2017, updates were made to CD 709 as a result of ongoing reviews to enhance requirements related to administrative segregation. Several modifications were made to the policy including changes to responsibilities and requirements at the institutional, regional and national review levels to strengthen and enhance both placement and review considerations; the elevation of the authority to chair the NLTSRC to the Senior Deputy Commissioner, and for the chair to have the responsibility to make a decision as to whether the inmate is to be maintained in or released from segregation; the requirement for the NLTSRC to review cases when an inmate has reached 4 placements or 90 cumulative days in segregation in a calendar year; a provision on specific groups of inmates not admissible to administrative segregation as well as additional groups

that are not admissible unless exceptional circumstances are identified; and, enhancements to the conditions of confinement to ensure the allowance of personal property, essential items, daily showers, and a minimum of two hours daily outside of the inmate's cell.

B) Proposed Legislative Change Pertaining to Administrative Segregation

99. On June 19, 2017, Bill C-56 – An Act to Amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act – was introduced in the House of Commons. The draft legislative amendments propose a presumptive time limit for confinement in administrative segregation and a system of independent, external review. This Bill did not proceed beyond first reading.

100. On October 16, 2018, Bill C-83 – An *Act to amend the Corrections and Conditional Release Act* and another Act – was introduced. The House of Commons passed Bill C-83 on March 3, 2019. On March 19, 2019, Bill C-83 received First Reading in the Senate and, as of June 7, 2019, the Bill was at Report stage in the Senate. Bill C-83 will eliminate the use of administrative and disciplinary segregation in CSC institutions; allow CSC to designate structured intervention units (SIU) for inmates who cannot be maintained in the mainstream inmate population; provide for the opportunity for SIU inmates to spend at least four hours per day outside their cells to interact with other inmates, as well as the opportunity for a minimum of two hours per day with others, including programs, interventions, and services; and, require CSC to consider systemic and background factors unique to Indigenous offenders. It will also introduce independent external decision-making oversight of decisions respecting inmates placed in SIUs, new technologies to enhance search capabilities of CSC staff regarding people

and packages that enter CSC facilities in an effort to limit contraband and improve victims' access to audio recording of parole hearings. The Bill will also introduce important principles and obligations for health services, including patient advocacy services; enshrine in legislation that registered health professionals may make recommendations to the Institutional Head to alter conditions of confinement or release individuals from an SIU for health reasons; and provide authority for CSC to designate institutions, or parts of institutions, as Health Care Units (HCU), along with appropriate admission and discharge processes.

C) Statistical overview on the decline of administrative segregation in Quebec

101. CSC has taken significant steps to reduce the use of administrative segregation.

102. The number of placements and duration of administrative segregation within CSC's institutions in Quebec have significantly decreased throughout the period covered by the present proceedings.

103. Between February 24, 2013 and April 7, 2019, 3 777 inmates were placed in administrative segregation for a total of 11 140 placements. This represents an average of approximately 1850 placements per year.

104. For the 11 140 placements in administrative segregation between February 2013 and April 7, 2019, 61% lasted for between 0-15 days, another 15% lasted between 16-30 days for a total of 76% of placements that lasted for 30 days or less. Only 9.5 % of the placements lasted more than 60 days.

Number of placements per duration (All Federal institutions in Quebec)														
	2013		2014		2015		2016		2017		2018		2019	
Duration	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
0-15 days	1132	55,2%	1419	57,7%	1301	60,5%	1003	63,0%	950	65,5%	961	67,9%	220	69,0%
16-30 days	336	16,4%	318	12,9%	325	15,1%	216	13,6%	233	16,1%	271	19,1%	59	18,5%
31-60 days	314	15,3%	413	16,8%	315	14,7%	232	14,6%	179	12,3%	121	8,5%	28	8,8%
61+ days	270	13,2%	311	12,6%	208	9,7%	141	8,9%	89	6,1%	63	4,4%	12	3,8%
Total	**2052**		**2461**		**2149**		**1592**		**1451**		**1416**		**319**	

105. The chart below for Joliette Institution illustrates that between 88% and 100% of the placements from February 23, 2013 to December 31, 2018 lasted between 0-15 days.[5] This is the institution where the Plaintiff was detained.

Number of placements per duration (Joliette Institution)														
	2013		2014		2015		2016		2017		2018		2019	
Duration	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
0-15 days	46	88,5%	77	90,6%	60	88,2%	44	88,0%	25	100%	22	91,7%	4	80,0%
16-30 days	3	5,8%	6	7,1%	7	10,3%	6	12,0%	0		2	8,3%	1	20,0%
31-60 days	2	3,8%	0		1	1,5%	0		0		0		0	
61+ days	1	1,9%	2	2,4%	0		0		0		0		0	
Total	**52**		**85**		**68**		**50**		**25**		**24**		**5**	

106. Moreover since February 23, 2013 there have only been six (6) out of a total of 309 placements that lasted for more than thirty (30) days (including the Plaintiff's two (2) placements). In other words, only 1.9% of placements lasted more than thirty (30) days.

107. Since 2016, there have been no placements of over thirty (30) days at Joliette Institution.

VI. ARLENE GALLONE – CLASS REPRESENTATIVE

108. The Plaintiff, Ms. Arlene Gallone is the class representative for the two groups in the present class action.

[5] Partial statistics for 2019 are excluded

109. On June 22, 2012, the Plaintiff at age 20 was sentenced to 10 months and 15 days for robbery, conspiracy, criminal harassment, assaulting a peace officer and drug possession. In addition, the Court imposed a six (6) year long-term supervision order.

110. During the course of her long-term supervision order she repeatedly breached her conditions causing her detention at Joliette Institution. While at Joliette Institution, the Plaintiff's pattern of impulsive, violent and threatening behaviour towards Correctional staff and other offenders presented important security challenges that resulted in her placement into administrative segregation, disciplinary charges and criminal accusations.

111. Between March 1, 2013 and March 24, 2014 she was placed six (6) times into administrative segregation for a total of one hundred and eighty-seven (187) days. Only two of these placements were for over (15) fifteen days, the whole as it appears from her administrative segregation placement and review records in a bundle as exhibit D-1.

112. During this same period, an Independent Chairperson found her guilty of sixteen (16) disciplinary offences and sentenced her to a total of one hundred and thirty-five (135) days of disciplinary segregation, the whole as it appears from the inmate offence report and notification of charges in a bundle as exhibit D-2.

113. The Plaintiff was also found guilty of uttering threats to Correctional officers and sentenced to eighteen (18) months detention, the whole as it appears from the Honourable Justice Jean Roy's sentencing decision dated July 3, 2014, as exhibit D-3.

114. CSC staff at Joliette Institution acted prudently, diligently and in good faith pursuant to law and policy in managing the Plaintiff's risk to security.

VII. COMMON ISSUES

115. All of the common issues proposed by the Plaintiff are intrinsically dependent on the allegation of the potential harmful effects on the mental health of inmates caused by administrative segregation.

116. The Defendant states that CSC's policies and practices with regard to administrative segregation must be assessed based on the facts established in this proceeding.

117. The existence of these alleged harmful effects caused by administrative segregation will be addressed directly through expert evidence at trial.

A) No breach of sections 7 and 12 of the *Canadian Charter*

118. The Plaintiff does not challenge the constitutional validity of the legislative scheme on administrative segregation.

119. The Defendant administers the legislative scheme on administrative segregation in a *Canadian Charter* compliant manner and thus does not breach Class members' rights under section 7 and 12.

120. CSC, its employees, agents and servants administer and enforce the *CCRA* and its Regulations prudently, diligently and in good faith, pursuant to policies, programs, procedures and practices in place at all material times and use administrative segregation on each inmate based on relevant information specific to each case.

121. The common issues the Plaintiff proposes under sections 7 and 12 of the *Canadian Charter* are redundant as they all relate to the proportionality of the duration of placement in

administrative segregation of the Class members. In any event, if there is a breach of Class members' *Charter* rights, which is specifically denied, it would be premised on each Class members' individual circumstances and cannot be determined on a systemic or collective basis.

122. Alternatively, if Class members' section 7 or 12 *Charter* right are engaged, any limitation is demonstrably justified in a free and democratic society and saved by section 1 of the *Charter*.

B) No breach of sections 25 or 26 of the *Quebec Charter*

123. The Defendant denies any violation of the Class members' rights under the *Quebec Charter*.

124. The analysis of the alleged *Quebec Charter* infringements, if applicable, should not be different from sections 7 or 12 of the *Canadian Charter* and cannot give rise to double indemnity, if any.

C) No civil fault

125. The Defendant denies that it committed a civil fault by placing Class members into administrative segregation and further contends that this issue can only be decided on individual circumstances of each inmate not on a collective basis.

D) No damages warranted

126. The Defendant denies that the Plaintiff or any of the proposed Class members suffered any injury, loss or damages as a result of any act or omission of the Defendant.

127. If a breach of the proposed Class members' *Canadian Charter rights*, or any one of them, is found, then a remedy pursuant to section 24(1) of the *Canadian Charter* is not appropriate and just, including an award of monetary damages, which would not serve the objectives of

compensation, vindication and deterrence, and would be inappropriate based on countervailing factors.

128. Further, the claim for section 24(1) damages is premised on particular *Canadian Charter* violations in individual circumstances, which cannot reasonably be assessed in the aggregate or in a factual vacuum based on a series of generalized allegations of misconduct.

129. With respect to the claim for punitive damages they are not appropriate in this case.

130. In the alternative, the Defendant states that not every Class member would have suffered damages, those damages would vary from one Class member to another and would be so individualized that they could not be assessed on a common or collective basis and would not allow for a collective recovery.

WHEREFORE MAY IT PLEASE THIS HONOURABLE COURT TO:

DISMISS Plaintiff's originating application;

THE WHOLE WITH COSTS.

MONTREAL, June 7, 2019

Attorney General of Canada

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Quebec Regional Office
200 René-Lévesque Blvd. West
Montreal (Quebec) H2Z 1X4
Fax: 514-283-3856

Per: Me Eric Lafrenière
Me Nicholas R. Banks
Me Laurent Brisebois
Me Claudia Gagnon
Tel: 514-283-1895
514-496-0771
514-283-3747
514-283-2002
E-mail: eric.lafreniere@justice.gc.ca
nicholas.banks@justice.gc.ca
laurent.brisebois@justice.gc.ca
claudia.gagnon@justice.gc.ca

Solicitor/counsel for the Defendant