

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-06-000781-167

(Class Actions)
SUPERIOR COURT

ARLENE GALLONE

Applicant

c.

ATTORNEY GENERAL OF CANADA

Defendant

**APPLICATION TO DETERMINE THE AMOUNT OF THE DAMAGES
RECOVERED COLLECTIVELY AND INDIVIDUALLY AND TO DETERMINE
THE PROTOCOL FOR THE DISTRIBUTION OF THESE DAMAGES**

(Art 18, 591 to 601 C.p.c.)

Introduction

1. On February 24, 2016, the plaintiff filed a class action against the Attorney General of Canada, as set out in the *Motion for Authorization to Institute a Class Action and Obtain the Status of Representative of a Class Action*, Exhibit **P-1** in support hereof;
2. On January 13, 2017, the Superior Court authorized this class action and appointed Ms. Gallone as class representative, as appears from the authorization judgment, Exhibit **P-2** in support hereof;
3. On February 28, 2017, the Plaintiff filed her Statement of Claim, as appears from the *Originating Application*, Exhibit **P-3** in support hereof;
4. On May 29, 2020, the Plaintiff filed her *Motion for Partial Dismissal of the Defence and to Obtain a Declaratory Judgment on the Defendant's Liability*, Exhibit **P-4** in support hereof;
5. On September 10, 2020, the Superior Court of Quebec granted this motion in part and confirmed the liability of the Defendant in this action, as appears from the judgment of September 10, 2020, Exhibit **P-5** support hereof;
6. In accordance with this judgment, the Superior Court of Quebec ordered that the principles underlying recovery of damages awarded by the Ontario

Superior Court of Justice in *Brazeau v. Attorney General of Canada*¹ and *Reddock v. Attorney General of Canada*² be applied to this action. The decision regarding the values of the amounts of collective and individual recoveries in the *Gallone* case has been deferred to a later date;

7. These three judgments referred to a later date the decisions on the method of distribution of the sums awarded by collective and individual recoveries;
8. This application seeks a determination of the amount of collective recovery and approval of the Claim Process Protocol for the members of the *Gallone* action, Exhibit **P-6** in support hereof. This protocol, based on the principle of averaging individual damages, respects the rights of the parties and the principle of proportionality. This protocol takes into consideration two essential elements emerging from the evidence and noted by all of the decisions on the merits regarding segregation³, namely that:
 - a. The severity and intensity of damages increase according to time spent in segregation;
 - b. People living with severe mental health disorders suffer more from segregation.
9. Concurrently, counsel for the plaintiffs in the related actions of *Brazeau v. Attorney General* and *Reddock v. Attorney General of Canada* will present on October 6th, 7th and 8th, 2020 their motions on the protocol for the distribution of the collective award and for a determination of the process for the distribution of the individual issues;
10. The plaintiff requests that, in the interest of all parties, the applications of Ms. Gallone, Mr. Reddock and Mr. Brazeau be heard at a joint hearing by the two judges hearing these three class actions, Justices Perell and Masse;
11. Alternatively, in order to ensure that decisions made in Ontario preserve and respect the rights of members of the *Gallone* action who are also members of the *Brazeau* or *Reddock* actions, the plaintiff in the *Gallone* action will seek permission from Justice Perell to obtain intervener status in the *Reddock* and *Brazeau* files in order to present the Protocol attached hereto at the hearing

1 *Brazeau v. (Canada)Attorney General* 2019 ONSC 1888 and *Brazeau v. Canada (Attorney General)*, 2020 ONSC 3272.

2 *Reddock v. Canada (Attorney General)*, 2019 ONSC 5053.

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

on October 6th, 7th and 8th. If so, the hearing of the present application should be held before the end of October 2020;

12. Relevant legislative provisions and case law regarding both class actions and general civil procedure in Ontario and Quebec highlight the importance of a process that is simple, efficient, and uniform across the country. Indeed, since the same person can be a member of the *Brazeau*, *Reddock* and *Gallone* actions at the same time, it is essential to harmonize the distribution protocols⁴;
13. In order to meet the requirements of the *Code of Civil Procedure* with respect to recovery, this application addresses the following issues :
 - A. The values of the collective recovery granted in the *Brazeau* and *Reddock* actions and their application to the present case;
 - B. The distribution protocol of the amounts ordered by collective and individual recoveries.

A. THE VALUES OF THE COLLECTIVE RECOVERY GRANTED IN THE *BRAZEAU* AND *REDDOCK* ACTIONS THEIR APPLICATION TO PRESENT CASE

Number of members of this action

14. The purpose of this application is not to rule on the rights of Ontario class members, but rather to apply the principles of Perell J.'s judgments to the members of this action, pursuant to Masse J.'s order of September 10, 2020;
15. Several members of the *Gallone* action are also members of the *Brazeau* or *Reddock* actions. However, it appears from the judgments rendered by Justice Perell that he specifically excluded placements in administrative segregation in Quebec after February 24, 2013: his judgments therefore obviously do not rule on the method of recovery and distribution of compensation in the *Gallone* case, and cannot have the effect of emptying the *Gallone* group of its members⁵ ;
16. As a practical matter, this means that the collective recovery amounts awarded by Perell J. compensate the members of *Brazeau* and *Reddock* only for their placements affected by these actions, and not for the placements affected hereby. This is further confirmed by the history of the proceedings, as the *Reddock* case was instituted after the *Gallone* case was authorized, and by the choice of *Brazeau* and *Reddock*'s definitions to exclude the

4 On the unique challenges of multi-provincial class actions and the proactive role of the managing judge in these cases to ensure that the rights of members in each province are respected, see *Canada Post Corporation v. Lépine* , 2009 SCC 16, para 57 .

5 *Reddock v. Canada (Attorney General)*, 2019 ONSC 5053, para 24.

members of this case, as more fully detailed in the *Motion for Partial Dismissal of the Defence and to Obtain a Declaratory Judgment on the Defendant's Liability*, Exhibit P-4;

17. According to the data provided by the Defendant and including all placements up to November 29, 2019,³ 994 persons have been placed in segregation in federal penitentiaries located in Quebec since February 24, 2013;
18. By applying an approximate prevalence of 18.3% of inmates with severe mental health problems,⁶ also known as "seriously mentally ill or SMI", it is possible to estimate the number of members of this subgroup at 731. By applying a prevalence of 81.7% of persons not suffering from severe mental health problems within the definition of the *Gallone* group, also called "non-SMI or prolonged", and by limiting the placements covered by this subgroup to placements of more than 15 days, it is possible to estimate the number of members of this subgroup at 2,046;
19. The present action therefore targets approximately 2,777 members according to the data provided by the Defendant on administrative segregation through November 29, 2019;
20. Members of the *Gallone* action are entitled to be compensated on a *pro rata* basis in relation to the aggregate amount awarded in the Ontario actions for their placements which occurred in Quebec after February 24, 2013, as provided for in Justice Masse's order of September 10, 2020.

Amount of the collective recovery awarded in Brazeau

21. Justice Perell awarded \$20,000,000 to the mental health group for their common experience.⁷ He justified the reasonableness of this amount *a posteriori* by estimating the number of members at approximately 2,000 and using a "multiplier" of \$10,000 per member⁸. In the first judgment, this \$20,000,000 was given only a deterrent and punitive function. Perell J then ordered that this amount be paid out as a program for people with mental health problems in prison. However, this decision was overturned on appeal and returned to Perell J. In his second judgment, the judge held that the \$20,000,000 would be distributed to members and that it also had a compensatory function. This amount was to serve as an immediate "down payment" for compensatory and punitive damages to be claimed individually. In any event, the \$20,000,000 amount did not reflect the Defendant's total liability⁹ ;

6 This percentage is the lowest identified prevalence of persons with severe mental health problems in federal penitentiaries.

7 *Brazeau v. Attorney General (Canada)* 2019 ONSC 1888, paras 386-387.

8 *Brazeau v. Attorney General (Canada)* 2019 ONSC 1888, paras 445-446.

9 *Brazeau v. Canada (Attorney General)*, 2020 ONSC 3272, paras 33-41.

22. Using a rule of 3, the \$20,000,000 awarded by Justice Perell in the *Brazeau* case leads to an estimate of the value of collective recovery for members of the *Gallone* action's group suffering from severe mental health disorders at \$7,310,000 .

Amount of collective recovery awarded in Reddock

23. In the *Reddock* case, Justice Perell awarded \$20,000,000 to class members who had been in segregation for more than 15 days and did not suffer from severe mental health problems. Of this \$20,000,000, \$9,000,000 was specifically allocated to a compensatory function while the remainder was for deterrence and advocacy. He justified the fairness and reasonableness of this base amount by estimating that there were approximately 9, 000 persons placed in segregation twice, on average, at \$500 per placement, or approximately \$2,222 per member¹⁰;
24. This amount was only intended to ensure that the Defendant paid a minimum amount as collective recovery for the *Charter*¹¹ violation only, and as a "base level" of compensatory damages. ¹² This amount was not intended to compensate class members for all the damages suffered by way of the totality of their stays in administrative segregation. Indeed, the judge considered that the other damages experienced by the class members and not covered by the collective amount would rather be recovered individually¹³;
25. Judge Perell calculated a base amount of \$500 for placements of more than 15 days. These placements lasted an average of 60 days. The \$500 ordered could not serve as compensation for the entire average 60-day period, but rather for having been placed in segregation for more than 15 days. To argue the contrary would lead to an average damage award of less than \$10 per day spent in administrative segregation, which would be completely out of line with the jurisprudential guidelines noted by the judge ¹⁴ and the seriousness of the damages identified by the judge himself. The Ontario Court of Appeal in this case specifically stated that this basic compensatory amount was "modest" and that the judge was considering a second phase of individual recovery to compensate class members for the damages suffered¹⁵;
26. By applying this collective recovery amount on a *pro rata* basis relative to the number of *Gallone* class members who spent more than 15 days in

10 *Reddock v. Canada (Attorney General)*, 2019 ONSC 5053, para 396.

11 *Reddock v. Canada (Attorney General)*, 2019 ONSC 5053, para 382.

12 *Reddock v. Canada (Attorney General)*, 2019 ONSC 5053, para 391.

13 *Reddock v. Canada (Attorney General)*, 2019 ONSC 5053, paras 380-385.

14 *Vancouver (City) v. Ward*, 2010 SCC 27.

15 *Brazeau v. Canada (Attorney General)*, 2020 ONCA 184, paras 103-104.

segregation, the 2,046 members of the first subgroup of the *Gallone* action are collectively entitled to \$4,546,667 .

Conclusion on the amount of collective recovery of the Gallone Group

27. From the foregoing, the application of Perell J.'s judgments to the present class action pursuant to the Court's order of September 10, 2020 results in a collective recovery of \$4,546,667 + \$7,310,000 = \$11,856,667 ;
28. Following the judgments of Justice Perell, these amounts will be considered as a down payment to the amounts awarded through the individual claims process described below.

B. THE PROTOCOL FOR THE DISTRIBUTION OF THE AMOUNTS GRANTED BY THE COLLECTIVE AND INDIVIDUAL RECOVERIES

29. Perell J. chose to award - on the basis of common injury or "common experience" - a first, minimal award of damages suffered by all class members, as well as a portion of punitive damages. The Supreme Court of Canada confirmed this approach in *Saint-Ferdinand*¹⁶ and *Ward*¹⁷;
30. The plaintiff proposes, as a continuation of this approach, to create categories of average damages and corresponding compensation, determine by categories corresponding to time spent in administrative segregation. The Supreme Court of Canada confirmed the validity of this approach for the assessment of damages experienced by the members of a class action in *Ciment du Saint-Laurent*¹⁸;
31. This averaged form of compensation avoids the need for thousands of individual trials, in accordance with the principle of proportionality. The plaintiff submits that this solution respects the rules of civil procedure of both provinces and could apply to all three class actions, ensuring the goal of harmonizing the claims process across the country.

Damages experienced by the class members and covered by the individual recovery

32. The British Columbia and Ontario Courts of Appeal have concluded that placement in segregation causes the following effects: " 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,

16 *Curateur public v. Syndicat national des employés de l'hôpital Saint-Ferdinand* (CSN), 1997 CanLII 8675 (QC CS).

17 *Vancouver (City) v. Ward*, 2010 SCC 27.

18 *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

psychosis, hopelessness, a sense of impending emotional breakdown, self-mutilation, suicidal ideation and behaviour. »¹⁹

33. Several expert reports produced in support of summary judgment applications in the Ontario actions conclude that the risk of suffering from any of the above-mentioned symptoms increases with each day spent in administrative segregation, as do the intensity of these symptoms²⁰;
34. Experts also agree that the damage does not stop when the person is released from segregation, but continues long after the person returns to the general population²¹ and that, regardless of their resilience to this environment, all people experience psychological suffering throughout the period of segregation²². Finally, experts agree that people with mental health problems suffer particularly in administrative segregation;

19 *Brazeau v. Canada (Attorney General)*, 2020 ONCA 184, para.16.

20 For example, see Juan Ernesto Mendez, affidavit filed in support of *Brazeau's* action, Appendix 1, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, August 5, 2011, page 17 . Gary Chaimowitz, affidavit in support of the *Brazeau* case, letter to James Sayce, pages 2-3. The Ontario Court of Appeal in *Brazeau* and *Reddock* concluded to this effect: *Brazeau v. Canada (Attorney General)*, 2020 ONCA 184, para 16.

21 Juan Ernesto Mendez, affidavit filed in support of *Brazeau's* action, Appendix 1, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, August 5, 2011, page 18.

22 *Psychiatric Effects of Solitary Confinement*, Stuart Grassian, page 329, *Psychiatric Effects of Solitary Confinement* Stuart Grassian, pages: 352 and 353. See Report of Dr. Dubreucq dated July 29, 2019, filed in the Court record, page 9.

35. In consideration of the foregoing, the plaintiff proposes the following compensation grid for individual claims:

TIME SPENT IN ADMINISTRATIVE SEGREGATION	COMPENSATORY AWARD	
	for Subgroup I	for Subgroup II
1 day	-	\$ 500.00
Between 2 and 5 days (inclusively)	-	\$ 1,500.00
Between 6 and 15 days (inclusively)	-	\$ 4,000.00
Between 16 and 30 days (inclusively)	\$ 3,000.00	\$ 11,000.00
Between 31 and 60 days (inclusively)	\$ 8,000.00	\$ 20,000.00
Between 61 and 90 days (inclusively)	\$ 15,000.00	\$ 33,000.00
Between 91 and 120 days (inclusively)	\$ 22,000.00	\$ 46,000.00
Between 121 and 150 days (inclusively)	\$ 29,000.00	\$ 59,000.00
Between 151 and 180 days (inclusively)	\$ 36,000.00	\$ 72,000.00
Between 181 and 365 days (inclusively)	\$ 43,000.00	\$ 85,000.00
More than 365 days	\$ 50,000.00	\$ 100,000.00

36. Identifying the main cause of the harm experienced by an inmate while in segregation would be impossible unless a psychiatrist conducted a thorough analysis of each claim. However, population-based studies are unanimous in finding that, at the level of the groups studied, segregation generates these damages, and that these damages increase with the time spent in segregation. It is this average harm resulting from the extent of the psychological and physical suffering related to these manifestations that will be averaged at the class level and that justify the amounts in the grid above, in light of relevant jurisprudence on *Charter*²³ violations ;
37. This method is strongly inspired by the one used in *St. Lawrence Cement*²⁴, where judges determined the value of individual claims on the basis of the average of the injuries suffered by the class members. This Protocol respects

23 *Vancouver (City) v. Ward*, 2010 SCC 27.

24 *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

these principles, and takes into consideration that all class members experience psychological harm during their placement and will experience an objective fear of developing the symptoms identified by the courts²⁵;

38. This principle of “averaging” inevitably results in some class members being either under- or over-compensated. For example, a person who has self-mutilated dozens of times in segregation could receive the same amount as a person who has never self-mutilated, but was placed in segregation for the same time period, living in anxiety and fear of dying in segregation. In all cases, inmates will have experienced psychological suffering located along a spectrum, and increasing in severity and intensity with time spent in segregation, in accordance with expert findings. What is important is that the damages paid to individual claimants do not overestimate the liability of the Defendant. Considering the seriousness of damages resulting from administrative segregation, it is clear that the grid respects this principle;
39. Class members are in very precarious, often unstable situations. Many suffer from functional illiteracy and do not have easy access to computers or resources to properly complete a claim form. In addition, many associate mental health problems with weakness, and may be reluctant to identify themselves as suffering from such problems, or simply may not have the ability to do so independently. The proposed Protocol addresses these difficulties;
40. The proposed method ensures that all members will receive an amount promptly, while ensuring that the liability of the Defendant is not overstated, thus paying heed to the maxim "justice delayed is justice denied";
41. Finally, the administrative costs entailed by the process proposed by Plaintiffs Reddock and Brazeau and the Defendant are in addition to the amount the Defendant will have to pay in compensation, and will represent millions of additional dollars. The Protocol hereby proposed simplifies to the greatest extent possible the involvement required from class members, the Defendant and third parties. Consequently, the amounts paid by the Defendant, including these related costs, will be fairer to the Defendant;

Membership of class members in each of the SMI and non-SMI subgroups

42. The definition of the SMI subgroup was proposed by the CSC in order to set an objective and measurable method of dealing with members suffering from severe mental health problems, as appears from Kelly Blanchet's affidavit filed in support of the Attorney General of Canada's Request for Appropriate Evidence, respectively Exhibits **P-7 and P-8** in support hereof²⁶;

25 *Laferrrière v. Lawson* [1991] 1 SCR 541.

26. Affidavit of Kelley Blanchet, p. 6-7.

43. The correctional services forms used to provide mental health care identify members belonging to the SMI group. Julie Desmarais, the representative designated to testify regarding the management of mental health by Correctional Services Canada, indicated that the mental health of inmates is evaluated as follows:
- a. At the beginning of the sentence, upon admission, through the mental health needs screening policy. According to this policy, a member of the nursing staff at the health centre screens for physical and mental health needs;
 - b. At admission, through computerized screening tools to identify the level of mental health needs;
 - c. Throughout the sentence and periods of administrative segregation, using the Mental Health Needs Scale;
 - d. By consulting the file and the history of the incarcerated person;
 - e. With the help of referrals to mental health services;

as appears from the examination of Julie Desmarais, Exhibit **P-9** in support hereof, pages 217 to 246;

44. During this examination, Julie Desmarais confirmed that psychologists were qualified to diagnose mental disorders and that mental health needs assessment was done in a multidisciplinary manner by a specialized mental health team;
45. Incarcerated persons are also prescribed a series of psychotropic drugs by physicians working for CSC, which also constitutes information in the incarcerated person's file that could be used to objectively identify him/her as belonging to the mental health group;
46. Objective identification ensures that neither class members nor the Defendant will be able to contest membership in the SMI or non-SMI group;
47. This objective identification process can be developed by the administrator and an expert he will hire to do so. As officers of the Court, they will determine a simplified method based on the prison documents of a sample of incarcerated persons who have been placed in segregation, allowing them to more quickly identify the members of the SMI subgroup;
48. The Defendant is required to provide data to facilitate recovery²⁷ and the prison records of the class members will clearly facilitate the collective and individual recoveries processes and limit the issues to be dealt with in the claims process²⁸;

²⁷ *Marcotte v. Fédération des caisses Desjardins du Québec*, [2014] 2 SCR 805, para 32.

²⁸ Art. 599 C.p.c.

49. The plaintiff is entitled to obtain documentation from class members in such a way as to enable an expert to assist the administrator in the objective identification of members with severe mental health problems.

The process favours direct credit for members still incarcerated and early payment of an initial amount to all members of the first subgroup.

50. The Defendant knows exactly who spent how much time in administrative segregation. The administrator will therefore first be able to identify all incarcerated persons who have been placed in administrative segregation for more than 15 days. This identification is simple and will take very little time for the Defendant;
51. All members of the first subgroup of this action, whether or not they have mental health problems, will be compensated according to the compensation grid for non-SMI, as defined by the Protocol. This first phase of compensation, which only requires verification of time spent in administrative segregation, will ensure that the vast majority of class members will be able to quickly receive an initial amount of money;
52. According to the information provided by the Defendants, this means that 2,505 members will quickly receive an amount as compensation for having spent more than 15 days in segregation;
53. With the help of the prison records of class members that will be transmitted by the Defendant and the objective identification of SMI class members that will be carried out by the expert to be appointed by the Court to assist the Administrator, it will then be very simple for the latter to calculate the additional compensation to which each SMI class member will be entitled;
54. A significant number of class members are still incarcerated. The Protocol provides that these class members will receive direct credit for the compensation to which they are entitled according to the established grid, without having to submit an individual claim. This method will follow the rules of the prison banking system, as described in *Defendant's Motion Record (Distribution Protocol)* Vol. 1 of 2, pages 8 to 12, Exhibit **P-10** in support hereof;
55. This proposal adapted to the nature of this action and the vulnerability of class members will guarantee a high compensation rate for class members who are still incarcerated in addition to ensuring that all class members, whether SMI or non-SMI, will receive a first amount of money very quickly;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

[1] **GRANT** in part the class action of the plaintiff and class members:

[2] **ACKNOWLEDGE** the judgment of September 10, 2020;

[3] **DEFINE** the Group as follows:

Class members in prolonged solitary confinement

All persons held in “solitary confinement”, such as in administrative segregation but excluding disciplinary segregation, after February 24, 2013 for more than 72 consecutive hours, in a federal penitentiary situated in Quebec, including consecutive periods totalizing more than 72 hours separated by periods of less than 24 hours;

Class members with mental health disorders

All persons held in “solitary confinement”, such as in administrative segregation but excluding disciplinary segregation, after February 24, 2013 in a federal penitentiary situated in Quebec who were, prior to or during such “solitary confinement”, diagnosed by a medical doctor either prior to or during such “solitary confinement” with an Axis I Disorder (excluding Substance Use Disorders), or Borderline Personality Disorder, who suffered from their disorder, in a manner described at Appendix A, and reported such prior to or during their stay in “solitary confinement”.

Appendix A:

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

- [4] **DECLARE** that class members suffered damages caused by the Defendant;
- [5] **ORDER** the Defendant to pay the amount of \$11,856,667 to class members and **ORDER** the collective recovery of this amount, plus interest at the legal rate and the additional indemnity provided for in the *Civil Code of Québec* as of September 10th, 2020;
- [6] **ORDER** the Defendant to deposit the sums mentioned in conclusion 5 with the clerk's office of the Superior Court of Quebec within 30 days following the expiry of the time limit within which this judgment will become *res judicata*, plus interest at the legal rate and the additional indemnity provided for in *Civil Code of Quebec* as of September 10th, 2020, namely the date of the judgment finding the Defendant liable;
- [7] **ORDER** the individual recovery of the class members' individual claims, in addition to the amounts recovered collectively;
- [8] **APPROVE** the Claim Process Protocol Exhibit P-6;
- [9] **ORDER** the parties to comply with the Protocol;
- [10] **DECLARE** that all sums awarded as collective and individual recoveries will be dealt with in accordance with the Protocol Exhibit P-6 ;
- [11] **CONDEMN** the Defendant to pay for the publication of notices to class members provided for in articles 591 and following C.C.P.;
- [12] **RECONVENE** the parties before the Court, on a date to be determined within thirty (30) days of the date on which this judgment becomes final, to hear representations from each party on :
- a) the publication of notices to class members required with respect to the two subgroups provided for in this judgment, in accordance with article 591 C.C.P., including the plan for the publication of the notices;
 - b) the approval of the fee agreement binding the plaintiff and its attorneys and the determination of the other fees provided for by art. 593 C.C.P.;
 - c) the appointment of a specialized firm as administrator to manage the claims and distribution process;
 - d) any other measure deemed necessary in order to facilitate the recovery and distribution of indemnities, including the appointment of a common expert to assist the administrator in the identification of SMI members .

[13] THE WHOLE WITH JUDICIAL COSTS against the Defendant, including legal fees, notice costs, costs relating to the of execution of this judgment, including the fees and disbursements of the Administrator and the expert appointed by the Court, as well as any other costs relating to the distribution of the amounts to the class members;

MONTREAL, September 15, 2020

TRUDEL JOHNSTON & LESPÉRANCE
Attorneys for the Plaintiff

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-06-000781-167

(Class Actions)
SUPERIOR COURT

ARLENE GALLONE

Applicant

c.

ATTORNEY GENERAL OF CANADA

Defendant

PARTS LIST

- EXHIBIT-1 : *Motion for authorization to institute a class action*, dated February 24, 2016;
- EXHIBIT -2 : Authorization judgment, dated January 13, 2017;
- EXHIBIT -3 *Originating Application*, dated February 28, 2017;
- EXHIBIT -4: *Motion for Partial Dismissal of the Defence and to Obtain a Declaratory Judgment on the Defendant's Liability*, dated May 29, 2020;
- EXHIBIT -5: Judgment dated September 10, 2020;
- EXHIBIT -6: Claim Process Protocol;
- EXHIBIT -7 : *Request for Appropriate Evidence*, dated October 28 , 2016;
- EXHIBIT-8 : *Affidavit of Kelley Blanchet*, dated November 10, 2016;
- EXHIBIT-9 : Examination of Julie Desmarais (excerpts only);
- EXHIBIT -10 Defendant's Motion Record (Distribution Protocol) Vol 1 of 2

MONTREAL, September 15, 2020

TRUDEL JOHNSTON & LESPÉRANCE
Attorneys for the plaintiff