CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

C.A. No: 500-09-031665-250
C.S. No: 500-06-001225-230

COURT OF APPEAL OF QUEBEC

ROYAL VICTORIA HOSPITAL

APPLICANT – Defendant

-vs.-

JULIE TANNY
and
LANA PONTING

RESPONDENTS – PLAINTIFFS

-and-

MCGILL UNIVERSITY
and
ATTORNEY GENERAL OF CANADA

IMPLEADED PARTIES - DEFENDANTS

ARGUMENT PLAN IN RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL OF APPLICANT–DEFENDANT ROYAL VICTORIA HOSPITAL ("RVH")
Respondents–Plaintiffs
Dated September 30, 2025

1. Leave to appeal a judgment authorizing a class action will only be granted in highly exceptional circumstances.[1] RVH does not demonstrate that the judgment on appeal « comporte *à sa face même* une erreur déterminante concernant l'interprétation des conditions d'exercice de l'action collective ou l'appréciation des faits relatifs à ces conditions… » Nor does the Judgment on Appeal involve « un cas flagrant d'incompétence de la Cour supérieure. »[2] Leave to appeal should be refused for the reasons to follow.

2. **First**, the Authorization Judge ("Judge") correctly applied the doctrine of *stare decisis*. The binding effect of precedent only extends to conclusions and "questions of law forming part of the *ratio decidendi* of a decision."[3] *Stare decisis* does not extend to factual conclusions or conclusions of mixed fact and law. Every single conclusion from the cases of *Morrow* and *Kastner* that RVH contends are binding on the Judge, are conclusions of fact and mixed fact and law. The Court of Appeal in *Kastner* was clear that the appeal « ne remet essentiellement, sinon même exclusivement, en question que les conclusions de fait du premier juge… »[4] The same is highlighted in *Morrow*.[5] This includes conclusions concerning Dr. Cameron's status vis-à-vis the hospital (RVH) and the hospital's liability. Contrary to RVH's submissions, *Morrow* only examined the *lien de préposition* for Dr. Cameron and not with regards to nurses, orderlies, and other employees of the RVH. As well, said judgments were decided based on the evidence before the respective courts. RVH led no evidence before this Judge showing that the evidence advanced in support of the Application for Authorization was the same as that considered in *Morrow* and/or *Kastner*. Under vertical *stare decisis,* the Supreme Court of Canada has held that lower courts may revisit and depart from the judgments of higher courts where the evidence significantly differs from that before the initial court.[6] Importantly, *Morrow* and *Kastner* are – in accordance with the principles of *stare decisis* – "only authority for what they actually decide."[7] Indeed, *Morrow* and *Kastner* are individual medical malpractice/negligence cases – where the plaintiff in *Morrow*, who was a medical professional who worked with Dr. Cameron, was diagnosed with schizophrenia, and actually "consented to the treatments."[8] By contrast, the present class action concerns

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[1] *Ligue canadienne de hockey c. Latulippe*, 2024 QCCA 843, at paras. 9-10.
[2] *Latulippe*, at paras. 9, 17; *Centrale des syndicats du Québec c. Allen*, 2016 QCCA 1878, para. 59.
[3] e.g., *R. v. Kirkpatrick*, 2022 SCC 33, at para. 127; *R. v. Sullivan*, 2022 SCC 19, at para. 64.
[4] *Kastner v. Royal Victoria Hospital*, 2002 CanLII 63769 (QC CA), at para. 7.
[5] *Morrow c. Hôpital Royal Victoria*, 1989 CanLII 1297 (QC CA), at pages 4 to 12.
[6] e.g., *Canada (Attorney General) v. Bedford*, 2013 SCC 72, at para. 44.
[7] *Michel v. Graydon*, 2020 SCC 24, at para. 15, citing *Quinn v. Leathem*, [1901] A.C. 495 (H.L.), at p. 506.
[8] *Morrow c. Hôpital Royal Victoria*, 1989 CanLII 1297 (QC CA), page 6.

systemic abuse orchestrated and perpetrated by RVH, McGill University, and the Government of Canada, including against persons who were not diagnosed with any psychological conditions. Other court judgments have also held that "depatterning and/or psychic driving… were an unwarranted trespass to the person… even by the standards of the time,"[9] consistent with evidence presented to the Judge. Authorization judges are allowed to decide questions of pure law at the authorization stage.[10] RVH's arguments are further contradicted by the mere existence of these 2 cases; *Kastner* (decided in 2002), was not abusive or subject to *stare decisis* under Morrow (decided in 1989).

3. **Second**, the Judge did not fail to distinguish between allegations of fact and opinion. The Judge expressly held that she only accepted as true "factual allegations in the application," and not "opinion, speculation or hypothesis." The "opinions" that RVH objects to are those of "psychiatrists, writers and researchers who have investigated the events surrounding the Montreal Experiments."[11] These are permissible "factual underpinnings".[12] Courts have held that media and other investigative reports may be used to establish an arguable case.[13] RVH's submissions advocate an improper evaluation of the merits at the authorization stage.[14]

4. **Third**, the Judge correctly applied the criteria for identifying "identical, similar or related issue[s] of fact and law" under art. 575(1) *C.C.P.* Each of the common issues identified at para. 210 is amply grounded in the caselaw set out in Plaintiffs' Argument Plan. This includes the questions of compensatory damages, the absence of informed consent, the commission of civil faults, the systemic nature of the faults, the exact participation of each Defendant, their direct, indirect, and solidary liability, and the injuries suffered by direct and indirect victims.[15] Defendants' other submissions are disagreements on questions of fact and mixed fact and law – neither of which can be determined at authorization.[16]

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[9] *Huard v. Canada (Attorney General)*, 2007 FC 195, para. 65.
[10] e.g., *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, at para. 55.
[11] Judgment on Appeal, at paras. 16, 23.
[12] *Infineon Technologies AG* v. *Option consommateurs*, 2013 SCC 59, at para. 134.
[13] e.g., *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, at para. 77.
[14] "A judge who rules at the authorization stage on the probative value of evidence presented in support of the application… makes an error of law warranting the Court of Appeal's intervention." *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, at para. 22.
[15] *U.T. c. Centre intégré de santé et de services sociaux de Lanaudière*, 2023 QCCS 3180, paras. 43, 45, 55; *U.T. c. Centre intégré de santé et de services de Lanaudière*, 2025 QCCA 157, paras. 6 d), 39, 42, 46-47; *S.N. c. Miller*, 2025 QCCS 85, para. 229; *Ward c. Procureur général du Canada*, 2023 QCCS 793, paras. 219, 234-235, 109-114 *Morfonios (Succession de Sarlis) c. Vigi Santé ltée*, 2021 QCCS 2489, at paras. 111-117.
[16] e.g., *Durand c. Subway Franchise Systems of Canada*, 2020 QCCA 1674, at para. 51.

Montreal, September 30, 2025

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Date: September 30, 2025 3:00:00 PM
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CANADA PROVINCE OF QUEBEC DISTRICT OF MONTREAL C.A. No.: **500-09-031665-250** C.S. No.: **500-06-000972-196**	COURT OF APPEAL OF QUÉBEC _____ **ROYAL VICTORIA HOSPITAL** APPLICANT – Defendant -vs.- **JULIE TANNY** and **LANA PONTING** RESPONDENTS – Plaintiffs -and- **MCGILL UNIVERSITY** and **ATTORNEY GENERAL OF CANADA** IMPLEADED PARTIES – Defendants

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DOCUMENTS:	**ARGUMENT PLAN IN RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL OF APPLICANT–DEFENDANT ROYAL VICTORIA HOSPITAL (“RVH”)**
NUMBER OF ATTACHED DOCUMENTS:	**1 PDF**
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Respondents – Plaintiffs
Dated September 30, 2025

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