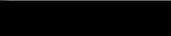


**C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

**SUPERIOR COURT
(CLASS ACTION)**

No: 500-06-001094-206

GEORGE MICHAEL DIGGS, 



Applicant

v.

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

Defendant

**MODIFIED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE (June 1st 2021)**
(Article 575 C.c.p.)

**TO A JUDGE OF THE SUPERIOR COURT, SITTING IN AND FOR THE JUDICIAL
DISTRICT OF MONTREAL, THE PLAINTIFF RESPECTFULLY SUBMITS THE
FOLLOWING:**

I. INTRODUCTION

1. Every year, Quebec Correctional Services ("Q.C.S.") places thousands of inmates in segregation for disciplinary reasons. Those inmates remain confined to a cell for 23 hours a day without meaningful human contact;
2. The practice violates the fundamental rights of the members of the group defined below and is undertaken despite the Q.C.S.'s knowledge of these consequences;

3. Class members are entitled to compensation for the violation of their rights, which are protected by sections 7, 9, and 12 of the *Canadian Charter of Rights and Freedoms* ("Canadian Charter") and by sections 1, 24 and 25 of the *Charter of Human Rights and Freedoms* ("Quebec Charter") (jointly, the "Charters"). Class members are also entitled to be compensated for damages caused by the defendant's fault;
4. Sub-group members suffering from a mental disorder are also entitled to be compensated for the violation of their rights as protected by section 15 of the *Canadian Charter* and by section 10 of the *Quebec Charter*;

II. DESCRIPTION OF THE GROUP

5. The plaintiff wishes to bring a class action on behalf of the individuals included in the following class, of which he is a member:

Any person who was kept in "solitary confinement" in a provincial detention centre in Quebec, i.e., confined to a cell for at least 22 hours per day, following a decision of the institution's disciplinary committee ("disciplinary segregation");

6. (...)

III. THE NATURE OF CLASS ACTION

7. The nature of the action that the plaintiff intends to bring against the defendant on behalf of the class members is an action for declaratory judgment and for compensatory and punitive damages;

IV. THE PARTIES

A. The defendant and the Quebec Correctional Services

8. The defendant represents the Ministry of Public Security ("M.P.S."), whose Minister is responsible for the administration of provincial detention facilities in Québec¹;
9. The role of Q.C.S. is defined in the *Act Respecting the Québec Correctional System* ("A.R.Q.C.S."). Section 1 sets out the objectives of the Q.C.S., which is to promote the social reintegration of offenders while respecting their fundamental rights²;
10. Q.C.S. operates 18 detention facilities, and used to operate another which is no longer in operation, as appears from the documents entitled *Les Services*

¹ *Act Respecting the Ministère de la Sécurité publique*, c. M-19.3, s. 9(4).

² *An Act Respecting the Québec Correctional System*, LRQ, c L-1.1, LRQ, c S-4.01, s. 1.

Correctionnels du Québec : Document d'information dated 2014, **Exhibit P-1** in support hereof, and the *Analyse prospective de la population carcérale des établissements de détention du Québec 2017-2018 à 2027-2028* dated January 2020, **Exhibit P-2** in support hereof. These facilities include the Rivière-des-Prairies detention facility, where the applicant was recently placed in disciplinary segregation;

B. The applicant

11. The applicant was born on December 3, 1983;
12. He is currently in pretrial detention at Rivière-des-Prairies and has been in that facility since autumn of 2018. He has not been convicted of the charges against him;
13. The applicant has been incarcerated in numerous provincial detention facilities during his lifetime, including Rivière-des-Prairies, Hull, Bordeaux, Quebec City and Leclerc;
14. The applicant was subjected to numerous stays in disciplinary segregation in these detention facilities and has had his fundamental rights violated in these facilities;
15. The applicant has also suffered serious consequences as a result of these disciplinary segregations, as well as the numerous breaches of procedural fairness in the process leading to their imposition;
16. The applicant has a claim against the defendant as set out below;

V. THE FACTS

A. Disciplinary segregation

17. Segregation is literally a prison within a prison, and is the most drastic deprivation of liberty that the state can impose on an individual. The characteristics of disciplinary segregation in Quebec detention facilities are as follows:
 - 17.1. Inmates who are placed in disciplinary segregation are confined to a cell for approximately 23 hours a day;
 - 17.2. They are alone in the isolation cell, which contains no furniture other than a bunk and a toilet;
 - 17.3. They eat all their meals alone in the isolation cell, with the food distributed through an opening in the door;
 - 17.4. Most interactions with Q.C.S. and medical staff take place through the food slot;

- 17.5. Inmates cease to have regular interactions with other inmates and Interactions with Q.C.S. are minimal;
- 17.6. They 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;
- 17.7. They cannot work during their time in confinement, losing the capacity to pay for canteen items, such as phone cards to contact their family, hygiene products, etc.;
- 17.8. They have no access to anything that could provide them with minimal distraction: no books, television or radio;
- 17.9. They cannot have any contact with their relatives, by phone or in person;
- 17.10. Their access to their personal belongings during the period of 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;
- 17.11. They may only leave the segregation cell for about one hour a day, during which they must wear handcuffs, except when taking a shower, which they may do only every other day, or when walking outside alone;
- 17.12. Q.C.S. employees routinely conduct strip searches before placing inmates in disciplinary segregation;
- 17.13. Inmates are made to take off their shoes when they are placed in disciplinary segregation;
- 17.14. Inmates are often required to wear a blue robe for the first 24 hours of their placement in disciplinary segregation;
- 17.15. Hygienic conditions in segregation cells are often deplorable, as appears from the Quebec Ombudsman's *Rapport annuel d'activités 2014-2015*, **Exhibit P-3**³ in support hereof. In particular, there is often urine and feces on the walls of the segregation 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;
18. In Quebec's prisons, disciplinary segregation, sometimes referred to as "the hole" or "dead lock", includes confinement and reclusion, since Q.C.S. applies these disciplinary sanctions as described above;

³ Quebec Ombudsman, *Rapport annuel d'activités 2014-2015*, Exhibit P-3, p. 77.

B. The psychological effects of segregation

19. In July 2008, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued a report in which he addressed the use of disciplinary segregation ("2008 UN Report"), at paragraphs 79-85, **Exhibit P-4** in support hereof;
20. He noted that as early as 1992, the Human Rights Committee acknowledged that prolonged segregation 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;
21. The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 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 resort⁴;
22. On August 5, 2011, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment released a second report, specifically on the use of segregation ("2011 UN Report"), **Exhibit P-5** in support hereof;
23. The definition of segregation contained in the 2011 UN Report corresponds to the disciplinary segregation practiced in Quebec detention facilities;
24. The 2011 UN Report noted that the use of solitary confinement as a disciplinary measure within prisons was likely the most pervasive rationale for the use of solitary confinement⁵;
25. The 2011 UN Report added that segregation could cause psychotic disturbances, its symptoms include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, and self-harm⁶;
26. The 2011 UN Report also explained that segregation can cause continuous sleep disruption, depression, anxiety, phobias, emotional dependence, confusion, impaired memory and concentration, even long after being released from segregation⁷;
27. The 2011 UN Report added that negative health effects could occur after only a few days in segregation, and the health risks rise with each additional day spent in such conditions⁸;

⁴ See 2008 UN Report, Exhibit P-4, para 83.

⁵ See 2011 UN Report, Exhibit P-5, para. 41.

⁶ See 2011 UN Report, Exhibit P-5, paras. 62-63.

⁷ See 2011 UN Report, Exhibit P-5, paras. 64-65.

⁸ See 2011 UN Report, Exhibit P-5, paras. 55 and 62.

28. These conclusions of the 2011 UN Report are mostly based on an article by Dr. Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, January 2006, **Exhibit P-6** in support hereof;
29. Dr. Grassian explained that the most common symptoms associated with segregation include stupor, difficulties with thinking and concentrating, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli;
30. Consequently, the 2011 UN Report determined that for the purposes of punishment, isolation "cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour", and thus constitutes a breach of section 7 of the *International Covenant on Civil and Political Rights*, which protects all persons from cruel, inhuman or degrading treatment or punishment⁹;
31. The 2011 UN Report "urge[d] States to prohibit the imposition of solitary confinement as a sanction – either as a part of a judicially imposed sanction or a disciplinary measure [...] [and] recommend[ed] that States develop and implement alternative disciplinary sanctions¹⁰;
32. Finally, the 2011 UN Report concluded 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 segregation¹¹;
33. Similarly, the *Nelson Mandela Rules* ("Mandela Rules"), adopted by United Nations General Assembly resolution 70/175 of 17 December 2015 **Exhibit P-7** in support hereof, contain numerous provisions applying to disciplinary segregation measures, including the following:
 - 33.1. Disciplinary segregation must be specifically authorized by law and must be in accordance with the regulations set out in the law (Rule 37);
 - 33.2. No prisoner shall be placed in disciplinary segregation except in accordance with rule 37 and the principles of fairness and due process (rule 39);
 - 33.3. No prisoner shall be punished twice for the same act and the disciplinary sanction imposed shall be proportionate to the offence (Rule 39);
 - 33.4. A prisoner charged with a disciplinary offence shall be given adequate time and facilities for the preparation of his defense (rule 41);

⁹ See 2011 UN Report, Exhibit P-5, para. 72.

¹⁰ See 2011 UN Report, Exhibit P-5, para. 84.

¹¹ See 2011 UN Report, Exhibit P-5, paras. 88-89 and 93-99.

- 33.5. 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);
- 33.6. 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);
34. In Quebec, the Quebec Ombudsman has also listed the serious consequences that isolation can have on inmates in his *Rapport annuel d'activités 2015-2016*, **Exhibit P-8**¹² in support hereof;
35. Like the 2011 UN Report, it noted that segregation can cause serious consequences, including anxiety, cognitive impairment, impaired perception, paranoia, sleep disruption, impaired memory, and concentration;
36. Finally, both the Quebec and the international literature conclude that disciplinary segregation compromises the ability of inmates to reintegrate society, contrary to the very mission of Q.C.S.;

C. The legal framework for disciplinary segregation

37. Q.C.S. are governed by the *A.R.Q.C.S.* and its regulations, as well as by various provincial directives and instructions;
38. The *A.R.Q.C.S.* does not provide guidelines for disciplinary segregation measures, which are instead governed under the terms "confinement" and "reclusion" by the *Regulation under the Act respecting the Québec correctional system* ("*R.A.R.Q.C.S.*") and by the directive entitled *Discipline and responsibility of the incarcerated person* ("*D.R.I.P.*");
39. Confinement and reclusion constitute disciplinary segregation for the purposes of this application. These disciplinary sanctions are analogous to solitary confinement as described above in paragraphs 17.1 to 17.15;
40. Section 74 of the *R.A.R.Q.C.S.* provides that confinement or reclusion may be imposed for any breach;
41. Breaches are referred to under article 5.2 of the *D.R.I.P* and cover a broad range of behaviour, in particular :
 - 41.1. Using physical violence, abusive or threatening language or gestures;
 - 41.2. Altering or damaging property;

¹² Quebec Ombudsman, *Rapport annuel d'activités 2015-2016*, Exhibit P-8, p. 85.

- 41.3. Interfering with the course of activities;
- 41.4. Committing obscene acts; and
- 41.5. Refusing to comply with institutional regulations or directives;
- 42. When a breach is noted, the Disciplinary Committee intervenes, makes a decision and determines, if necessary, the sanction to be imposed (s. 5.3 *D.R.I.P.*);
- 43. Several sanctions of different kinds may be imposed for the same breach, for example, one breach may result in the imposition of confinement and reclusion (s. 5.6.2 *D.R.I.P.*);
- 44. Disciplinary segregation may be imposed for up to 12 days per breach, which is the sum of the maximum durations provided for the disciplinary sanctions of confinement and reclusion (s. 5.6.1 and 5.6.2 *D.R.I.P.*);
- 45. In practice, however, Class members are frequently placed in disciplinary segregation for more than 12 days, see the *Demande d'accès à l'information sur le nombre de jours de réclusion*, **Exhibit P-9**, in support hereof;

The D.R.I.P. and Q.C.S. deny the procedural fairness to which class members are entitled when they are placed in disciplinary segregation

- 46. The seriousness of the infringement of the inmates' residual liberty and human rights requires that any decision to impose disciplinary segregation must respect a high degree of procedural fairness;
- 47. However, both the procedure provided for at the hearing under the *D.R.I.P.* and its application do not adequately protect the fundamental rights of detainees;
- 48. First of all, the right to counsel is not guaranteed before the Disciplinary Committee even when an inmate might be at risk of being segregated: instead, this right depends on a prior request and the authorization of the members of the Disciplinary Committee imposing the sanction (s. 5.6.3.2 *D.R.I.P.*);
- 49. Although the risk of segregation should theoretically require the Disciplinary Committee to ensure the right to counsel (s. 5.5.4.2.1. *D.R.I.P.*), the reality is quite different;
- 50. In fact, class members almost never have access to counsel before or during the hearing before the Disciplinary Committee, mostly because of the restrictive conditions associated with those hearings and because of the vagueness of the criteria that justifies a refusal under the *D.R.I.P.*;

51. In this respect, the Report of the Quebec Ombudsman entitled “Garantir l’équité procédurale du processus disciplinaire des personnes incarcérées”, **Exhibit P-10** in support hereof, notes that the requirement for a "prior request" has the effect of compromising the right in question, since many inmates are not aware that they can be represented or of the procedure they need to undertake to ensure that representation (p. 21);
52. This legislative and practical barrier is compounded by the short time allowed to contact a lawyer, given that there are generally only a few hours between the alleged breach and the Disciplinary Committee hearing (Exhibit P-10, p. 22);
53. Indeed, even in the rare circumstances where the Disciplinary Committee accepts for a class member to be represented by counsel, the time allowed to contact counsel is sometimes so short that in practice it amounts to a denial of the right to counsel (Exhibit P-10, p. 22);
54. The absence of legal assistance greatly impairs the detainee's right to present his position fully and fairly, and, consequently, his right to a full and complete defence, especially since the detainee may have only four hours to prepare for his hearing (art. 5.5.2.3 *D.R.I.P.*);
55. In addition, documents relating to a breach, such as an event report, are rarely provided to class members before the hearing, which prevents them from being adequately prepared, Exhibit P-10, p. 13, in support hereof;
56. This situation is exacerbated by the fact that the Disciplinary Committee hearing is conducted according to the balance of probabilities standard, rather than according to the standard of proof "beyond a reasonable doubt" (art. 5.6.4.2. *D.R.I.P.*);
57. This reality, coupled with the defendant's systemic practice of refusing class members the possibility to call other inmates as witnesses to testify about the alleged event, greatly impairs their right to a full answer and defence;
58. On a balance of probabilities, where the testimony of an inmate contradicts the testimony of a correctional officer, the chances of the former being believed are unreasonably low;
59. Additionally, the Disciplinary Committee is appointed by the Director of the institution from among correctional services officers, probation officers, prison counsellors, and managers working in a detention facility (art. 5.5.1 *D.R.I.P.*). In other words, from among the colleagues of the persons who drafted and approved the breach report;
60. In addition, these same decision makers interact, usually on a daily basis, with the alleged author of the breach (Exhibit P-10, p. 34);

61. Furthermore, the correctional officers who sit on the Discipline Committee are sometimes among the same correctional officers who patrol the area where class members are placed in disciplinary segregation;
62. Finally, the review procedure of the Disciplinary Committee's decision, as applied and provided for in the *D.R.I.P.*, guarantees neither an external nor independent assessment: instead, it allows the person who initially appointed the decision makers of the Disciplinary Committee, the director of the institution, to review their decision (art. 5.6.10 *D.R.I.P.*);
63. This process does not ensure that the initial decision imposing disciplinary segregation or its review was made by a sufficiently impartial decision maker, or at least creates a reasonable apprehension of bias in this regard;
64. This systemic violation of procedural fairness in the imposition of disciplinary segregation infringes the fundamental rights and freedoms of class members in a manner that is grossly disproportionate and arbitrary when weighed against the purpose of disciplinary segregation;
65. This systemic violation is also disproportionate when weighed against the breaches sanctioned and exceeds what is authorized by the *D.R.I.P.*;
66. For example, an inmate named Arlene Gallone received numerous disciplinary segregation sanctions during her years of incarceration for what could be described as minor breaches, including, as appears from the reports on disciplinary offences in her carceral file, **Exhibit P-11**:
 - 66.1. Four days of disciplinary segregation for smoking two cigarettes in her cell (2013-02-08);
 - 66.2. Three days of disciplinary segregation for saying "kiss my ass" twice to a correctional officer (2013-02-09);
 - 66.3. Four days of disciplinary segregation for leaving her cell in a jacket (2013-12-27);
 - 66.4. Five days of disciplinary segregation for saying "Kiss My Ass" again (2012-02-13);
 - 66.5. Four days of disciplinary segregation because she walked to the health center in a "jaquette tanguay" and did not understand the guard telling her in French to go get changed. She was called on the intercom to go to the health center to get her narcotic medication (2013-12-27);
67. The same disproportionality can be seen in the numerous disciplinary confinement sanctions imposed on another inmate, as appears from the reports on disciplinary offences filed as **Exhibit P-12**:

- 67.1. Two days of disciplinary segregation for refusing to cooperate with correctional officers to go on suicide prevention, when she was in crisis and had not taken her medication (2016-06-22);
- 67.2. Two days in disciplinary segregation for banging her head on the door of the cell while she was in disciplinary segregation and after she was asked to stop (2014-11-05);
- 67.3. Two days of disciplinary segregation for calling a correctional officer "ostie de grosse vache" while already being in a segregation cell (2014-11-05);
- 67.4. One day of disciplinary segregation for saying "Don't listen to me ass..." (2014-11-02);
- 67.5. Three days of disciplinary segregation for doing a forward roll, a handstand on her hands and stunts in the outdoor yard, for throwing a rock through the kitchen window and for taking time to walk back to the door (2014-07-02);
68. As illustrated by the experiences of those two inmates, disciplinary segregation also has a disproportionate effect on people with mental disabilities;
69. Indeed, Q.C.S. frequently uses disciplinary segregation to punish breaches that are due to the mental disabilities of class members;
70. A recent study carried out in the United States has revealed that people suffering from a mental disorder prior to their detention were 36% more at risk of being placed in disciplinary segregation following a misconduct than people not suffering from a mental disorder, as appears from the article *The Effect of Mental Illness on Segregation Following Institutional Misconduct*, **Exhibit P-13**, in support hereof;
71. This same discriminatory practice in the use of disciplinary segregation exists in Quebec's detention facilities. Indeed, people suffering from a mental disorder are overrepresented in disciplinary segregation;
72. This use of disciplinary segregation is wrong and discriminatory in that it perpetuates the historical disadvantage suffered by mentally disabled persons in detention facilities;

D. Fault and unlawful and intentional infringement of class members' rights

73. Disciplinary segregation should be an exceptional measure and limited in duration;
74. However, it appears from the above that Q.C.S. use this drastic measure of deprivation of liberty frequently, and in an arbitrary and grossly disproportionate manner;

75. Furthermore, this practice of Q.C.S. violates class members' right to liberty and security protected by section 7 of the *Canadian Charter* and section 1 of the *Quebec Charter* in a manner that is inconsistent with the principles of fundamental justice;
76. This practice also violates the class members' right to not be subjected to cruel and unusual treatment, protected by section 12 of the *Canadian Charter*;
77. This practice also violates the right of class members to be treated with humanity and with the respect due to the human person, protected by section 25 of the *Quebec Charter*;
78. This practice further violates the right of sub-group members not to be treated in a discriminatory manner, as set out in section 15 of the *Canadian Charter*;
79. In itself, the *D.R.I.P.* unjustifiably infringes sections 7, 12 and 15 of the *Canadian Charter* and sections 1, 10 and 25 of the *Quebec Charter*;
80. Finally, class members placed in disciplinary segregation for more than 12 days are victims of a violation of their right not to be arbitrarily detained, protected by section 9 of the *Canadian Charter* and section 24 of the *Quebec Charter*;
81. The infringement of fundamental rights of class members is an unlawful and intentional practice that has long been known by the defendant;
82. In 2008, the Quebec Ombudsman described the significant impact that segregation could have on the physical and mental health of inmates subjected to it, as appears from his *Rapport annuel d'activités 2007-2008*, **Exhibit P-14** in support hereof;
83. He explained that it is because of the potential effects of this measure that the instruction on health care provides for daily visits to prisoners by the institutions' nursing staff¹³;
84. However, the Quebec Ombudsman noted that this rule was not always respected;
85. 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", **Exhibit P-15**;
86. 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 illness¹⁴;

¹³ Quebec Ombudsman, *Rapport annuel d'activités 2007-2008*, Exhibit P-14, p. 112.

¹⁴ Examen des rapports présentés par les États parties en application de l'article 19 de la Convention, Exhibit P-15, p. 7.

87. In his annual report in 2015, the Quebec Ombudsman noted once again that "plusieurs jours pouvaient s'écouler sans que des intervenants spécialisés en santé mentale ou faisant partie l'équipe d'intervention suicide réévaluent la condition de personnes suicidaires mises en isolement"¹⁵ therefore infringing the provincial instruction on health care for incarcerated persons¹⁶, and violating the protections guaranteed by the *Charters*;
88. That same year, the Quebec Ombudsman published a second report concerned exclusively with the duty of procedural fairness in the prison's disciplinary process, in which he noted numerous breaches within provincial detention facilities (Exhibit P-10);
89. Furthermore, with respect to the composition of the Disciplinary Committees and to the appointment process of its members, the report revealed that there exist better guarantees of impartiality in the federal prison system as well as in provincial institutions in Alberta, Ontario, Manitoba, New Brunswick and Newfoundland¹⁷;
90. One year later, in his *Rapport annuel d'activités 2015-2016*, the Quebec Ombudsman noted that the government still had not accepted a recommendation that was essential to ensure respect of the principle of procedural fairness, namely, the exclusion of correctional services officers who directly supervise inmates from the composition of Disciplinary Committees¹⁸;
91. The Quebec Ombudsman reiterated the importance of implementing this recommendation, which aimed to put an end to the issue of partiality (or the appearance of partiality) with respect to the composition of Disciplinary Committees¹⁹;
92. More recently, in his *Rapport annuel d'activités 2018-2019*, the Quebec Ombudsman noted that he has asked the M.P.S. to regulate the use of segregation since 2016 and that the M.P.S. has still not acted accordingly, as appears from the *Rapport annuel d'activités 2018-2019*, **Exhibit P-17** in support hereof;
93. In his report, the Quebec Ombudsman also recalled the M.P.S.' commitment made the previous year to draft a new directive regarding solitary confinement. The M.P.S. was not able to confirm the date on which it would be completed;

¹⁵ Quebec Ombudsman, *Rapport annuel d'activités 2014-2015*, Exhibit P-3, p. 73, inhouse translation : several days could go by without specialized mental health workers or members of the suicide intervention team reassessing the condition of suicidal inmates placed in segregation.

¹⁶ Instruction on Health Care for Incarcerated Persons, **Exhibit P-16**.

¹⁷ Exhibit P-10, p. 35 and 36.

¹⁸ Exhibit P-8, p. 86.

¹⁹ Exhibit P-8, p. 86.

94. In the *Rapport annuel d'activités 2018-2019*, the M.P.S. replied to the Quebec Ombudsman that the work relating to the directive would be completed in August 2019;
95. However, as of August 24, 2020, there was no new guidance or directive governing the use of disciplinary segregation in effect, as appears from the response to an access to information request (2020 -11745), **Exhibit P-18** in support hereof;
96. Finally, in 2019, in the wake of the numerous judgments rendered on segregation in Canada and the federal government's change in mentality, which materialized in the introduction of Bill C-83, the Q.C.S. asked detention facilities to provide a minimum of two hours of cell time per day to all incarcerated persons, as appears from the response to an access to information request (2020-11745) (exhibit P-18);
97. Yet with respect to disciplinary segregation, the Q.C.S. continued to leave people in cells without human contact at least 23 hours a day, thereby reaffirming the Q.C.S.'s intentional infringement of members' fundamental rights, as appears from the response to an access to information request (2020-11745) (exhibit P-18);
98. In short, it appears from the foregoing that the defendant's wrongful practice infringes the rights of the members protected by the *Charters*, despite the fact that it has long been aware of the problems relating to procedural fairness as well as the harmful and devastating consequences of the use of disciplinary segregation on class members;
99. This is clearly a violation and an unlawful and intentional interference within the meaning of section 49 of the *Quebec Charter*;
100. The State cannot set up a system that violates the *Charters*;
101. These infringements of class members' rights cannot be justified in a free and democratic society and an award of damages is necessary to ensure that government actions respect their fundamental rights.

VI. THE CASE OF THE APPLICANT

102. The applicant was born on December 3, 1983;
103. The applicant was incarcerated in numerous provincial detention facilities during his lifetime, including Rivière-des-Prairies Institution, Bordeaux Institution, Quebec Institution and Leclerc Institution;
104. In November 2014, the applicant was incarcerated at the Leclerc Detention Center, which was then a provincial detention facility;

105. In December 2014, the applicant was placed in disciplinary segregation following an altercation with another inmate. The applicant was sentenced to 7 days of disciplinary segregation by the Disciplinary Committee;
106. At the end of the seventh day, a correctional officer, Ms. Khan, explained to the applicant that other inmates did not want him to return to the area he was in before, although she did not provide any evidence or testimony supporting her claim;
107. She then gave the applicant two choices: be transferred from the area or remain in disciplinary segregation;
108. The applicant was surprised by the news and suspicious of the reasons provided by the Correctional Officer. Thus, he specifically requested to be released from disciplinary segregation;
109. Despite these requests, the applicant remained in solitary confinement for 30 days without being informed of the opportunity to request a review or challenge such a decision and without being allowed to consult a lawyer in this regard;
110. The applicant spent Christmas and New Year's Eve alone in disciplinary segregation;
111. Subsequently, in July 2016, the applicant was placed in lockdown for many weeks at the Bordeaux Detention Facility following a riot, which he did not participate in. No breach report was filed against him;
112. Finally, more recently, the applicant was placed for more than three months in disciplinary segregation at the Rivière-des-Prairies detention facility, although he received only a three-days sanction;
113. This imposition of disciplinary segregation was the result of an incident that occurred on March 22, 2020, when the applicant was recovering from a knee reconstruction surgery which he had undergone 6 days earlier. The applicant argued with a correctional officer since the food brought to him did not respect the diet prescribed by his doctor, and threw his food on the floor;
114. The claimant then received a breach report on the grounds that he threw his food at a nurse;
115. However, no nurse was there at the time of the incident and the food was not thrown at the correctional officer;
116. The applicant was nevertheless placed in disciplinary segregation as a temporary measure until March 25, 2020;
117. At the hearing before the Disciplinary Committee, the applicant strongly contested the alleged breach;

118. The applicant asked for the name of the nurse at whom he would have thrown his food: his request was refused;
119. The claimant also requested to have other inmates who were there during the incident testify: this request was also denied;
120. Although the applicant knew that the alleged breach was untrue and that the correctional officer lied about it, he believed there was nothing he could do about it, given the established practice of not respecting the rights of incarcerated persons to mechanisms respecting procedural fairness;
121. At the Disciplinary Committee hearing, the evidence presented consisted solely of the testimony of the applicant and the testimony of the correctional services officer: the nurse who was supposedly hit by the food, and whose identity remains unknown to this day, was absent;
122. The testimony of the correctional officer prevailed, and the applicant was placed in disciplinary segregation on March 25, 2020;
123. Furthermore, since the claimant was in disciplinary segregation, he was only able to see the institution's doctor to check for infection and remove the staples once after his operation;
124. For the same reasons, the claimant was not able to see a physiotherapist before the end of his segregation, although it was prescribed by his doctor following his operation;
125. He remained in solitary confinement in the same cell until May 27, 2020, when the Quebec Ombudsman intervened and asked the detention facility to stop the segregation, after the applicant had made a formal request to him a few days earlier;
126. During the majority of his disciplinary hearings throughout those years, the applicant was not represented by counsel;
127. It is only recently that he has come to understand the right and benefit of legal assistance, as this information is not usually provided to inmates by correctional officers. Instead, officers rely on the fact that there is an explanatory statement informing inmates of this right on breach reports²⁰;
128. The same can be said with respect to the right to request a review of the decision imposing disciplinary segregation;
129. Furthermore, every time he was placed in disciplinary segregation, the claimant was expelled from school;

²⁰ See also Exhibit P-10 (Equity), p. 21.

130. All of these prolonged periods of disciplinary segregation resulted in serious consequences for the claimant, who is now experiencing stress and anxiety;
131. Additionally, not being able to present his defense or to be heard have resulted in frustration, a strong feeling of helplessness and distrust of the carceral system, especially given the fact the he still has not been convicted;
132. When he was released, he felt alienated and had difficulty adapting to the outside world. He is no longer comfortable in crowds, has become paranoid at times and has developed a form of claustrophobia;
133. Although the applicant is aware that his fears are irrational, he nonetheless feels unable to stay close to other people or use public transportation, among other things;
134. The repeated use of disciplinary segregation against the applicant violated his fundamental rights in an unlawful and intentional manner, and caused him numerous damages that must be compensated;
135. The applicant is also entitled to punitive damages, since this unlawful practice of the Q.C.S. is intentional and has continued for too long.

VII. THE COMPOSITION OF THE CLASS

136. The composition of the group makes it difficult or impractical to apply for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
137. It is in fact impossible for the applicant to contact all class members and, even more so, to obtain a mandate from each of them, since this class action is likely to affect thousands of people;
138. Class members are currently dispersed in all 18 detention facilities of the province or have been released;
139. In addition, class members, many of whom suffer from mental health disorders, constitute a particularly vulnerable population in financial, social, and human terms;
140. For the vast majority of class members, a class action is the only vehicle that can provide them access to justice.

VIII. THE REMEDY SOUGHT AND THE METHOD OF RECOVERY

141. The claimant and class members suffered harm that may include psychotic and cognitive disturbances, anger, anxiety, feelings of abandonment, loss of confidence, depression, phobias, paranoia, psychosis, emotional dependence, disorientation,

- impaired memory and concentration, loss of appetite, sleep disturbances, and difficulties in social interaction, including with correctional officers and other inmates;
142. They feel frustrated and powerless due to the lack of procedural fairness in disciplinary hearings and the consequences that result from the lack of those safeguards;
 143. Although the exact nature of damages suffered may vary from one member to another, all members have suffered damages and those damages are likely to be quantified using an average, depending on the evidence to be presented;
 144. The defendant may provide the following information to establish the amount of the collective recovery:
 1. The number of persons placed in disciplinary segregation for the period covered by the action;
 2. The length of placements in disciplinary segregation;
 145. This information and the evidence that will be presented will allow the court to accurately determine the total amount of the claim;

IX. COMMON QUESTIONS

146. The identical, similar or related questions of fact and law connecting each class member to the defendant that the plaintiff intends to have determined in the class action are :
 1. 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*?
 2. What is a mental health disorder?
 3. 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*?
 4. Does placement in disciplinary segregation exceeding 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*?
 5. 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*?

6. Does the directive entitled Discipline and responsibility of the incarcerated person violate sections 7, 12, and 15 de la Canadian Charter of Rights and Freedoms and sections 1, 10, and 25 Charter of Human Rights and Freedoms?
7. Are class members entitled to damages as a just and appropriate remedy under section 24(1) of the *Canadian Charter of Rights and Freedoms*?
8. To what extent do people with mental health disorders suffer distinct damage from the whole group?
9. Should all class members with mental health disorders benefit from special isolation conditions?
10. Did the defendant commit a civil wrong against the class members through its use of disciplinary segregation?
11. What is the nature of the damages suffered by the class members?
12. 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 practices?
13. Does disciplinary segregation, as practiced by the defendant, entitle class members to punitive damages under the *Charter of Human Rights and Freedoms*?

X. THE CONCLUSIONS SOUGHT

147. The defendant identifies the forms of order sought in the class action as follows:

GRANT the applicant'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 protected by sections 1 and 25 of the *Charter of Human Rights and Freedoms* and 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 (...) 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 Freedom*;

DECLARE that the defendant's practice of disciplinary segregation unjustifiably infringes the rights of class members 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 12 days;

DECLARE that the directive entitled Discipline and responsibility of the incarcerated person violates sections 7, 12, and 15 de la *Canadian Charter of Rights and Freedoms* and sections 1, 10, and 25 *Charter of Human Rights and Freedoms*;

ORDER the defendant to pay each class member an 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 request for authorization to institute a class action;

ORDER the defendant to pay each (...) group member 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 request for authorization to institute a class action;

ORDER the defendant to pay 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 request for authorization to institute a class action;

CONDEMN the defendant to pay an additional amount of \$250 per additional day spent in disciplinary segregation when the duration exceeds 12 days, with interest at the legal rate plus the additional indemnity since the filing of the request for authorization to institute a class action;

ORDER that the claims of the class members be subjected to collective recovery;

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

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

XI. ADEQUATE REPRESENTATION

148. The applicant is a class member and has a good knowledge of the file;
149. He is prepared to invest the resources and time necessary to carry out all the formalities and tasks related to the exercise of this class action and undertakes to cooperate fully with the prosecutors;
150. He acts in good faith with the sole purpose of obtaining justice for himself and each class member;

151. For these reasons, the applicant is in a position to ensure adequate representation of class members (...) he intends to represent;

XII. THE JUDICIAL DISTRICT

152. The applicant requests that the class action be brought before the Superior Court in the district of Montreal;
153. The applicant and a large proportion of the class members currently reside in the district of Montreal;
154. The defendant also has one of its principal places of business there;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the request for authorization to bring a class action and to be designated as a representative;

AUTHORIZE the class action for compensatory and punitive damages against the defendant;

GRANT Mr. George Michael Diggs the status of representative for the members of the following group:

Any person who is kept in "solitary confinement", i.e., confined to a cell for at least 22 hours per day, following a decision of the Institutional Discipline Committee ("disciplinary segregation");

(...)

IDENTIFY as follows the main questions of fact or law to be addressed collectively:

1. 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*?
2. What is a mental health disorder?
3. 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*?
4. Does placement in disciplinary segregation exceeding 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*?

5. 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*?
6. Does the directive entitled Discipline and responsibility of the incarcerated person violate sections 7, 12, and 15 de la Canadian Charter of Rights and Freedoms and sections 1, 10, and 25 Charter of Human Rights and Freedoms?
7. Are class members entitled to damages as a just and appropriate remedy under section 24(1) of the *Canadian Charter of Rights and Freedoms*?
8. To what extent do people with mental health disorders suffer distinct damage from the whole group?
9. Should all class members with mental health disorders benefit from special isolation conditions?
10. Did the defendant commit a civil wrong against the class members through its use of disciplinary segregation?
11. What is the nature of the damages suffered by the class members?
12. 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?
13. Does disciplinary segregation, as practised by the defendant, entitle class members to punitive damages under the *Charter of Human Rights and Freedoms*?

IDENTIFY the related conclusions as follows:

GRANT the applicant'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 protected by sections 1 and 25 of the *Charter of Human Rights and Freedoms* and 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 (...) group 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 Freedom*;

DECLARES that the defendant's practice of disciplinary segregation unjustifiably infringes the rights of class members 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 12 days;

DECLARE that the directive entitled Discipline and responsibility of the incarcerated person violates sections 7, 12, and 15 de la *Canadian Charter of Rights and Freedoms* and sections 1, 10, and 25 *Charter of Human Rights and Freedoms*;

ORDER the defendant to pay each class member an 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 request for authorization to institute a class action;

ORDER the defendant to pay each (...) group member 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 request for authorization to institute a class action;

ORDER the defendant to pay 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 request for authorization to institute a class action;

CONDEMN the defendant to pay an additional amount of \$250 per additional day spent in disciplinary segregation when the duration exceeds 12 days, with interest at the legal rate plus the additional indemnity since the filing of the request for authorization to institute a class action;

ORDER that the claims of the class members be subjected to collective recovery;

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

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

DECLARE that unless excluded, class members will be bound by any judgment to be rendered in the class action in the manner provided by law;

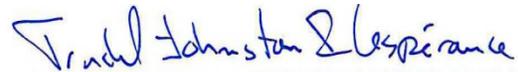
SET the exclusion period at sixty (60) days after the date of the notice to class members, at the expiry of which time the members of the group who have not excluded themselves of the means of exclusion shall be bound by any judgment to be rendered;

ORDER the publication of a notice to the members in the manner to be determined by the Court;

REFER the matter to the Chief Justice for determination of the district in which the class action is to be brought and the designation of the judge to hear it;

THE WHOLE, with costs, including notice costs.

Montreal, June 1st, 2021



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Our Ref: 1341-3

No.: 500-06-001094-206

(CLASS ACTION)
SUPERIOR COURT
DISTRICT OF MONTRÉAL

GEORGE MICHAEL DIGGS

Applicant

v.

ATTORNEY GENERAL OF QUEBEC

Defendant

Our file: 1341-3

BT 1415

**MODIFIED APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS
ACTION AND TO OBTAIN THE STATUS
OF REPRESENTATIVE (June 1st 2021)
(Article 575 C.c.p.)**

ORIGINAL

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