

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No.: 500-06- 000781-16-7

(Class Action)
SUPERIOR COURT

ARLENE GALLONE, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

v.

ATTORNEY GENERAL OF CANADA, with
an office at Quebec Regional Office
Department of Justice Canada, Guy-Favreau
Complex, East Tower, 9th Floor, 200 René-
Lévesque Boulevard West, district of
Montreal, province of Quebec, H2Z 1X4

Respondent

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND OBTAIN THE STATUS OF REPRESENTATIVE**
(art. 575 C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF QUEBEC
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER
RESPECTFULLY ALLEGES THE FOLLOWING:

Each year the Correctional Service of Canada confines thousands of inmates to a cell for 23 hours a day with no contact with other human beings and in most cases without knowledge of how long they will be confined. The solitary confinement of inmates for more than 72 consecutive hours violates the Canadian *Charter of Rights and Freedoms* and the Quebec *Charter of Human Rights and Freedoms*. Similarly, the segregation of inmates with a mental health disorder violates both of these fundamental laws, regardless of the length of their placement.

The class action seeks compensatory damages for the harm that class members suffered as a result of their unlawful solitary confinement and punitive damages for the Correctional Service of Canada's intentional interference with their fundamental rights.

1. **The Petitioner wishes to institute a class action on behalf of natural persons forming part of the two Classes hereinafter described and of which she is also a member, namely:**

Class members in prolonged solitary confinement

All persons held in solitary confinement after February 24, 2013 for more than 72 consecutive hours, in a federal penitentiary situated in Quebec, including consecutive periods totalizing more than 72 hours separated by periods of less than 24 hours;

AND

Class members with mental health disorders

All persons held in solitary confinement after February 24, 2013 in a federal penitentiary situated in Quebec and who had a mental health disorder, including disorders of thought, mood, perception, orientation or memory that significantly impairs judgment, behaviour, the capacity to recognize reality or the ability to meet the ordinary demands of life as defined by section 85 of the *Corrections and Conditional Release Act*¹;

2. **The facts that give rise to an individual action on behalf of the Petitioner against the Respondent, are as follows:**

- 2.1. The Correctional Service of Canada's ("CSC") practice of placing inmates in solitary confinement for more than 72 hours violates their rights to liberty and security protected by section 7 of the Canadian *Charter of Rights and Freedoms* and section 1 of the Quebec *Charter of Human Rights and Freedoms*, as well as their right to be treated with humanity and the respect due to the human person, protected by section 25 of the Quebec *Charter*;

- 2.2. The CSC's practice of placing inmates in solitary confinement for more than 15 days further violates their right not to be subjected to a cruel or unusual treatment, protected by section 12 of the Canadian *Charter of Rights and Freedoms*;

- 2.3. The use of solitary confinement as a detention measure on inmates with a mental health disorder violates their fundamental rights to liberty and

¹ SC 1992, c.20 ("*CCRA*") at s. 85.

security, as well as their right not to be subjected to cruel and unusual treatment, regardless of the length of the inmate's' placement;

- 2.4. The use of solitary confinement for inmates with a mental health disorder also violates their rights to be treated with humanity and with the respect due to the human person and to a separate treatment appropriate to their mental condition, protected by sections 25 and 26 of the Quebec *Charter of Human Rights and Freedoms*;
- 2.5. Considering all of the above, the Respondent has additionally committed a civil fault by placing any inmate in solitary confinement for more than 72 hours and by placing inmates with a mental health disorder in solitary confinement regardless of the length of the placement;

THE CORRECTIONAL SERVICE OF CANADA AND SOLITARY CONFINEMENT

The Correctional Service of Canada

- 2.6. The Respondent represents the CSC, the federal government agency that administers sentences with a term of two years or more;
- 2.7. The CSC manages institutions of various security levels and supervises offenders under conditional release in the community, including those subject to a Long-Term Supervision Order (“**LTSO**”), as appears from a copy of a CSC website page entitled “*Our Role*”, filed as Exhibit **P-1**;
- 2.8. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by:
 - (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
 - (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community²;
- 2.9. The CSC is headed by the Commissioner of Correctional Service of Canada (the “**Commissioner**”), who reports to the Minister of Public Safety Canada.

² CCRA at s. 3.

The Commissioner controls and manages the CSC and all matters connected with it. The Commissioner adopts directives and guidelines that every federal penitentiary must follow;

2.10. The CSC manages 43 institutions all over Canada, 12 of which are situated in Quebec, as appears from a copy of a CSC website page entitled "*National Facility Directory*", filed as Exhibit **P-2**, including the Joliette Institution for Women where the Petitioner was incarcerated;

2.11. On a typical day in 2014, CSC was responsible for 23,154 offenders, 15,327 of whom were incarcerated in federal custody, as appears from a copy of the *2014 Corrections and Conditional Release Statistical Overview*, filed as Exhibit **P-3**;

Solitary confinement

2.12. Inmates serve their sentences in penitentiary and are generally detained with other inmates. The CSC can exceptionally separate inmates from other inmates through what is known legally as administrative or disciplinary segregation;

2.13. The purpose of administrative segregation is to maintain the security of a penitentiary or the safety of any person, when the CSC considers that an inmate represents a danger for itself, the CSC or its staff, or other inmates.³ The purpose of disciplinary segregation is to impose a sanction for serious disciplinary offenses⁴;

2.14. Ninety-eight percent of segregation placements are administrative, as appears from a document prepared by the Office of the Correctional Investigator ("**OCI**") for a conference held on March 22, 2013, entitled *Solitary Confinement Segregation in Canadian Federal Corrections: A Prison Ombudsman's Perspective*, available on the OCI's website, filed as Exhibit **P-4** ;

2.15. Before placing her in segregation, the CSC must consider the mental health condition of the inmate as appears from the Commissioner's *Administrative*

³ CCRA at ss. 31 and 87.

⁴ CCRA at ss. 38 and 44 (1) f).

Segregation Directive Number 709 and *Administrative Segregation Guidelines* Number 709-1, filed respectively as Exhibits **P-5 et P-6**⁵;

The Nature of Solitary Confinement

- 2.16. Segregation is the separation of an inmate from the general population of a penitentiary. The nature and scope of such separation are not prescribed by any law, regulation or directive. In practice, the segregation of inmates is a drastic privation of their residual liberty that is disproportionate to the objective of segregation;
- 2.17. For both administrative and disciplinary segregation, inmates are confined alone to a small cell for 23 hours a day;
- 2.18. Inmates and CSC staff most commonly refer to a solitary confinement cell as a “**hole**”;
- 2.19. The CSC strip searches each inmate before placing him in segregation;
- 2.20. Cells used for segregation are furnished with a bed, a toilet, and a sink. They do not usually have any natural light and may only have a frosted window that does not open;
- 2.21. Inmates are thus deprived of regular access to fresh air and sunlight;
- 2.22. The CSC feeds inmates by sliding their meals to them through a trap in the cell door;
- 2.23. Inmates cease to have regular interactions with other inmates and interactions with the CSC staff are kept to a minimum;
- 2.24. Inmates lose access to indoor and outdoor activities, educational and rehabilitation programs, books, computers, television or radio;
- 2.25. The CSC restricts the access of inmates to their personal belongings while they are in solitary confinement. They can spend days, and sometimes

⁵ See also *CCRA* at s. 87.

weeks or months without access to basic necessities such as sanitary materials and spare clothes;

- 2.26. Inmates can only leave the cell for an hour a day and must wear handcuffs while they are out of the hole. During this hour, they are only allowed to do a limited number of activities if time and security protocol permits, such as shower, call their lawyer, and walk outside;
- 2.27. Visits from family members and friends become difficult due to security protocols and the limited time inmates are allowed outside the hole;
- 2.28. Inmates are never informed by the CSC of the numbers of days they will spend in administrative solitary confinement. Not knowing how long you will be kept in solitary deeply exacerbates the pain and suffering of the individuals who are confined to it;
- 2.29. While it is supposedly designed to be a preventative measure, inmates consider administrative segregation to be a severe punishment;

Psychological and Physiological Effects of Prolonged Segregation

- 2.30. On August 5, 2011, the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment released a report on the use of solitary confinement ("**UN Report**"), as appears from a copy of the report, filed as Exhibit **P-7**;
- 2.31. The definition of solitary confinement adopted in the UN Report matches the CSC practice of segregation⁶;
- 2.32. The UN Report found that solitary confinement causes psychotic disturbances, whose symptoms include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis and self-harm⁷;
- 2.33. After spending only a few days in segregation, inmates begin to experience these effects and the severity increases with each additional day⁸;

⁶ UN Report, P-7 at p. 8 ("The physical isolation of individuals who are confined to their cells 22 to 24 hours a day").

⁷ UN Report, P-7 at p.18.

⁸ UN Report, P-7 at p.17.

- 2.34. The UN Report further found that solitary confinement creates continued sleep disturbances, depression, anxiety, phobias, emotional dependency, disorientation, impaired memory and concentration, even long after the end of isolation⁹;
- 2.35. Those conclusions are corroborated by an article cited in the UN report and written by Stuart Grassian, M.D., "Psychiatric Effects of Solitary Confinement", published in the Washington University Journal of Law & Policy in January 2006, filed as Exhibit P-8. The author found that the most common symptoms associated with solitary confinement include stupor, difficulties with thinking and concentration, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli¹⁰;
- 2.36. Solitary confinement can also cause an acute mental disorder in individuals who had been free of any such disorder until then¹¹;
- 2.37. For all these reasons, the UN Report concluded that the disciplinary or penal use of solitary confinement constitutes a cruel and unusual treatment that should be completely prohibited¹²;
- 2.38. The UN Report found that not knowing how many days they will spend in segregation has dramatic consequences on the state of mind and distress of inmates. For that reason, the UN report concluded that indefinite solitary confinement should be prohibited¹³;
- 2.39. Recognizing that the adverse effects of solitary confinement are observed after a few days only, the UN report found that solitary confinement for more than 15 days constitutes a cruel and unusual treatment, as appears from P-7;
- 2.40. The Quebec regulations on administrative segregation provide that solitary confinement should last a maximum of 72 hours, which can be exceptionally prolonged for one period of 24 hours¹⁴;

⁹ UN Report, P-7 at p. 18.

¹⁰ Grassian, P-8 at pp.332, 335-336.

¹¹ Grassian, P-8 at p.333.

¹² UN Report, P- 7, at p. 20.

¹³ UN Report, P-7, at p. 17.

¹⁴ *Regulation under the Act respecting the Québec correctional system*, CQLR c S-40.1, r 1 at s. 36.

2.41. Considering all of the above, the Petitioner alleges that the solitary confinement of inmates becomes an unjustified threat to his security and liberty after 72 hours and cruel and unusual treatment after 15 days;

Psychological and Physiological Effects of Solitary Confinement on Inmates with a Mental Health Disorder

2.42. Placement in solitary confinement poses a serious risk of short- and long-term psychological harm to inmates with a mental health disorder, regardless of the length of the placement¹⁵;

2.43. In solitary confinement, the most vulnerable individuals suffer from states of florid psychotic delirium, marked by severe hallucinatory confusion, disorientation, and even incoherence, intense agitation and paranoia¹⁶;

2.44. Long-term psychological harm is most commonly manifested by a continued intolerance of social interaction.¹⁷ These lasting personality changes often compromise the ability of inmates with mental health disorders to reintegrate into society¹⁸;

2.45. Solitary confinement further frequently causes a severe exacerbation or recurrence of pre-existing illness¹⁹;

2.46. The UN report therefore concludes that the segregation of inmates with mental health disorders constitutes a cruel and unusual treatment, regardless of the duration of the placement²⁰;

THE CSC'S KNOWLEDGE OF THE INTERFERENCE AND THE SYSTEMATIC ABUSE OF SOLITARY CONFINEMENT

2.47. The CSC has known for countless years of the immediate and natural or at least extremely probable consequences of its acts. Its continued gross

¹⁵ Grassian, P-8 at pp. 332, 354; UN Report, P-7 at pp. 9, 18.

¹⁶ Grassian, P-8 at pp.328, 332.

¹⁷ Grassian, P-8 at pp.332-333, 353.

¹⁸ UN Report, P-7 at p. 18.

¹⁹ Grassian, P-8 at pp.329, 333.

²⁰ UN Report, P-7 at p. 21.

negligence and its systematic abuse of solitary confinement give Class members the right to seek punitive damages;

- 2.48. Although it is a temporary measure only to be used in emergencies and as a last resort, the CSC uses solitary confinement as a medium- and long-term solution to problems that it encounters in managing the overpopulation and safety of institutions as well as the mental health of inmates;
- 2.49. A review of the CSC's mental health strategy prepared for the OCI found that:

According to CSC staff, segregation and segregation-like units have become *de facto* intermediate care services. Offenders are often isolated for long periods of time without mental health interventions unless it is on an ad hoc basis;

as appears from a copy of the report from John Service, PhD, entitled "*A Review of the Implementation of the Correctional Service of Canada's 'Mental Health Strategy'*", filed as Exhibit **P-9**;

- 2.50. The OCI has recognized that the conditions in solitary confinement exacerbate the symptoms associated with mental illness and causes irreversible psychological and physiological harm, as appears from a copy of its *2011-2012 Annual Report*, filed as Exhibit **P-10**;
- 2.51. For years, the OCI has repeatedly advised the CSC that it must prohibit the solitary confinement of inmates with a mental health disorder:

In the past year, I have been very clear on the point that mentally disordered offenders should not be held in segregation or in conditions approaching solitary confinement. Segregation is not therapeutic. In too many cases, segregation worsens underlying mental health issues. Solitary confinement places inmates alone in a cell for 23 hours a day with little sensory or mental stimulation, sometimes for months at a time. Deprived of meaningful social contact and interaction with others, the prisoner in solitary confinement may withdraw, "act out" or regress. Research suggests that between one-third and as many as 90% of prisoners experience some adverse symptoms in solitary confinement, including insomnia, confusion, feelings of hopelessness and despair, hallucinations, distorted perceptions and psychosis.

- as appears from a copy of the OCI's *Annual Report 2009-2010*, filed as Exhibit **P-11**;
- 2.52. In May 2012, the UN Committee against Torture rendered a report on Canada's compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, entitled *Consideration of reports submitted by States parties under article 19 of the Convention*, filed as Exhibit **P-12**;
- 2.53. The Committee expressed concern for "[t]he use of solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness"²¹;
- 2.54. In December 2013, the Chief Coroner of Ontario recommended the abolishment of indefinite solitary confinement, as appears from a copy of the report entitled "*The Inquest touching the death of Ashley Smith: Jury verdict and recommendations*", filed as Exhibit **P-13**;
- 2.55. Even though the UN Special Rapporteur, the UN Committee against Torture, the OCI and the Chief Coroner of Ontario have all reached similar conclusions on the segregation of inmates, this practice has not significantly declined in number or length, especially in the case of inmates with mental health disorders:
- 2.55.1. From 2012 to 2015, there have been more than 24,717 placements in solitary confinement, which represents an annual average of 8,239 placements, as appears from a copy of an OCI report entitled *Administrative Segregation in Federal Corrections – 10 Year Trends*, filed as Exhibit **P-14**;
- 2.55.2. The average number of consecutive days spent in administrative segregation was 35 days from 2011 to 2014 and descended to 27 days in 2015²²;
- 2.55.3. More than half of the persons admitted to administrative segregation stay for more than 30 days²³;

²¹ *Consideration of reports submitted by States parties under art. 19 of the Convention*, P-12 at p. 6.

²² *Administrative Segregation in Federal Corrections – 10 Year Trends*, P-13 at p. 2.

²³ *2014 Corrections and Conditional Release Statistical Overview*, P-3 at p. 68.

2.55.4. 63.2% of inmates with a segregation history suffer from a mental health disorder²⁴;

2.55.5. In 2012-2013, 49% of the inmate population received at least one institutional mental health service. This number rises to 75% in the case of women offenders, as appears from a copy of the OCI's *2013-2014 Annual Report*, filed as Exhibit **P-15**;

2.55.6. In the last years, 97.8% of all solitary confinements were administrative in nature and were thus of an indefinite duration²⁵;

2.56. The unlawful and intentional interference with the Class members' rights entitles them to seek punitive damages against the CSC;

THE DAMAGES SOUGHT BY CLASS MEMBERS

2.57. For Class members placed in prolonged solitary confinement:

2.57.1. The Petitioner is entitled to seek for herself and each Class member compensation for the unjustified violation of their constitutional rights to liberty and security, their right not to be subjected to cruel and unusual treatment and for their right to be treated with humanity and with the respect due to the human person, amounting to \$500 per day spent in solitary confinement, for each day after 72 hours;

2.58. For Class members with mental health disorders:

2.58.1. The Petitioner is entitled to seek for herself and each Class member compensation for the unjustified violation of their constitutional rights to liberty and security, their right not to be subjected to cruel and unusual treatment, for not having been treated with humanity and with the respect due to the human person, and for not being submitted to separate treatment appropriate to their mental condition, amounting to \$500 per day spent in solitary confinement;

²⁴ 2014 *Corrections and Conditional Release Statistical Overview*, P-3 at p. 67

²⁵ *Solitary Confinement Segregation in Canadian Federal Corrections: A Prison Ombudsman's Perspective*, P-4.

2.58.2. For persons who are members of both classes, the Petitioner only requests compensation of \$500 per day spent in solitary confinement;

2.59. For all Class members, the Petitioner is further entitled to seek for herself and for each Class member an amount of \$10 000 as punitive damages;

THE CASE OF THE PETITIONER

2.60. Arlene Gallone is 24 years old;

2.61. On June 22, 2012, she was condemned and started to serve her ten-month and fifteen-day provincial sentence. She was also sentenced to a LTSO of six years;

2.62. On January 20, 2013, Arlene Gallone finished serving her provincial sentence and started her LTSO. On this date, she became a federal offender and was placed under the management of the CSC;

2.63. Her LTSO imposed the following conditions:

- i. to live in either a Community Residential Facility or a CSC establishment, namely the Thérèse-Casgrain Halfway House;
- ii. to follow psychiatric treatment;
- iii. to not consume drugs and alcohol;
- iv. to avoid contact with certain people, including her co-offender and daughter's father;
- v. to maintain or research employment; and
- vi. to declare her relations;

as appears from a copy of her Correctional Plan dated October 2, 2013, filed as Exhibit **P-16**²⁶;

2.64. In February 2013, a few days after arriving at Thérèse-Casgrain Halfway House, Arlene Gallone was sent to the Joliette Establishment for breaching a condition of her LTSO;

2.65. In total, she spent approximately a year and a half at Joliette, during which the CSC held her in solitary confinement for more than nine months, as

²⁶ See p. 4.

appears from copies of her *Segregation review* dated September 3, 2013, filed as Exhibit **P-17**, *Assessment for decision* dated December 16, 2013, filed as Exhibit **P-18**, and a Federal Court decision concerning her rendered on May 8, 2015, filed as Exhibit **P-19**²⁷;

- 2.66. In its decision, the Federal Court quashed the suspension of Arlene Gallone's LTSO, and thereby recognized the seriousness of the privation of her liberty and her needs for mental health care :

[19] In addition, where the assessment of physical or mental capacities may have an impact on the type of conditions to be imposed, a hearing would be appropriate. Here, the Correctional Service's community mental health team, as well as the staff member supervising her, raised concerns about the applicant's cognitive abilities and intellectual limitations. Meeting with the applicant would have certainly allowed for an assessment of the grounds of the staff's concerns, in addition to hearing the applicant's explanations regarding the events leading up to the suspension, a decision which significantly restricted her residual liberty.

[...]

[21] In this case, the duty of procedural fairness was particularly onerous given that, as the applicant pointed out, she was subject to highly restrictive constraints during her re-admissions (in a maximum security penitentiary, in solitary confinement 23 hours a day, with nothing in her cell but the clothes on her back).

- 2.67. When Arlene Gallone first arrived at Joliette, the CSC knew or ought to have known of her mental health disorders, which were detailed in her October 5, 2012 Criminal Profile, as appears from her Correctional Plan, Exhibit P-16;
- 2.68. The CSC further knew or ought to have known of her mental health disorders when she was first placed in segregation. The nurse who conducted her preliminary assessment concluded that she was "showing bizarre behaviour, suggesting serious mental disorder", and was concerned with her suicidal behaviour, as appears from a copy of that assessment on March 12, 2013, filed as Exhibit **P-20**;
- 2.69. Arlene Gallone's numerous stays in segregation exacerbated her mental health disorders, causing her distress, anxiety, depression, loss of appetite and difficulty to interact with other members of the staff and co-inmates, sleep disturbance and loss of confidence;

²⁷ See also P-16.

2.70. The CSC further aggravated her condition by holding her in solitary confinement on numerous occasions for prolonged periods. Her segregation still has an impact on her mental health today;

2.71. Arlene Gallone describes her time in the hole at Joliette as hell. More than two years after her last stay in solitary, she is still deeply affected by this inhuman treatment;

2.72. Since January 2015, Arlene Gallone has not gone back to Joliette and has not had to experience solitary confinement;

2.73. Arlene Gallone's case exemplifies the CSC's systematic and negligent use of segregation. Rather than working to reintegrate her in society, like it is mandated to do, the CSC imposed a cruel and inhuman treatment on Arlene Gallone and violated her constitutional rights to liberty and security, as well as her quasi-constitutional rights to be treated with humanity and with the respect due to the human person and to receive separate treatment appropriate to her mental condition;

3. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings in that:

3.1. The size of the Class is conservatively estimated to include thousands of inmates placed in a federal penitentiary situated in Quebec;

3.2. It is impossible for the Petitioner to contact and obtain mandates from every class member;

4. The Petitioner seeks to have the following questions of fact and law, which are identical, similar or related and unite each member of the Class, decided by a class action:

4.1. Does the solitary confinement of the Class members violate section 7 or section 12 of the Canadian *Charter of Rights and Freedoms*? If so, are such violations justified under section 1?

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

- 4.3. Is the Respondent committing a civil fault by placing class members into solitary confinement?
- 4.4. Should the Respondent compensate the Petitioner and the Class members for the damages caused by its civil fault?
- 4.5. Is the Respondent unlawfully and intentionally interfering with the rights of Class members under the *Charter of Human Rights and Freedom*?
- 4.6. Are the Petitioner and Class members entitled to punitive damages under the *Charter of Human Rights and Freedom*?

5. It is appropriate to authorize a class action on behalf of the Class members for the following reasons:

- 5.1. Only the institution of a class action will provide the Class members with reasonable access to justice;
- 5.2. The cost of bringing each individual action would disproportionately exceed the amount sought by each against the Respondent;
- 5.3. If Class members actually exercised their rights, the sheer number of victims would lead to a multitude of individual actions instituted in different jurisdictions, which could lead to contradictory rulings on questions of fact and law that are for all intents and purposes identical to all the Class members;
- 5.4. A class action would serve to deter the Respondent from neglecting their legal obligations to protect the human rights of inmates;

6. The nature of the action that the Petitioner seeks to institute is

- 6.1. An action in compensatory and punitive damages;

7. The Petitioner seeks the following conclusions:

GRANT the Petitioner's Motion on behalf of all Class members;

CONDEMN the Respondent to pay the Petitioner and each Class member in prolonged solitary confinement the amount of 500\$ per day spent in solitary

confinement, for each day after 72 hours, plus interest from the date of service of this motion;

CONDEMN the Respondent to pay the Petitioner and each Class member with a mental health disorder the amount of \$ 500 per day in solitary confinement, plus interest from the date of service of this motion;

CONDEMN the Respondent to pay the Petitioner and each Class member the amount of \$10,000 as punitive damages;

ORDER the collective recovery of the claims;

ORDER the liquidation of the class members' individual claims;

THE WHOLE with costs, including costs of all experts, notices and expenses of the administrator, if any;

8. The Petitioner is apt to assume an adequate representation of the class members that she intends to represent for the following reasons

- 8.1. The Petitioner is a class member. She has an honest and strong desire to represent the interests of the members;
- 8.2. She is willing to cooperate fully with her attorneys in order to diligently carry out the action;
- 8.3. She is represented by attorneys who have extensive experience in class action litigation;

9. Petitioner requests and proposes that the class action be brought before the Superior Court, sitting in the district of Montreal, for the following reasons:

- 9.1. A large amount of the class members reside in Montreal, including the Petitioner;
- 9.2. The Petitioner's attorneys practice in the district of Montreal;

FOR THESE MOTIVES, MAY IT PLEASE THE COURT :

GRANT the Petitioner's motion;

AUTHORIZE the class action hereinafter described as:

An action in compensatory and punitive damages;

GRANT the Petitioner's Motion to obtain the Status of Representative of all class members forming part of the Class hereinafter defined as:

Class members in prolonged solitary confinement

All persons held in solitary confinement after February 24, 2013 for more than 72 consecutive hours, in a federal penitentiary situated in Quebec, including consecutive periods totalizing more than 72 hours separated by periods of less than 24 hours;

AND

Class members with mental health disorders

All persons held in solitary confinement after February 24, 2013 in a federal penitentiary situated in Quebec and who had a mental health disorder, including disorders of thought, mood, perception, orientation or memory that significantly impairs judgment, behaviour, the capacity to recognize reality or the ability to meet the ordinary demands of life as defined by section 85 of the *Corrections and Conditional Release Act*²⁸;

IDENTIFY as follows the principle questions of fact and law to be determined collectively:

Does the solitary confinement of the Class members violate section 7 or section 12 of the Canadian Charter of Rights and Freedoms? If so, are such violations justified under section 1?

Are the Class members entitled to damages as a just and appropriate remedy under section 24 (1) of the Canadian Charter of Rights and Freedoms?

Is the Respondent committing a civil fault by placing class members into solitary confinement?

Should the Respondent compensate the Petitioner and the Class members for the damages caused by its civil fault?

Is the Respondent unlawfully and intentionally interfering with the rights of Class members under the Charter of Human Rights and Freedom?

Are the Petitioner and Class members entitled to punitive damages under the Charter of Human Rights and Freedom?

IDENTIFY as follows the conclusions sought in relation thereof:

GRANT the Petitioner's Motion on behalf of all Class members;

CONDEMN the Respondent to pay the Petitioner and each Class member in prolonged solitary confinement the amount of 500\$ per day spent in

²⁸ SC 1992, c.20 ("**CCRA**") at s. 85.

solitary confinement, for each day after 72 hours, plus interest from the date of service of this motion;

CONDEMN the Respondent to pay the Petitioner and each Class member with a mental health disorder the amount of \$ 500 per day in solitary confinement, plus interest from the date of service of this motion;

CONDEMN the Respondent to pay the Petitioner and each Class member the amount of \$10,000 as punitive damages;

ORDER the collective recovery of the claims;

ORDER the liquidation of the class members' individual claims;

THE WHOLE with costs, including costs of all experts, notices and expenses of the administrator, if any;

ORDER the publication of a notice to the class members according to the terms to be determined by the Court;

REFER the present file to the Chief Justice for determination of the district in which the class action should be brought and to designate the Judge who shall preside over the hearing;

THE WHOLE with cost, including the cost of all notices;

MONTREAL, February 24, 2016

Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE

Counsel for the Plaintiff

NOTICE OF PRESENTATION

TO : **Attorney General of Canada**
Guy-Favreau Complexe
200, René-Lévesque Boulevard West
9th Floor
Montréal (Québec) H2Z 1X4

TAKE NOTICE that the present *Motion for authorization to institute a class action and obtain the status of representative* will be presented before this Honourable Court, at the Palais de justice, located at 1, Notre-Dame Street East, in the city and district of Montreal, on the date set by the coordinating judge of the class actions chamber.

PLEASE ACT ACCORDINGLY

Montréal, this February 24, 2016


TRUDEL JOHNSTON & L'ESPÉRANCE
Attorney for Petitioner

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-06- 000781-16-7

(Class Action)
SUPERIOR COURT

ARLENE GALLONE

Petitioner

v.

ATTORNEY GENERAL OF CANADA

Respondent

LIST OF EXHIBITS

- EXHIBIT P-1: Copy of a CSC website page entitled “*Our Role*”;
- EXHIBIT P-2: Copy of a CSC website page entitled “*National Facility Directory*”;
- EXHIBIT P-3: Copy of the *2014 Corrections and Conditional Release statistical overview*;
- EXHIBIT P-4: Copy of a document prepared by Office of the Correctional Investigator entitled *Solitary Confinement Segregation in Canadian Federal Corrections: A Prison Ombudsman’s Perspective*;
- EXHIBIT P-5: Commissioner’s *Administrative Segregation Directive* Number 709;
- EXHIBIT P-6: *Administrative Segregation Guidelines* Number 709-1;
- EXHIBIT P-7: Copy of the UN Report on the use of solitary confinement;
- EXHIBIT P-8: Article written by Stuart Grassian, M.D., entitled: “*Psychiatric Effects of Solitary Confinement*”;
- EXHIBIT P-9: Copy of the report from John Service, PhD, entitled “*A Review of the Implementation of the Correctional Service of Canada’s ‘Mental Health Strategy’*”;
- EXHIBIT P-10: Copy of OCI’s *2011-2012 Annual Report*;
- EXHIBIT P-11: Copy of OCI’s *2009-2010 Annual Report*;

- EXHIBIT P-12:** *Consideration of reports submitted by States parties under article 19 of the Convention of the Committee against Torture;*
- EXHIBIT P-13:** Report entitled *Inquest touching the death of Ashley Smith; Jury verdict and recommendations* of the Chief Coroner of Ontario;
- EXHIBIT P-14:** Copy of the OCI's report entitled *Administrative Segregation in Federal Corrections – 10 Year Trend;*
- EXHIBIT P-15:** Copy of OCI's *2013-2014 Annual Report;*
- EXHIBIT P-16:** Copy of the Arlene Gallone's *Correctional Plan* dated October 2, 2013;
- EXHIBIT P-17:** *Segregation review* dated September 3, 2013;
- EXHIBIT P-18:** *Assessment for Decision* dated December 16, 2013,
- EXHIBIT P-19:** Arlene Gallone v. R, Federal Court, May 8, 2015;
- EXHIBIT P-20:** Copy of the *Preliminary Assessment* dated March 12, 2013.

Montreal, February, 24 février 2016



TRUDEL JOHNSTON & LESPÉRANCE
Attorney for the Petitioner

No.: 500-06-
SUPERIOR COURT
(Class action)
DISTRICT OF MONTRÉAL

ARLENE GALLONE

Petitioner

c.

ATTORNEY GENERAL OF CANADA

Respondent

Notre dossier: 1341-1

BT 1415

**MOTION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND OBTAIN
THE STATUS OF REPRESENTATIVE
(C.C.P. 575)**

ORIGINAL

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