C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: **500-06-000781-167**

(Class Actions)

S U P E R I O R C O U R T

ARLENE GALLONE

Plaintiff

v.

ATTORNEY GENERAL OF CANADA

Defendant

MOTION FOR PARTIAL DISMISSAL OF THE DEFENCE AND TO OBTAIN A DECLARATORY JUDGMENT ON THE DEFENDANT'S LIABILITY

(Arts. 142, 158 and 168 C.C.P.)

TO THE HONORABLE JUSTICE CHANTAL MASSE, DESIGNATED JUSTICE FOR THIS CLASS ACTION, THE PLAINTIFF EXPOSES THE FOLLOWING:

OVERVIEW

1. The Plaintiff asks the Court to dismiss the Defendant's allegations that its use of solitary confinement in federal penitentiaries does not violate Class members' rights protected by sections 7 and 12 of the *Canadian Charter of Rights and Freedom* (hereinafter the "*Canadian Charter"*), as well as its subsidiary allegations that, any such violations are constitutional pursuant to section 1 of the *Canadian Charter*.

2. The Plaintiff further asks the Court to dismiss the Defendant's allegations that a remedy pursuant to section 24(1) of the *Canadian Charter* is not appropriate and just, including an award of monetary damages, as it would not serve the objectives of compensation, vindication and deterrence.

3. The present motion asks the Court to declare that Class members suffered a violation of their rights under sections 7 and 12 of the *Canadian Charter*, and that they are intitled to monetary damages as are all other Canadian inmates.

4. Following recent decisions from the superior and appellate Courts of Ontario and British Columbia in related files, the Defendant's abovementioned allegations are ill-founded in law and should be considered as barred by the doctrine of *res judicata* and the principles of good faith, proportionality and abuse of process.

5. Allowing the Defendants to persist in these allegations would either result in postponement of justice for Class members or lead to inconsistent and discriminatory judicial outcomes not only between the province of Quebec and the rest of Canada, but also between Quebec inmates.

6. The present motion seeks to ensure that Quebec inmates who were held in solitary confinement after February 24, 2013 are being governed by and are entitled to the same legal regime and provided with the same legal benefits as other any other inmates.

7. This motion is structured as follows:

I. THE GALLONE CLASS ACTION

8. On February 24, 2016, the Plaintiff, Arlene Gallone, instituted a class action proceeding against the Attorney General of Canada, hereinafter "AGC", regarding the use of solitary confinement in Quebec's federal penitentiaries since February 24, 2013.

9. 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.

as it appears form the *Gallone v. Attorney general of Canada judgment of authorization dated January 13, 2017*, Exhibit **P-1**.

10. 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 *Canadian Charter*? If so, are such violations justified under section 1?

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

11. The file was suspended from May 2018 to December 2018 for the parties to explore settlement discussions.

12. The AGC filed its defence on June 7, 2019 which contests all the abovementioned violations of the *Canadian Charter*, as it appears from the Defence, Exhibit **P-2***.*

13. Examinations on discovery of representatives of the Correctional Service of Canada, Julie Desmarais and Francis Anctil, were held on June 17 and 18, 2019.

14. The Plaintiff filed Dr Jean-Luc Dubreucq's expert report on July 30, 2019, which was the last procedural step before the filing of the *Joint Declaration that a file is complete.*

15. The file is ready to proceed to trial. The parties have agreed to file additional evidence before trial, including additional expert evidence.

II. RECENT LEGAL DEVELOPMENTS REGARDING THE USE OF SEGREGATION IN CANADA

16. The present action is one of five such actions exploring the legality of administrative segregation in Canadian penitentiaries. The other four actions are: (a) *Corporation of the Canadian Civil Liberties Association* v. *Her Majesty the Queen*[1] (b) *British*

[1] *Corporation of the Canadian Civil Liberties Association* v. *Her Majesty the Queen*, 2017 ONSC 7491 (hereinafter "*CCLA ONSC*"), Exhibit **P-3,** and *Canadian Civil Liberties Association* v. *Canada*, 2019 ONCA 243 (hereinafter "*CCLA ONCA*"), Exhibit **P-4**.

Columbia Civil Liberties Association v. *Canada (Attorney General)*[2] (c) *Brazeau* v. *Canada (Attorney General)*[3] and (d) *Reddock* v. *Canada (Attorney General)*[4].

17. The legal history of these cases forms part of the factual context of the immediate case and are the basis of the present motion.

18. On January 19, 2015, the British Columbia Civil Liberties Associations (hereinafter "BCCLA") and the John Howard Society of Canada filed an Application for Declaratory Judgment against the AGC before the Supreme Court of British Columbia challenging the use of solitary confinement in Canadian prisons. The action claims that sections 31-33 and 37 of the Corrections and Conditional Release Act (hereinafter "CCRA"), which sets out the "administrative segregation" regime, violate sections 7, 9 and 10, 12 and 15 of the *Canadian Charter*.

19. Similarly, on January 27, 2015, the Canadian Civil Liberties Association (hereinafter "CCLA") filed an Application for Declaratory Judgment in Ontario against the AGC. In its action, the CCLA asked the Ontario Superior Court of Justice to declare that sections 31 to 37 of the CCRA violate sections 7, 11h) and 12 of the *Canadian Charter*.

20. On July 20, 2015, Christopher Brazeau instituted class action proceedings against AGC seeking to represent inmates suffering from serious mental health issues who were in federal custody at any time since November 1, 1992 across Canada (hereinafter the *Brazeau* action). Mr. Brazeau alleged violations of sections 7, 9 and 12 of the *Canadian Charter*. In particular, he claimed that the AGC had not granted class members access to health care. The class action was certified on December 12, 2016.

21. On March 3, 2017, Jullian Jordeal Reddock instituted class action proceedings against the AGC for inmates placed in administrative segregation for periods of at least fifteen (15) consecutive days in federal penitentiaries in Canada. Mr. Reddock alleged that by subjecting prisoners to prolonged administrative segregation in accordance with sections 31 to 37 of the CCRA, the rights of inmates under sections 7, 9, 11 h) and 12 of the *Canadian Charter* had been violated. The class action was certified on June 21, 2018.

---

2 *British Columbia Civil Liberties Association* v. *Canada (Attorney General)*, 2018 BCSC 62, (hereinafter "*BCCLA BCSC*"), Exhibit **P-5,** and *British Columbia Civil Liberties Association* v. *Canada (Attorney General)*, 2019 BCCA 228 (hereinafter "*BCCLA BCCA*"), Exhibit **P-6.**

3 *Brazeau* v. *Attorney General (Canada)*, 2019 ONSC 1888 (hereinafter "*Brazeau"*), Exhibit **P-7**; *Brazeau and Reddock* v. *Canada (Attorney General)*, 2020 ONCA 184 (hereinafter "*Brazeau & Reddock ONCA*"), Exhibit **P-8**.

4 *Reddock* v. *Canada (Attorney General)*, 2019 ONSC 5053 (hereinafter "*Reddock*"), Exhibit **P-9** and *Brazeau and Reddock* v. *Canada (Attorney General)*, 2020 ONCA 184 (hereinafter *Brazeau & Reddock ONCA*), Exhibit **P-8**.

22. In 2018, the Defendant and the representatives of the three related class actions - *Brazeau, Reddock* and *Gallone* - held preliminary settlement discussions. The present file was therefore suspended from May 2018 to December 2018.

23. The parties did not reach an agreement. Consequently, the proceedings resumed in January 2019 in all class actions.

24. Justice Perell decided *Brazeau* and *Reddock* by way of summary judgment[5]. The Ontario Court of Appeal, hearing both appeals jointly, stated that "there was no serious dispute as to the essential facts of how administrative segregation was used in Canada's penitentiaries"[6]. Therefore, a summary judgment was appropriate.

25. The important conclusions of those four analogous judgments are described below.

A. December 18, 2017: Ontario Superior Court's Judgment in the CCLA Action

26. Following a four day hearing, Associate Chief Justice Marrocco held that sections 31 to 37 of the CCRA, which authorize administrative segregation, violate section 7 of the *Canadian Charter* as the fifth working day review fails to provide the procedural safeguards required by the principles of fundamental justice. He further concluded that these violations were not justified pursuant to section 1 of the *Canadian Charter*.

27. Justice Marrocco did not find that administrative segregation was contrary to sections 11 (h) and 12 of the *Canadian Charter*.

28. Justice Marrocco made the following findings, which were confirmed by the Ontario Court of Appeal as discussed below:

    28.1. The United Nations' "Mandela Rules represent an international consensus of proper principles and practices in the management of prisons and the treatment of those confined"[7].

    28.2. "Canada is using administrative segregation to isolate prisoners in a way captured by the term solitary confinement as that term is defined in the Mandela Rules"[8].

---

5 A motion for summary judgment is a procedure under Ontario law whereby a party may request that the Court decide on specific issues or on the merits of the entire case without the matter proceeding to trial. The party bringing the motion must persuade the Court that there is no genuine issue requiring a trial. The summary judgment process is intended to improve access to justice by reducing the delay and expense of trials in cases where a party's position lacks merit or in cases that can be fairly decided on the balance of the evidence presented.

6 *Brazeau & Reddock ONCA, supra* note 3, para 27.

7 *CCLA ONSC, supra* note 1, para 61.

8 *CCLA ONSC, supra* note 1, para 46.

28.3. “Admitting or maintaining an inmate in administrative segregation amounts to a significant deprivation of liberty”, as defined under section 7 of the *Canadian Charter*[9].

28.4. The CCRA, International Standards and reputable Canadian medical organizations like the CMA and the Registered Nurses Association of Ontario regard administrative segregation as harmful[10].

28.5. “Placing an inmate in administrative segregation imposes a psychological stress, quite capable of producing serious permanent observable negative mental health effects[11], which constitutes a breach of the right to security of the person”[12].

28.6. “Harmful effects of sensory deprivation caused by solitary confinement could occur as early as 48 hours after segregation”[13].

28.7. “Solitary confinement can alter brain activity within days”[14].

28.8. “Solitary confinement for more than 15 days posed a serious risk of psychological harm”[15].

28.9. Solitary confinement can cause development and exacerbation of mental illness[16].

28.10. Canada “agrees to some extent that inmates with mental illness should not be in administrative segregation”[17].

28.11. “The practice of keeping an inmate in administrative segregation for a prolonged period is harmful and offside responsible medical opinion”[18].

28.12. “The lack of an independent review means that there is virtually no accountability for the decision to segregate”[19].

---

9 *CCLA ONSC, supra* note 1, para 87.
10 *CCLA ONSC, supra* note 1, para 96.
11 *CCLA ONSC, supra* note 1, para 89.
12 *CCLA ONSC, supra* note 1, paras 98-101.
13 *CCLA ONSC, supra* note 1, para 123.
14 *CCLA ONSC, supra* note 1, paras 125-127.
15 *CCLA ONSC, supra* note 1, paras 124 and 248.
16 *CCLA ONSC, supra* note 1, paras 240 and 247.
17 *CCLA ONSC,* supra note 1, para 213.
18 *CCLA ONSC, supra* note 1, para 257.
19 *CCLA ONSC, supra* note 1, para 163.

29. Justice Marrocco's decision was based heavily on the following experts' reports: Dr. Chaimowitz (applicant), Dr. Martin (applicant), Prof. Méndez (applicant), Dr. Nussbaum (respondent), Mr. Pyke (respondent), Dr. Morgan (respondent).

30. Justice Marrocco declared sections 31 to 37 of the CCRA invalid due to their violation of section 7 of the *Canadian Charter*. The declaration of invalidity was suspended for twelve (12) months.

31. The CCLA appealed Associate Chief Justice Marrocco's dismissal of the claims that were based on sections 11 (h) and 12 of the *Canadian Charter*. It further submitted on appeal that the CCRA also contravened section 7 of the *Canadian Charter* because was grossly disproportionate and overbroad.

32. The AGC did not cross-appeal.

B. January 17, 2018 : British Columbia Supreme Court's Judgment in the BCCLA Action

33. Following a 34 day hearing, on January 17, 2018, Justice Leask of the British Columbia Supreme Court held that the sections 31-33 and 37 of the CCRA contravened sections 7 and 15 of the *Canadian Charter*, and that these breaches were not justified pursuant to section 1 of the *Canadian Charter*.

34. He did not find a breach of sections 9 and 12 of the *Canadian Charter*.

35. Justice Leask made the following findings, which were confirmed by the British Columbia Court of Appeal as explained below:

35.1. "Administrative segregation as currently practised in Canada conforms to the definition of solitary confinement found in the Mandela Rules"[20].

35.2. "The Government acknowledges that a decision to place an inmate in administrative segregation, a more restrictive institutional setting, is a deprivation of the inmate's residual liberty interest and therefore engages section 7"[21].

35.3. Administrative segregation as it is practised in federal penitentiaries can cause physical harm. In fact, the denial of access to exercise spaces that allow sustained walking and the housing of inmates in conditions that contribute to social isolation or sensory deprivation, poses a substantial risk of serious harm to older inmates and those with chronic medical conditions and/or physical disabilities[22].

35.4. "Some of the specific harms include anxiety, withdrawal, hypersensitivity, cognitive dysfunction, hallucinations, loss of control, irritability, aggression,

---

[20] *BCCLA BCSC*, *supra* note 2, para 137.
[21] *BCCLA BCSC*, *supra* note 2, para 261.
[22] *BCCLA BCSC*, *supra* note 2, para 308.

rage, paranoia, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behaviour"[23].

35.5. "The risks of these harms are intensified in the case of mentally ill inmates. However, all inmates subject to segregation are subject to the risk of harm to some degree"[24].

35.6. "Many inmates suffer permanent harm as a result of spending time in administrative segregation"[25].

35.7. "Negative health effects can occur after only a few days in segregation, and those harms increase as the duration of the time spent in segregation increases"[26].

35.8. "This harm is most commonly manifested by a continued intolerance of social interaction, a handicap which often prevents the inmate from successfully readjusting to the broader social environment of the general population in prison and, perhaps more significantly, often severely impairs the inmate's capacity to reintegrate into the broader community upon release from imprisonment"[27].

35.9. "The 15-day maximum prescribed by the Mandela Rules is a generous standard given the overwhelming evidence that even within that space of time an individual can suffer severe psychological harm"[28] .

35.10. "Prolonged segregation is both unnecessary for and, indeed, even inconsistent with, the objective of maintaining institutional security and personal safety"[29].

35.11. "Prolonged segregation affects inmates' ability to interact with other human beings, deprives them of rehabilitative and educational group programming; risks mentally healthy inmates descending into mental illness and exacerbates symptoms for those with pre-existing mental illness"[30];

35.12. "Rather than prepare inmates for their return to the general population, prolonged placements in segregation have the opposite effect of making

---

23 *BCCLA BCSC*, *supra* note 2, para 247.
24 *BCCLA BCSC*, *supra* note 2, para 247.
25 *BCCLA BCSC*, *supra* note 2, para 276.
26 *BCCLA BCSC*, *supra* note 2, para 250.
27 *BCCLA BCSC*, *supra* note 2, para 172.
28 *BCCLA BCSC*, *supra* note 2, para 250.
29 *BCCLA BCSC*, *supra* note 2, para 327.
30 *BCCLA BCSC*, *supra* note 2, para 328.

them more dangerous both within the institutions' walls and in the community outside"[31];

35.13. "These harmful effects have been recognized since the late 19th and early 20th centuries"[32];

35.14. The law fails to respond to the needs of Aboriginal and mentally ill inmates and instead impose burdens or deny benefits in a manner that has the effect of perpetuating their disadvantage and thus violating section 15[33].

36. Justice Leask's conclusions were based on the following expert's reports: Dr. Grassian (applicant), Dr. Haney (applicant), Dr. Rivera (applicant), Dr. Mills (defendant), Mr. Pyke (defendant) and Dr. Gendreau (defendant)[34].

37. As a result, Justice Leask declared sections 31-33 and 37 of the CCRA to be of no force and effect while granting a 12-month suspension of the declaration of invalidity[35].

38. The AGC appealed Justice Leask's decision. The AGC did not appeal the conclusions that the CCRA violated sections 7 and 15 of the *Canadian Charter*. It submitted, however, that Justice Leask had erred by failing to conclude that the *Canadian Charter* violations were justified under section 1 of the *Canadian Charter*.

C. March 25, 2019: Ontario Superior Court's Judgment in the Brazeau Action[36]

39. Mr. Brazeau initial claim regarded all mental health issues in federal penitentiaries, including administrative segregation.

40. Mr. Brazeau eventually discontinued claims that did not involve administrative segregation, and the Class definition was amended to carve out Class Members in the Gallone's Action. Following those amendments, Mr. Brazeau represents the following Class members:

> All offenders in federal custody, who were placed in administrative segregation in a federal institution situated outside Québec after February 24, 2013, or who placed in administrative segregation in a federal institution anywhere in Canada before February 24, 2013 were diagnosed by a medical doctor with an Axis I Disorder (excluding substance use disorders) or Borderline Personality Disorder, who suffered from their disorder, in a manner described in Appendix A, and reported such during their incarceration, where the diagnosis by a medical doctor occurred either before or during incarceration in a federal institution and the offenders were

---

31 *BCCLA BCSC*, *supra* note 2, paras 328 and 330.
32 *BCCLA BCSC*, *supra* note 2, para 252.
33 *BCCLA BCSC*, *supra* note 2, paras 489 and 522.
34 *BCCLA BCSC*, *supra* note 2, para 251.
35 *BCCLA BCSC*, *supra* note 2, para 610.
36 *Brazeau*, *supra* note 3.

incarcerated between November 1, 1992 and the present, and were alive as of July 20, 2013[37].

41. Following a five day hearing, Justice Perell concluded that the review process for administrative segregation was in violation of section 7 of the *Canadian Charter* and therefore that there was a class-wide breach of section 7 for each placement in segregation[38].

42. He further concluded that the psychological stress and harm caused by administrative segregation infringe upon rights to life and security of the person and there was a breach of section 7[39] and of section 12[40] of the *Canadian Charter* for those Class Members who were involuntarily placed in administrative segregation for more than thirty days and a similar breach for those Class Members who were voluntarily placed in administrative segregation for more than sixty days. Below this number of days, class members might be able to prove such violations at individual issues trials.

43. None of the violations of the *Canadian Charter* were saved under section 1[41].

44. Justice Perell concluded that there was no proof of torture and no violation of section 9 of the *Canadian Charter*.

45. Particularly, Justice Perell made the following factual conclusions, which were later confirmed by the Court of Appeal of Ontario:

    45.1. Administrative segregation as currently practised by the Correctional Services is a form of solitary confinement as found in the Mandela Rules[42].

    45.2. "Negative health effects from administrative segregation can occur with a few days in segregation and those harms increase as the duration of the time in administrative segregation increases"[43].

    45.3. "Some of the specific harms of administrative segregation include anxiety, withdrawal, hypersensitivity, cognitive dysfunction, significant impairment of ability to communicate; hallucinations, delusions, loss of control, severe obsessional rituals, irritability, aggression, depression, rage, paranoia, panic attacks, psychosis, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behaviour"[44].

---

37 *Brazeau*, *supra* note 3, para. 7
38 *Brazeau*, *supra* note 3, paras 156, 264 and 294.
39 *Brazeau*, *supra* note 3, paras 262, 298 and 299.
40 *Brazeau*, *supra* note 3, paras 369 and 371.
41 *Brazeau*, *supra* note 3, para 330.
42 *Brazeau*, *supra* note 3, paras 156 and 262 b).
43 *Brazeau*, *supra* note 3, para 262.
44 *Brazeau*, *supra* note 3, para 262.

45.4. “Depending on its duration, a placement of a seriously mentally ill inmate in administrative segregation is deleterious to the purpose of rehabilitating the inmate and returning him or her to the society outside the penitentiary. Prolonged administrative segregation may impair the mentally ill inmate’s capacity to return to society as a law-abiding citizen”[45].

45.5. “A placement in administrative segregation of a seriously ill inmate is contrary to the purposes of the CCRA, namely, that of 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”[46].

45.6. “Administrative segregation is not a therapeutic setting and inmates with very serious mental illness belong in a setting where they can receive the treatment that they do not and cannot adequately receive in administrative segregation as it is currently constituted“[47].

45.7. “A placement in administrative segregation can cause and does cause physical and mental harm to inmates, particularly to inmates that have serious pre-existing psychiatric illness”[48].

45.8. “The draconian impact of prolonged administrative segregation on the seriously mentally ill is drastically imbalanced against its object, which is to secure the safety of the institution” and is “grossly disproportionate when it imperils the life, liberty, and security of the person of the mentally ill inmate”, therefore against the principles of fundamental justice[49].

45.9. These harmful effects have been known for decades[50].

46. Despite the principles developed in *Mackin v. New Brunswick (Minister of Finance)*[51], Justice Perell concluded that damages could be awarded to the whole class pursuant to section 24 (1) of the *Canadian Charte*r for violations of their rights under section 7 due to the inadequate review process, and damages were available to the subclasses[52] that suffered breaches of sections 7 and 12 of the *Canadian Charter*.

47. Justice Perell awarded 20,000,000$ to the class as aggregated damages for vindication and deterrence purposes, which was to be distributed in the form of

---

45 *Brazeau*, *supra* note 3, para 262.
46 *Brazeau*, *supra* note 3, para 262.
47 *Brazeau*, *supra* note 3, para 262.
48 *Brazeau*, *supra* note 3, paras 262 and 298.
49 *Brazeau*, *supra* note 3, para 309.
50 *Brazeau*, *supra* note 3, para 372.
51 2002 SCC 13.
52 The subclasses are : (1) those involuntarily placed in administrative segregation for more than 30 days (2) those voluntarily placed in administrative segregation for more than 60 days.

additional mental health or program resources for structural changes to penal institutions[53].

48. Those damages were awarded for vindication and deterrence, and without prejudice to any individual Class Member's claim of an award for compensation at an individual issues trial[54].

49. Justice Perell further stated that the AGC was not liable for punitive damages on a class-wide basis but may be liable for punitive damages at the individual issues trials[55].

50. Justice Perell based his decision on the following experts' reports : Dr. Austin (plaintiff), Dr. Coyle (plaintiff), Dr. Chaimowitz (plaintiff), Dr. Dvoskin (defence), Dr. Grassian (plaintiff), Dr. Haney (plaintiff), Dr. Labrecque (defence), Mr. Pike (defence), Dr. Sneddon (defence), Dr. Morgan (defence).

D. March 28, 2019 : Ontario Court of Appeal's Decision in the CCLA Action[56]

51. On March 28, 2019, the Ontario Court of Appeal affirmed Associate Chief Justice Marrocco's ruling that the inadequate review process for administrative segregation contravened section 7 of the *Canadian Charter* and that it was not justified under section 1.

52. Further, the Court agreed with him that there was no violation of section 11 (h) of the *Canadian Charter*.

53. However, the Court reversed his conclusions and held that prolonged administrative segregation, defined as more than 15 days, of any inmate was unconstitutional because it constitutes cruel and unusual treatment. The Court held that Sections 31-37 of the CCRA authorize such treatment and thus violate section 12 of the Charter[57], and that this infringement is not justified under section 1[58].

54. Specifically, the Court of Appeal made the following conclusions:

    54.1. The Mandela rules "reflect a general shift in social views regarding acceptable treatment or punishment. Public perceptions of the appropriate way to treat inmates have evolved, and today, as society has become informed about the harm caused by solitary confinement, the public's views have changed"[59].

---

53 *Brazeau*, *supra* note 3, paras 387 and 445.
54 *Brazeau, supra* note 3, paras 449 and 466.
55 *Brazeau, supra* note 3, para 451.
56 *CCLA ONCA*, *supra* note 1.
57 *CCLA ONCA*, *supra* note 1, para 119.
58 *CCLA ONCA*, *supra* note 1, para 126.
59 *CCLA ONCA*, *supra* note 1, para 29.

54.2. “In principle, I agree with the CCLA that those with mental illness should not be placed in administrative segregation. However, the evidence does not provide the court with a meaningful way to identify those inmates whose particular mental illnesses are of such a kind as to render administrative segregation for any length of time cruel and unusual. I take some comfort in my view that a cap of 15 days would reduce the risk of harm to inmates who suffer from mental illness – at least until the court has the benefit of medical and institutional expert evidence to address meaningful guidelines. This issue therefore remains to be determined another day”[60].

54.3. “Prolonged administrative segregation causes foreseeable and expected harm which may be permanent and which cannot be detected through monitoring until it has already occurred. Legislative safeguards are inadequate to avoid the risk of harm”[61].

54.4. “The effect of prolonged administrative segregation is thus grossly disproportionate treatment because it exposes inmates to a risk of serious and potentially permanent psychological harm“[62].

55. The Court held that a remedy pursuant to the superior court’s inherent jurisdiction and pursuant section 52 (1) of the *Constitution Act, 1982* was appropriate.

56. The AGC sought leave to appeal to the Supreme Court of Canada.

E. June 24, 2019 : British Columbia Court of Appeal’s Decision in the BCCLA action[63]

57. The British Columbia Court of Appeal affirmed the decision that there had been a violation of section 7 of the *Canadian Charter* [64], and confirmed the trial judge’s factual findings related to the harm caused by administrative segregation[65].

58. Particularly, the British Columbia Court of Appeal concluded the following:

58.1. The practice of administrative segregation “as it is currently practised in federal institutions, constitutes a form of solitary confinement prohibited by the Mandela Rules”[66].

58.2. “A legislative provision that authorizes the prolonged and indefinite use of administrative segregation in circumstances that constitute the solitary confinement of an inmate within the meaning of the Mandela Rules deprives an inmate of life, liberty and security of the person in a way that is

---

60 *CCLA ONCA*, *supra* note 1, para 66.
61 *CCLA ONCA*, *supra* note 1, paras 5 and 71.
62 *CCLA ONCA*, *supra* note 1, para 99.
63 *BCCLA BCCA*, *supra* note 2.
64 *BCCLA BCCA*, *supra* note 2, para 126.
65 *BCCLA BCCA*, *supra* note 2, para 90.
66 *BCCLA BCCA*, *supra* note 2, para 163.

grossly disproportionate to the objectives of the law. In addition, the draconian impact of the law on segregated inmates, as reflected in Canada's historical experience with administrative segregation and in the judge's detailed factual findings, is so grossly disproportionate to the objectives of the provision that it offends the fundamental norms of a free and democratic society" [67].

58.3. "The decision to keep an inmate in administrative segregation is an important one that carries with it the risk that the person so confined will suffer significant emotional harm which, in some cases, will be permanent. The risk of self-harm and suicide also increases with exposure to solitary confinement"[68].

59. The AGC sought leave to appeal to the Supreme Court of Canada.

F. August 29, 2019 : Ontario Superior Court's Judgment in the Reddock action[69]

60. From the certification stage, Mr. Reddock's action specifically excluded Brazeau's and Gallone's Class members. He was authorized by Justice Perell to represent the following members:

> All persons, except Excluded Persons, as defined below, who were involuntarily subjected to a period of Prolonged Administrative Segregation, as defined below, at a Federal Institution, as defined below, between November 1, 1992 and the present, and were alive as of March 3, 2015 (**"the Class"**);
>
> Excluded person are:
>
> > i. All offenders incarcerated at a Federal Institution who were diagnosed by a medical doctor with an Axis I Disorder (excluding substance abuse disorders), or Borderline Personality Disorder, who suffered from their disorder in a manner described in Appendix "A", and reported such during their incarceration, where the diagnosis by a medical doctor occurred either before or during incarceration in a federal institution and the offenders were incarcerated between November 1, 1992 and the present and were alive as of July 20, 2013; and
> >
> > ii. All persons who were involuntarily subjected to Prolonged Administrative Segregation, as defined below, only at a Federal Institution situated in the Province of Quebec after February 24, 2013. Persons who were involuntarily subjected to Prolonged Administrative Segregation at Federal Institutions situated in Quebec

---

67 *BCCLA BCCA*, *supra* note 2, para 167.
68 *BCCLA BCCA*, *supra* note 2, para 185.
69 *Reddock*, *supra* note 4.

> and another Canadian province, or at a Federal Institution situated in Quebec prior to February 24, 2013, are not Excluded Persons.
>
> "Administrative Segregation" is defined as sections 31 to 37 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20.
>
> "Prolonged Administrative Segregation" is defined as the practice of subjecting an inmate to Administrative Segregation for a period of at least fifteen (15) consecutive days.
>
> "Federal Institutions" are defined as the system of Federal correctional facilities across Canada that is administered by the Correctional Service of Canada, a Federal Government body.[70]

61. In *Reddock*, Justice Perell concluded that the right to liberty protected under section 7 of the *Canadian Charter* was breached on a class-wide basis because of an inadequate system of review of placement in administrative segregation[71]. The AGC conceded that the lack of an independent review of administrative segregation placements constitutes a breach of section 7 that cannot be justified pursuant to section 1[72].

62. Justice Perell further found that prolonged administrative segregation violated inmates' rights to life and security protected under section 7, and that such deprivation of rights was not in accordance with the principles of fundamental justice[73].

63. Additionally, Justice Perell found that all placements in administrative segregation for more than 15 days violate section 12 of the *Canadian Charter.*

64. Following the Ontario Court of Appeal's decision in the CCLA action, Justice Perell concluded that no difference should be drawn between voluntary and involuntary administrative segregation[74].

65. However, he did not find any violation of section 11 of the *Canadian Charter,* as administrative segregation did not affect the length of the detention in itself.

66. Justice Perell made the following factual conclusions, partly based on those made in the *Brazeau* case, which were later confirmed by the Ontario Court of Appeal as explained below:

---

70 *Reddock v. Canada*, 2018 ONSC 3914, Exhibit **P-10**.
71 *Reddock*, *supra* note 4, para 241.
72 *Reddock*, *supra* note 4, para 306.
73 *Reddock*, *supra* note 4, para 262.
74 *Reddock*, *supra* note 4, paras 272 and 273.

66.1. “Placement in administrative segregation for more than fifteen days causes serious physical and mental harm”[75].

66.2. “Every inmate placed in administrative segregation for more than 15 days suffers a base level of psychiatric and physical harm”[76].

66.3. “The risk of that harm happens immediately upon the placement into administrative segregation and the risk is actualized into harm in some Class Members immediately and in the rest of the Class Members by no later than fifteen days” [77].

66.4. “Solitary confinement has been associated with serious mental illness and with the exacerbation of the symptoms of those with pre-existing mental health problems” [78].

66.5. “The historical record shows how harmful and dysfunctional has been the practice of isolating inmates from meaningful human and humane contact; and the more recent academic literature is consistent and confirmatory of the fact that prolonged administrative segregation causes physical and psychiatric harm”[79].

66.6. “The contraventions of the rights to life, liberty, and security of the person caused severe psychological distress, including anxiety, hypersensitivity, cognitive dysfunction, significant impairment of ability to communicate; hallucinations, delusions, loss of control, severe obsessional rituals, irritability, aggression, depression, rage, paranoia, panic attacks, psychosis, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behaviour. There are new psychological symptoms and exacerbated psychiatric conditions in those with diagnosed or undiagnosed mental illnesses”[80].

66.7. “The negative health effects from administrative segregation can occur within a few days of segregation and those harms increase as the duration of the time in administrative segregation increases”[81].

66.8. “Suicide is a common response to administrative segregation”[82].

67. Despite the principles stated by *Mackin v. New Brunswick (Minister of Finance),* Justice Perell concluded that damages could be awarded to the whole class

---

75 *Reddock*, *supra* note 4, para 189
76 *Reddock*, *supra* note 4, paras 265 and 268.
77 *Reddock*, *supra* note 4, para 189.
78 *Reddock, supra* note 4, para 191.
79 *Reddock*, *supra* note 4, para 199.
80 *Reddock*, *supra* note 4, para 268.
81 *Reddock*, *supra* note 4, para 268.
82 *Reddock*, *supra* note 4, para 260.

pursuant to section 24(1) of the *Canadian Charter* for violations of their rights under sections 7 and 12. He further stated:

> Mackin is a rule to be narrowly and cautiously applied and it does not overrule the other guiding principles about making s. 24 (1) of the Charter a meaningful, powerful and creative remedial provision[83].

68. Justice Perell awarded 20,000,000 $ as a base level of *Charter* damages. This amount was granted for vindication and deterrence with regards to the breach of section 7 of the *Canadian Charter* which was not disputed by the AGC, as well as for vindication, deterrence and compensation with respect to the other violations of sections 7 and 12 of the *Canadian Charter*[84].

69. Justice Perell further stated that the AGC was not liable for punitive damages on a class-wide basis but may be liable for punitive damages after the *Canadian Charter* damages are determined at the individual issues trials.

70. The Reddock decision was made pursuant to the following expert's reports : Dr. Chaimowitz (applicant), Dr. Glancy (defendant), Dr. Grassian (applicant), Mr. Hayden (defendant), Mr. Curtis Jackson (defendant), Dr. Martin (applicant), Prof. Méndez (applicant), Dr. Nussbaum (defendant), Mr. Pike(defendant), Mr. Snedden (defendant) ;

G. March 9, 2020: Ontario Court of Appeal's Decision in the Brazeau and Reddock actions[85]

71. The Court of Appeal concluded that the following factual findings from the *Brazeau* case were amply supported by the record [86] and that they coincide with the findings made in the CCLA and BCCLA actions: [87]

    71.1. "There is no meaningful difference between administrative segregation and solitary confinement"[88].

    71.2. "A placement in administrative segregation can cause and does cause physical and mental harm to inmates, particularly to inmates who have serious pre-existing psychiatric illness"[89].

---

83 *Reddock*, *supra* note 4, para 374.
84 *Reddock*, *supra* note 4, para 381.
85 *Brazeau & Reddock ONCA*, *supra* note 3.
86 *Brazeau & Reddock ONCA*, *supra* note 3, para 16 : "The motion judge made clear findings, amply supported by the record, by the decision of this court in CCLA, and by that of the Court of Appeal for British Columbia in BCCLA, that prolonged administrative segregation causes harm to the health and wellbeing of inmates."
87 *Brazeau & Reddock ONCA*, *supra* note 3, para 18.
88 *Brazeau & Reddock ONCA, supra* note 3, para 16
89 *Brazeau & Reddock ONCA, supra* note 3, para 16.

71.3. "A placement in administrative segregation imposes severe psychological stress. For inmates who have or who develop serious mental illnesses, a prolonged placement may cause permanent harm"[90].

71.4. "Negative health effects from administrative segregation can occur within a few days in segregation and those harms increase as the duration of the time in administrative segregation increases"[91].

71.5. "Some of the specific harms of administrative segregation include anxiety, withdrawal, hypersensitivity, cognitive dysfunction, significant impairment of ability to communicate, hallucinations, delusions, loss of control, severe obsessional rituals, irritability, aggression, depression, rage, paranoia, panic attacks, psychosis, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behaviour"[92].

71.6. "A placement of an inmate with a serious mental illness in administrative segregation is deleterious to the purpose of rehabilitating the inmate and returning him or her to the society outside the penitentiary. Prolonged administrative segregation may impair the inmate's capacity to return to society as a law-abiding citizen"[93].

71.7. "Factors affecting the extent to which a placement in administrative segregation causes psychiatric harm include whether the inmate volunteered for the placement or whether the placement was involuntary"[94].

71.8. "Where the placement in solitary confinement is involuntary, it has substantial and adverse effects on the mental health of the inmate that may develop within a matter of days and likely will have substantial and adverse effects on mental health if the confinement is prolonged beyond 30 days"[95].

71.9. "Where the placement in solitary confinement is voluntary, the placement can and likely will have substantial and adverse effects on mental health if the confinement is prolonged beyond 60 days. In some inmates with mental illness, the harm may occur sooner"[96].

71.10. "Administrative segregation is not a therapeutic setting. Inmates with very serious mental illness belong in a setting where they can receive the

---

90 *Brazeau & Reddock ONCA, supra* note 3, para 16.
91 *Brazeau & Reddock ONCA, supra* note 3, para 16.
92 *Brazeau & Reddock ONCA, supra* note 3, para 16.
93 *Brazeau & Reddock ONCA, supra* note 3, para 16.
94 *Brazeau & Reddock ONCA, supra* note 3, para 16.
95 *Brazeau & Reddock ONCA, supra* note 3, para 16.
96 *Brazeau & Reddock ONCA, supra* note 3, para 16.

treatment that they need. They cannot receive adequate treatment in administrative segregation as it is currently constituted"[97].

71.11. "Because of human resource issues of availability of health professionals and inadequate training of Correctional Service of Canada ("CSC") staff, the mental health assessments of inmates with serious mental illness who are placed in administrative segregation is often ineffective and inadequate"[98].

71.12. "In some but not all cases, the CSC has failed to adequately monitor the current mental health status of an inmate in administrative segregation"[99].

71.13. "There is no justification for placing an inmate suffering from a serious mental illness in administrative segregation for more than 30 days if the placement is involuntary or for more than 60 days if the placement is voluntary"[100].

72. Those findings were repeated in *Reddock*. At para. 189 of that decision, the motion judge stated:

> I find as a fact that a placement in administrative segregation for more than fifteen days causes serious physical and mental harm. The risk of that harm happens immediately upon the placement into administrative segregation and the risk is actualized into harm in some Class Members immediately and in the rest of the Class Members by no later than fifteen days[101].

73. The Court dismissed the argument that the cases were inappropriate for a summary judgment.

74. For the purposes of the appeal, the AGC had accepted that, unless overturned by the Supreme Court of Canada, the *CCLA ONCA* and *BCCLA BCCA* decisions were binding and that, for the purposes of the appeals, breaches of sections 7 and 12 of the *Canadian Charter* had been proven in both *Brazeau* and *Reddock*[102].

75. The aggregated damages awarded in *Reddock* was affirmed. The *Brazeau* judgment was varied only with respect to the aggregate damage award and that issue was remitted to Justice Perell for reconsideration. The process with regards to the individual issues trials in both cases is still to be determined by Justice Perell.

---

97 *Brazeau & Reddock ONCA, supra* note 3, para 16.
98 *Brazeau & Reddock ONCA, supra* note 3, para 16.
99 *Brazeau & Reddock ONCA, supra* note 3, para 16.
100 *Brazeau & Reddock ONCA, supra* note 3, para 16.
101 *Brazeau & Reddock ONCA, supra* note 3, para 17.
102 *Brazeau & Reddock ONCA, supra* note 3, para 8.

H. May 28, 2020: Ontario Superior Court's Judgment on the aggregate damages in the Brazeau Action

76. On May 28, 2020, Justice Perell condemned the AGC to 20,000,000 $ in aggregated damages for the purposes of compensation, vindication and deterrence[103].

77. Justice Perell did not feel compelled to follow *Reddock's* approach, and stated the award of damages for vindication and deterrence purposes in *Reddock* was without prejudice to the award of damages for those purposes in *Brazeau*.[104]

78. Justice Perell awarded damages for all Class Members, since "Given the state of their mental health, they should not have been placed in administrative segregation at all."[105]. Regarding the individual issues trials, the *per capita* award is deemed to be compensatory damages.

III. ARGUMENTS

A. The Principle of Res judicata

79. The conclusions of the abovementioned class actions' decisions are binding on the Defendant in the present matter pursuant to the doctrine of *res judicata.*

80. The *Reddock* and *Brazeau* actions concluded :

80.1. The right to liberty protected by section 7 of the *Canadian Charter* was breached for all placement in administrative segregation due to the lack of an independent review.

80.2. The rights to life and security of the person protected by section 7 were breached for all inmates placed in administrative segregation for more than 15 days.

80.3. The right not to be subjected to a cruel and unusual treatment protected by section 12 of the *Canadian Charter* was breached for all inmates placed in administrative segregation for more than 15 days.

80.4. Those violations were not saved under section 1 of the *Canadian Charter.*

80.5. Damages were available for the Class member's under section 24 (1) of the *Canadian Charter.*

---

103 *Brazeau* v. *Canada (Attorney General)*, 2020 ONSC 3272, para 41, Exhibit **P-11**.
104 *Ibid,* para 25.
105 *Ibid,* para 31.

81. The following allegations of the Defence are in direct contradiction with such conclusions and should be dismissed pursuant to the principle of *res judicata*:

> 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.
>
> 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.
>
> 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.
>
> 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[106].

82. For the principle of *res judicata* to apply, there needs to be an identity of parties, cause of action and object.

Identity of Parties

83. The AGC is the Defendant in all cases.

84. The Class definitions in the *Brazeau* and *Reddock* actions initially included persons who are Class members in the present matter. Justice Perell granted the amendment to Brazeau and Reddock class definition to specifically exclude the

---

106 Defence, Exhibit **P-2**.

members of the present class action. The reason for granting this amendment is only "because they are Class Members in a parallel class action"[107]. Canada consented to this "carve-out."

85. Mr. Brazeau and Mr. Reddock thus represent inmates who were placed in administrative segregation in a Quebec penitentiary as of July 20, 2009 for the *Brazeau* case and March 5, 2011 for the *Reddock* case, and up to February 24, 2013 in both cases.

86. Correspondingly, the definition in the present matter of the class members who suffer from serious mental illness was designed to match *Brazeau*'s definition of the mentally ill. In fact, it was recognized by all parties that the two actions "ont des causes d'action à la fois communes et distinctes" [108].

87. The *Reddock* case, however, only covers those who were placed in administrative segregation for more than 15 days, whereas the present case includes those who were segregated for more than 72 consecutive hours.

88. As a consequence, the parties of all three actions are identical with respect to the inmates who were placed in administrative segregation for more than 15 days and those who suffer from an Axis I disorder or a Borderline Personality Disorder.

Identity of cause of action

89. All cases, including the present one, have the same legal and factual basis. All cases relate to federal penitentiaries, which follow the same laws and regulations and apply these laws identically or in a highly similar fashion, as appears from the factual findings in all two adjudicated cases.

90. A detailed history of administrative segregation was first portrayed in the *Brazeau* case, later followed in the *Reddock* file and used by the Court of Appeal in the *Brazeau and Reddock* files[109]. It shows the overwhelming international and domestic views on administrative segregation, and more specifically that it should not be used for mentally ill prisoners or exceed 15 days. This history is based on documentary evidence which applies for administrative segregation in the whole of Canada, including Quebec.

91. Such documentary evidence would be used in the present file.

92. The Defendant agreed that harmful effects caused by administrative segregation have to be addressed through expert evidence at trial[110].

---

107 *Brazeau, supra* note 3, para 7; *Reddock, supra* note 4 paras 31-32.

108 *Gallone* c. *Procureur général du Canada* 2017 QCCS 2138, para 14, Exhibit **P-1**.

109 *Brazeau*, *supra* note 3, paras 85 and following; *Reddock, supra* note 4, paras 111 and following ; *Brazeau & Reddock ONCA, supra note 3, para 14.*

110 Defence, para 117, Exhibit **P-2**.

93. The Plaintiff has the intention to ask the main experts who testified for the plaintiffs in the other cases to do so in the present file.

94. The Defendant itself, in a letter emailed to the Court stated the following:

> Or, il y a présentement trois actions collectives pendantes au Canada portant sur l'enjeu de l'isolement préventif des détenus. Au Québec, dans le dossier Gallone c. PGC, le débat porte sur ce que qualifie la partie demanderesse comme étant le « solitary confinement » dont l'isolement préventif des détenus. Ce recours a été autorisé le 13 janvier 2017 par l'honorable Chantal Masse qui est la juge désignée dans ce dossier. En Ontario, il existe deux actions collectives portant sur le même sujet: les dossiers Reddock v. AGC et Brazeau v. AGC, les deux assignés à l'honorable Perell.
>
> as it appears from the *Letter from the Attorney General to the court dated June 4, 2018,* Exhibit **P-12.**

95. Similarly, on August 9, 2019, the Defendant sent an email to the court restating its position that the *Brazeau* and *Reddock* cases were related to the present case:

> Cependant, comme nous l'avons indiqué à la partie demanderesse, il se peut que nous demandions à la Cour de suspendre le dossier en attendant les jugements finaux dans les deux recours collectifs en Ontario (Brazeau et Reddock) sur le même sujet que dans le présent dossier qui comprennent déjà des membres du Québec (mais pour une période, dans le temps, différente que dans le présent dossier).
>
> as it appears from the *Letter from the Attorney General to the court dated August 9, 2019,* Exhibit **P-13.**

96. Additionally, the AGC pleaded before Justice Perell that *Brazeau* and *Reddock's* actions had no factual justification for a drastic disparity since "these are overlapping, interconnected cases raising the same allegations; they are based on a similar factual record; and they are concerned with the same national penal system."[111]

97. The following common issues which are to be addressed by this court were ruled upon by the Ontario Court of Appeal in the *Brazeau* and *Reddock* case:

1. Does the solitary confinement of Class members violate section 7 or section 12 of the Canadian 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 Canadian Charter?

---

[111] *Brazeau* v. *Canada (Attorney General)*, 2020 ONSC 3272, para 19.

98. Based on those three common issues, the cause of action in all three cases is thus the same.

Identity of object

99. The *Reddock and Brazeau* cases and the present action all seek monetary awards under section 24 (1) of the *Charter.*

100. As stated previously, Justice Perell concluded that damages under section 24 (1) could be awarded to class members in the *Reddock* and *Brazeau* files - this finding was later affirmed by the Court of Appeal.

101. There is thus an identity of object in all three matters.

B. Good faith, abuse of process and proportionality principles

102. If the present matter is not found to be bound by the decision of *Brazeau* and *Reddock* pursuant to the principle of *res judicata*, the court should still dismiss the Defendant's allegations found in the section "Overview" and paragraphs 119, 121, 122, 126, 127, 128, and 130 of the Defence pursuant to the principles of good faith, abuse of process and proportionality.

103. Following analogous factual conclusions, the Appellate Courts of Ontario and British Colombia decided that:

103.1. The right to liberty protected by section 7 of the *Canadian Charter* was breached for all placement in administrative segregation due to the lack of an independent review.

103.2. The rights to life and security of the person protected by section 7 were breached for all inmates placed in administrative segregation for more than 15 days.

103.3. The right not to be subjected to a cruel and unusual treatment protected by section 12 of the *Canadian Charter* was breached for all inmates placed in administrative segregation for more than 15 days.

103.4. Those violations were not saved under section 1 of the *Canadian Charter.*

104. The Defendant itself stated that unless and until the decisions in the CCLA and BCCLA actions were reversed by the Supreme Court of Canada, breaches of sections 7 and 12 of the *Canadian Charter* had been proven for the purpose of the appeals in *Brazeau* and *Reddock*[112].

[112] *Brazeau & Reddock ONCA, supra* note 3, para 8.

105. The Ontario Court of Appeal in the *Reddock* and *Brazeau* actions concluded to the availability of damages for the Class member's under section 24 (1) of the *Canadian Charter.* Such conclusion is also final.

106. The Defendant decided to abandon the appeals formed before the Supreme Court of Canada, as appears from the Supreme Court of Canada case information for docket 38574, filed as Exhibit **P-14**. Therefore, the Court of Appeal decisions in the Reddock, Brazeau, CCLA and BCCLA actions are final.

107. Even though the general rule might be that a court of one province is not bound by the decision of another, in this case, it would be jurisdictionally unacceptable to undertake another trial based on identical facts, expert reports and legal arguments[113].

108. Given the submissions of the AGC itself[114], and that the Defendant's allegations were rejected by more than 12 judges, nine of whom sit on appellate Courts, in files that are interconnected, the principles of good faith (arts. 6, 7 and 1375 C.c.Q.), estoppel and abuse of process, should preclude the Defendant from presenting such arguments.

109. To allow the Defendant to submit those arguments would generate important costs and further delay justice for thousands of individuals whose rights were breached for years. As the legal maxim goes, *Justice delayed is Justice denied.*

110. Time is of the essence to allow members who are part of more than one class action to follow a similar timetable in the recovery process.

111. Allowing the Defendants to persist in these allegations will result in postponement of justice for Class members. It will lead to inconsistent judicial outcomes not only between the province of Quebec and the rest of Canada, but also between inmates which are members of both class actions.

112. The Superior Court which has important powers to facilitate and accelerate procedures, should therefore declare the abovementioned conclusions as final and binding in the present matter[115].

C. Conclusion on argument

113. Based on the principle of *res judicata*, the proportionality principle (art. 18 of the C.c.p.)[116], the principle of good faith, estoppel, abuse of process and in the best interests of justice[117], we respectfully submit that the court should dismiss the

---

113 *Ligue catholique pour les droits de l'homme c. Hendricks*, 2004 CanLII 20538, para 28.
114 *See above section Identity of cause of action.*
115 Code of Civil Procedure, CQLR c C-25.01, article 158.
116 *Ibid*, article 18.
117 *Ibid,* article 9.

section “Overview” and paragraphs 119, 121, 122, 126, 127, 128, and 130 of the Defence.

114. The Plaintiff further submits that the base level of monetary award for the Gallone two sub-groups should be equivalent to the aggregated damages awarded in *Reddock* and *Brazeau,* and calculated on a *pro rata* basis of the $20 million awarded in the both actions.

IV. CONCLUSIONS

CONSIDERING THE ABOVE, THE PLAINTIFF ASKS THE HONOURABLE COURT TO:

GRANT the present *MOTION FOR PARTIAL DISMISSAL OF THE DEFENCE AND TO OBTAIN A DECLARATORY JUDGMENT ON THE DEFENDANT'S LIABILITY;*

DISMISS the section “Overview” and the following paragraphs of the Defence: 119, 121, 122, 126, 127, 128, 130;

DISMISS paragraph 119 of the Defence and **DECLARE** that the Defendant didn't administer the legislative scheme on administrative segregation in a *Canadian Charter* compliant manner and thus breached Class member's rights under sections 7 and 12 of the *Canadian Charter*;

DISMISS paragraph 121 of the Defence and **DECLARE** that the common issues the Plaintiff proposes under sections 7 and 12 of the *Canadian Charter* are not redundant and **DECLARE** that the breach can be determined on a systemic or collective basis;

DISMISS paragraph 122 of the Defence and **DECLARE** that the breaches, on a Class wide basis are not saved by section 1 of the *Canadian Charter.*

DISMISS paragraph 126 of the Defence and **DECLARE** that the Plaintiff and all Class members suffered from damages as a result of acts and omissions of the Defendant;

DISMISS paragraph 127 of the Defence and **DECLARE** that a remedy pursuant to section 24 (1) of the *Canadian Charter* for all Class members' is appropriate and just;

DISMISS paragraph 128 of the Defence and **DECLARE** that the award of monetary damages serves the objectives of compensation, vindication and deterrence, and is therefore appropriate based on countervailing factors;

DISMISS paragraph 130 of the Defence and **DECLARE** that all Class members suffered damages that can be assessed on a common or collective basis and can allow collective recovery;

DECLARE that the base level of monetary award for Quebec inmates should be equivalent to the aggregated damages awarded in the *Reddock* and *Brazeau* actions, and calculated on a *pro rata* basis of the $ 20 million awarded in both actions;

DECLARE that this base level of monetary award is without prejudice to the Class members further claims to be determine through the process ordered by this Court;

DECLARE that the first two first common issues defined in the Judgment authorizing the class action should be answered as follows:

1. Does the solitary confinement of Class members violate section 7 or section 12 of the *Canadian Charter*? *YES*

   If so, are such violations justified under section 1? *NO*

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

DECLARE that the Defendant is liable for its violation of the Class members' rights protected by sections 7 and 12 of the *Canadian charter*;

DECLARE that the following common issues are to be determined by this Court at a later date:

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?*

MONTRÉAL, May 29, 2020

TRUDEL JOHNSTON & LESPÉRANCE
Applicant's Attorney

AFFIDAVIT

I, ANDRE LESPÉRANCE, lawyer, practicing with the law firm Trudel Johnston & Lespérance, being duly sworn, states as follows:

1. I am one of the plaintiff's attorney in the present file;

2. I declare that all the information provided in this motion is correct.

Montreal, May 29, 2020

ANDRÉ LESPÉRANCE

SWORN before me, in St-Jean-sur-Richelieu
this May 29, 2020

_____
Commissaire à l'assermentation
pour le Québec

COMMISSAIRE À L'ASSERMENTATION
MICHEL
BETTEZ
219779
POUR LE QUÉBEC

No.: 500-06-000781-167

SUPERIOR COURT
(Class action)
DISTRICT OF MONTREAL

ARLENE GALLONE

Plaintiff

v.

ATTORNEY GENERAL OF CANADA

Defendant

Our File : 1341-1 BT 1415

MOTION FOR PARTIAL DISMISSAL OF THE DEFENCE AND TO OBTAIN A DECLARATORY JUDGMENT ON THE DEFENDANT'S LIABILITY

ORIGINAL

Lawyers : Me André Lespérance
Me Clara Poissant-Lespérance
Me Marianne Dagenais-Lespérance

TRUDEL JOHNSTON & LESPÉRANCE,
750, Côte de la Place d'Armes, suite 90
Montréal (Québec) H2Y 2X8
Tél. : 514 871-8385
Fax : 514 871-8800
andre@tjl.quebec
clara@tjl.quebec
marianne@tjl.quebec