

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-06-001094-206

SUPERIOR COURT
(Class Actions)

GEORGE MICHAEL DIGGS, residing



Plaintiff

v.

ATTORNEY GENERAL OF QUEBEC,
having an establishment at 1 Notre-Dame
Street East, 8th Floor, Montreal, District of
Montreal, Province of Québec, H2Y 1B6

Defendant

ORIGINATING APPLICATION OF THE CLASS ACTION
(Art. 141 et 583 C.c.p.)

**TO THE HONORABLE JUSTICE PIERRE-C. GAGNON OF THE SUPERIOR COURT,
SITTING IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE PLAINTIFF
RESPECTFULLY SUBMITS THE FOLLOWING:**

I. INTRODUCTION

1. Each year, the Quebec Correctional Services (“**QCS**”) deliberately place inmates in segregation for disciplinary reasons, including those suffering from a mental health disorder. Segregation as a sanction or punishment for a disciplinary offence is known as “confinement” and “solitary confinement” (hereinafter “Disciplinary segregation”) under section 74 of the *Regulation under the Act respecting the Québec correctional system*, CQLR, c. S-40.1, r. 1 (the “**Regulation**”).
2. Disciplinary segregation is routinely ordered by the QCS as a sanction for behaviours that include a simple lack of collaboration with an agent or symptoms of a mental health disorder.
3. During a stay in Disciplinary segregation, inmates are confined in their cells for more than 22 hours per day without any meaningful human contact, with little more than their clothes on their backs and nothing to do.

4. This practice amounts to what is internationally and scientifically known as “Solitary”¹ and causes great psychological and physical harm and suffering to inmates.
5. This practice is unlawful and violates these individuals’ rights to liberty, to security of the person, and to protection from cruel and unusual treatment or punishment as well as their rights not to be subject to arbitrary detention, all of which are guaranteed by sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* (the “**Canadian Charter**”) and sections 1, 24 and 25 of the *Charter of Human Rights and Freedoms* (the “**Quebec Charter**”).
6. This practice further violates the rights of inmates who suffer from a mental health disorder to be treated without discrimination as protected by section 15 of the *Canadian Charter* and section 10 of the *Quebec Charter*.
7. This class action therefore seeks an order for the Defendant to pay damages to compensate class members for the prejudice they suffered, as well as an order to pay punitive damages.

II. THE AUTHORIZED CLASS ACTION

8. On June 29, 2021, the Court authorized the institution of this class action against the Defendant and designated Mr. George Michael Diggs as the representative Plaintiff.
9. In its judgment, the Court designated the group as follows:

Any person who, in between October 1st, 2017 and June 29, 2021, was kept in “solitary confinement” in a provincial detention centre in Québec, i.e. confined to a cell for at least 22 hours per day, following a decision of the institution’s disciplinary committee (“disciplinary segregation”).

*The class excludes, in conformity with the class action authorized in the matter of Gallone v. Procureure Générale du Québec (Superior Court, District of Montréal, n° 500-06-000866-174), every person kept in solitary confinement during more than 22 hours per day after **June 14, 2014**, in a provincial detention centre in Québec, (except as a result of) disciplinary segregation or administrative segregation (dry cell).*

(hereinafter the « **class members** »)

¹ Solitary confinement is defined by the international and scientific communities as the practice of confining an individual to a cell by themselves for 22 hours a day. Confinement and solitary confinement, as defined by the *Regulation* and as practiced by the defendant, both amount to that notion. Where necessary to distinguish solitary confinement as defined by the international and scientific communities from solitary confinement as described in the *Regulation*, the former will be capitalized herein.

10. The main questions of fact or law to be addressed collectively are the following:
- a. Does Disciplinary segregation, as practiced by the Defendant, violate the rights of class members protected by sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*?
 - b. What is a mental health disorder for the purposes of this demand?
 - c. Does Disciplinary segregation, as practiced by the Defendant, violate the rights of members with a mental health disorder protected by section 15 of the *Canadian Charter of Rights and Freedoms* and by section 10 of the *Charter of Human Rights and Freedoms*?
 - d. Does placement in Disciplinary segregation for more than 12 days, as practiced by the Defendant, violate section 9 of the *Canadian Charter of Rights and Freedoms* and section 24 of the *Charter of Human Rights and Freedoms*?
 - e. Does Disciplinary segregation, as practiced by the Defendant, violate the rights of class members protected by sections 1 and 25 of the *Charter of Human Rights and Freedoms*?
 - f. Does the directive entitled “Directive sur la discipline et responsabilité des personnes incarcérées” violate sections 7, 12 and 15 of the Canadian Charter of Rights and Freedoms and sections 1, 10 and 25 of the Charter of Human Rights and Freedoms?
 - g. Are class members entitled to damages as a just and appropriate remedy under section 24(1) of the *Canadian Charter of Rights and Freedoms*?
 - h. To what extent do people with mental health disorders suffer injury that is distinct from the whole group?
 - i. Should all class members with mental health disorders benefit from specific special isolation conditions?
 - j. Did the Defendant commit a civil wrong against the class members through its use of Disciplinary segregation?
 - k. What is the nature of the damages suffered by the class members?
 - l. Did the Defendant unlawfully and intentionally violate the rights of class members protected by the *Charter of Human Rights and Freedoms* through its Disciplinary segregation practises?
 - m. Does Disciplinary segregation, as practised by the Defendant, entitle class members to punitive damages under the *Charter of Human Rights and Freedoms*?

III. THE PARTIES

A. The Defendant and the Quebec Correctional Services

11. The Defendant represents the Ministry of Public Security (“**MPS**”) which is responsible for the administration of provincial detention facilities in Quebec pursuant s. 9 (4) of the *Act respecting the Ministère de la Sécurité publique*, CQLR, c. M-19.3.
12. The role of the QCS, defined under section 1 of the *Act respecting the Québec Correctional System*, CQLR, c. S-40.1 (the “**Act**”), is to promote the social rehabilitation of offenders and maintain a safe society while respecting the fundamental rights of offenders.
13. The QCS operate 18 detention centres, as it appears from the documents entitled “Les services correctionnels du Québec : Document d’information”, dated 2014, and “Analyse prospective de la population carcérale des établissements de détention du Québec 2017-2018 à 2027-2028”, dated January 2020, respectively filed as **Exhibit P-1** and **Exhibit P-2**.

B. The Plaintiff

14. The Plaintiff has been incarcerated at the Rivière-des-Prairies prison since Fall 2018.
15. Beforehand, the Plaintiff spent time in various provincial detention centres, including Hull, Bordeaux, and Quebec.
16. The Plaintiff suffers from anxiety, post-traumatic stress disorder and Tourette syndrome.
17. During his different stays in the Defendant’s detention centre, the Plaintiff was placed in Disciplinary segregation several times.

IV. THE FACTS

A. Disciplinary segregation

Legal framework

18. The QCS are governed by the *Act* and its regulations, as well as by various provincial directives and instructions.
19. The *Act* establishes Discipline committees within each provincial detention centre.
20. The *Regulation* determines what type of sanctions can be imposed by a Discipline committee, which include “confinement” and “solitary confinement”. In practice, confinement and solitary confinement are the sanctions predominantly used, as it appears from page 41 of the Quebec Ombudsman’s report entitled “Garantir l’équité

procédurale du processus disciplinaire des personnes incarcérées” (hereinafter “**Garantir l’équité procédurale**”), filed as **Exhibit P-3**.

21. According to section 74 of the *Regulation*, confinement consists in the obligation to remain in a cell, usually one’s own cell in the general population, and can only be imposed for up to five (5) days. Solitary confinement in turn refers to the obligation to remain in a cell in a separate area, also known as the “hole”, for up to seven (7) days.
22. Although the *Act* and the *Regulation* authorize the imposition of such disciplinary sanctions, their characteristics are not precised by law but are mostly defined by the Defendant’s practice.

The practice of Disciplinary segregation

23. Disciplinary segregation is the most drastic deprivation of liberty that a state can impose on inmates; it is literally a prison within a prison.
24. The main characteristic of Disciplinary segregation is the lack of meaningful social contact. Inmates are confined to their cell for more than 22 hours a day.
25. The only social interactions inmates placed in Disciplinary segregation may have, are with the QCS or the medical staff: they cannot have any contact with their relatives, by phone or in person. In the case of solitary confinement, these take place through an opening in the door called the food slot.
26. Furthermore, when placed in Disciplinary segregation:
27. Inmates do not have access to anything that could provide them with minimal distraction, such as books, television or radio.
28. Inmates do not have access to programs and activities and have no means to prepare their release from prison.
29. Inmates are deprived of indoor and outdoor activities, educational and rehabilitation programs, except for a walk in the outer courtyard. Inmates who were involved in an educational program before being placed in Disciplinary segregation are therefore expelled from it.
30. Inmates cannot work during their time in Disciplinary segregation, losing the capacity to pay for canteen items, such as phone cards to contact their family, hygiene products, etc.
31. The Inmate’s access to their personal belongings during the period of Disciplinary segregation is restricted. As a result, inmates may spend several days or weeks without access to their sanitary items and without being able to change their clothing.
32. The only furnitures inmates have access to are a toilet and a bunk fixed to the floor.

33. Inmates are often stripped of their clothes and required to wear a blue robe for the first 24 hours of their placement.
34. Inmates who have a maximum security level are required to wear handcuffs during the hour they have outside of their cell, except when walking outside alone or when taking a shower, which they may do only every other day.
35. Moreover, hygienic conditions in solitary confinement cells are deplorable, as appears from the Quebec Ombudsman's Rapport annuel d'activités 2014-2015, filed as **Exhibit P-4**.
36. There is often urine and feces on the walls of the solitary confinement cells, which have no windows and a poor ventilation system. The cells are often very hot in the summer and very cold in the winter.
37. The term Solitary Confinement has been defined by the scientific and international literature as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day, as it appears from rule 44 of the Nelson Mandela Rules ("**Mandela Rules**"), adopted by United Nations General Assembly resolution 70/175 of December 17, 2015, filed as **Exhibit P-5**; and paragraph 26 of the United Nations report entitled "Torture and other cruel, inhuman or degrading treatment or punishment" (the "**2011 UN Report**"), filed as **Exhibit P-6**.
38. Disciplinary segregation as practiced by the QCS, including both confinement or solitary confinement, amount to the scientific and international definition of Solitary Confinement.

B. The psychological effects of Disciplinary segregation

39. The detrimental long-term physical and psychological effects of Solitary Confinement are now well recognized.
40. Solitary Confinement has dramatic, sometimes permanent, consequences. It can cause a psychotic disorder known as "prison psychosis". Symptoms of this disorder include anxiety, depression, anger, cognitive impairment, altered perception, paranoia, psychosis and self-harm, as it appears from paragraphs 62-63 of the 2011 UN Report, Exhibit P-6.
41. Solitary Confinement can further cause the following effects: agitation, aggression, delusions, difficulty tolerating external stimuli, hallucinations, hopelessness, hypersensitivity, impaired memory and concentration, irritability, loss of control, panic attacks, rage, obsessional thinking, self-mutilation, significant impairment of ability to communicate, sleep disturbances, suicidal ideation and behaviour, withdrawal, and a sense of impending emotional breakdown. Those effect can be felt long after being released from solitary confinement, as it appears from paragraphs 55, 62-65 and 88 of the 2011 UN Report, Exhibit P-6; from an article written by Dr. Stuart Grassian entitled "*Psychiatric Effects of Solitary Confinement*",

filed as **Exhibit P-7**; as well as from page 85 of the Quebec Ombudsman's *Rapport annuel d'activités 2015-2016*, filed as **Exhibit P-8**.

42. Those negative health effects can occur after only a few days in Solitary Confinement, and the health risks rise with each additional day spent in such conditions, as it appears from paragraphs 55 and 62 of the 2011 UN Report, Exhibit P-6.
43. Given those effects, Solitary Confinement compromises the ability of inmates to reintegrate society, contrary to the very mission of QCS.
44. The effects of Solitary Confinement are particularly acute for inmates suffering from a mental health disorder. Being placed in Solitary Confinement significantly exacerbates the symptoms of their disorder and provokes its recurrence.
45. There is also an increase in prevalence of suicides and suicidal attempts in individuals who suffer from a mental health disorder subject to Solitary Confinement, as it appears from paragraph 68 of the 2011 UN Report, Exhibit P-6; as well as from rule 45 of the Mandela Rules, Exhibit P-5.

V. THE DEFENDANT'S RESPONSIBILITY

A. The Defendant violates the rights to liberty, security and life of class members in a manner inconsistent with the principles of fundamental justice

Violation of the rights to liberty, security and life

46. Not only does Disciplinary segregation as practiced by the Defendant limit the residual liberties of the inmates subjected to it, but it also causes great psychological and physical harm, as detailed above.
47. For class members who suffer from a mental health disorder, a placement in Disciplinary segregation can cause serious harm and increases the risk of suicidal attempts, regardless of the duration of the placement.
48. For class members who do not suffer from a mental health disorder, those harms can occur after only a few days of segregation.
49. The Defendant's use of Disciplinary segregation therefore violates class members' rights to liberty, security and life as protected by section 7 of the *Canadian Charter* and section 1 of the *Quebec Charter*, and, as seen below, does so in a manner completely inconsistent with the principles of fundamental justice.

Inconsistency with the principles of fundamental justice

50. The seriousness of the infringement on the inmates' residual liberty and rights to life and security requires that any decision to impose Disciplinary segregation be subjected to the highest degree of procedural fairness.
51. However, both the procedure under the *Directive sur la discipline et responsabilité des personnes incarcérées* (hereinafter "**Directive discipline et responsabilité**"), filed as **Exhibit P-9**, and its application do not adequately protect the fundamental rights of inmates.
52. The Discipline committee is not independent and impartial, as it appears from page 77 of the Québec Ombudsman's *Rapport annuel d'activités 2014-2015*, Exhibit P-4; and section 4.2 of "Garantir l'équité procédurale", Exhibit P-3.
53. Members of Discipline committees are employees of the detention centres and are appointed by the facility director. They are called on to review and adjudicate offencereports that have been drafted and approved by their own colleagues.
54. In addition to judging the work of their colleagues, members of the Discipline committees are often correctional officers themselves and have daily contacts with the inmates charged with disciplinary offences, as it appears from paragraphs 103-106 of "Garantir l'équité procédurale", Exhibit P-3; and page 77 of the Québec Ombudsman's *Rapport annuel d'activités 2014-2015*, Exhibit P-4. As such, correctional officers play the roles of both charging and judging inmates on disciplinary issues which may lead to Disciplinary segregation. This does not ensure independence and impartiality.
55. In his *Rapport annuel d'activités 2015-2016*, Exhibit P-8, at page 86, the Québec Ombudsman noted that the government still had not implemented a recommendation made the year before to exclude correctional officers who directly supervise inmates from Discipline committees, even though that recommendation was deemed essential to ensure procedural fairness. This recommendation has still not been implemented to this day.
56. Furthermore, the lack of independence and impartiality is compounded by the fact that class members cannot adequately defend themselves before the Discipline committee.
57. First of all, if an inmate wants a lawyer to assist them in the disciplinary process, they must request one ahead of time, as it appears from section 5.5.2.4.1 of the *Directive discipline et responsabilité*. The criteria for denial of the right to counsel are vague and vary by detention centres, as it appears from paragraph 62 and 63 of "Garantir l'équité procédurale", Exhibit P-3.
58. In this respect, the Québec Ombudsman noted that the requirement for a "prior request" has the effect of compromising the right in question since many inmates are not aware—and are not informed—that they can be represented by counsel nor how to benefit from that representation, as it appears from page 21 of "Garantir l'équité procédurale", Exhibit P-3.

59. In addition, disciplinary hearings often takes place only hours following the alleged offence, which prevents inmates from adequately preparing their defence. Such short notice further prevents them from contacting a lawyer who can prepare in time and adequately represent the interests of their client. This effectively amounts to a denial of the right to counsel, as it appears from paragraph 62 of “Garantir l’équité procédurale”, Exhibit P-3.
60. This denial of legal assistance greatly impairs the inmate’s ability to present their position fully and fairly, and, consequently, their right to a full answer and defence.
61. Additionally, inmates must request the authorization of the Discipline committee to call a witness, including to cross-examine the officer who wrote the offence report.
62. In practice, Discipline committees systematically deny access to witnesses, despite the fact that the inmates contests the alleged offence and wants to present exculpatory evidence, as it appears from paragraph 59 of “Garantir l’équité procédurale”, Exhibit P-3. As such, they are effectively prevented from adducing evidence in their favour, which has serious consequences to the fairness of the process and is contrary to the *Regulation*.
63. This situation is compounded by the fact that the decisions of the Discipline Committees are made on the balance of probabilities, a burden that inmates can seldom meet when they are prevented from adducing evidence or cross-examining correctional officers.
64. To add to these fundamental deficiencies, the decisions of the Discipline committees can only be reviewed by the facility director if a challenge is submitted within eight hours of the decision, pursuant to section 76 of the *Regulation*. Moreover, the facility director is not independent from the first adjudicator, having himself appointed the members of the Discipline committee.
65. The United Nation’s Special Rapporteur declared that all persons held in segregation ought to be given the opportunity, inter alia, to request a review of their disciplinary sanction before an independent body and to have free access to counsel for the period of time they are held in Solitary Confinement, as it appears from paragraphs 88-89 and 93-99 of the 2011 UN Report, Exhibit P-6. However, these rights are routinely denied to class members.
66. The Mandela Rules, Exhibit P-5, reiterate the importance of procedural fairness in disciplinary hearings:
67. A prisoner charged with a disciplinary offence shall be given adequate time and facilities for the preparation of his defence (rule 41).
68. A detained person charged with a disciplinary offence shall be allowed to defend himself or herself through legal assistance when the interests of justice so require, particularly in serious disciplinary cases (rule 41).

69. As it appears from the foregoing, the entire process by which the Defendant imposes Disciplinary segregation onto class members violates the most elemental principles of procedural fairness. Therefore, Disciplinary segregation as practiced by the Defendant violates section 7 of the *Canadian Charter* and section 1 of the *Quebec Charter*.

B. The Defendant violated the right of class members not to be subjected to cruel and unusual treatment or punishment

70. As detailed above, Disciplinary segregation as practiced by the Defendant causes catastrophic physical and psychological harm to class members, including anxiety, depression, anger, cognitive impairment, altered perception, paranoia, psychosis, suicidal ideation and self-harm.

71. The effects of Disciplinary segregation as practiced by the Defendant are particularly acute for inmates suffering from a mental health disorder as it triggers the reoccurrence of symptoms and exacerbates their mental suffering.

72. In all, Disciplinary segregation "cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour", as it appears of paragraph 72 and 84 of the 2011 UN Report, Exhibit P-6.

73. The Mandela Rules contains provisions related to Disciplinary segregation, including the following:

74. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment, such as indefinite or prolonged solitary confinement (rule 43); and

75. Solitary confinement, which includes Disciplinary segregation, shall be prohibited in the case of prisoners with mental disabilities when their conditions would be exacerbated by such measures (rule 45).

76. Disciplinary segregation as practiced by the Defendant is grossly disproportionate and so excessive as to outrage standards of decency and thus violates the rights of class members not to be subjected to cruel or unusual treatment or punishment protected by section 12 of the *Canadian Charter* and section 25 of the *Quebec Charter*.

C. The Defendant violated the right of class members not to be arbitrarily detained

77. The *Act* and the *Regulation* do not allow the Defendant to impose placements in confinement for more 5 days or to impose placements in solitary confinement for more than 7 days, as stated in section 74 of the *Regulation*.

78. Despite those limits, Discipline Committees routinely order several sanctions for a single disciplinary offence, for example 7 days of solitary confinement immediately followed by 5 days of confinement, as it appears from section 5.6.2 of the *Directive discipline et responsabilité*, Exhibit P-9; and from an Access to information Request, dated April 6, 2016, filed as **Exhibit P-10**.
79. Furthermore, Discipline committees order consecutive sanctions for several disciplinary offence reports on a single event, as it appears from paragraph 79 of “Garantir l’équité procédurale”, Exhibit P-3.
80. In doing so, Discipline committees are imposing Disciplinary segregation for far more than 7 days. Indeed, between 2015 and 2016, the number of days imposed as solitary confinement in the Defendant’s detention centres ranged from 3.5 to 35, as it appears from the answer to the Access to information Request, Exhibit P-10.
81. The Ombudsman notes that correctional officers sometimes order an increase in the security level of an inmate following a disciplinary decision. The inmate will then be placed in a *Régime de vie restrictif*, which mean being kept in the same cell for 23 hours per day. Those *Régime de vie restrictifs* may be imposed for months as a result of that initial disciplinary decision, as it appears from paragraph 70 of Garantir l’équité procédurale, Exhibit P-3.
82. Effectively, the person will therefore remain in solitary confinement for much longer than 5 or 7 days, in violation of their right not to be arbitrarily detained by the Defendant, protected by section 9 of the *Canadian Charter* and section 24 of the *Quebec Charter*.

D. The Defendant violated the right not to be discriminated against

83. Disciplinary segregation has a disproportionate impact and is used in a disproportionate manner on inmates who suffer from a mental health disorder, as noted above.
84. In particular, the suffering they experience as a result of Disciplinary segregation is greater and comes about faster than for inmates who do not suffer from a mental health disorder. Notably, it exacerbates the symptoms of their disorder and provokes recurrence of mental disorder.
85. Inmates who suffer from a mental illness are also more likely to be sanctioned with Disciplinary segregation as opposed to other measures.
86. Moreover, the symptoms associated with mental health disorders are often considered a disciplinary offence itself, which not only perpetuates a historical prejudice against people suffering from a mental health disorder but also reinforces harmful stereotypical biases against neuroatypical behaviours.

87. As such, the Defendant's practice of placing inmate who suffer from a mental health disorder in Disciplinary segregation violates their right to equality protected by section 15 of the *Canadian Charter* and section 10 of the *Quebec Charter*.

VI. THE DAMAGES

A. Compensatory damages

88. The Defendant has infringed upon the rights of class members guaranteed under the *Canadian Charter* and the *Quebec Charter* as explained above.
89. The mere infringement of these fundamental rights entitles class members to damages in the present case.
90. Moreover, class members have suffered from serious damages as a result of these violations, including but not limited to, stress, anxiety, anger, depression, insomnia, psychotic disorders, cognitive impairment, paranoia, suicidal ideation, self-harm and exacerbation of pre-existing mental disorders. An award of damages is necessary to compensate this prejudice.
91. As such, the Plaintiff is justified in asking for himself and for class members compensation in the form of damages in the amount of 2,000\$ per placement in Disciplinary segregation for the violation of their rights, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec*.
92. The Plaintiff is also justified in asking for himself and for class members who suffer from a mental health disorder additionnal compensation in the form of damages in the amount of 2,000\$ per placement in Disciplinary segregation for the violation of their rights, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec*.
93. The Plaintiff is further justified in asking for himself and for class members compensation in the form of damages in the amount of 250\$ per day spent in Disciplinary segregation for the continued violation of their rights, with interest at the legal rate and the additional indemnity provided for under article 1619 of the *Civil Code of Québec*.
94. Finally, the Plaintiff is justified asking for himself and for class members compensation in the form of damages in the amount of 250\$ per additional day spent in Disciplinary segregation when the duration exceeds what is authorized by law for the violation of their right not to be arbitrarily detained, with interest at the legal rate and the additional indemnity provided for under article 1619 of the *Civil Code of Québec*.

B. Punitive damages

95. Moreover, the Defendant intentionally infringed upon the rights of class members, for which they are entitled to receive an award of punitive damages.

96. As explained below, the Defendant has long known the severe consequences caused by Disciplinary segregation and yet has willingly decided to violate the rights of class members regardless of these consequences or of the impacts on *Charter* protected rights.
97. In July 2008, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment appointed by the United Nations Commission on Human Rights, issued an activity report (“**2008 UN Report**”) in which he addressed the use of Disciplinary segregation at paragraphs 79-85, which report is filed as **Exhibit P-11**.
98. The Special Rapporteur noted that as early as 1992, the Human Rights Committee acknowledged that prolonged Solitary Confinement could violate the *International Convention on Civil and Political Rights* and that the Committee against Torture had recognized its adverse physical and mental effects, expressing concerns regarding its use as a disciplinary sanction.
99. The Special Rapporteur was of the opinion that Solitary Confinement should be kept to a minimum, should only apply in very exceptional cases, for as short a period of time as possible, and should only be a measure of last resort, as it appears of paragraph 83 of the 2008 UN Report, Exhibit P-11.
100. In 2008, the Québec Ombudsman described the significant impact that Solitary Confinement could have on the physical and mental health of inmates subjected to it, as it appears from his *Rapport annuel d'activités 2007-2008*, filed as **Exhibit P-12**.
101. In June 2012, the United Nations Committee against Torture released a report on Canada's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entitled “Examen des rapports présentés par les États parties en application de l'article 19 de la Convention”, filed as **Exhibit P-13**;
102. At page 7 of this report, the Committee expressed concern about the use of Solitary Confinement, whether disciplinary or administrative, which is often extensively prolonged, even for people with a mental health disorder.
103. More recently, in his *Rapport annuel d'activités 2018-2019*, the Québec Ombudsman noted that the MPS has been asked since 2016 to regulate the use of Solitary Confinement and that the MPS has still failed to act accordingly, as it appears from the page 62 of the *Rapport annuel d'activités 2018-2019*, filed as **Exhibit P-14**.
104. In this report, the Québec Ombudsman also made reference to the MPS's commitment, made the previous year, to draft a new directive regarding the use of Solitary Confinement. The report also noted the MPS's response that the work relating to the directive would be completed in August 2019 and that the directive would become effective by September 30, 2019.

105. However, the only instruction given by the Defendant in relation to Solitary Confinement since September 20, 2017 was to ask detention centres to provide a minimum of two hours outside of the cell per day to all incarcerated persons, as it appears from the response to an access to information request (2020 -11745), filed as **Exhibit P-15**.
106. Yet, this change in orientation expressly excluded inmates placed in Disciplinary segregation, as it appears from Exhibit P-15. The QCS has thus continued to leave people in cells without human contact for at least 22 hours a day following a decision from a Discipline committee, thereby reaffirming the QCS's intentional infringement of members' fundamental rights.

VII. COLLECTIVE RECOVERY

107. Every year, there are approximately 44,000 people detained in the Defendant's correctional facilities and 46% of them are in pretrial detention, as it appears from Exhibit P-4, page 69.
108. With regards to class members who suffer from a mental health disorder, 51.5 % of inmates have consulted a psychologist for emotional or psychological issues. One inmate out of three has been prescribed medication in relation to psychological issues, and one out of five has been hospitalised for those problems. Moreover, 49.6% of inmates have experienced suicidal ideation, and 34% have tried to commit suicide at least once, as it appears from Exhibit P-1, page 32, section 4.6.
109. While the exact nature of damages may vary among class members, all of them have suffered damages as a result of the Defendant's behaviour, and these damages can be quantified on average and on a class-wide basis.
110. The Defendant must provide the Plaintiff with the relevant information to establish the amount of the collective recovery.
111. The Plaintiff and the Court will need to be able to identify:
- The number of persons that have been placed in solitary confinement following a decision from the Discipline committee during the period of the class action; and
 - The length of these placements.
112. With this information, the Court will be able to determine with sufficient accuracy the global amount that class members should be awarded.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the Plaintiff's class action on behalf of all class members.

DECLARE that the Defendant's practice of Disciplinary segregation unjustifiably infringes the rights of class members as protected by sections 1 and 25 of the *Charter of Human Rights and Freedoms* and by sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*.

DECLARE that the Defendant's practice of Disciplinary segregation unjustifiably infringes the rights of class members who suffer from a mental health disorder as protected by section 15 of the *Canadian Charter of Rights and Freedoms* and by section 10 of the *Charter of Human Rights and Freedoms*.

DECLARE that the Defendant's practice of Disciplinary segregation unjustifiably infringes on the rights of class members as protected by section 24 of the *Charter of Human Rights and Freedoms* and section 9 of the *Canadian Charter of Rights and Freedoms* when the placement in Disciplinary segregation exceeds what is authorized by law.

DECLARE that the directive entitled "*Directive sur la discipline et responsabilité des personnes incarcérées*" violates sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* and sections 1, 10 and 25 of the *Charter of Human Rights and Freedoms*.

CONDEMN the Defendant to pay each class member an amount of \$2,000 per placement in Disciplinary segregation, with interest at the legal rate plus the additional indemnity from the date of the filing of the Application for authorization to institute a class action and obtain the status of representative.

CONDEMN the Defendant to pay each class member who suffer from a mental health disorder an additional amount of \$2,000 per placement in Disciplinary segregation, with interest at the legal rate plus additional compensation from the date of the filing of the Application for authorization to institute a class action and obtain the status of representative.

CONDEMN the Defendant to pay to each class member an additional amount of \$250 per day spent in Disciplinary segregation, with interest at the legal rate plus the additional indemnity from the date of the filing of the Application for authorization to institute a class action and obtain the status of representative.

CONDEMN the Defendant to pay to each class member an additional amount of \$250 per additional day spent in Disciplinary segregation when the duration exceeds what is authorized by law, with interest at the legal rate plus the additional indemnity since the filing of the request for authorization to institute a class action.


CONDEMN the Defendant to pay to each class member an amount to be determined as punitive damages for the unlawful and intentional interference with their *Charter* rights.

ORDER that the claims of the class members be subject to collective recovery.

RECONVENE parties within 30 days of the final judgment to determine the measures for distribution of the amounts recovered collectively.

THE WHOLE with costs, including costs of experts, opinions and expenses of the administrator, notices, and distribution to members.

Montreal, September 29, 2021



TRUDEL JOHNSTON & LESPÉRANCE
PLAINTIFF'S LAWYERS

Mtre André Lespérance
Mtre Marianne Dagenais-Lespérance
Mtre Jessica Lelièvre
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Our File: 1341-3

SUMMONS
(Art. 145 and following *C.c.p.*)

Filing of a judicial application

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

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the Montreal Courthouse situated at 1 Notre-Dame St. East, Montreal, Québec, H2Y 1B6, within 15 days of service of this application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Plaintiff's lawyer or, if the Plaintiff is not represented, to the Plaintiff.

Failure to answer

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

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of this summons. However, in family matters or if you have no domicile, residence or establishment in Québec, it must be filed within 3 months after service; or
- propose a settlement conference.

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

Where to file the judicial application

Unless otherwise provided, the judicial application is heard in the judicial district where

your domicile is located, or failing that, where your residence or the domicile you elected or agreed to with Plaintiff is located. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the court.

However, if the application pertains to an employment, consumer or insurance contract or to the exercise of a hypothecary right on the immovable serving as your main residence, it is heard in the district where the employee's, consumer's or insured's domicile or residence is located, whether that person is the Plaintiff or the Defendant, in the district where the immovable is located or, in the case of property insurance, in the district where the loss occurred. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the special clerk of that district and no contrary agreement may be urged against you.

Transfer of application to the Small Claims Division

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

Convening a case management conference

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

Exhibits supporting the application

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

(See the Plaintiff's list of exhibits)

The exhibits are available on demand.

Notice of presentation of an application

Applications filed in the course of a proceeding and applications under Book III or V of the Code—but excluding applications pertaining to family matters under article 409 and applications pertaining to securities under article 480—as well as certain applications under Book VI of the Code, including applications for judicial review, must be accompanied by a notice of presentation, not by a summons. In such circumstances, the establishment of a case protocol is not required.

CANADA

**PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

No.: **500-06-001094-206**

**SUPERIOR COURT
(Class Actions)**

GEORGE MICHAEL DIGGS

Plaintiff

v.

ATTORNEY GENERAL OF QUÉBEC

Defendant

PLAINTIFF'S LIST OF EXHIBITS

IN SUPPORT OF HIS ORIGINATING APPLICATION, THE PLAINTIFF INTENDS TO USE THE FOLLOWING EXHIBITS:

- EXHIBIT P-1:** Document of the Ministry of Public Safety entitled "Les services correctionnels du Québec : Document d'information", dated 2014.
- EXHIBIT P-2:** Document of the Ministry of Public Safety entitled "Analyse prospective de la population carcérale adulte des établissements de détention du Québec de 2017-2018 à 2027-2028", dated 2020.
- EXHIBIT P-3:** Québec Ombudsman's report entitled "Garantir l'équité procédurale du processus disciplinaire des personnes incarcérées", dated March 31, 2015.
- EXHIBIT P-4:** Québec Ombudsman's annual report for 2014-2015.
- EXHIBIT P-5:** Nelson Mandela Rules, adopted by United Nations General Assembly resolution 70/175 of December 17, 2015.
- EXHIBIT P-6:** Special Rapporteur of the Human Rights Council's Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, dated August 5, 2011 (the "2011 UN Report").
- EXHIBIT P-7:** Article of Stuart Grassian entitled "Psychiatric Effects of Solitary Confinement", dated January 2006.
- EXHIBIT P-8:** Québec Ombudsman's annual report for 2015-2016.

- EXHIBIT P-9:** *Directive sur la discipline et responsabilité de la personne incarcérée*, dated October 1, 2003.
- EXHIBIT P-10:** Response to an Access to Information Request (R.N. 116344), dated April 6, 2016.
- EXHIBIT P-11:** Special Rapporteur of the Human Rights Council's report entitled "Torture et autres peines ou traitements cruels, inhumains ou dégradants", dated July 28, 2008 (the "2008 UN Report").
- EXHIBIT P-12:** Québec Ombudsman's annual report for 2007-2008.
- EXHIBIT P-13:** : United Nations Committee against Torture's report entitled "Examen des rapports présentés par les États parties en application de l'article 19 de la Convention", dated June 25, 2012.
- EXHIBIT P-14:** Québec Ombudsman's annual report for 2018-2019.
- EXHIBIT P-15:** Reponse to an Information Access Request (R.N. 2020-11745), dated August 24, 2020.

Montreal, September 29, 2021



TRUDEL JOHNSTON & LESPÉRANCE
PLAINTIFF'S LAWYERS

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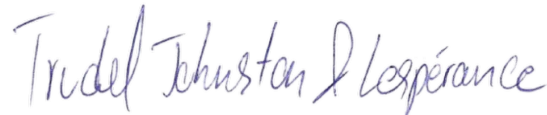
NOTICE OF PRESENTATION

To: **Mtre Emmanuelle Jean**
Mtre Nancy Brûlé
Mtre Juliette Reny
BERNARD ROY (JUSTICE QUÉBEC)
1, Notre-Dame Street East, 8th Floor
Montreal, QC H2Y 1B6

TAKE NOTICE that the present *Originating Application of the Class Action* shall be presented before the Honorable Pierre-C. Gagnon, judge for the Superior Court, at the Montreal Courthouse situated at 1 Notre-Dame St East, Montreal, Québec, H2Y 1B6 at a date, time and room to be determined.

DO ACT ACCORDINGLY.

Montreal, September 29, 2021



TRUDEL JOHNSTON & LESPÉRANCE
PLAINTIFF'S LAWYERS

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Our File: 1341-3

No.: 500-06-001094-206

DISTRICT OF MONTREAL

SUPERIOR COURT

(Class Actions)

GEORGE MICHAEL DIGGS, residing at [REDACTED]

Plaintiff

v.

ATTORNEY GENERAL OF QUÉBEC, having an establishment at 1 Notre-Dame Street East, 8th Floor, Montreal, District of Montreal, Province of Québec, H2Y 1B6

Defendant

Our File: 1341-3

BT 1415

ORIGINATING APPLICATION OF THE CLASS ACTION

(Art. 141 et 583 C.c.p.)

ORIGINAL

Lawyers:

Mtre André Lespérance

Mtre Marianne Dagenais-Lespérance

Mtre Jessica Lelièvre

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