SUPERIOR COURT
(Class Actions)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000972-196

DATE: July 31, 2025

BY THE HONOURABLE DOMINIQUE POULIN, J.S.C.

JULIE TANNY
and
LANA PONTING
and
PATRICIA EDWARDS ROBERGE, personally and in her capacity as *de facto* liquidator of the estate of her mother, the late **ELIZABETH BOYLE EDWARDS**
Applicants
v.
ROYAL VICTORIA HOSPITAL
and
McGILL UNIVERSITY
and
ATTORNEY GENERAL OF CANADA, representing the Government of Canada
Defendants

JUDGMENT
(AUTHORIZATION OF A CLASS ACTION)

JP2544

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OVERVIEW

[1] The Court authorizes a class action against the Royal Victoria Hospital ("**RVH**"), McGill University ("**McGU**") and the Government of Canada ("**AGC**"), on behalf of persons who were the direct and indirect victims of depatterning treatment conducted at the Allan Memorial Institute ("**AMI**"), under the care and methods employed by Dr. Ewen Cameron between 1948 and 1964 (the **"Montreal Experiments**").

[2] The Applicants' allegations, taken as true, bring forward a defendable argument that the Montreal Experiments involved medical processes which departed from sound medical practice and violated the patients' bodies and minds[1] and that the Defendants could be held responsible for the damages caused to the Class Members, victims of those experiments.

[3] The Applicants blame the Government of Canada for the faults of its representatives who would have negligently funded the Montreal Experiments. They also blame McGU and RVH for enabling the Montreal Experiments to take place and for the faults or omissions of their subordinates who conducted same.

[4] As defined in the application, depatterning was a process conducted with a goal of *erasing a patient's thoughts whereby patients were immobilized, rendered intellectually helpless and prevented from using their usual defences through the use of intensive Electroconvulsive therapy (ECT), sensory isolation, massive amounts of sedatives and barbiturates to lessen patients' resistance and to induce sleep treatment. It was a three-stage process in which patients lost track progressively of time and space through extreme disturbances of memory*.[2]

[5] Depatterning was followed by a "repatterning" procedure through psychic driving. Psychic driving is defined by the Applicants as subjecting the patients to *continuously repeated audio message on a looped tape, often concurrently with muscular paralytic and sedating drugs to subdue them for purposes of exposure to the looped message(s) such as Thorazine and Amobarbital. This included "negative driving" – the use of negative and destructive messages of statements that patients had expressed about themselves (for example: "you are selfish") followed by "positive driving" – the use of positive messages (for example: "you are lovable") repeated between 250,000 to 500,000 times*.

[6] The Applicants submit that the Montreal Experiments were conducted without the informed consent of the patients, or even without their knowledge.

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1 The *Second Amended Application to Authorize the Bringing of a Class Action & to Appoint the Applicants as Representative Plaintiffs* (the "***Second Amended Application for Authorization***") counts 312 paragraphs and is substantiated by 103 exhibits. This overview is a brief summary of the matter.

2 *Id*. at para. 3.

[7] The Applicants and the Class Members allegedly suffered from severe damages to their bodies and minds during and after being subjected to the Montreal Experiments.

[8] From their recourse, the Applicants are seeking that it be declared that Montreal Experiments consisted of unlawful human experimentation enabled by the Government of Canada as well as by the RVH and McGU. They claim to recover from those Defendants on a solidary basis an indemnity in compensation for the damages suffered by the Class Members.

[9] Two Applicants, Lara Ponting and Julie Tanny, have demonstrated that their application satisfies the four criteria required to succeed at the authorizing stage of a class action.

[10] The Applicants Patricia Edwards Roberge and her late mother Elizabeth Boyle Edwards have not discharged this burden.

[11] The class action is authorized as regards the claim for compensatory damages. However, the application is dismissed as relates to the claim for punitive damages based on the *Quebec Chater of rights and freedoms*.[3] The events and alleged faults took place before the *Charter* entered into force.

ANALYSIS

[12] The Court explains below its analysis of the four cumulative authorization criteria edicted by article 575 C.C.P.

[13] As the Court of Appeal recently reiterated, the authorization criteria must be interpreted broadly and generously in order to promote the objectives of the class action, which are access to justice, deterrence of harmful behaviour and compensation for victims.[4]

1. THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT (ART. 575 (2) C.C.P.)

[14] The scope of the analysis to be undertaken by the Court at the authorization stage when assessing the appearance of a right of the action has been clearly circumscribed by decisions of higher courts.

[15] As part of this analysis, the role of the Court is to filter claims that are frivolous or manifestly unfounded.

[16] The factual allegations in the application are taken as true, which excludes allegations that are legal in nature, generic or general, vague, imprecise, patently

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3 RLRQ c C-12 – *Charter of human rights and freedoms* (the "***Charter***").

4 *Royer* c. *Capital One Bank Canada Branch)*, 2025 QCCA 217, ("***Royer***"), at para. 23.

inaccurate or otherwise contradicted, or those that consist of opinion, speculation or hypothesis.[5]

[17] The judge may also consider the exhibits filed in support of the application.[6]

[18] Still, at the stage of authorization, the judge is not called upon to examine the probative value of the allegations or the exhibits. Although the judge may determine a pure question of law and interpret the applicable law in order to fulfill his role, he must refrain from ruling on the legal merits of the conclusions with regard to the facts alleged. This principle is clearly stated by the Supreme Court in *Saint Joseph's Oratory of Mount Royal* v. *J.J.*:[7]

> [55] Je n'en dirai pas davantage en l'espèce sur ces notions complexes d'« organisations » ou de « corporations » religieuses, d'« église » ou de « congrégation ». Certes, le tribunal *peut* trancher une pure question de droit au stade de l'autorisation si le sort de l'action collective projetée en dépend; dans une certaine mesure, il *doit* aussi nécessairement interpréter la loi afin de déterminer si l'action collective projetée est « frivole » ou « manifestement non fondée » en droit : *Carrier*, par. 37; *Trudel c. Banque Toronto-Dominion*, 2007 QCCA 413, par. 3 (CanLII); *Fortier c. Meubles Léon ltée*, 2014 QCCA 195, par. 89-91 (CanLII); *Toure c. Brault & Martineau inc.*, 2014 QCCA 1577, par. 38 (CanLII); *Lambert c. Whirlpool Canada, l.p.*, 2015 QCCA 433, par. 12 (CanLII); *Groupe d'action d'investisseurs dans Biosyntech c. Tsang*, 2016 QCCA 1923, par. 33 (CanLII); Finn (2016), p. 170. Toutefois, outre ces situations, il n'y a en principe pas lieu pour le tribunal, au stade de l'autorisation, de « se prononcer sur le bien-fondé en droit des conclusions en regard des faits allégués » : *Comité régional des usagers des transports en commun de Québec c. Commission des transports de la Communauté urbaine de Québec*, 1981 CanLII 19 (CSC), [1981] 1 R.C.S. 424, p. 429; *Nadon c. Anjou (Ville)*, 1994 CanLII 5900 (QC CA), [1994] R.J.Q. 1823 (C.A.), p. 1827-1828; *Infineon*, par. 60.
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> (Emphasis by the Court)

[19] The Applicants' burden is hence not onerous. They only need to demonstrate a mere possibility of success on the merits of the case, nothing more. The Court of Appeal reiterated these rules in *Davies* v. *Air Canada*,[8] where it stated:

> [16] As the Supreme Court made clear in *L'Oratoire Saint-Joseph du Mont-Royal* and *Asselin*, the role of a motion judge on an application for authorization to institute a class action is very limited. His or her task is not to "make […] determination[s] as to the merits in law of the conclusions in light of the facts

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5 *Tessier* c. *Economical, compagnie mutuelle d'assurance*, 2023 QCCA 688, ("***Tessier***"), at para. 27, citing *L'Oratoire Saint-Joseph*, at paras 59 et 60.

6 *Royer*, *supra* note 4 at para. 24.

7 *L'Oratoire Saint-Joseph du Mont-Royal* c. *J.J.*, 2019 CSC 35, [2019] 2 RCS 831, ("***L'Oratoire Saint-Joseph***"), at para. 55.

8 *Davies* v. *Air Canada*, 2022 QCCA 1551, at paras 16 and 30. See also *Benjamin* v. *Credit: VW Canada inc*, 2022 QCCA 1383, at paras 45 and 46.

> being alleged", but rather to "filter out frivolous claims, and nothing more". This explains why, in order to clear the hurdle set by article 575(2) *C.C.P.*, "[t]he applicant need establish only a mere 'possibility' of succeeding on the merits, as *not even* a 'realistic' or 'reasonable' possibility is required".
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> (Emphasis by the Court)

[20] In light of the above principles, the factual allegations of the Applicants may be analyzed as follows.

[21] Unlike certain other applications for authorization to institute a class action, the Applicants in this instance have little personal knowledge of the technical facts in support of their allegations. They rely mostly on writings from various sources which report on the relevant facts. The allegations consist in, for an important part, a summary of the extensive evidence supporting the application.

[22] For the purpose of the analysis, the Court will consider that the facts alleged are deemed to be true, as well as the contents of the documentary evidence on which the allegations rely, unless manifestly contradicted or unreliable.

[23] No distinction will be made as regards books, studies, reports and opinions from psychiatrists, writers and researchers who have investigated the events surrounding the Montreal Experiments. The exhibits submitted do not appear unreliable and the writings filed are all much documented.

[24] Various issues are raised regarding the analysis of the condition set forth by article 575 (2) C.C.P. It is indicated to discuss them in the following order:

- The sufficiency of the allegations regarding the Montreal Experiments
- The sufficiency of the allegations regarding the potential responsibility of the three Defendants
- The personal cause of action of the three Applicants
- The argument of prescription
- The argument of stare decisis
- The claim for punitive damages under the *Charter*.

1.1 The Sufficiency of the Allegations regarding the Montreal Experiments

[25] The facts alleged detail exhaustively the extent of the methods reproached to Dr. Cameron and are supported by sufficient evidence to convince that the allegations are not the fruit of the speculation, hypothesis or opinion on the part of the Applicants.

[26] There is no question that the allegations bring forward a debatable issue regarding the acceptability of the techniques employed by Dr. Cameron and the trauma sustained by the persons who underwent his depatterning method.

[27] The Applicants' demand for authorization describes at length the technique employed by Dr. Cameron as reported in science articles.[9]

[28] Among the evidence submitted, the following excerpts are sufficient to support allegations that the Class Members were the object of medical methods which were unsound and should have been denunciated, even at the time, and sustained damages as a result of their exposure to same.

[29] In itself, the process of depatterning raises sufficient concerns to justify a debatable argument that it might not have been in respect of the integrity and security of the patients. Dr. Cameron offers the following description of the different stages of his procedure of depatterning in one of his publications:[10]

> "In the first stage of disturbance of the space-time image, there are marked memory deficits but it is possible for the individual to maintain a space-time image. In other words, he knows where he is, how long he has been there and how he got there. In the second stage, the patient has lost his space-time image, but clearly feels that there should be one. He feels anxious and concerned because he cannot tell where he is and how he got there. In the third stage, there is not only a loss of the space-time image but loss of all feeling that should be present. During this stage the patient may show a variety of other phenomena, such as loss of a second language or all knowledge of his marital status. In more advanced forms, he may be unable to walk without support, to feed himself, and he may show double incontinence".
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> (Emphasis by the Court)

[30] A controversy regarding Dr. Cameron's experiments was eventually raised in the course of a trial against the Central Intelligence Agency in Washington in the mid-1980s. It appears that the CIA funded some of Dr. Cameron's work but it was never clearly established who was informed of this source of funding.

[31] Even Dr. Cameron might not have been aware that the CIA was involved, since the funding was undercover.

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9 Alfred W. McCOY, "Science in Dachau's Shadow: Hebb, Beecher, and the Development of CIA Psychological Torture and Modern Medical Ethics", in the *Journal of the History of the Behavioral Sciences,* Vol. 43(4), 401–417 Fall 2007, Wiley InterScience, 2007, (Exhibit R-19a); Vera Sharav, "1950s–1960s: Dr. Ewen Cameron Destroyed Minds at Allan Memorial Hospital in Montreal", on *CIA Mind Control*, Alliance for Human Research Protection (AHRP), January 18, 2015, (Exhibit R-19b).

10 D. Ewen CAMERON, M.D., J.G. LOHRENZ, M.D. and K.A. HANDCOCK, M.B., Ch.B., "The Depatterning Treatment of Schizophrenia", in *Comprehensive Psychiatry, Official Journal of the American Psychopathological Association*, Vol. 3, No. 2, April 1962, (Exhibit R-20).

[32] In this respect, this reference to Dr. Cameron's ignorance of the funding is criticized, since other sources indicate that he was a close personal friend of a spymaster from their days at the Nuremberg Tribunal. This spymaster became Director of the CIA and Dr. Cameron met with him in Washington to arrange for the CIA's covert funding for his experiments. It is believed by some that "*this Nuremberg experience and his exposure to the Nazi medical experiments there might explain why Cameron later conducted his own research with a cruelty that none, including Cooper, can explain*".[11]

[33] The plaintiffs in this U.S. case submitted evidence that Dr. Cameron had used approximately a hundred patients as involuntary subjects, admitted to the AMI with moderate problems, to test methods of brain-washing and depatterning*, — first, a drug-induced coma, spiked with LSD for up to eighty-six days; next, extreme electro-shock treatment three times daily for thirty days; and, finally, a football helmet clamped to the head with a looped tape repeating, up to a half-million times, messages such as "my mother hates me"*.[12] The Agency later paid Canadian victims $750,000, as ordered by the CIA director.[13]

[34] In parallel to those proceedings in the United States, the Minister of Justice, Canada, requested an opinion on matters related to activities carried by Dr. Cameron at the AMI in the 1950's and 1960's and in particular as to whether the Government of Canada could incur liability as a result of its funding of those activities.

[35] This opinion was submitted by attorney George Cooper to the federal Government in March 1986.[14]

[36] Based on the results of his investigation, Cooper concludes that the techniques and procedures alleged by the nine plaintiffs in the U.S. lawsuit were in fact used at the AMI, and by Dr. Cameron in particular, including the depatterning procedure as called by Dr. Cameron. He notes that depatterning, psychic driving and sensory isolation were used at the AMI and at a few centers in some other countries but not in Canada. They were developed further at the AMI and continued longer than elsewhere. The use of the three procedures in combination along with sleep therapy and drugs appears to be unique to the AMI.[15]

[37] The report further describes the procedure of depatterning (*massive electroshock treatments - sometimes up to twenty or thirty times as intense as the "normal" course of*

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11 Exhibit R-4a, p. 54. As we will see, Cooper was mandated by the Government of Canada to provide a legal opinion regarding the Government's exposure given its funding of some of Cameron's experiments.

12 Alfred W. McCOY, "Science in Dachau's Shadow: Hebb, Beecher, and the Development of CIA Psychological Torture and Modern Medical Ethics", *supra* note 9, p. 408, (Exhibit R-19a).

13 *Id.*, p. 409.

14 MINISTER OF SUPPLY AND SERVICES CANADA, Ottawa, 1986, *Opinion of George Cooper, Q.C. Regarding Canadian Government Funding of the Allan Memorial Institute in the 1950's and 1960's*, (Exhibit R-49a), (the "***Cooper Report***").

15 *Id.*, p. 13.

electro convulsive therapy (ECT) treatments. At the end of up to 30 days of treatment - up to 60 treatments at the rate of two per day - the patient's mind would be more or less in a childlike and unconcerned state),[16] followed by a period of reorganization, during which the patient would undergo considerable anxiety.

[38] Sensory isolation is described as an alternative method of preparing patients for the procedure of psychic driving. It involved depriving the patients of incoming sensory stimulation for days.

[39] Then psychic driving procedure was administered to patients following the previous methods of preparation. Messages played on tape recorders were repeated thousands of times to the patients by means of pillow microphones, stenographic headphones, and other methods. Negative signals such as "you don't get along with people," to confront the patients with their inadequacies. After 10 days of delivering negative messages, positive messages were then repeated in the same manner. Psychic driving would take place for continuous periods of up to sixteen hours per day. Taken together, the positive and negative messages might be repeated up to half a million times.[17] In order to keep the patient receptive to the messages, injections of curare and beeswax would be given. LSD was sometimes also administered.[18]

[40] Cooper concludes that it is clear that the procedures of depatterning and psychic driving were not based on sound principles of science or medicine.[19]

[41] He adds: *Even when judged by the knowledge and standards of the day, it is now seen that the theoretical foundation for Dr. Cameron's work was very weak*[20] and further comments: *it represented a level of assault on the brain that was not justifiable even by the standards of the time and even in light of the rather rudimentary level of scientific and medical knowledge of those days compared to today*.[21]

[42] However, Cooper raises that none of the medical doctors whom he spoke to was prepared to state that Dr. Cameron conducted his work in disregard of the limits of acceptable medical practice at the time, or otherwise than out of desire to benefit his patients.[22]

[43] He concludes that Dr. Cameron's techniques were tolerated, but were not adopted elsewhere in other hospitals in Montreal, including elsewhere in the McGU teaching

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16 *Id.*, p. 17.
17 *Id.*, pp.19 and 20.
18 *Id.*
19 *Id.*, p. 26.
20 *Id.*, p. 27.
21 *Id.*
22 *Id.*

hospital system. The procedures were not free from controversy, even within the AMI, but no one spoke out publicly against them.[23]

[44] Cooper further draws a somewhat contradictory conclusion that, based on all medical people he spoke to, Dr. Cameron's research work was not improper given the practices, the standards, the level of knowledge and the climate of the time, although he acknowledges that some psychiatrists would probably disagree and that this conclusion is not free from controversy.[24]

[45] He also extends the following reserve. To him, Dr. Cameron must have known that the large doses of electric shock applied in the depatterning procedure and that the large number of seizures produced could result in brain damage. He further comments: "To the extent that patients' individual medical records might show on examination that some individuals who were not severely disturbed were subjected to the treatment, then for such cases it might be said that the treatments bordered on the irresponsible".[25] He concludes:

> "(…) *Perhaps the conclusion that comes closest to the truth is that he acted incautiously, but not irresponsibly. Most psychiatrists did not make the mistakes he did in developing and applying the depatterning and psychic driving techniques, but this was out of a sense of caution in the face of the highly intrusive and extremely intensive nature of the treatments*."[26]

[46] Other excerpts of evidence indicate that scientists who testified in the U.S. trial were of the opinion that Dr. Cameron's depatterning experiments deviated from the standards at the time:

> "(…) As for Dr. Cameron's treatment of his patients, the eminent psychiatrist Robert Lifton stated, in an affidavit for the plaintiffs, that his depatterning experiments had "deviated from standard and customary psychiatric therapies in use during the 1950s"; and instead "represent a mechanized extension of . . . 'brainwashing' methods" (Rauh & Turner, 1990, pp. 333, 336)."[27]

[47] Other examples assert as follows:

> "Most certainly, no one would be suitable to the type of experimental procedures used at Allan Memorial Institute at that time, unless they had volunteered to undergo those experimental procedures." [28]

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23 *Id.*, p. 28.
24 *Id.*, p. 86.
25 *Id.*, p.124.
26 *Id.*, pp.124 and 125.
27 Alfred W. McCOY, "Science in Dachau's Shadow: Hebb, Beecher, and the Development of CIA Psychological Torture and Modern Medical Ethics", *supra* note 9, p. 409 (Exhibit R-19a).
28 Exhibit R-22, testimony reported in a book written by Jim Keith, *Mind control, World control*, USA, Adventures Ynilimited Press, 1997, pp. 87 and 88.

> "Dr. Cameron's experiments also violated the informed consent provisions of the Nuremberg Code, which arose out of the war crime trials of the Nazi doctors, in which Dr. Cameron participated as a member of the American psychiatric team. He thus had direct knowledge of the medical atrocities the Nuremberg code was designed to prevent. The Canadian Psychiatric Association's position that Dr. Cameron's research would "not be permitted in today's research climate" is correct, but ignores the fact that the rules of ethical conduct in medical research have not changed since Nuremberg."[29]

[48] The issue of adequate consent was also raised by the U.S. Department of Justice, which raised that the consent forms signed for the AMI were for examinations and treatment only and not for experimentation.[30]

[49] As regards the line between treatment and experimentation, the following analysis by a psychiatrist whose father was subjected to Dr. Cameron's treatment questions interestingly this issue as follows:

> "It would appear that in Ewen Cameron's work at the Allan Memorial Institute, the line between therapy and research became blurred. Routine clinical intervention became extended increasingly so that treatment became experimental procedure, and the line between the two disappeared altogether. What confounds the situation even further is that Cameron's ambitions were so paramount that they eroded the physician-patient relationship. The trust that patients put in their doctor was misused; The needs of individual patients were subsumed in the overall goal. If one reads Cameron's work, especially the paper on sensory deprivation that was prepared for the 1964 San Antonio conference on that subject, it is clear that experimental procedures were being designed to further a theory of human behaviour and to develop techniques of influencing behaviour. Work was not concentrated on what was best for any one patient but on fashioning a methodology for behavioural change that would be applicable to a general class of patients. This is human experimentation, pure and simple. In notes made for this paper on March 18,1960, Cameron reveals the progression of his thinking:
>
> Regarding sensory deprivation, make reference to the following:
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> 1. My own work on nocturnal delirium
> 2. The early deprivation experiments (Allan)
> 3. The experiments on Chemical deprivation
> 4. The special instance of Sernyl (PCP) — a sensory input block
> 5. The present sensory deprivation experiments
> 6. Projected experiments using drugs
> 7. Old experiments using ECT to break up the space-time image
> 8. Old experiments using LSD-25 for the same purpose PCP

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29 *The C.I.A. Doctors, Human Rights Violations by American Psychiatrists*, by Colin A. Ross, M.D., p. 126.

30 Exhibit R-99, p. 2.

> 9. Also in paper, make reference to input-overload in ternis of 1) sound 2) light 3) pain 4) verbal stimulation.
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> Thus, Cameron himself saw his work as experimentation. Further confirming that his procedures were not routine treatment are the following facts: he applied to, and received funding from, outside agencies to prove his theories, and he built a special laboratory in a separate part of the hospital to further his methodology.
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> An editorial in the *New England Journal of Medicine* following up on Beecher's paper on ethical experimentation decried the way that some unethical experimenters since Nuremberg had ignored the precepts of the Code. Cameron's research and consent procedures were not the standard of the time; however, he was in the company of a minority of researchers who were carrying out unethical experimentation on human subjects without informed consent. It is my opinion that his ambition and drive so clouded his sensitivities that he abused the trust of his patients; they became to him, not humans in pain, but laboratory animals in a search for the cure to mental illness. In that sense, there is a parallel with the Nazi physicians; their drive for the progress of science, as they so defined it, led them to dehumanize those (…)."[31]

[50] Obviously, all those issues of facts and law would need to be determined after a complete hearing on the merits of the case. More particularly, the issue as to whether the treatments or experiments conducted by Dr. Cameron were faulty according to the standards of the time is an issue to be analyzed on the merits and based on the weighing of evidence.

[51] As regards the damages caused by the Montreal Experiments, the evidence also support the allegations.

[52] As summarized by Cooper, depatterning was a highly intensive and intrusive procedure deliberately aimed at breaking up the pathways of the brain and reducing it to an almost infantile state.[32]

[53] When Dr. Cameron left the AMI, his successor Dr. Cleghorn mandated a committee to collect data and test patients who had been depatterned. Their report indicates that 75 % demonstrated unsatisfactory or impoverished social adjustments and that persisting amnesia ranging from six months to ten years was reported by 60 % of respondents. Dr. Cleghorn had stopped the use of depatterning immediately after becoming the director of the AMI in 1964, even before the report was issued.[33]

[54] In 1956, a colleague of Dr. Cameron published the results of a study on the technique of psychic driving used on several patients of the AMI. He referred to his

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31 Exhibit R-27, *A Father, a Son and the CIA*, by Harvey Weinstein, dated 1988, pp. 119 to 129 PDF.

32 Exhibit R-49a, p. 21.

33 *I Swear by Apollo. Dr. Ewen Cameron and the CIA – Brainwashing Experiments*, by Don Gillmor, Montréal, Eden Press, 1987, (Exhibit R-16b), p. 83 PDF.

patients‘ defences against psychic driving as “running away from the situation bolting out of his office or trying to escape the institution”.[34]

[55] An earlier report indicated that perceptual isolation alone produces intolerable psychological pressure in a short time and causes intellectual and visual perception impairment for a period of time.[35]

[56] The above excerpts of evidence substantiate the intrusive nature of the treatments, their effect on the patients during the process and the resulting losses afterwards. They also substantiate the allegations that the integrity and dignity of the patients were infringed. Those excerpts also corroborate the allegations of the Applicants as regards their personal damages and causes of action.

1.2 The Cause of Action Against the Royal Victoria Hospital

[57] The allegations and the evidence demonstrate a debatable cause of action against the RVH.

[58] The Applicants raise that the Montreal Experiments were performed systemically by not only Dr. Cameron, but by doctors, nurses, orderlies, technicians and other staff of the AMI.

[59] They blame RVH for the fault of its subordinates, but also for having been willfully blind and having allowed the Montreal Experiments to be performed, neglecting its duty to protect the Class Members and ensure that they would receive sound and secure services.[36]

[60] They also invoke that the patients were not informed of what they were subjected to, although standards for medical experimentation had been clearly delineated at Nuremberg in 1947, specifically requiring voluntary informed consent as a basic principle.[37] They invoke that the RVH neglected to ensure that its patients were duly informed of the nature of the experiments in order to formulate a valid consent.

[61] The evidence submitted supports the allegations that Dr. Cameron was acting as representative of the RVH. Indeed, Cooper explains that Dr. Cameron was the head of the AMI at all relevant times and its driving force.[38] He was Chief psychiatry at the RVH and the Director of the AMI, the psychiatric wing pf the RVH.[39]

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34 Exhibit R-3a, p. 12.

35 Exhibit R-3b, pp. 9 to 14, *Effects of Radical Isolation upon Intellectual Function and the Manipulation of Attitudes*, report by Dr. Hebb and others, qualified SECRET in 1955 and distributed to the Canadian army.

36 The specifics allegations are detailed at lenght at paragraph 217 of the *Second Ammended Application for Authorization*.

37 *Second Ammended Application for Authorization* at para. 221.

38 *Cooper Report*, p. 5, (Exhibit 49a).

39 *Id*., p. 62.

[62] The evidence also demonstrates that the performance of the Montreal Experiments involved an exhaustive team of medical staff.

[63] For example, Cooper explains that throughout the procedure, and for a period of up to three years afterwards, a patient would receive intensive personal care, both in and out of hospital as required, from the hospital staff including social workers, psychiatrists, psychologists and nurses.[40] He also underlines that hospital staff spent weeks bringing the schizophrenic patients back from depatterning. Prolonged memory deficit was a particularly serious problem.[41] As well, during the "positive" period of psychic driving, the hospital staff would work with the patients to encourage them to put the new behavioural patterns into practice.[42]

[64] Dr. Cameron also described that the procedure of depatterning required the development of a team of highly skilled workers.[43]

[65] Expectedly, the RVH raises that Dr. Cameron was not its subordinate, but an independent professional having a direct contractual relationship with his patients, over whom RVH had no right of control or supervision of his work.

[66] The Applicants retorke that Dr. Cameron was an employee of the RVH. The Cooper opinion states that he received a salary from McGU and obtained private income from patients and that in medical matters he was responsible to the RVH.[44]

[67] The Applicants' argument rests on the decision *Martel* v. *Hôtel-dieu St-Vallier*,[45] where the Supreme Court of Canada held that an anesthetist was a subordinate of the hospital based on the factual circumstances of the matter. He was a salaried employee of the hospital and was designated to act by the head of the service of anesthesia of the hospital under the contract between the patient and the hospital. No contractual relationship existed between the patient and the anesthetist.

[68] The facts of the present matter differ from the situation which prevailed in *Martel*.

[69] But the Court will not decide at the present stage of the issue of liability of the RVH for the acts of Dr. Cameron. This is a mixed question of facts and law which should be decided based on the law which prevailed at the time and in light of the evidence. As determined by the Supreme Court in *L'Oratoire Saint-Joseph,* the Court should refrain from applying the law to the underlying facts of the matter.

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40 *Id*., p. 20.
41 *Id*., p. 21.
42 *Id*., p. 25.
43 *Id*., p. 24.
44 *Id*., p. 62.
45 *Martel* v. *Hôtel-Dieu St-Vallier / Vigneault v. Martel*, 1969 CanLII 3 (CSC), [1969] RCS 745, ("***Martel***").

[70] Furthermore, the Applicants argue that this situation where the liability of the RVH is being raised for an alleged systemic process of experiments conducted by its Director, which were against the standards and harmed the patients, should be distinguished from a case invonking the responsibility of a doctor for his faulty performance in a malpractice matter. This argument is debatable and is not unreasonable.

[71] The cause of action against the RVH raises various issues of facts and law, namely:

- Whether Dr. Cameron and the AMI medical staff were faulty according to the standards of the time;
- Whether RVH should be held liable as the principal of Dr. Cameron and the AMI medical staff who took part in the Montreal experiments, under former article 1054 C.c.B.c.;
- Whether RVH was aware or should have been aware of the alleged abusive experiments and was directly at fault for allowing the Montreal Experiments to continue, implying its liability under former article 1053 C.c.B.c.

[72] Those issues cannot be decided at the stage of authorization.

[73] Based on the allegations and the evidence in support, it is not unreasonable to raise that the responsibility of the RVH could be established for having allowed the Montreal Experiments to take place and for the faults committed by its subordinates who conducted, participated or contributed to same.

[74] As the Court of Appeal decided in *J.J.* c. *Oratoire Saint-Joseph du Mont-Royal*[46]*: " it would be unfair to deprive a party of access to the justice system by way of a class action for the sole reason that some of the issues in dispute may be difficult to establish, especially if they arise from the respondent's situation or the defences he intends to raise on the merits"* (translation by the Court).

1.3 The Cause of Action against McGill University

[75] The cause of action against McGU is also based on both its direct liability for its own neglect and failures to act, as well as on its indirect liability for the fault of its subordinates. The same allegations of fault are formulated against both Defendants.[47]

[76] The Applicants rely on evidence which demonstrates that the AMI was established in 1943 as a joint enterprise of McGU and the RVH. The university took responsibility for

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[46] *J.J.* c. *Oratoire Saint-Joseph du Mont-Royal*, 2017 QCCA 1460, at para. 66.
[47] *Second Ammended Application for Authorization* at para. 217.

teaching and research and RVH for the clinical services.[48] Some said that the AMI was coadministered by McGU and the RVH.[49]

[77] It is the Board of Directors of McGU which appointed Dr. Cameron as Director of the AMI at the same time he was appointed as Professor of psychiatry and Chairman of the Department of Psychiatry. His salary from the university was then set at 10 000 $ a year paid by the university and he had the right to receive an income of not more than 8 000 $ from private practice.[50] It is unclear what salary he obtained from conducting the Montreal Experiments, whether it came from McGU, from private practice or from funding.

[78] The Applicants filed a letter from the Comptroller of McGU who submits the Psychiatry budget as approved by the Principal.[51] The letter is addressed to Dr. Cameron as Chairmen of the Department of Psychiatry, Allan Memorial Institute. It confirms that the budget includes income from a grant awarded to McGU plus general funds of the University in order to provide for budgeted expenditures consisting mostly of salaries. The letter also confirms that the University also contributes to the costs of operating the building. This letter appears to indicate that McGU contributed to the operations of the AMI in terms of salaries, other expenditures and costs of operating the building.

[79] Checks to workers were issued by McGU:

> "There were a number of casual workers on the project-· psychologists. Technicians and assistants - none of whom were aware of the source of the funding. The information is not necessarily something that goes beyond the principal researcher who applied for the grant. Part-time assistants were aware that they were being paid from a grant as they received a cheque that was devoid of salaried staff benefits deductions, but there was no indication of the grant's origin. The cheques were issued by McGill University."[52]

[80] The Applicants also raise that the grants afforded by the Federal Government were awarded to Dr. Cameron jointly with McGU.[53]

[81] The University is not being blamed for the quality of acts of medicine performed while Dr. Cameron was its appointee, nor for the unsuccessful results of his research. It is blamed for having blindfully tolerated experiments deemed abusive and conducted against the standards of the time, over a lengthy period of time, while the techniques employed and their effects on patients were not only manifest but publicly reported by Dr. Cameron in his studies.

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48 Exhibit R-1c, p. 1.
49 Exhibit R-16b, p 1.
50 Letter from Principal and Vice-Chancelor dated July 1st 1943.
51 Exhibit R-60, November 29, 1949.
52 Exhibit R-16b, p. 50.
53 Exhibit R-49b, p. 337.

[82] In this particular respect, it is invoked that persons in situation of authority at McGU were aware or should have been aware of the abusive experiments.

[83] Evidence gathered indicates that Dr. Donald O. Hebb, Chairman of the Psychology Departement of McGU during the 1950s had a discrediting opinion of Dr. Cameron's experiments. Testimony to this effect was rendered in the U.S. trial. Dr. Hebb also stressed out in a documentary film before his death that in his opinion, Dr. Cameron was criminally stupid:[54]

> Cameron's experiments were done without the patient's consent. Cameron was irresponsible -- criminally stupid, in that there was no reason to expect that he would get any results from the experiments. Anyone with any appreciation of the complexity of the human mind would not expect that you could erase an adult mind and then add things back with this stupid psychic driving. He wanted to make a name for himself - so he threw his cap over the windmill.... Cameron stuck to the conventional experiments and paper writing for most of his life but then he wanted that breakthrough. That was Cameron's fatal flaw - he wasn't so much driven with wanting to know - he was driven with wanting to be important - to make that breakthrough - it made him a bad scientist. He was criminally stupid.

[84] It can be noteworthy that Hebb himself has been qualified as the progenitor of psychological torture.[55]

[85] In conclusion, as for the RVH, the Court finds that it is not unreasonable to raise that the responsibility of McGU could be established for having allowed the Montreal Experiments to take place and to be orchestrated by Dr. Cameron, its Chairman of Psychiatry and appointed Director at the AMI.

1.4 The Cause of Action against the AGC

1.4.1 The Funding of Dr. Cameron's Projects

[86] The cause of action against the AGC is based on the Government of Canada's indirect extracontractual liability for the faults of its agents, namely the agencies or departments which funded Dr. Cameron's depatterning projects and the employees involved in the funding decisions, under the *Crown Liability and Proceedings Act*.[56]

[87] The Applicants argue that the AGC, through its agents, *participated in, knew about, approved and recommended for funding, oversaw, monitored, encouraged, directed, and aided and abetted the inception of, the growth of, and/or the continuation of the Montreal*

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[54] Hamline Journal of Public Law and Policy, Volume II Fall 1990, by Raugh and Turner, Anatomy of a Public Interest Case Against the CIA, pp. 6 and 7,(exhibit R-13).

[55] Exhibit R-4a, p. 54, citing Alfred W. McCoy, *A Question of Torture, CIAInterrogation from the Cold War to the War of Terror* (New York: Metropolitan Books, 2006), p. 33.

[56] *Crown Liability and Proceedings Act*, R.C.S.. 1985, c. C-50.

Experiments and list the different neglectful omissions which led to the continuation of the fundings despite what they knew or should have known.[57]

[88] Between 1950 and 1964, the Department of National Health and Welfare provided $495,494.41 to Dr. Cameron of AMI for the support of nine psychiatric research projects. The funds were made available under the Mental Health Grant. It was federally funded but provincially administered. The program was for the express purpose of strengthening health services in Canada.[58] The projects funded are the following:

Projects Supported under the Mental Health Grant (National Health Grants)

Project No.	Project Titles and Authors	Amount & Duration
604-5-11	The Effect of Senescence on Resistance to Stress - Cameron, O.E.; Kral, V.A.	$195,388.00 1950-1957
604-5-13	Research Studies on E.E.G. and Electrophysiology - Cameron, D.E.	$60,353.33 1950-1957
604-5-14	Support for a Behavioral Laboratory - Cameron, D.E.	$17,875.00 1950-1954
604-5-43	Study of the Personal and Social Aspects of Retirement and Retirement Adjustment - Cameron, D. E.	$24,450.00 1956-1958
604-5-74	Study of Ultraconceptual Communication - Cameron, D.E.	$26,228.08 1959-1961
604-5-76	A Study of the Effects of Nucleic Acid Upon Memory Impairment in the Aged - Cameron, D.E.	$18,000.00 1959-1963
604-5-104	Comparative Studies of Adrenal Cortical Function in Aged Persons with Acute Confussional States or Senile Psychosis - Cameron, D. E.	$51,860.00 1963-1965
604-5-108	Psychiatric Research in Clinical Criminology: (1) Criminal Behavior as a Sympton of a Psychopathological State; (2) .Emotional Growth and Criminality; (3) The Family and Criminality: the role of the family as a transmitter of criminal values - Cameron, D. E.	$ 43,590.00 1963-1965
604-5-432	A Study of Factors whith Promote or Retard Personality Change in Individuals Exposed to Prolonged Repetition of Verbal Signals - Cameron, D.E.	$ 57,750.00 1961-1964

[89] The above information was obtained by a certain Don Weitz from the Public Archives under the *Access to Information Act*. He was investigating on the Canadian and

[57] *Second Ammended Application for Authorization* at para. 218 and its sub-paragraphs.
[58] Exhibit R-5a.

CIA supported experiments at the AMI and produced an article documented on over 35 different sources.[59] To him each of these research projects were related to Dr. Cameron's brainwashing research.

[90] He specifies that the grant of $7,875.00 to support Behavioral Laboratory funded several brainwashing studies conducted by Dr. Cameron, including sensory deprivation, psychic driving and electroshock.[60]

[91] Of the nine programs, four are identified by the Applicants as being relevant to the Montreal experiments (projects 604-5-13, 604-5-14, 604-5-74, 604-5-432).

[92] Cooper discusses in his report the involvement of agencies or departments of the Government of Canada in funding the AMI.[61]

[93] He identifies three agencies which funded Dr. Cameron for various projects.

[94] The National Research Council awarded $4,197.00 for Dr. Cameron's Behavioural Laboratory, the same amount as the sum contributed by the Departement of National of Health and Welfare.

[95] The Defense Research Board ("**DRB**"), chaired by Dr. Solandt, would not have funded work in the area of psychiatric research. In fact, Dr. Solandt ensured that Dr. Cameron made no application to the DRB in this area.

[96] Finally, the Departement of National Health and Welfare funded nine to ten projects. Cooper reviewed eight of the files concerning the projects funded by this department. He concluded that four of them were investigated by Dr. Cameron. Two would be relevant to the matter and would also be the subjects of investigation in the research work carried out by Dr. Cameron with CIA funds:[62]

- Project No 604-5-14 entitled "Support for a Behavioural Laboratory". A number of experiments were planned which he describes as follows:

  > "One was to test memory and learning impairment due to individual and cumulative electric shock. Another was to film patients against a checkered backdrop before and after ECT treatment, to see if any differences in physical movements could be detected. A third was to study the effects of sensory isolation. A fourth was to investigate psychic driving techniques in various situations: while the patient was under hypnosis, in continuous sleep, and when the patient's resistance was lowered using the isolation techniques of Dr. Hebb."[63]

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59 Exhibit R-3a.
60 *Id.*, p. 12.
61 Exhibit R-49a, p. 29 and following.
62 *Id.*, pp. 43 and 44.
63 *Id.*, p. 43.

- Project No 604-5-432 entitled "Study of Factors which Promote or Retard Personality Change in Individuals Exposed to Prolonged Repetition of Verbal Signals"; i.e. psychic driving.

[97] The Applicants submit regulations governing the award of grants for research.[64] Those provide for the need to produce progress reports. They also provide requirements as to how the applications are filed in the Provinces but are approved (or not) by the Federal, who in turn advises the Provinces. Cooper mentions in his report that the applications are filed by the institution.[65] The review for approval is made based on appraisers' comments and progress reports. The reports are required to contain a summary of what has been accomplished and the basic supporting data used in drawing conclusions stating observations made. If no renewal is requested, then a final report should be submitted, which may consist in reprint of publications.

[98] Cooper summarizes in his report how the medical adequacy of the applications would be reviewed by a Research Subcommitte of the Mental Health Advisory Committee. People within the Departement would sit as chairman and secretary. The Committee acted as some form of peer review.

[99] The Departmenent sent representatives on occasional planned visits to the institutions where the work was carried out[66] in order to be in a position to evaluate the application for a renewal.

[100] The Applicants argue that the Federal government agencies were not simply handing the money, but were well informed of the nature of the experiments conducted with the funds. To them, the agencies had knowledge and nevertheless continued their financing.

[101] In this respect, Cooper investigated and concluded that Cooper's applications were dealt with in the same manner as the others. He, however, believes that more deference could have existed towards his applications, in view of his professional reputation:

> "(…) What is suggested is that it is likely that some members of the reviewing groups may have been somewhat reluctant to express doubts, if indeed they had any, about the medical or scientific basis for the procedures under review in the proposal."[67]

[102] Cooper concluded that the Departement of National Health and Welfare conducted itself in a prudent and professional manner.[68]

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64 Exhibit R-5b.
65 Exhibit R-49a, p. 39.
66 *Id.*, pp. 48 and 49.
67 *Id.*, p. 47.
68 *Id.*, p. 50.

[103] The Cooper report was severely criticized in a text published by the lawyer who represented the victims against the CIA:

> "(…) The result was neither independent nor a study, but was instead a several hundred page brief, which concluded not only that Canada was blameless, but that the CIA involvement with Cameron was "a red herring."
>
> Moreover, although this document was called the "Cooper Report," it had, in fact, been compiled and written by Canadian Justice Department lawyers -- whose job it was to defend Canada against claims of liability based on its involvement with Cameron. A more clear conflict of interest is difficult to imagine, and one can only wonder why no Canadian Bar disciplinary committee has investigated the lawyers who did it.
>
> The flaws with the "Cooper Report" did not end with bias, they extended to irresponsible assertions that Cameron had done nothing wrong. So eager were the Canadian Justice Department lawyers to foreclose suits against their Government that, without interviewing any of our clients or even reviewing the medical records which documented their injuries, their report announced that there was probably little if any lasting harm done to Cameron's victims. Finally, although the assignment given to Cooper was to evaluate Canadian Government responsibility, his report went much further, reproducing the CIA's principal defences, now as the "independent" conclusions of an official Canadian Government investigation. The Canadian Government's "Cooper Report" was, in short, a complete whitewash."[69]

[104] The Applicants also raise that the fact that Dr. Solandt, the Head of Canada's DRB[70], doubted Dr. Cameron's experiments and refused to fund his work, supports their argument that the other federal government agencies which funded his projects were negligent.

[105] Relevant excerpts of evidence detail Dr. Solandt's position regarding Dr. Cameron's work:

> "Dr. Solandt agreed to appear and to testify concerning the fact that he had disapproved of Cameron's destructive experiments and made his views known. Again, his affidavit summarized these views:
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> > "I knew of the experimental depatterning procedures used by D. Ewen Cameron. In the early 1950s, the wife of one of my associates sought medical treatment from Cameron at the Allan Memorial Institute. She was depatterned and after seeing her I knew that this kind of work was something the Defence Research Board would have no part in. It was my view at the time and continues to be that Cameron was not possessed of the necessary sense of humanity to be regarded as a good doctor. My views of Cameron and the depatterning procedures were known to him, and I let it be known through Dr. Morton that I would not look favourably

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69 Exhibit R-13, pp. 4 and 5; see also Exhibit R-4a, p. 53.

70 Exhibit R-4a, p. 45.

> upon any application by Cameron to the Defence Research Board for psychiatric research. Cameron never applied for Defence Research Board grants to fund psychiatric research and would never have received such support had he applied".[71]

[106] And:

> "My views of Cameron and the depatterning procedures were known to him, and I let it be known through Dr. Morton that I would not look favourably upon any application by Cameron to the Defence Research Board for psychiatric research." Solandt had consulted professionals and asked for their opinions of Cameron's work. "The feelings were mixed, the majority were against him".[72]

[107] It is also raised that the DRB had awarded Dr. Hebb a secret grant for experiments that discovered the devastating psychological impact of sensory isolation.[73]

[108] In conclusion, the allegations and the exhibits advance a cause of action against the AGC which is not unreasonable.

[109] It can be reasonably advanced that the funding was directed and used for the depatterning method which is in the center of this application.

[110] It can also be reasonably advanced that the AGC could incur liability if the evidence convinces on the merits that the employees in charge of the agencies which funded Dr. Cameron's work closed their eyes on projects that should have been doubted and were seriously doubted by the Chairman of the DRB.

[111] As regards the demonstration that the Applicants' cause of action bears a causal link with the projects financed by the Government of Canada, same is discussed further below.

1.4.2 The Canadian Government Assistance Plan

[112] In November 1992, the Government of Canada launched "The Allan Memorial Institute Depatterned Persons Assistance Plan". The plan was launched without prejudice and for compassionate and humanitarian reasons.[74]

[113] The *Order Respecting Ex Gratia Payments to Persons Depatterned at the Allan Memorial Institute Between 1950 and 1965*[75] authorized the Minister to make an ex gratia payment of $100,000.00 to any "depatterned person": (a) who was a permanent resident of Canada and was alive at the time of the payment; (b) who signed a waiver protecting

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71 Exhibit R-13, p. 7.
72 Exhibit R-16b, p. 34.
73 *Id.*, p. 46.
74 Exhibit R-51.
75 *Id.*

Her Majesty in right of Canada and the RVH against court action; and (c) who withdrawn any court action against Her Majesty in right of Canada.

[114] The release submitted to the beneficiaries stipulated the following:

> "I (…) do hereby release, acquit and forever discharge and by this Release do for myself, my heirs, executors, administrators, successors and assigns RELEASE AND DISCHARGE Her Majesty the Queen in right of Canada and Her Ministers of Justice, National Defence and Health and Welfare, their officers, servants and employees and their heirs, executors, administrators, successors and assigns and the Royal Victoria Hospital (the "releasees") from any and all actions, causes of actions, claims and demands whatsoever…arising from depatterning treatment of the releasor at the Allan Memorial Institute of the Royal Victoria Hospital at Montréal, Québec."[76]

[115] It is alledged that approximately 77 patients were indemnified but that hundreds were rejected because they had not been de-patterned enough to warrant compensation.[77] Eventually, a judge, in the cause of a revision process, would have ruled that a further 250 persons would be allowed to compensation.[78]

[116] AGC argues that Class Members having signed the release form cannot be included in the class definition.

[117] The Court finds that it is premature to decide at the present stage if the release is opposable to all Class Members who have signed. It would be important to decide this issue upon reviewing the documents and hearing whatever argument could be raised on behalf of the signatories. Furthermore, the release does not preclude any cause of action against McGU.

1.5 The Personal Cause of Action of the Applicants

[118] At the authorization stage, the sufficiency of the syllogism must be assessed according to the personal cause of the Applicants, since the recourse in its collective dimension does not yet exist. As the Court of Appeal explains in *Royer*, If the Applicants fail to demonstrate that they meet this requirement, their application must be dismissed, not only on this basis, but also on the basis of their lack of interest in bringing proceedings, which is the object of the conditions of 575(4) C.C.P.[79]

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76 Exhibit R-52, p. 1.
77 Exhibit R-53.
78 *Second Ammended Application for Authorization* at para. 209.
79 *Royer*, *supra* note 4 at para. 27.

1.5.1 Applicant Julie Tanny

[119] Mrs. Tanny's father, Charles Tanny, was admitted to the AMI on January 4, 1957, under the care of Dr. Cameron, with the primary complaint of pain in the right side of his face.

[120] On the same day, he was placed on sleep treatment, more particularly an insulin-induced coma where he slept the majority of the day for a duration of approximately 50 days in combination with the administration of barbiturates and antipsychotic drugs.

[121] The Applicant Tanny summarizes the medical notes regarding the treatment his father was subjected to.

[122] On his 24th day of sleep, he had undergone five ECTs at the rate of three per week. He had incontinence and a great deal of confusion, but was not yet in the third stage of depatterning.

[123] On the 27th day, Dr. Cameron notes that they are not satisfied that he has become sufficiently confused: "*we are not altogether satisfied that [Mr. Tanny] has become sufficiently confused. He is still keeping in contact with his former life…hence we are putting him on Page-Russell one a day for 3 consecutive days…he is not incontinent*".

[124] On his 41st day of sleep, after 21 ECTs, Dr. Cameron notes that he is entering stage 2. The approach is continued in the hope of getting him to stage 3.

[125] After 48 days, Dr. Cameron writes: "*He has no knowledge of where he is, a lot of the time he is pretty cheerful and childish though at other times he will show little bursts of hostility. He has only occasional incontinence. Under these circumstances we feel that the patient is probably taken as far as we can hope to take him. We are beginning to let the patient come out of sleep. We will discontinue sleep treatment gradually and also put him onto [ECT] 3 times a week*".

[126] He was discharged from the hospital on March 19, 1957, and was continued to be treated on monthly ECTs until August 15, 1957. A medical note indicates that "*He has, however, still the complaint of feeling very lethargic and tired…it should be mentioned that this patient, because of his fear of insanity, was not actually told about the continuation of his treatment…"* After his discharge he was continued on monthly ECTs as a form of modified Sleep Treatment whereby he went to the institute at 9 a.m., was given intravenous Atropine, then ECT, then amytal sodium, and then slept until midday.

[127] Mr. Tanny was given various medications during his sleep therapy enumerated by the Applicant as including sedative and hypnotic medication and antipsychotic medication.

[128] The allegations describe how Mr. Tanny was very disoriented and confused and suffered from memory losses when he returned home. When with time he learned whom

his family members were, he never regained his affectionate dispositions and was distant, strict, volatile and violent. He remained detached from his family.

[129] The Applicant's childhood *went from one filled with love and support to one filled with shame, embarrassment, self-blame and fear.*

[130] The Applicant describes in her application the damages which she believes she sustained due to the consequences of her father's change during her childhood. She has been seeing a therapist for decades to cope with her feelings of abandonment.

[131] The allegations that Charles Tanny was a victim of depatterning conducted by Dr. Cameron during his hospitalization at the AMI are not frivolous. The allegations that the applicant sustained damages as a result of those treatments experiments are not unreasonable.

[132] For the reasons explained above, it is not unreasonable to argue that the Defendants could be held responsible for the damages sustained by the applicant.

[133] As regards the AGC in particular, it is not frivolous to argue that the funding of the projects projects 604-5-13 (Research Studies on E.E.G. and Electro-physiology between 1950-57) and 604-5-14 (Support for a Behavioral Laboratory between 1950-54) had a direct relation with the conducting of these alledged experiments on Mr. Tanny in 1957.

[134] The Court sees a defendable cause of action by Applicant Tanny against the three Defendants.

1.5.2 Applicant Lana Ponting

[135] The allegations formulated by Applicant Lana Ponting appear less substantiated than those formulated by Applicant Tanny. Many allegations rely on the memory of Mrs. Ponting from many years when she underwent treatments at the AMI during her stay from April 3rd 1958, when she was 15 years old.

[136] Her allegations regarding the psychic driving she underwent (paragraph 284.7) and her prolonged sleep and ECT (paragraph 284.10), added to the medical notes confirming her intake of LSD and other medications (paragraph 284.8) certainly allow her to argue that she underwent depatterning experiments by Dr. Cameron.

[137] Although they lack corroboration, these allegations are specific and not contradicted. If a doubt subsists, it shall benefit the Applicant.[80]

[138] Her allegation that she was raped as a result of which she became pregnant is certainly very sad and troubling but not related to the heart of the class action.

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[80] *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra* note 7, at para. 79

[139] The damages which she alledges are serious (paragraph 284.20 and following). She has been treated for depression, has lost cognitive and functional abilities. She has flashbacks and nightmares about the abuse she suffered. She describes her damages as including *mental/emotional injuries including pain, suffering, anxiety, mental distress, loss of quality and enjoyment of life, depression, apathy, loss of stability, emptiness, and injury to self-respect as well as loss of support, guidance, care, consortium, intimacy, stability, and companionship* (paragraph 284.27).

[140] Her allegations are that she was admitted to the AMI and endured this torture and abuse simply "*because of difficulties which she had with her family. This consisted of stubbornness and disobedience which had been going on for two years*."[81]

[141] Mrs. Ponton benefits from the same arguments as Mrs. Tanny regarding the Defendants' liability.

[142] As will be detailed below, Mrs. Ponting has an additional argument to contest the argument of prescription raised by the Defendants.

1.5.3 Applicants the Late Elizabeth Boyle Edwards and Her Daughter Patricia Edwards Roberge

[143] Elizabeth Boyle Edwards was admitted to the AMI around May 13, 1960. Incomplete records of her file at the AMI were released by the RVH.

[144] The allegations are that her record shows that she was an outpatient at the AMI. However, her daughter alledges that she was also admitted on at least two occasions for unspecified periods of time. She remembers picking up her mother more than once when she was a young girl.

[145] The allegations refer to grievous psychological torture and abuse as a result of which she spent her entire life on serious medication, spent her days catatonic with a robotic behaviour, unable to function.

[146] The allegations are scarce regarding the treatment which she received or experiments to which she could have been submitted. There are allegations that she had nightmares and some rambling about Dr. Cameron and the CIA. Her family did not believe that her ramblings were an indication of anything since they were not aware at the time of the experiments and abuse conducted at the AMI.

[147] The Court finds that the late Mrs. Edwards and her daughter formulate allegations which are too vague to support at the present stage that they have a right of action against the Defendants. More particularly, the allegations are too vague and not enough

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81 From a letter cited at para. 284.3. of *Second Ammended Application for Authorization.*

substantiated to demonstrate that Mrs. Edwards was a victim of the depatterning process conducted in the course of the Montreal Experiments.

[148] This does not mean that both these Applicants would not be considered as Class Members at a later stage. But the Court cannot simply rely on their allegations to consider at this stage that they have a cause of action.

[149] They will hence not be authorized to act as representatives in the cause of this class action.

1.6 The Argument of Prescription

[150] The facts of this case having occurred decades ago, the Defendants expectedly raise the issue of prescription.

[151] Clearly, the issue of prescription is serious and will need to be analyzed with scrutiny on the merits.

[152] However, for the reasons which follow, this argument cannot be decided at the present stage of authorization.

1.6.1 The Particular Situation of Applicant Tanny

[153] Applicant Tanny signed the release as a witness to her mother's signature.[82] She had also witnessed the application for the ex gratia payment.[83] AGC argues that Applicant Tanny was aware all the time of all legal facts giving rise to her claim, including her father's hospitalization and treatment, his medical records and the funding provided to Dr. Cameron. Her right of action would hence be prescribed since 1995. AGC argues that Applicant Tanny's involvement in her father's application for compensation constitutes evidence which is incompatible with her allegations that she was in the impossibility to act.

[154] Although this argument appears to be serious, it needs to be decided on the merits. As explained further below, the Applicants have filed an expertise report in order to demonstrate their impossibility to act.

[155] The Court cannot at the present stage decide on the probative value of this evidence.

1.6.2 The Particular Situation of Applicant Ponting

[156] Applicant Ponting was 15 years of age when she was admitted at the AMI.

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82 Exhibit ACG-3.
83 Exhibit ACG-1.

[157] She invokes that she was the victim of violent behaviour during childhood which could constitute a criminal act. She relies on article 2926.1 C.C.Q. which stipulates that her right of action would hence be imprescriptible.

[158] This argument is serious and raises issues of facts and law which shall be determined on the merits.[84]

1.6.3 The Difficulty of Determining at This Stage the Starting Point of the Prescription Delay

[159] When were the Applicants supposed to become aware that they had a right of action?

[160] The following allegations of the application underline the difficulty for the Class Members to become aware that they had a right of action:

> 152. Class Members who did decide to investigate the matter were met with obstacles the whole way through. First, they would have to be able to identify themselves as having been part of the Montreal Experiments (i.e. if they did not experience complete amnesia relating to their stay at the Allan Memorial Institute). Second, they would have to make a request and successfully gain access to the remaining portions of their medical records (which were highly redacted, if received at all). Third, they would have to be able to face the prospect of a lawsuit despite their cognitive shortcomings and other remaining side effects of having undergone the Montreal experiments – all formidable tasks to overcome;
>
> 153. From the destruction of the MKULTRA files in 1973, to the signing of nondisclosure agreements upon settlement, the Montreal Experiments have remained in the dark;
>
> 154. Despite the lasting impact Cameron and the Montreal Experiments had on many Canadians, few Montrealers today even know that this occurred in the city. In fact, many believe the Montreal Experiments to be a myth;

[161] The Applicants alledge a program aired on CBC The National News on October 26, 2017, entitled “Compensation for CIA-funded brainwashing experiments paid out to the victim’s daughter 60 years later”.[85] Shortly thereafter, a group of several victims formed and some were interviewed on television. On December 15, 2017, an episode of The Fifth Estate documented the facts in a documentary entitled “Brainwashed : The Secret CIA Experiments in Canada”.[86] The group of victims advertised on Facebook and as the group was growing, it named itself *Survivors Allied Against Government Abuse (SAAGA).* A group of 60-65 victims from across Canada met for the first time on May 20, 2018, to share their stories and at that point contemplated filing a lawsuit.[87]

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84 *Watch Tower Bible and Tract Society of Pennsylvania* c. *A*, 2020 QCCA 1701, at paras 26 to 34.
85 Exhibit R-77.
86 Exhibit R-78.
87 Exhibit R-79.

[162] In a summary judgment rendered in the U.S. matter[88], the court underlines the particular circumstances of the matter as regards prescription issues:

> "The focus of the statute of limitations arguments in this case must be discussed with careful consideration of what is being alleged. This is not a medical malpractice case although there are aspects which may implicate treating the case for limitations purposes as negligence in promoting medical malpractice. This case involves the alleged negligence by the CIA in secretly funding a doctor who allegedly carried out experiments on unwitting human subjects.
>
> […]
>
> Newspaper articles containing allegations do not necessarily place citizens on notice when there is no evidence that these articles were read. When six of the plaintiffs heard or read of the CIA funding, they initiated suit within the requisite time period. The extent of the articles' reach, the popularity of the paper, the ability of the plaintiffs to follow daily public events, especially under the circumstances of this case, are all issues difficult to discern at this posture. This Court declines to hold that the facts submitted somehow place a duty on these plaintiffs to have read the applicable articles. Without actual notice or without having read the articles it would go too far to state that the statute of limitations began to run when the articles were published. The trier of fact must resolve the issue of diligence and notice."

[163] The Court agrees with these findings. It is not possible to conclude at the present stage that the numerous publications regarding the events can serve to establish the starting point of the prescription unless it was demonstrated that the Class Members were aware of or should have been aware of same. This is an issue for the merits.

[164] Furthermore, at the present stage, the Court finds that it is not unreasonable to plead that the Class Members and Applicants became aware of their right of action when the secret experiments were revealed in Canada by the episodes of the National News and the Fifth Estate mentioned above. Again, this issue needs to be determined on the merits.

[165] Finally, the Applicants blame the Government of Canada for its failure to collaborate with the CIA who had undertaken to advise all Canadian victims. The RVH responded that it could not provide with the names of the patients since Dr. Cameron had taken his personal records when he left in 1964 including patients lists. It is also reported that his son, a lawyer, would have destroyed the records on the grounds on confidentiality.[89] These are all facts which, if proven, could serve to assess the prescription issue.

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88 *Orlikow* v. *United States*, 682F. Supp. 77 (D.D.C. 1988), (Exhibit R-47), pp. 7 and 9.

89 Exhibit R-16 B, p. 95 PDF.

1.6.4 The Applicants' Impossibility to Act

[166] The Applicants advance their impossibility to act. They rely on the expertise report of psychiatrist Evan Jules Brahm, M.D. The latter was mandated to[90]:

> "[…] assess Julie Tanny, Patricia Roberge and Lana Ponting in order to determine whether there were any psychological issues that impaired their ability to file their action prior to or around when the class action was filed in January 2019 and to summarize the result of the assessment of several other adult children of a parent who had been patients who were subjected to the Montreal Experiment at the Allan Memorial Institute."

[167] He examined Applicant Tanny at his office in January 2019 and by a video assessment on March 19 and 20, 2025. Based on her history and mental status examination, he concludes as follows:

> "Based on the lack of any discussion within the family of Charles Tanny's treatment, the impact on his behaviour of his treatment at the Allan Memorial Institute, and the shame that Julie Tanny experienced after learning the details, it is my impression that this trauma led to an avoidant pattern of being able to act in situations that are potentially traumatizing which is very commonly seen in people who have experienced significant trauma. Consequently, it is my opinion that she was psychologically incapable of acting sooner to submit a legal proceeding."[91]

[168] He also examined Applicant Ponting twice by telephone, each for an hour, the first time on November 2, 2020, and the second time on March 26, 2025. Based on her history and mental status examination and diagnosis impression, he concludes as follows:

> "Ms. Ponting was severely traumatized by her treatment at the Allan Memorial Institute. In addition to having a post-traumatic stress disorder with frequent "flashbacks" of her experience, and she has significant memory impairment and a vulnerability to an exacerbation of panic and depression by any incident that is reminiscent of this. These impairments left her too damaged to have acted sooner in filing a legal proceeding – in other words, under a psychological inability to act."[92]

[169] Although arguments can be raised regarding the probative value of this report and of the information on which the author relies, this analysis should be performed on the merits. At the present stage, the Court cannot be asked to weigh the probative value of exhibits and expertise reports.

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90 Exhibit R-103, p. 1.
91 *Id.*, p. 3.
92 *Id.*, p. 10.

1.7 The Argument of Stare Decisis

[170] The Defendants argue that Quebec courts have already ruled on litigations relating to the treatment plan given by Dr. Cameron and the indirect responsibility of RVH for his alleged misconduct.

[171] In this respect, they invoke the cases of *Morrow*[93] and *Kastner.*[94]

[172] As described below, the facts of those matters differ substantially from the allegations brought forward by the Applicants and those decisions do not preclude the Applicants' rights of action.

[173] In *Morrow,* the Court concluded that the evidence did not demonstrate that Dr. Cameron *experimented* treatment with the patient. The evidence rather demonstrated that the treatment afforded was used for many years, was favourable and approved by his colleagues in anglophone hospitals and elsewhere and that no fault of Dr. Cameron or employees of the AMI was demonstrated. The Court also concluded that Dr. Cameron was not the subordinate of RVH as regards his relation with the plaintiff.

[174] The Court of Appeal upheld this decision, underlinning, however, that the treatments afforded to the plaintiff did not go their full course towards "departterning". They were discontinued at the request of the family after 11 treatments. The doctors who testified all indicated that 11 shock treatments were not uncommon. A full series of depatterning would range from 30 to 60 electric shocks.

[175] Evidence was also administered by the testimony of expert psychiatrists who compared the research to be done under the grant[95] which Dr. Cameron had applied for and the treatments given to the plaintiff. They both asserted that the work described in the application for grants and the treatment offered were not the same. Psychic driving was not used in the case of the plaintiff. Chemical agents such as Artane, Bulbocapnine, Curare and LSD25 were not used.

[176] The Court of Appeal determined that the evidence simply did not support appellant's claim that the treatments she received were given for purposes of experimentation and not for therapy.

[177] The facts and evidence in *Morrow* are distinct from the facts substantiating the Applicants' cause of action. The grounds of dismissal of the action in the *Morrow* matter

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93 *Morrow* v. *Hôpital Royal Victoria et al.*, J.E. 78-824, pp. 71, 82 and 140 to 141, appeal dismissed: *Morrow* v. *Hôpital Royal Victoria*, J.E. 90-165.

94 *Kastner* c. *Royal Victoria Hospital*, 2000 CanLII 17987 (QC CS), paras. 95, 99 to 114, 142 to 144, 162 to 165, 167 to 181 and 220 to 224; upheld in appeal *Kastner* v. *Hôpital Royal Victoria*, 2002 CanLII 63769, para. 13.

95 On March 4, 1957, the CIA approved a grant as Mkultra Subproject 68 for the period of time from March 18, 1957, to June 30, 1960.

do not constitute stare decisis as regards the allegations formulated in the *Second Amended Application for Authorization*.

[178] In *Kastner*, the Court dismissed the plaintiff's action on the grounds that her claim was prescribed[96] and that she failed to demonstrate a fault on the part of Dr. Cameron.

[179] The RVH pleaded that Dr. Cameron had been hired as administrator of the AMI in a management position and was not its employee as regards his position as an independent physician with his own patients. Dr. Cameron was authorized to use the premises to administer treatment to his clients. The hospital bill did not include the professional charges. The admission forms designated Cameron as attending physician. The Court stated that in those days, the doctors decided whether to admit patients and decided what treatment to be given to them, except for situations of total disregard for normal medical practices. All facts to be reviewed on the merit of the class action.

[180] The Court held that the plaintiff could raise the liability of the Government of Canada under article 1053 C.c.B.c. if she demonstrated the silence of the Government servants and their neglect to make verification of the use of the funds.

[181] However, no one seriously contested the opportunity or demonstrated the inappropriateness of the treatments administered to the plaintiff.[97] The treatment included electroshocks and deep sleep coma induced by massive injection of insulin.

[182] The plaintiff's application to the governmental aid program was dismissed, apparently because it was felt that the plaintiff had not been depatterned.[98] None of the psychiatrists who were presented by the plaintiff at trial could give any detail as to how, when, why, and on which patients depatterning was practised.[99] The Court concluded that *the medical charts of the A.M.I. are very eloquent on the treatments and they do not, in any way, prove any inkling of what plaintiff is alleging, not even as was pleaded, the beginning phases of depatterning.*[100] *In short, none of the prescribed steps to attain depatterning can be found here. As stated earlier, the patient was treated like the seriously ill person she was and no more.*[101]

[183] The Court further decided that it became *moot to look for a master-servant relationship in order to try and find liability of either or both defendants.*[102]

[184] The Court of Appeal upheld this decision, concluding that no manifest error could justify to intervene on the appreciation by the first instance judge of the credibility of the

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96 The judge did not believe her explanations regarding when she became aware of her right of action.
97 *Kastner* c. *Royal Victoria Hospital*, *supra* note 94, at para. 169.
98 *Id.* at para. 195.
99 *Id.* at para. 197.
100 *Id.* at para. 204.
101 *Id.* at para. 207.
102 *Id.* at para. 224.

witnesses and the probative value of the evidence. It further concludes that the RVH could not be considered as being the principal of Dr. Cameron.

[185] But this decision does not discuss the situation which would have prevailed had it been demonstrated that as Director of AMI, Dr. Cameron managed grants so that they be used for abusive experiments.

[186] The Court concludes that the *Kastner* matter discusses facts which are fundamentally different from those alleged by the Applicants and hence does not decide on the issues raised by their alleged cause of action.

1.8 The Claim for Punitive Damages under the *Charter*

[187] The Applicants are claiming punitive damages under article 49 of the *Québec Charter of Rights and freedoms*.[103]

[188] For the reasons detailed below, this claim cannot be authorized since all relevant facts and faults alleged occurred prior to the entering into force of this provision allowing a claim for punitive damages.

[189] There is no question that the *Charter* and its provisions came into force after the facts and more importantly after the alledged faults at the source of the cause of action.

[190] The Applicants raise that the issue regarding the possible retroactivity of those provisions shall be decided on the merits. The Court is of the view that this question can be decided at the present stage.

[191] The issue is not to determine if the rights which are protected under the *Charter* existed prior to its enforcement nor if fundamental rights of the Applicants and Class Members were infringed.

[192] The issue here is rather to determine if punitive damages can be claimed for an infringement to fundamental rights which occurred before the *Charter* came into force. Although this infringement could constitute a fault within the meaning of article 1053 C.c.B.c. and justify compensatory damages, could it also justify punitive damages, and if so, based on what legal provision?

[193] The Supreme court of Canada, in *Béliveau St-Jacques* c. *Fédération des employées et employés de services publics inc*.,[104] confirmed that article 1053 C.c.B.c. could serve as a basis to claim for compensatory damages in a case of a violation of fundamental rights before the *Charter* came into force.

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[103] *Charter*, *supra* note 3, at art. 49.

[104] *Béliveau St-Jacques* c.*Fédération des employées et employés de services publics inc*., 1996 CanLII 208 (CSC), [1996] 2 RCS 345, at para. 118.

[194] As regards punitive damages, the courts came to a different conclusion.

[195] In *Imperial Tobacco Canada Ltée* c. *Conseil québécois sur le tabac et la santé*,[105] the Court of Appeal confirmed the reasoning of the first instance judge who concluded that punitive damages could be awarded only after the date of entering into force of the *Charter*:

> [968] Il est évident, à la lecture des extraits suivants du jugement, que le juge est pleinement conscient que la Charte ne s'applique pas pendant toute la période visée :
>
> > [488] We look in detail at the criteria for assessing punitive damages in Chapter IX of the present judgment. At that time we also consider the fact that the Quebec Charter was not in force during the entire Class Period, having come into force only on June 28, 1976.
> >
> > [1024] Quebec law provides for punitive damages under the Quebec Charter and the CPA and we have ruled that in these files such damages are warranted under both. We recognize that neither one was in force during the entire Class Period, the Quebec Charter having been enacted on June 28, 1976, and the relevant provisions of the CPA on April 30, 1980. Consequently, the punitive damages here must be evaluated with reference to the Companies' conduct only after those dates.
>
> (Emphasis by the Court)

[196] In *J.B.* c. *Soeurs Grises de Montréal*,[106] justice Courchesne decided that the allegations of an application for authorization which aimed to indemnify the class members for acts committed during a period terminating in 1973, prior to the *Charter*, could not justify a claim for punitive damages. Her reasoning is the following:

> [74] Le demandeur entend réclamer pour lui-même et pour les membres du Groupe proposé des dommages punitifs en vertu de la Charte des droits et libertés de la personne (la Charte) en raison d'une atteinte intentionnelle à leur dignité et à leur intégrité physique et psychologique.
>
> [75] Les dommages punitifs ne peuvent être réclamés que s'ils sont expressément prévus par la loi. En l'occurrence, le demandeur allègue une violation d'un droit protégé par la Charte aux termes d'une atteinte illicite et intentionnelle au sens de son article 49 al. 2.
>
> [76] Toutefois, les dispositions de la Charte ne sont entrées en vigueur que le 28 juin 197667 .
>
> [77] Or, les actes reprochés à la Congrégation à la Demande en autorisation et la définition du Groupe proposé telle que circonscrite sur le plan temporel portent sur

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[105] *Imperial Tobacco Canada Ltée* c. *Conseil québécois sur le tabac et la santé*, 2019 QCCA 358, at paras 965 to 969.

[106] *J.B.* c. *Soeurs Grises de Montréal*, 2022 QCCS 964, at para. 78.

> une période se terminant en 1973. Aucun acte fautif commis au-delà de cette période n'est allégué à la Demande en autorisation.
>
> [78] Par conséquent, les Abus allégués, perpétrés selon les allégations entre 1925 et 1973 ne peuvent constituer des atteintes illicites au sens de la Charte puisqu'elle n'est pas applicable à la période visée par le recours.
>
> [79] Pour ces motifs, les allégations de la Demande en autorisation ne peuvent donner ouverture à une réclamation de dommages punitifs.

[197] This reasoning applies to the present matter.[107] The application for authorization cannot be granted as regards the claim for punitive damages.

2. THE CLAIMS OF THE CLASS MEMBERS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF FACT OR LAW (ART. 575 (1) C.C.P)

2.1 The Class Definition

[198] The conditions applicable to the definition of the class have been determined as follows by the Court of Appeal in *George* c. *Québec (Procureur general)*:[108]

> 1. The definition of the group must be based on objective criteria;
>
> 2. The criteria must be based on a rational basis;
>
> 3. The definition of the group must not be circular or imprecise;
>
> 4. The class definition must not be based on a criterion or criteria that depend on the outcome of the class action on the merits.

[199] The proposed class definition reads as follows:

> All persons who underwent depatterning treatment at the Allan Memorial Institute in Montreal, Quebec, between 1948 and 1964 using Donald Ewen Cameron's methods (the "Montreal Experiments") and their successors, assigns, immediate family members, and dependants.[109]

[200] The adequacy of the class definition must be verified in light of the purported cause of action of the proposed class action.

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[107] The Court is aware that other decisions authorized a class action claiming for punitive damages under the *Charter* when the period of the class action overlapped during the period after the Charter entered into force: *Ward* c. *Procureur général du Canada*, 2023 QCCS 793, *A.B.* c. *Frères des écoles chrétiennes du Canada francophone*, 2022 QCCS 1772; *A.B.* c. *Corporation épiscopale catholique romaine de Saint-Hyacinthe*, 2022 QCCS 2146; *B.* c. *Frères Maristes*, 2023 QCCS 167; *A.B.* c. *Corporation épiscopale catholique romaine d'Amos*, 2023 QCCS 762.

[108] *George* c. *Québec (Procureur général)*, 2006 QCCA 1204, at para. 40.

[109] As modified orally during the hearing.

[201] In this instance, the Applicants advance a cause of action which is based on their assertion that the Defendants are responsible for the damages which were sustained by all persons who were the victims of the depatterning method employed by Dr. Cameron in the course of the Montreal Experiments.

[202] The Class Members can be objectively identified as the patients admitted at the AMI during the class period and who underwent depatterning, as well as their successors, assigns, immediate family members, and dependants.

[203] This definition is directly linked to the cause of the class action. It is not circular nor imprecise and it does not depend on the issue of the class action.

[204] The common issues will essentially be whether the process as described by the Applicants is faulty and whether the Defendants should be held liable for having enabled same.

[205] If the action succeeds, the persons claiming to be Class Members will then be called upon to demonstrate, on an individual basis, that they were victims of depatterning as it is described by the Applicants, during the period of the class action, and the extent of the damages they sustained. This expected process does not render the definition of the class circular or dependent upon the outcome of the determination of the common issues.

[206] The class definition as proposed by the Applicants appears adequate to the Court.

2.2 The Common Issues

[207] As the Court of Appeal reiterated in *Tessier*,[110] a single common question is sufficient to satisfy the requirement of article 575(1) C.C.P. *"if it advances the debate or promotes its resolution in a non-trivial manner, without necessarily requiring a common answer*".

[208] At the present stage, the Court accepts that the common issues proposed in the Second Amended Application are adequate, except for the issues referring to the claim for punitive damages under the Québec *Charter*.

[209] The Court also sets aside the statutes and Charters which, as confirmed by the Applicants, are not pursued directly, but only cited for the principles which they establish, namely the *Canadian Charter of Rights and Freedoms*, the *Charter of Human Rights and Freedoms*, the *Act Respecting Health Services and Social Services*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, 10 December 1984, the *Convention on the Prevention and Punishment of the Crime of Genocide*, Paris, 9 December 1948, and the *Charter of the United Nations*[111].

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[110] *Tessier*, *supra* note 5, at para 26.

[111] *Applicants' Argument Plan for Clas Action Authorization* at para. 12.

[210] The common issues are hence identified as follows:

210.1. Were the Montreal Experiments medically-suitable treatment for those that underwent them?

210.2. Were the Montreal Experiments human experimentation?

210.3. Was informed consent properly obtained for participation in the Montreal Experiments?

210.4. Did the Locus Defendants commit a fault, whether intentionally, negligently, or recklessly, by their systemic participation in the Montreal Experiments?

210.5. Did the Governmental-Funding Defendant commit a fault, whether intentionally, negligently, or recklessly through their active or passive participation in the Montreal Experiments?

210.6. Did any of the Defendants know or should they have known of the nature of the Montreal Experiments and when?

210.7. Did the Defendants fail and/or neglect to notify Class Members that they had been subjects in the Montreal Experiments and to assure that they received proper follow-up treatment?

210.8. With respect to Class Members' rights, did any of the Defendants breach the *Civil Code of Québec*, *inter alia*, articles 10, 11, 1375, 1399, 1457, 1463?

210.9. In the affirmative to any of the above questions, did the Defendants' conduct engage their solidary liability toward Class Members?

210.10. What is the nature and extent of damages to which the Class Members can claim?

210.11. Are Class Members entitled to bodily, moral and material damages, and if so, in what amount?

3. THE COMPOSITION OF THE CLASS MAKES IT DIFFICULT OR IMPRACTICABLE TO APPLY THE RULES FOR MANDATE OR FOR CONSOLIDATION OF PROCEEDINGS (ART. 575 (3) C.C.P.)

[211] This criterion is generally met if there exists a class comprising a large number of people whose identity is not easily determined:

> [28] Quant au paragr. 573(3), les juges autorisateurs doivent simplement se demander s'il existe un groupe et si sa composition rend difficile ou peu pratique l'application des règles sur le mandat d'ester en justice pour le compte d'autrui

> (art. 91 C.p.c.) ou sur la jonction d'instance (210 C.p.c.), ce qui est habituellement le cas des demandes visant un grand nombre de personnes dont l'identité n'est pas facilement déterminée. L'action envisagée n'a par ailleurs pas à être le meilleur recours possible pour les intéressés, sauf l'exception particulière de l'action déclaratoire de droit public.[112]

[212] Other factors causing constraints inherent in the use of the mandate and the joinder of the parties are also considered, such as the scattered geographic location of the Class Members and their physical or psychological limitations.

[213] The Court agrees with the arguments submitted by the Applicants. The class includes all patients admitted to the AMI during the class period who were the subject of depatterning and their identity is not easily determined. Those persons are believed to be scattered throughout the province and across Canada. The class action corresponds to the ideal "véhicule procédural" to allow the purported elderly and vulnerable victims and their representatives and other Class Members to be represented and come forward to assert their rights.

4. THE APPLICANTS ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS (ART. 575 (4) C.C.P.)

[214] The threshold for this criterion is generally easily satisfied. A person who proposes a class action must demonstrate that he or she: (i) will be able to perform this function adequately; (ii) has an interest in the matter; (iii) has a general understanding of the matter; (iv) will be able to make the necessary decisions based on the advice of his or her lawyers; (v) has an interest in pursuing the litigation and (vi) does not place himself or herself in a conflict of interests with the other members of the class.[113]

[215] The representative does not have to correspond to the ideal representative. Case law even states that this condition is based on criteria which threshold is minimal.[114] "*No proposed representative should be excluded unless his or her interests or competence is such that the case could not possibly proceed fairly*".[115]

[216] The arguments raised by the Defendants to contest that the Applicants would be suitable representatives reside in their arguments that they have not demonstrated their right of action.

[217] As discussed above, this argument only stands as regards Applicant Roberge and her late mother.

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112 *Tessier*, *supra* note 5, at para 28.
113 *Id.* at para 29.
114 *Société québécoise de gestion collective des droits de reproduction (Copibec)* c. *Université Laval*, 2017 QCCA 199, at para 57.
115 *Infineon Technologies AG* c. *Option consommateurs*, 2013 SCC 59, [2013] 3 RCS 600, at para. 149.

[218] The Court sees no reasons to consider that Applicants Ponting and Tanny would not meet this fourth criteria.

FOR THESE REASONS, THE COURT:

[219] **GRANTS** in part the *Second Amended Application to Authorize the Bringing of a Class Action & to Appoint the Applicants as Representative Plaintiffs*;

[220] **AUTHORIZES** the bringing of a class action in the form of an application to institute proceedings in damages and declaratory relief;

[221] **APPOINTS** the Applicants Tanny and Ponting as representatives of the persons included in the Class herein described as:

- All persons who underwent depatterning treatment at the Allan Memorial Institute in Montreal, Quebec, between 1948 and 1964 using Donald Ewen Cameron's methods (the "Montreal Experiments") and their successors, assigns, immediate family members, and dependants;

[222] **IDENTIFIES** the principal issues of fact and law to be treated collectively as the following:

a) Were the Montreal Experiments medically-suitable treatment for those that underwent them?

b) Were the Montreal Experiments human experimentation?

c) Was informed consent properly obtained for participation in the Montreal Experiments?

d) Did the Locus Defendants commit a fault, whether intentionally or negligently, by their systemic participation in the Montreal Experiments?

e) Did the Governmental-Funding Defendant commit a fault, whether intentionally or negligently, through their active or passive participation in the Montreal Experiments?

f) Did any of the Defendants know or should they have known of the nature of the Montreal Experiments and when?

g) Did the Defendants fail and/or neglect to notify Class Members that they had been subjects in the Montreal Experiments and to assure that they received proper follow-up treatment?

h) With respect to Class Members' rights, did any of the Defendants breach the *Civil Code of Québec*, CQLR c CCQ-1991 (*inter alia*, arts. 10, 11, 1375, 1399, 1457, 1463)?

i) In the affirmative to any of the above questions, did the Defendants' conduct engage their solidary liability toward Class Members?

j) What is the nature and extent of damages to which the Class Members can claim?

k) Are Class Members entitled to bodily, moral and material damages, and if so, in what amount?

[223] **IDENTIFIES** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Applicants and each of the members of the Class;

DECLARE that the Montreal Experiments consisted of unlawful human experimentation enabled by the Government of Canada as well as by the Royal Victoria Hospital and McGill University;

DECLARE that the Defendants solidarily liable for the damages suffered by the Applicants and each of the members of the Class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

[224] **DETERMINES** that the Class Action will be instituted in the District of Montreal;

[225] **DECLARES** that all Class Members that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted, in the manner provided for by law;

[226] **FIXES** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the Class Members mthat have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

[227] **CONVOKES** the parties to determine the contents of the notice to the Class Members and the modalities of publication;

[228] **THE WHOLE** with costs.

Dominique Poulin

Signature numérique de Dominique Poulin
Date : 2025.07.31 07:34:03 -04'00'

DOMINIQUE POULIN, J.S.C.

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Hearing dates: June 9, 10, 11, 2025

Note: *The translation of this judgment was requested on July 30, 2025 because it is in the interest of the members of the class to obtain a translation. However, in view of the announced deadline for its delivery, the Court considers that delaying the signing of this judgment while awaiting the translated version would result in a delay prejudicial to the public interest or cause injustice or serious inconvenience to one of the parties to the litigation. The translation will follow.*