Federal Court  Cour fédérale

Date: 20220421

Docket: T-2189-14

Citation: 2022 FC 580

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 21, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

CHRISTOPHER LILL

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

I. Overview

[1] Christopher Lill has been serving a life sentence without the possibility of parole for 25 years since 2007 as a result of a first degree murder conviction. On October 21, 2011, while incarcerated at La Macaza Institution, a federal medium security facility, a violent incident involving another inmate occurred. Three days after that incident, Mr. Lill was placed in

administrative segregation, where he would remain from October 24 until November 30, 2011. On November 7, 2011, Mr. Lill's security classification was raised to maximum security. On November 30, 2011, he was transferred to Port-Cartier Institution, a maximum security facility. Mr. Lill was placed in maximum security facilities until May 2, 2014, when he was transferred to a medium security facility as a result of his classification having been lowered from maximum to medium security in January 2014.

[2] The Correctional Service of Canada [CSC] admits that an error was committed in the investigation process conducted by the Preventive Security Department in the aftermath of the October 21, 2011, incident. Indeed, the information available did not demonstrate that a comprehensive analysis had been conducted prior to ordering Mr. Lill's placement in segregation. In fact, there was no formally recorded information to identify Mr. Lill as the instigator of the altercation. Further, the CSC acknowledges that the flaws affecting the validity of the decision to keep Mr. Lill in administrative segregation tainted the rest of the process of reassessing the plaintiff's security classification. The security classification was reassessed even before the investigation by the security intelligence officers had shed light on the alleged fight. The reassessment of Mr. Lill's security classification did not follow a fair, reasonable and transparent decision-making process based on all of the relevant information.

[3] Mr. Lill is claiming damages from the defendant in the amount of $456,000 for his placement in administrative segregation for the 30-day period from October 31, 2011, to November 30, 2011, inclusively, and for the change in his security classification that caused him to be wrongly placed in maximum security for the following 884 days, from December 1, 2011, to May 2, 2014, inclusively. Because the CSC has admitted its fault with respect to Mr. Lill's

placement in administrative segregation and change in security classification, the issues in this case involve the other essential elements of liability, namely, causation and injury. The CSC argues that, regardless of the fault committed against Mr. Lill, no causal link between that fault and the alleged injuries was established and that, if such a link had been established, that link would have been completely severed, on at least two occasions, as a result of Mr. Lill's actions.

[4] I do not agree with the CSC. At no time during the months following Mr. Lill's transfer to Port-Cartier had that link been severed. My impression of Mr. Lill's character and the evidence of numerous witnesses is that Mr. Lill was admittedly combative, disregarded the advice of others, and at times displayed irreverence and arrogance. However, there is no evidence to suggest that Mr. Lill's incarceration at the maximum security facilities would have been shortened had he been more compliant. The causal link between the admitted fault and the injury caused over the entire period covered by this action is therefore intact.

[5] However, the amount claimed is exaggerated, as it should not be forgotten that Mr. Lill will be compensated following the resolution of the class actions in *Gallone v Attorney General of Canada*, 2020 QCCS 5107; *Brazeau v Attorney General (Canada)*, 2019 ONSC 1888; *Reddock v Canada (Attorney General)*, 2019 ONSC 5053; *Brazeau v Canada (Attorney General)*, 2020 ONCA 184; *Gallone v Attorney General of Canada*, 2020 QCCS 3992; and *Brazeau v Canada (Attorney General)*, 2020 ONSC 7229 [collectively *Reddock* class actions]. Indeed, on April 19, 2021, this Court issued a consent order declaring that Mr. Lill's periods of administrative segregation would not be the subject of the trial. This order was issued to avoid double compensation to Mr. Lill. Despite this order, to which he consented, Mr. Lill maintained his claim. The amount claimed does not take into account the nature and content of the damage

suffered by Mr. Lill according to the jurisprudence to that effect. The evidence shows that there is little difference between the conditions of confinement in a medium security institution and a maximum security institution. Furthermore, Mr. Lill has not demonstrated that he has suffered psychological harm. He did not file an expert report showing a connection between the fault and the alleged injuries. Finally, Mr. Lill is not entitled to exemplary or punitive damages because he has not shown that the CSC acted in bad faith. The fault was committed in good faith, and the subsequent actions were taken in good faith to assist Mr. Lill in his correctional journey.

II. Facts

[6] This case arose out of an alleged fight between two inmates approximately eleven years ago. As a result, Mr. Lill was placed in administrative segregation and his security classification was raised.

[7] From 2008 to 2010, Mr. Lill was serving his sentence at Donnacona Institution, a maximum security facility. While that period is not directly relevant to this action, it should be noted that Mr. Lill spent the majority of his time there in segregation, away from the general population. He was not an exemplary inmate, apparently, so when he was later to be transferred back there, Donnacona Institution refused him. We will come back to this. Following the review of his security classification, Mr. Lill was transferred to Archambault Institution, a medium security facility, before being transferred to La Macaza Institution, another medium security facility, in September 2010, where he would remain until November 30, 2011.

[8] During his detention at La Macaza, he was allegedly involved in multiple incidents of varying degrees of seriousness. He is said to have burned a Mohawk flag (allegedly in accordance with his traditions), pushed an elder and driven a golf cart towards a staff member. In addition, he was suspected of trafficking. Mr. Lill partially or fully denied responsibility for these incidents. However, since the elder in question was not called to testify to clear the air, and since several credible witnesses have confirmed Mr. Lill's responsibility for these incidents, it is difficult to conclude that he was not responsible. There is no doubt that Mr. Lill was often his own worst enemy. The testimony of Alexandre Leblanc-Jolicoeur, Mr. Lill's parole officer at La Macaza, about Mr. Lill's character very much reflects my own impression of the plaintiff during his testimony. Mr. Leblanc-Jolicoeur testified that while Mr. Lill was no better or worse than most inmates, his character became more combative when penitentiary staff tried to make him follow his correctional plan. Mr. Lill became difficult to deal with, with an arrogant, sometimes belligerent attitude, demonstrating an inability to admit he was wrong, always believing he knew better than anyone else how to behave and wanting to do things his own way. In any event, Mr. Lill's responsibility for these incidents is not the subject of this trial. It is therefore not necessary to dwell on it, except to say that Mr. Lill does not appear to have been a model inmate during his incarceration at La Macaza institution. This is also evident from much of his institutional journey that is the subject of this action.

[9] On October 24, 2011, correctional officers at La Macaza Institution were informed of an alleged physical assault by Mr. Lill on fellow inmate Douglas Foreman on October 21, 2011. Ève Melançon, who was a security intelligence officer [SIO] at the facility at the time, was assigned to find out who had committed the assault. She met with Mr. Foreman, who told her that Mr. Lill was the assailant and that he wanted to file a criminal complaint against Mr. Lill.

Ms. Melançon also met with Mr. Lill and another inmate. Mr. Lill was therefore placed in administrative segregation pursuant to former paragraph 31(3)(a) of the *Corrections and Conditional Release Act*, SC 1992, c. 20 [Act], in order to ensure the safety of the inmates, including Mr. Foreman, during the investigation of the events of October 21, 2011.

Paragraph 31(3)(a) of the Act then read as follows:

Purpose	**Objet**
31(1) The purpose of administrative segregation is to keep an inmate from associating with the general inmate population.	31(1) L'isolement préventif a pour but d'empêcher un détenu d'entretenir des rapports avec l'ensemble des autres détenus.
Duration	**Retour parmi les autres détenus**
(2) Where an inmate is in administrative segregation in a penitentiary, the Service shall endeavour to return the inmate to the general inmate population, either of that penitentiary or of another penitentiary, at the earliest appropriate time.	(2) Le détenu en isolement préventif doit être replacé le plus tôt possible parmi les autres détenus du pénitencier où il est incarcéré ou d'un autre pénitencier.
Grounds for confining inmate in administrative segregation	**Motifs d'isolement préventif**
(3) The institutional head may order that an inmate be confined in administrative segregation if the institutional head believes on reasonable grounds	(3) Le directeur du pénitencier peut, s'il est convaincu qu'il n'existe aucune autre solution valable, ordonner l'isolement préventif d'un détenu lorsqu'il a des motifs raisonnables de croire, selon le cas :
(a) that	a) que celui-ci a agi, tenté d'agir ou a l'intention d'agir d'une manière compromettant la sécurité d'une personne ou
(i) the inmate has acted, has attempted to act or intends to	

act in a manner that jeopardizes the security of the penitentiary or the safety of any person, and	du pénitencier et que son maintien parmi les autres détenus mettrait en danger cette sécurité;
(ii) the continued presence of the inmate in the general inmate population would jeopardize the security of the penitentiary or the safety of any person,	
…	…

[10] Mr. Lill still denies assaulting Mr. Foreman to this day and claims that he did not learn of the allegations until October 27, 2011, a few days after he was placed in segregation following the incident. Gary Brandon, another of Mr. Lill's fellow inmates, testified that Mr. Lill was not involved in the incident. However, it is difficult to place much probative value on Mr. Brandon's testimony that he reported Mr. Foreman to the penitentiary authorities on two occasions and to the inmate committee. According to Mr. Brandon, Mr. Foreman fabricated the scuffle with Mr. Lill in order to be sent back to British Columbia. Since Mr. Lill was not Mr. Brandon's friend and, by his own admission, Mr. Brandon was risking his safety by denouncing his fellow inmate, Mr. Foreman, it is difficult to understand the motivation behind this persistent denunciation. This significant inconsistency affects the overall credibility of the witness. In any event, Mr. Lill's actual or proven involvement in this incident is of limited relevance to this action, especially since the defendant has already admitted that a fault was committed in the reassessment of Mr. Lill's security classification following the incident.

[11] On October 31, 2011, at the segregation committee meeting on Day 5 of segregation, the committee members had already decided to recommend to the institutional head that Mr. Lill's

security classification be raised. In addition, they felt that Mr. Lill could not be held in the same facility as Mr. Foreman because Mr. Foreman wished to file an assault complaint against him. When informed of this conclusion, Mr. Lill vehemently maintained his innocence and stated that he was willing to take a polygraph test to confirm that he was telling the truth. However, his reintegration into the general population was deemed inappropriate, and with his security classification having been raised, his transfer from La Macaza to a maximum security facility seemed inevitable. After being informed that his security classification would be raised to maximum, requiring his transfer to another penitentiary, Mr. Lill implored the committee to arrange for his transfer to Donnacona rather than Port-Cartier. However, that request was refused by Donnacona because of Mr. Lill's behaviour while incarcerated there—as noted above, he had been incarcerated for two years at Donnacona, most of that time in segregation.

[12] Mr. Lill's security assessment was completed on October 31, 2011. It would have been possible to change the recommendation if new relevant information had surfaced. The institutional head of La Macaza, Stéphane Lalande, had the final say, and it was open to him to disagree with the committee's decision, but that was not the case here. Mr. Lalande testified that he agreed with Ms. Melançon's assessment that Mr. Lill had committed the assault and, on November 7, 2011, approved the recommendation submitted by his management team to raise Mr. Lill's security classification. In the circumstances, this meant that a transfer to a maximum security facility was in order.

[13] However, there are only two maximum security institutions in Quebec, namely, Port-Cartier and Donnacona. Since Donnacona refused to accept Mr. Lill's transfer, only Port-Cartier Institution could accommodate him in Quebec. Moreover, Mr. Lill had not applied for an inter-

regional transfer, the Regional Reception Centre [RRC] was overloaded at the time and the institutional head wanted to end Mr. Lill's segregation as quickly as possible. In these circumstances, and despite Mr. Lill's spirited protests, a transfer to Port-Cartier Institution was approved. As with any inter-institutional transfer, a pre-transfer risk assessment was conducted. As a result of the assessment, it was concluded that Mr. Lill fit the profile of the inmate population at Port-Cartier and could be suitably accommodated.

[14] However, this was not the case.

[15] On November 30, 2011, Mr. Lill was released from administrative segregation and transferred to Port-Cartier, where he arrived on December 12, 2011, after having been previously referred to the RRC. Upon arrival at Port-Cartier Institution (and already on the bus to the facility), Mr. Lill began protesting his transfer, refused to enter the facility, and claimed that he had been unfairly transferred and that his security classification should never have been raised. He allegedly threatened to attack fellow inmates or staff members in order to remain in segregation and thus not become part of the general population of the institution. Mr. Lill wanted to avoid the protective custody designation that comes with being incarcerated in Port-Cartier and argued that he feared for his safety if he were to enter the general population—the evidence suggests that Mr. Lill was concerned about his family's ties to the Hells Angels and feared for his life in Port-Cartier because other inmates had been involved with rival groups. However, in addition to the pre-transfer inquiry at La Macaza, the institutional head of Port-Cartier Institution, Gilles Rose, testified that he had made inquiries to ensure that Mr. Lill's safety would not be compromised if he were to enter the general population. All of these inquiries and even consultation with the inmate committee revealed that Mr. Lill could have entered the general

population without any problems and that his fears were probably unfounded. Efforts were also made to reassure Mr. Lill, but to no avail. Throughout this period, Mr. Lill did not participate in any prison programs, as he had not served enough of his sentence.

[16] At Port-Cartier Institution, located on the North Shore, far from his family in Gatineau, Mr. Lill received no family visits. His grandmother's health and his mother's work, among other things, made it impossible for them to make the trip, despite the financial compensation and the possibility of extended visits offered by the CSC to inmates incarcerated at the institution. Reports about Mr. Lill paint a picture of a man who often reported being anxious and nervous when among the general population. This may explain his tendency to seek segregation. Chantal Girouard, Mr. Lill's parole officer at Port-Cartier, testified that the goal with Mr. Lill was instead to integrate him into the general population of Port-Cartier Institution, which he continued to refuse to do; between December 12, 2011, and September 27, 2012, Mr. Lill was placed in the general population for only 27 days, that is, from December 12, 2011, to January 7, 2012, inclusively. In fact, Mr. Lill was placed in voluntary segregation beginning on January 7, 2012, because he had reported being anxious and stressed out, apparently over his appeal of his conviction, which was heard in January 2012 and for which he was awaiting a decision, and he needed to be kept separate from the rest of the population to avoid [TRANSLATION] "flipping out". On January 19, 2012, Mr. Lill barricaded himself in his cell and self-harmed by cutting himself—the report suggests that Mr. Lill did this to get attention, as he had not received any news about a request he had made to Port-Cartier staff.

[17] Mr. Lill's psychological condition was of concern, and the reports on Mr. Lill show that various approaches had been taken by Port-Cartier staff to try to help him better manage his

anxiety, stress and aggression in order to integrate into the general population, including by requiring him to complete anger management training, but Mr. Lill refused to cooperate, preferring segregation to integration. Reports indicate that Mr. Lill regularly complained about a variety of issues, particularly his conditions of confinement and officer conduct, and that he was angry with the staff at La Macaza over his raised security classification and transfer to Port-Cartier. Furthermore, when staff in Port-Cartier tried to intervene with Mr. Lill, he did not seem to listen and simply continued to raise the same issues and repeat the same complaints. The reports show that Mr. Lill had difficulty making progress with his rehabilitation plan because he was entrenched in his positions and unable to question himself.

[18] Ms. Girouard testified about the difference between medium and maximum security facilities, the main difference being that the movement of inmates within the facility was more restricted and controlled in a maximum security facility. Inmates had the same access to work, school, gym, and activities for Indigenous inmates; however, inmates in maximum security facilities did not have unrestricted access to workstations and were more restricted in their movements from one station to another.

[19] In May 2012, having already been in segregation since January 7, 2012, Mr. Lill suggested that he be transferred to Donnacona in order to get out of segregation, promising to integrate into the general population there. According to Ms. Girouard, Donnacona denied the transfer application because, while Lill was serving his sentence there, he had constantly tried to manage his own sentence in segregation—Mr. Lill wanted things done his way! Furthermore, Ms. Girouard stated that she was not convinced that Mr. Lill could be transferred directly from segregation in Port-Cartier to a medium security facility; Mr. Lill had told her, upon his arrival in

Port-Cartier, that he would act violently towards his fellow inmates, and he did not show her that his behaviour warranted a lowering of his security classification to medium security. She added that at the time, federal institutions were legally required to review inmates' security classifications every two years. Therefore, Mr. Lill's security classification would have been reviewed in 2013.

[20] The impression that emerges from the evidence is that Mr. Lill became frustrated with the staff at Port-Cartier because no one was willing to help him find a quick way back to a medium security facility. Donnacona would not accept him, so he requested a transfer to the Regional Mental Health Centre [RMHC], a psychiatric hospital located at Archambault Institution, for a mental health program. Although Port-Cartier remained his home institution, Mr. Lill could at least try again to find a way to have his security classification lowered to medium. Given Mr. Lill's behaviour, I would not be surprised if the Port-Cartier staff were not unhappy to see him go to the RMHC.

[21] On September 27, 2012, further to his request, Mr. Lill was transferred to the RMHC. He still belonged to his home institution, Port-Cartier, as his presence at the RMHC was temporary. His integration at the RMHC was described by his psychoeducator as optimal, but this attitude quickly deteriorated. The RMHC receives inmates from all security levels for a relatively long period of time, while they heal. The placement is temporary because of the limited number of beds available at the facility, which must be freed up for other inmates to receive treatment. Upon his arrival, Mr. Lill was placed in an assessment range for two months to ensure that he could integrate into the mentalization program and the general population of the institution. Sophie Gosselin, a psychoeducator at the RMHC, testified that everyone at the RMHC

remembers when Mr. Lill arrived. He came in [TRANSLATION] “with great fanfare”; he was happy to be there and already knew a lot of people. But that soon changed when he realized that neither his parole officer nor the medical staff at the RMHC could help him [TRANSLATION] “fix” his security classification, because the RMHC was just a hospital, and Port-Cartier remained his home institution. Mr. Lill began to lose interest in programs and complain about the program he was in, and also began to undermine Ms. Gosselin’s authority by ridiculing her in public. Mr. Lill did not attend sessions as he had agreed to do and began to disengage from the program and the work he was being given.

[22] Mr. Lill was allegedly involved in an escape plot and drug trafficking. He was also alleged to have been a negative influence on fellow inmates in his range and to have displayed an intimidating attitude towards his psychoeducator. These facts are generally denied by Mr. Lill. On December 11, 2012, the RMHC interdisciplinary team decided to deny Mr. Lill admission to the mentalization program and to discharge him from RMHC, which meant that he would have to return to his home institution in Port-Cartier. His behaviour and lack of commitment were the main reasons for that decision.

[23] Mr. Lill could not imagine returning to square one by being transferred back to Port-Cartier Institution. On January 24, 2013, Mr. Lill was placed in administrative segregation following his involvement in an escape plot. That segregation ended on February 18, 2013; however, as a result of his unstable condition, he was transferred from Range 2B to the intensive care unit in Range 1C. Mr. Lill had demonstrated an attitude consistent with expected standards, but as a result of a suicide attempt, he was placed back in segregation from March 28, 2013, until his departure to Port-Cartier on May 27, 2013. On March 25, 2013, Mr. Lill attempted suicide.

His feelings of despair included the fact that he was to be returned to Port-Cartier, that he had not been selected for the mentalization program, and that the Supreme Court of Canada had refused to hear the appeal of his conviction. On April 3, 2013, the decision was made to delay Mr. Lill's transfer to Port-Cartier until his suicide risk level had stabilized. Efforts were underway to see that Mr. Lill was transferred to Atlantic Institution in New Brunswick, another maximum security facility where, at the very least, he would be willing to go.

[24] Karim Fakhour, the correctional manager at Archambault Institution, with which the RMHC is affiliated, testified that there is no real distinction at the RMHC in the treatment of inmates with different security classifications; inmates with minimum, medium and maximum security classifications all have access to the same services and recreation, with the exception of Range 1C, which houses inmates while they are being assessed upon arrival at the RMHC, and where movement is more restricted.

[25] On May 27, 2013, likely in response to his distress at being returned to Port-Cartier Institution, Mr. Lill was eventually transferred to Atlantic Institution. He was able to work for the first six or seven months after his arrival. Being outside of Quebec, he could not follow the Quebec curriculum, although he could in principle have followed the New Brunswick curriculum.

[26] In addition, a prison program referred to him by the RMHC was not offered in that institution due to a lack of staff; however, the fact that it was impossible for him to take part in that program was not held against Mr. Lill. Furthermore, his continued desire to participate in programs probably even helped him in his prison journey. Finally, Mr. Lill did not receive visits

from his family during his incarceration at Atlantic Institution, likely as a result of the distance. However, he did receive a few visits from his spouse, which apparently helped him emotionally.

[27] Although he remained segregated from the general population of Atlantic Institution of his own volition, Mr. Lill's behaviour and attitude during his incarceration was reportedly exemplary. As a result, his security classification was downgraded to the so-called medium security category shortly after the prescribed two-year period for reassessment, in January 2014. His classification was supposed to have been reassessed in November 2013, but due to the workload of the parole officer assigned to Mr. Lill at the time, Nathalie Waterbury, the reassessment was not conducted until after the vacation break. Mr. Lill was aware of the situation and was understanding. The officer's supervisor had also signed off on it.

[28] Mr. Lill's transfer to a medium security institution took a few months, as there was no space at the receiving institution on the day initially scheduled for the transfer. The next transfer was scheduled for May 2, 2014. Mr. Lill had not requested an interim placement at another medium security facility in the meantime. Therefore, he had to remain at Atlantic Institution until then. This type of wait is common, and offenders who have been reassessed often remain at Atlantic Institution for several months while awaiting their inter-regional transfer.

III. Procedural history

[29] On October 24, 2014, Mr. Lill commenced this action in civil liability against the defendant. In addition to allegations as to the reassessment of his security classification, Mr. Lill alleged, among other things, that the CSC was at fault in placing and maintaining him in

administrative segregation at La Macaza Institution and that he had been subjected to extreme conditions of confinement at Port-Cartier Institution and the RMHC. Mr. Lill was said to be living with the aftereffects of his time in segregation at those three institutions.

[30] A number of procedural hurdles delayed the hearing on the merits. First, the parties agreed to file a motion to stay the proceeding, pending the outcome of two applications for judicial review (T-204-15 and T-2563-14). On October 19, 2016, Justice Martineau delivered his decision on these applications, and Mr. Lill was required to amend his claim accordingly on November 4, 2016. Following numerous pre-trial conferences, an initial trial date was set for October 21, 2019. As a result of an application by Mr. Lill's counsel for a postponement for medical reasons, the proceeding was adjourned and scheduled for April 2020. Because of the pandemic, the proceeding was adjourned again and rescheduled for May 2021.

[31] On April 19, 2021, pursuant to a motion by the defendant that was initially opposed by Mr. Lill, I issued an order, by consent of counsel, to remove the periods of segregation from the scope of the trial, in light of the very real possibility of double compensation resulting from the *Reddock* class actions and the present judgment. These class actions, although each has its own particularities, will generally compensate inmates who have spent 15 days or more in administrative segregation. It appears (and this is the reason behind the April 19, 2021 order) that Mr. Lill has not opted out of at least one of these class actions and does not intend to do so, since, in his view, these are two separate claims. In any event, the time to opt out of these actions has expired, such that it is very likely that Mr. Lill will be compensated by these actions, if this has not already been done.

[32] The April 19, 2021 order was complied with, in that the length of the trial was reduced by one third (due to the many witnesses who were no longer compelled to testify about the periods of segregation applicable to Mr. Lill), and counsel addressed the issue of segregation only peripherally at trial. However, the amount of damages being claimed by Mr. Lill remained unchanged. The nine-day trial took place before me from May 12, 2021, to May 27, 2021; a total of 20 witnesses testified before me.

IV. Issue

[33] In Quebec civil law, in order to obtain damages, a person must show fault, injury and a causal link between the fault and the injury (article 1457 of the *Civil Code of Québec*, CQLR c CCQ-1991 [CCQ]. Since the CSC has admitted that it did indeed commit a fault, this judgment deals only with the other essential elements of liability, namely the causal link and the injury.

[34] The issues raised by the parties are therefore as follows:

A. Is there a causal link between the fault and the alleged injury?

B. Did Mr. Lill suffer any injury following the increase in his security classification or following his transfers to maximum security institutions and placement in the general population in those institutions, or as a result of inaccuracies in the information in his prison record in relation to these two elements?

C. Is Mr. Lill entitled to punitive damages?

D. Did Mr. Lill contribute, through his acts and omissions, to the injury he alleges he suffered?

[35] The last two issues are addressed in the second issue in this case, the issue of injury.

V. Analysis

A. *Is there a causal link between the fault and the alleged injury?*

[36] Before turning to the merits of the case, it is appropriate to take a brief look at the principles applicable to causation. Only an injury that is a logical, direct and immediate consequence of the fault may be compensated (article 1607 CCQ; *Infineon Technologies AG v Option consommateurs*, 2013 SCC 59 at para 140). Several theories have been developed in Quebec civil law to assess causation, but two stand out: the theory of reasonable foreseeability of consequences and, most notably, the theory of adequate causation (*Imperial Tobacco Canada ltée c Conseil québécois sur le tabac et la santé*, 2019 QCCA 358 at para 666 [*Imperial Tobacco*]; *Hogue c Procureur général du Québec*, 2020 QCCA 1081 at para 43 [*Hogue*]).

[37] The theory of adequate causation involves examining the various *sine qua non* conditions of the injury in order to identify which condition or conditions were the true causes of the harm (*Hogue* at para 49). It can be applied in conjunction with the reasonable foreseeability of consequences theory, which requires a causal relationship between the fault and the injury where it was foreseeable that the fault would result in that injury (*Imperial Tobacco* at paras 665–66). The requirement that the damage be a direct and immediate consequence of the fault precludes compensation for vicarious injury, also known as cascading injury. Thus, damage that is caused by a previous injury and that is not an immediate consequence of the fault cannot be compensated (*Hogue* at para 45).

[38] The causal link may also be wholly or partially interrupted by intervening events between the fault and the injury. Where (1) the causal link between the original fault and the injury is completely severed and (2) a causal link exists between the intervening event and the injury, the debtor is relieved of liability, following the principle of *novus actus interveniens* (*Solomon v Matte-Thompson*, 2019 SCC 14 at para 91 [*Solomon*]).

[39] Where the causal link is not completely severed, the fault is referred to as a contributory fault resulting in an apportionment of liability (article 1478 paragraphs 1 and 2 CCQ; *Salomon* at para 91). A debtor is also not liable for any aggravation of the injury that the victim could have avoided (article 1479 CCQ).

[40] The CSC argued that, during Mr. Lill's incarceration in Port-Cartier, or at least at the RMHC, Mr. Lill's conduct caused a break in the causal link. In the alternative, the defendant asserted that Mr. Lill's conduct contributed to the injury, which warrants shared liability.

(1) Severing of causal link as a result of Mr. Lill's conduct at Port-Cartier Institution

[41] The CSC argued that there was a complete breakdown in causation when Mr. Lill, while incarcerated at Port-Cartier Institution, unreasonably refused to enter the general population and chose to spend the remainder of his incarceration in administrative segregation. The defendant pointed out that Mr. Lill had no reason not to be among the general population at that institution, as there was no threat to his life or safety. According to the CSC, from the moment Mr. Lill decided not to integrate into the general population at the Port-Cartier Institution no matter what—even threatening staff members—Mr. Lill became the architect of his own misfortune. He

himself delayed his correctional journey, slowed down his schooling and extended the time he was classified as maximum security.

[42] I agree with the CSC that some of the injuries can be tempered by the fact that Mr. Lill himself contributed to his situation. However, I cannot go as far as the defendant and conclude that there was a complete severing of the causal link as a result of Mr. Lill's conduct at Port-Cartier Institution. The evidence suggests that the security classification should be reassessed every two years or as soon as circumstances warrant. Following this two-year rule, the re-evaluation of Mr. Lill's security classification was scheduled for late fall 2013. It was indeed around this time that Mr. Lill's security classification was reassessed and lowered to a medium security classification. It would have been very difficult, if not impossible, for Mr. Lill to have had his classification reassessed before that time. Instead, it seems to me that it was Mr. Lill's actions and stubbornness that allowed him to be transferred to the RMHC and then, instead of returning to Port-Cartier, to be transferred to Atlantic Institution, where his behaviour warranted a lowering of his security classification, all in the approximate time that it would have taken him to have had his security classification reviewed if he had been on good behaviour in Port-Cartier. Throughout his time in Port-Cartier, Mr. Lill insisted that he was denied justice; he constantly complained that his security classification had been improperly raised to maximum, that he should never have been transferred to Port-Cartier, that the conditions in segregation in Port-Cartier were abominable, and that his situation was intolerable. His incessant complaints were repeated each time prison staff met with Mr. Lill, who still would not listen to suggestions that he be integrated into the general population of Port-Cartier. Again, this is consistent with the character of the man I witnessed in his testimony—stubborn, rigid in his refusal to adapt, and unapologetic for his behaviour. It was this behaviour that prevented him from integrating into the

general population of Port-Cartier and kept him isolated, yet whether this behaviour was orchestrated or not, Mr. Lill was able to force his way into the community. Mr. Lill was able to force the hand of Port-Cartier and RMHC staff to transfer him, so that he got somewhere—Atlantic Institution—where he was able to meet with someone—Ms. Waterbury—who helped him develop a plan that worked for him, and that brought his security classification down to medium, finally correcting, in Mr. Lill's eyes, the injury that had been done to him at La Macaza when his security classification had been raised to maximum.

[43] On cross-examination, Ms. Girouard, Mr. Lill's parole officer at Port-Cartier Institution, testified that if she had been required to reassess Mr. Lill's classification, she would have given him a so-called maximum security classification, as she had to take into account the incidents that had occurred in the year prior to the reassessment of the classification at both La Macaza and Port-Cartier institutions. There was no reason to doubt the assessment at La Macaza Institution or the accuracy of the incidents in Mr. Lill's record. She assumed that the information in Mr. Lill's record was true. Moreover, because Mr. Lill was not on his best behaviour at Port-Cartier Institution, having threatened to attack other inmates or staff in order to remain in segregation, there was no reason for Ms. Girouard to believe that she should have reassessed Mr. Lill's security classification.

[44] The CSC views Ms. Girouard's testimony as evidence that the inmate's behaviour contributed to the length of his placement in a maximum security institution. However, as noted above, this argument does not take into account the fact that Mr. Lill's security classification would not be reassessed until 2013. Indeed, according to Ms. Gosselin herself, she could only

have reassessed Mr. Lill's security classification and lowered it to medium security before the two-year period expired if his conduct had been [TRANSLATION] "beyond reproach".

[45] In these circumstances, Mr. Lill's detention for just over two years in a maximum security facility was most certainly a foreseeable harm following the reassessment of Mr. Lill's security classification in 2011. It was foreseeable that Mr. Lill would not conduct himself in a manner beyond reproach. The real cause of the period of detention of just over two years in a maximum security institution is the fault of CSC. It was not due to Mr. Lill's behaviour. Mr. Lill engaged in conduct that resulted in his being classified as medium security in 2014, which was when he was scheduled for reassessment. The causal link is therefore intact and there is no apportionment of liability for the injury resulting from Mr. Lill's transfer to Port-Cartier Institution following the reassessment of his security classification.

(2) Break in causation due to Mr. Lill's behaviour at the RHMC

[46] The defendant makes essentially the same arguments for Mr. Lill's transfer to the RHMC, namely that his conduct at that facility severed the causal link between the misconduct and the alleged injuries.

[47] The same logic applies here. Without revisiting all of the incidents in which Mr. Lill was allegedly involved at the RHMC, it should be noted that Mr. Lill was described by Mr. Fakhour, the correctional officer at the RHMC, as an average inmate who had his ups and downs. The fact that Mr. Lill did not behave in a manner that would have warranted a lowering of his security

classification at the RHMC does not mean that there is a break in causation or that the injuries are not a “logical, direct and immediate” result of the misconduct.

(3) Mr. Lill’s contribution to the injuries

[48] In addition to the break in causation, the defendant argued that Mr. Lill also contributed to the injuries he suffered through his actions and attitude:

1. Refusal to integrate with the general population of Donnacona Institution for two and a half years

2. Multiple unacceptable behaviors at La Macaza Institution

3. Unjustified refusal to integrate with Port-Cartier Institution and unacceptable behaviour

4. Unacceptable and intimidating behaviour towards fellow inmates and staff at the RHMC

5. Involvement in illegal acts such as an escape conspiracy and trafficking in canteen items and drugs at the RHMC

6. Refusal to integrate with the general population in Atlantic Institution.

[49] The evidence confirms that the correctional system in Canada is highly regulated and subject to an administrative process. It has been shown that it is very difficult to meaningfully correct the trajectory on which Mr. Lill was placed without first going through a very bureaucratic review system. The difficulty is that once Mr. Lill was caught up in an

administrative error regarding the manner in which his security classification was changed from medium to maximum, he had to live with the consequences until his review process was completed. In this regard, Justice Martineau ultimately ruled in Mr. Lill's favour, and the defendant eventually admitted its error. However, by that time, Mr. Lill was already subject to a level of security that may not have been warranted and was transferred to a penitentiary where he may not have belonged. There is no doubt that Mr. Lill's attitude did not help him. The impression I got from him after his testimony, and which was confirmed by various witnesses, was that Mr. Lill was combative and relentless in dealing with his own sentence; in his mind, he was never in the wrong and the fault always lay with someone else. In a way, it was Mr. Lill's non-conformity and stubbornness that got him assessed and transferred to Atlantic Institution, where he met Ms. Waterbury, with whom he seemed to have an affinity and ultimately helped him obtain a medium security rating that allowed him to be transferred to a medium security facility where, in Mr. Lill's view, he should have always remained but for the defendant's admitted fault. As Mr. Rose testified, [TRANSLATION] "there are very ways out from Port-Cartier", but Mr. Lill had one goal: to use any means possible to get out of that facility. While there, Mr. Lill persisted and proclaimed his innocence to anyone in the institution who could help him find justice, but because of the bureaucracy, it was not possible to correct the situation immediately. If not for the defendant's error, Mr. Lill would not have had to struggle for two years to regain a medium security classification.

[50] Having concluded that the causal link was intact, I can see little evidence that Mr. Lill's conduct contributed to the alleged injuries, in general. This subject is therefore addressed later in the analysis of Mr. Lill's contribution, if any, to specific injuries.

B. *Did Mr. Lill suffer any injuries following the increase in his security classification or following his transfers to maximum security institutions and detention in the general population in those institutions, or as a result of inaccuracies in the information in his prison record in relation to these two elements?*

[51] To redress the injury he suffered as a result of his increased security classification and his transfers to and detention in maximum security facilities, Mr. Lill is seeking $456,000 in damages, or $500 for each day he spent in segregation or maximum security between November 30, 2011, and May 2, 2014.

[52] Mr. Lill argued that the protective custody designation he received as a result of his transfer to Port-Cartier Institution still affects his ability to integrate into other correctional institutions. Mr. Lill also stated that he has been harmed by the fact that his life and safety were threatened at Port-Cartier Institution and that he could not receive family visits while in custody because the institution was so remote. Mr. Lill added that the differences in the conditions of confinement between the medium and maximum security facilities caused him harm. Finally, Mr. Lill was allegedly harmed by his deprivation of liberty at Atlantic Institution.

[53] Mr. Lill also argued that he suffered psychological harm as a result of the increase in his security classification and that the defendant’s fault entitles him to exemplary and punitive damages.

[54] Before going into the details of each of the alleged injuries, it should be noted that they are exaggerated since they do not take into account:

- the April 19, 2021 order stating that the components of the action regarding administrative segregation will not be addressed to avoid double compensation;
- the state of the case law on this issue;
- the facts relating to the deprivation of Mr. Lill's liberty at Port-Cartier Institution, the RHMC and Atlantic Institution;
- the scant evidence of the alleged psychological harm; and
- the lack of evidence of entitlement to exemplary and punitive damages.

[55] I also address the issue of record keeping below, as well as the issue of interest.

(1) The April 19, 2021 order stating that the components of the action regarding administrative segregation will not be addressed to avoid double compensation

[56] Mr. Lill was clear in his opening statement and testimony that he was maintaining his original claim amount of $456,000, even though several periods of his claim are covered by the *Reddock* case. Yet, as appears from the April 19, 2021 order on consent, the purpose of the order was [TRANSLATION] "to avoid double compensation to the plaintiff for the periods he spent in administrative segregation in a penitentiary". It is surprising, to say the least, and even extreme, that Mr. Lill has not adjusted the quantum of damages sought in his claim when he consented to such an order. This attitude affects his credibility on quantum.

[57] Mr. Lill's explanation in this regard—that he seeks compensation in this action for the entire period of confinement in a maximum security facility, including the periods of segregation

in such facilities—does not hold water. The compensation stemming from the *Reddock* case covers all injuries resulting from segregation for 15 days or more, regardless of the cause. Thus, it does not matter whether or not it was the increase in security classification that led to Mr. Lill's placement in segregation. The fact is that he will be compensated in any event for these periods by the *Reddock case*. Certainly, Mr. Lill cannot be compensated a second time through this remedy for the harms resulting from segregation placements of 15 days or more. Such double compensation would affront the very purposes of class actions, the principle of finality of judgments on the merits, and the doctrine of *res judicata*. If Mr. Lill had wanted to be compensated through this action rather than through the class actions, he should have opted out of the class actions. Thus, to be consistent with the April 19, 2021 order and to avoid double compensation for Mr. Lill, the Court should only consider the following periods during which Mr. Lill was not in segregation in assessing his damages:

- Regional Reception Centre: November 30 to December 11, 2011 (11 days)
- Port-Cartier: December 11, 2011, to January 7, 2012 (27 days)
- RHMC: September 27, 2012, to January 24, 2013, and February 18 to March 28, 2013 (157 days)
- Atlantic Institution: May 27, 2013, to May 2, 2014 (340 days)

[58] Thus, Mr. Lill may be compensated for the time he was held in maximum security as a result of the increase in his security classification (including periods of segregation of less than 15 days) by this action and for his detention in administrative segregation for a period of 15 days or more by the *Reddock* case.

(2) State of the case law on this issue

[59] Mr. Lill based the quantum of damages he claims on judgments that deal with the deprivation of liberty of individuals who are not held in federal penitentiaries and who are in circumstances quite different from his own. For example, Mr. Lill relied on *Dion v Légaré*, 2019 QCCQ 8185, a decision from the Small Claims Division of the Court of Québec. In that case, the Court ordered the defendant, a police officer for the City of Lévis who had arrested and detained Mr. Dion [TRANSLATION] "for purposes of investigation" for a few hours, to pay $10,966.64 in damages and $1,000 in punitive damages. Mr. Dion alleged several harms arising from his wrongful arrest and subsequent detention. These harms are unique to Mr. Dion's situation and are not transposable to the situation of a federally incarcerated inmate. For example, Mr. Dion alleged that he was detained for several hours in the police vehicle in full view of passers-by and that he avoided Lévis for fear of having to interact with the police department that detained him. Mr. Lill also relied on *Couillard v Quebec (Attorney General)*, 2015 QCCQ 481 and *Freyre Arzate v Chartrand*, 2016 QCCQ 9725 to the same effect.

[60] The above case law led Mr. Lill to conclude that if compensation of several thousand dollars was awarded to individuals who had been deprived of their liberty for a few hours or days, then compensation of $500 per day for an inmate who was illegally transferred from a medium security facility to a maximum security one is reasonable. While the details of these cases vary, they all have one thing in common that differentiates them from Mr. Lill's situation: they were all free people, not federal inmates, who were illegally or at least improperly arrested. This is a major difference and makes the case law relied upon by Mr. Lill irrelevant. As Protonotary Morneau put it in the context of an inmate seeking compensation for a period of

segregation: “[i]t must be borne in mind that if he had not been kept in administrative segregation the plaintiff would not have been at liberty like any law-abiding individual, but would still have been an inmate in a penitentiary” (*Grenier v Canada (Attorney General)*, 2004 FC 132 at para 86 [*Grenier*]).

[61] There are no reported decisions on the damages that should be awarded to an individual who has been upgraded to a higher security institution. There are, however, decisions on compensating an inmate for the residual deprivation of liberty caused by detention in administrative segregation. These decisions can be used as a benchmark, provided that we do not forget that the deprivation of liberty in these cases was much greater. Indeed, administrative segregation is a much more draconian regime. The consensus in the scientific community is that it is detrimental to the health of the prisoner after more than 15 consecutive days, and the longer the placement lasts. There is no such consensus regarding conditions of confinement in maximum security penitentiaries.

[62] Thus, in assessing damages, the Court must bear in mind that Mr. Lill is not in the position of a person who was living free in the community and was unlawfully arrested. For example, Mr. Lill was, at the time of the fault, detained in a medium security facility and serving a life sentence. The damages are to compensate him for the difference in the conditions of his confinement between a medium security institution and a maximum security (Port-Cartier and Atlantic) and multi-level institution (RHMC). *Barker v Barker*, 2021 ONSC 158 [*Barker*], refers to three Federal Court decisions (*Abbott v Canada*, 1993 CarswellNat 455 at paras 168–78; *Saint-Jacques v Canada (Department of the Solicitor General)*, 1991 CarswellNat 353 at paras 12–22; *Grenier* at paras 86-87) having found that damages for unlawful placement in

administrative segregation generally range from $16 to $26 per day (adjusted for inflation in 2020) (*Barker* at paras 47–48).

[63] Another benchmark is the compensation awarded in Process 2 of the individual claims in the *Reddock* case, involving administrative segregation in a cell for 22 hours a day for more than 15 days. The Court awarded up to a maximum of $20,000 in damages for a cumulative period of administrative segregation in excess of 100 days, and up to a maximum of $20,000 based on certain diagnoses by a medical expert, and having caused, according to that expert's report, low (up to $10,000), medium (up to $15,000), or severe (up to $20,000) harm. Thus, in Process 2 compensation, a *Reddock* class member may be awarded a maximum aggregate amount of $40,000.

(3) Facts relating to the deprivation of Mr. Lill's liberty at Port-Cartier Institution, the RHMC and Atlantic Institution

a) *Protective custody designation*

[64] Mr. Lill alleged that he was harmed by his transfer to Port-Cartier Institution because he is now identified as an inmate in "protective custody". There was considerable discussion at trial about the effects of this designation and the circumstances leading to its attribution. However, little was said about the actual consequences in Mr. Lill's case.

[65] It would not be difficult to believe that Mr. Lill already had a protective custody designation when he arrived at Port-Cartier Institution. Indeed, he was kept away from the general population at both Donnacona and Archambault institutions when he was detained there

from 2008 to 2010. In addition, Mr. Lill was incarcerated at La Macaza Institution, a facility where sex offenders and informants are freely circulating in the open.

[66] The testimony of Ms. Girouard and that of the institutional head of Port-Cartier Institution, Mr. Rose, revealed that it was not impossible for inmates to integrate into the general population after their incarceration at Port-Cartier Institution, although it may be more difficult. Further, the evidence shows that inmates in protective custody have access to the same programs, services and resources as those in the general population. Thus, I am of the view that Mr. Lill's protective custody designation, even if I were to accept that it resulted from the transfer to Port-Cartier Institution, does not constitute an injury or a basis for an award of damages.

b) *Threat to life and safety at Port-Cartier Institution*

[67] Mr. Lill claimed in particular that he did not enter the general population at Port-Cartier Institution because he believed his past ties to the Hells Angels were putting his life at risk. This allegation is not supported by the evidence and, on the contrary, contradicts it. In fact, as Mr. Lill admitted and as the documentary evidence shows, he is no longer affiliated with this group, and has not been for many years. Moreover, his past ties to this group were taken into account when the decision was made to transfer him to this facility. The SIOs of Port-Cartier and La Macaza institutions nevertheless concluded that there was no contraindication to his transfer to Port-Cartier Institution.

[68] In addition, at Port-Cartier Institution, after being placed in segregation, Mr. Lill agreed to enter the general population, where he remained without any problems for 24 days. He then

asked to be placed in segregation again because he was stressed and afraid of [TRANSLATION] "getting jumped". He stated that he [TRANSLATION] "had no problems with fellow inmates in the population" and that it was only his anxiety about the appeal of his conviction. Finally, during Mr. Lill's detention at Port-Cartier Institution, new verifications were made with preventive security, the inmate committee and various sources to determine if his life and safety were indeed threatened. These checks showed that this was not the case.

[69] Therefore, there is no basis for compensating Mr. Lill on this claim.

c) *Geographic location of Port-Cartier Institution*

[70] Mr. Lill claimed damages for his lack of visits while he was at Port-Cartier Institution, located on the North Shore, because it was too far away for his family members, who are in Gatineau. In particular, Mr. Lill was deprived of the last years of his grandmother's life, to whom he was close, as she died during this period and her health did not allow her to visit Mr. Lill in Port-Cartier. Mr. Lill did not receive visits from his mother either, as she was too busy as a daycare manager.

[71] While the Court is sympathetic to Mr. Lill's situation, it is important to remember that the CSC must "take all reasonable steps" to ensure that the penitentiary in which the inmate is confined "is one that provides them with the least restrictive environment for that person", taking into account, among other things, the degree of custody and control necessary and the accessibility to the inmate's family (section 28 of the Act). The evidence also indicates that

special programs are in place at Port-Cartier Institution to facilitate visits, given that the vast majority of the inmates there are not from the North Shore.

[72] In addition, section 11 of the Act provides that a person sentenced or transferred to penitentiary may be received into any penitentiary. Therefore, accessibility to family is not an absolute right, but a criterion to be considered in the selection of the penitentiary. There is no indication that the CSC did not take this criterion into account. More than one request was made for a transfer to Donnacona Institution, but all were denied by the institution because of Mr. Lill's behaviour while he was there. Apart from the requests that were denied, Mr. Lill made no request for a transfer to a maximum security facility closer to his family.

[73] It is clear that, in these circumstances, the CSC had no obligation to place Mr. Lill in a maximum security institution that was closer to his family. I am therefore of the view that the harm suffered by Mr. Lill as a result of the distance from his family is not compensable in the circumstances.

d) *Difference in conditions of confinement between medium and maximum security facilities*

[74] Mr. Lill argued that the differences in conditions of confinement between a medium and maximum security facility caused him harm. Although Mr. Lill was not the direct victim of violence or even threats against him while in the general population, he claimed that there is

more violence and disorder in maximum security facilities and that the atmosphere is generally more tense than in a medium security facility.

[75] Ms. Girouard, who has worked at both Port-Cartier and La Macaza Institutions, testified that offenders in both institutions had access to school, the same resources, the gym and similar programs. According to her, the main difference between the two facilities is the movement of inmates, which is more supervised and regulated in a maximum security facility than in a medium security facility. She further argued that incidents of violence are not more common in an institution like Port-Cartier, as correctional officers are able to respond more quickly because of their equipment and the configuration of the penitentiary.

[76] This testimony is consistent with the rest of the evidence. There does not appear to be much difference between a medium security facility and a maximum security facility. Mr. Lill's residual loss of liberty when he was transferred to a maximum security facility is minimal. It is certainly much less than the loss of liberty suffered by inmates who are placed in administrative segregation. Damage awards must reflect this reality. Thus, the difference in the residual loss of liberty between an inmate in a maximum security institution and an inmate in a medium security institution does not justify an award of $500 per day. Rather, it would be reasonable to award the plaintiff compensation ranging from $6 to $18 per day, in light of the case law cited above. Thus, compensation of $18 per day would amount to a maximum award of $684 for his 38-day placement at the RRC and Port-Cartier Institution.

[77] The same logic applies to Mr. Lill's confinement at Atlantic Institution, a maximum security facility. Although the Correctional Investigator described the conditions of confinement

in the regular areas of Port-Cartier Institution as [TRANSLATION] “several points higher than those found in other maximum security penitentiaries in Canada”, there is no other evidence to suggest that the conditions of confinement are significantly different between Atlantic and Port-Cartier institutions.

[78] While incarcerated at Atlantic Institution, Mr. Lill served his sentence among a population that did not have access to the cafeteria and ate their meals in the cells. However, these inmates were able to attend school and programs. Mr. Lill refused offers from his management team to integrate him into the general population. Offenders in this population have greater freedom of movement within the institution and access to the cafeteria. The CSC cannot be held responsible for this deprivation of liberty which was the result of Mr. Lill’s choices.

[79] Therefore, for his incarceration at Atlantic Institution, it would be reasonable to set the quantum of damages on the same scale as at Port-Cartier Institution, at $18 per day for a maximum of $6,120 (340 days x $18).

e) *Deprivation of liberty at the RHMC*

[80] The RHMC is a hospital that operates as a multi-level security facility. This means that it houses inmates with minimum, medium and maximum security classifications. As a regional treatment centre, the RHMC has a mandate to provide intensive mental health care to inmates. Inmates are transferred there for clinical reasons, never for security reasons. Mr. Lill claimed that because of his so-called maximum security classification, he did not have access to the same services as other patients at the RHMC. Among other things, like all other maximum security

inmates, Mr. Lill had to be escorted if he wanted to access the gym, the yard and the library at Archambault Institution, which is the home institution of the RHMC.

[81] It appears from the testimony of Nancy Massicotte, who was the clinical director at the RHMC at the time of the events, that there is almost no difference in treatment between maximum, medium and minimum security inmates at the RHMC. Inmates have access to the gym, a common room and books regardless of their security classification. The main difference is that minimum and medium security inmates can go unescorted to Archambault Institution to access services at that facility. Maximum security inmates must be escorted.

[82] There is also a distinction to be made between Mr. Lill's placement in Range 2B, the assessment range where the above conditions apply, and his placement in Range 1C, where movements are restricted, particularly because of suicide risks. Mr. Lill was placed in this range in segregation initially because of an escape plot and remained there even after he was released from segregation, until he left the RHMC for Atlantic Institution. In this range, inmates have access to a smaller yard and, as appropriate, can participate in the same activities as all other inmates. It is not clear what services were available to Mr. Lill while he was in this range.

[83] It should also be noted that, during his placement at the RHMC, Mr. Lill was constantly surrounded by care staff, nurses and even psychiatrists. He had weekly meetings with a psychologist and group meetings facilitated by a psychoeducator. At the RHMC, he also received visits and had regular contact with family members and his girlfriend.

[84] In light of the overall conditions of confinement at the RHMC, I am of the opinion that the plaintiff was not deprived of any liberty in excess of the conditions of confinement at medium security facilities such as La Macaza. Mr. Lill's conditions of confinement at the RHMC were at least as good as those at La Macaza. No damages should be awarded for his detention at the RHMC.

(4) Insufficient evidence of the alleged psychological harm

[85] Mr. Lill alleged that he suffered significant psychological harm as a result of the increase in his security classification and subsequent transfer to a maximum security facility. This psychological distress allegedly culminated in a suicide attempt during his period of segregation at the RHMC. Mr. Lill's records are replete with entries regarding his unstable mental state, his numerous suicide attempts, his relentless efforts to clear his name and get his security classification returned to a medium level, and his continued return to segregation.

[86] However, Mr. Lill did not file a psychological report and did not call any expert witnesses to show that he suffered psychological harm as a result of this situation. Without commenting on whether psychological harm must be proven in all cases by an expert, I must say that the evidence in this case is not sufficient to determine whether Mr. Lill did in fact suffer psychological harm as a result of the CSC's fault. Nor is this evidence sufficient to determine the seriousness of that fault.

[87] Admittedly, Mr. Lill did attempt suicide on March 25, 2013. From January to March 2013, Mr. Lill was under increasing stress: waiting for the Supreme Court of Canada's

decision on his application to appeal his conviction, the negative response to this application, various proceedings in Federal Court, family concerns (father and grandparents), the burden of hiding his condition from his loved ones so as not to worry them, and the prospect of a possible return to Port-Cartier Institution.

[88] On this last point, I believe, without being able to say so in the absence of expert evidence, that the prospect of a return to administrative segregation at Port-Cartier Institution, rather than the conditions of confinement in the general population of that institution, adversely affected the plaintiff's mental state. At that time, he already had a protective custody designation. This was another reason why he did not want to return to that institution.

[89] The various reports that were submitted in evidence and that mention Mr. Lill's anxiety problems are not sufficient in themselves to establish this causal link and to justify an award of damages for psychological harm. It is therefore impossible in this case, in the absence of expert evidence, to order the defendant to pay compensation for psychological harm allegedly suffered by Mr. Lill.

(5) Lack of evidence of entitlement to exemplary and punitive damages

[90] Exemplary and punitive damages were not the main focus of Mr. Lill's argument. It is difficult to understand the basis and scope of this argument. However, it appears from the re-amended reply that Mr. Lill sees bad faith in the fact that no steps were taken to mediate the 2011 incident, that no corrections were made to his prison record, and that the transfer to

Port-Cartier Institution gave him a protective custody designation, [TRANSLATION] “placing him at risk for the remainder of his sentence”.

[91] In Quebec law, punitive damages can only be awarded where a statute expressly provides for them (article 1621 CCQ; *de Montigny v Brossard (Estate)*, 2010 SCC 51 at para 48). One statute that does so is Quebec’s *Charter of Human Rights and Freedoms*, CQLR c C-12 [Quebec Charter], which allows a court to award punitive damages against a person guilty of unlawful and intentional interference with a protected right (Quebec Charter, s 49 para 2).

[92] There is no evidence that the individuals who conducted the reassessment of Mr. Lill’s security classification acted with the intent to cause the harm that Mr. Lill alleges he suffered. Rather, the evidence reveals that they intended to ensure the safety of the inmates at La Macaza, including Mr. Foreman and Mr. Lill, by placing Mr. Lill in segregation. Indeed, the admitted fault appears to have been committed in good faith by the SIO, who failed to record all of the information pertaining to her investigation. During the testimony of this SIO, the Court found no evidence of intent to harm Mr. Lill.

[93] Moreover, the reassessment of the security classification following the segregation placement does not reveal any intent to harm Mr. Lill, but rather reflects the intent to assign Mr. Lill the security classification that is consistent with his behaviour, that being a maximum security classification rather than a medium security classification. Thus, the objective behind the reassessment was the security of the penitentiary and not the intent to harm Mr. Lill. This is evident from the testimony of Mr. Lill’s parole officer, Leblanc-Jolicoeur, and his immediate supervisor, Geneviève Ricard, who made their recommendation for an increase in the plaintiff’s

security classification in good faith, based on *prima facie* credible information recorded in several observation reports completed by several different employees, as well as on the objective result on the Security Reclassification Scale.

[94] It should also be recalled that a police officer from the Sûreté du Québec testified under oath before a justice of the peace that she had reasonable grounds to believe that the plaintiff had assaulted Mr. Foreman, which is an indictable offence under paragraph 266(a) of the *Criminal Code*, RSC 1985, c C-46. This criminal charge was not withdrawn by the provincial Crown until May 2013.

[95] The Correctional Investigator, another independent third party, noted that given the criminal charges against Mr. Lill in relation to the incident with Mr. Foreman, the review of the security classification [TRANSLATION] “can hardly be considered unreasonable in these circumstances”.

[96] As I mentioned above, Mr. Lill’s transfer to Port-Cartier Institution was done not with the objective of harming him, but because it was the only facility reasonably available in the circumstances.

[97] Finally, it must be remembered that good faith is presumed (article 2805 CCQ). Mr. Lill has not discharged his burden of proving that CSC employees acted in bad faith and intended to harm him, much less shown that the CSC itself, as an institution, wished Mr. Lill harm. The defendant committed a fault, to be sure, but nothing more.

(6) Record keeping

[98] Mr. Lill claimed that he would be harmed if incidents that allegedly did not occur were added to his prison record. This issue was not argued in detail at trial. It is difficult to know what the substance of this issue is, such as whether Mr. Lill is seeking injunctive relief.

[99] In any event, this complaint is an impermissible indirect attack on two final judgments of this Court which found that the CSC did in fact implement the remedial measures indicated as a result of the fault that gave rise to this case (*Lill v Canada (Attorney General)*, 2016 FC 1151 at paras 17–20; *Lill v Canada (Attorney General)*, 2020 FC 551 at paras 11, 75–77, 79–82 and 85–88).

(7) Interest

[100] The applicable interest rate is the one in effect in the province where the litigation originates, which in this case is Quebec (*Crown Liability and Proceedings Act*, RSC 1985, c C-50, subsection 31(1)). It is 5% from the date of default (*Interest Act*, RSC 1985, c I-15, section 4; article 1618 CCQ).

[101] Although the trial has been postponed twice, first from October 2019 to April 2020 for medical reasons by Mr. Lill and then postponed for another year, owing to the current pandemic, I find that there is no reason to interrupt the application of the period of interest in this case.

VI. Conclusion

[102] In summary, I find that Mr. Lill's conduct in Port-Cartier did not cause a break in the causal link between the fault admitted by CSC and the injury he suffered as a result of the increase in his security classification and his transfers to and detention in maximum security institutions. Mr. Lill is therefore entitled to compensation for the days he was detained in a maximum security institution as a result of the increase in his security classification, including periods of segregation of less than 15 days, but excluding periods of more than 15 days during which he was in administrative segregation (which have already been compensated by the *Reddock* case). Based on the case law and the little difference in conditions of confinement between maximum and medium security facilities, I set the amount of compensation at $18 per day for his 38-day incarceration at the RRC and Port-Cartier Institution, and for his 340-day incarceration at Atlantic Institution. Accordingly, the action is allowed, and compensation is awarded to the plaintiff in the amount of $6,804 plus interest at the rate of 5% per annum, compounded semi-annually, from the date of default until final payment.

JUDGMENT in T-2189-14

THE COURT'S JUDGMENT is that the action is allowed and compensation in the amount of $6,804.00 is awarded to the plaintiff, plus interest at the rate of 5% per annum, compounded semi-annually, from the date of default until final payment. For costs, the parties must attempt to reach an agreement. If the parties are unable to agree on costs, they may make written submissions, not exceeding five (5) pages, within fourteen (14) days of the date of this decision. Reply submissions, not exceeding two (2) pages, may be made within seven (7) days.

"Peter G. Pamel"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2189-14
STYLE OF CAUSE:	CHRISTOPHER LILL v HER MAJESTY THE QUEEN
PLACE OF HEARING:	HEARD VIA VIDEOCONFERENCE
DATE OF HEARING:	MAY 17, 18, 19, 20, 21, 25, 26 AND 27, 2021
JUDGMENT AND REASONS:	PAMEL J.
DATED:	APRIL 21, 2022

APPEARANCES:

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