CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Civil Division)

NO.: 500-17-106683-199

ALISON JEAN STEEL
and
MARILYN RAPPAPORT

Plaintiffs

-vs-

PROCUREUR GÉNÉRAL DU CANADA
and
HÔPITAL ROYAL VICTORIA
and
CENTRE DE SANTÉ UNIVERSITAIRE McGILL

Defendants

OUTLINE OF PLAINTIFFS' ARGUMENT CONTESTING THE APPLICATION OF DEFENDANTS FOR PARTIAL DISMISSAL OF PLAINTIFFS' MODIFIED ORIGINATING APPLICATION

1. **THAT** Plaintiffs have instituted an action against Defendants as family members of former patients of Dr. Ewen Cameron who used Plaintiff's, Alison Jean Steel, mother as a guinea pig and who used Plaintiff's, Marilyn Rappaport, sister as a guinea pig, for the purposes of conducting research upon them by way of experimentation, such as inflicting upon them massive electroshock treatments, experimental drugs and psychic driving, between the years 1948 to 1965 at the Allan Memorial Institute, part of the Royal Victoria Hospital.

2. **THAT** the above-mentioned former patients were treated with psychiatric depatterning techniques funded by the Government of Canada, as confirmed by the Allan Memorial Institute Depatterned Persons Assistance Plan, produced as Plaintiffs' Exhibit P-64 in contestation to Defendants' Application for Partial Dismissal.

3. **THAT** as alleged by Plaintiffs, the treatments carried out by Dr. Ewen Cameron and/or the doctors who assisted him and the employees of the Hospital were unjustified, having been inflicted upon their mother and sister without their informed consent, and thereby causing permanent psychological damage to the patients.

4. **THAT** as appears from the present court record, Plaintiffs were ordered by Judge André Prévost, J.C.S., who is in charge of the case management of the present case, to modify their proceedings and incorporate in the said proceedings the actual damages suffered by each of the family members of the patients.

5. **THAT** in response to this Order, Plaintiffs amended their original Application by incorporating the impact that the above-mentioned experimental research had on family members of their parents and/or siblings, and this Modified Originating Application is dated December 29, 2020.

6. **THAT** Plaintiffs were intending to continue with the modification of the Originating Application for those few mandators who prior to December 29, 2020, were unable to furnish to Plaintiffs' undersigned attorney the impact of this experimental research on their family members.

7. **THAT** on the other hand and subsequent to December 29, 2020, Defendants' attorneys, both verbally and in writing, advised Plaintiffs' undersigned attorney and the Trial Judge that they intended to file an application for the partial dismissal of Plaintiffs' Modified Originating Application and therefore it was not practical for Plaintiffs to continue to modify their Originating Application to incorporate the few mandators who were not included in the Modified Originating Application until the Court decided on the Defendants' Motion for Partial Dismissal of Plaintiffs' Modified Originating Application.

8. **THAT** Plaintiffs' present proceedings were instituted under Articles 91 and 92 of the *Code of*

Civil Procedure (C.C.P.) as a result of a meeting that took place in the meeting room of the Plaintiff, Marilyn Rappaport's, condominium and residence on May 20, 2018, and this meeting resulted from Plaintiff, Marilyn Rappaport, establishing a group whose parents and/or siblings were used as guinea pigs by Dr. Ewen Cameron for experimental research, and this group was referred to as SAAGA (Survivors Allied Against Government Abuse).

9. **THAT** Plaintiffs' undersigned attorney was invited by the Plaintiff, Marilyn Rappaport, to attend this meeting and was present throughout the meeting and spoke to all members of the group who were present.

10. **THAT** during this meeting, Plaintiffs' undersigned attorney was mandated by the group to proceed with a class action lawsuit against Defendants and particularly against the Attorney General of Canada (the government) for funding the Allan Memorial Institute program of experimental research.

11. **THAT** it was also announced at this meeting on May 20, 2018, that many members of this group were from Canada, the United States, Mexico and Israel, and with the launch of SAAGA by Plaintiffs they expected many more to come forward.

12. **THAT** the families who form the SAAGA group mandated Plaintiffs' undersigned attorney to take a class action since Plaintiffs' undersigned attorney has been litigating this matter for more than three decades, the whole as appears from an article that appeared in the CJN which was written by Janice Arnold on May 22, 2018, produced as Plaintiffs' Exhibit P-65 in contestation to Defendants' Application for Partial Dismissal, and a further article written by Joshua Philip on May 23, 2018, produced as Plaintiffs' Exhibit P-66 in contestation to Defendants' Application for Partial Dismissal.

13. **THAT** furthermore, as appears from the Originating Application, as alleged by Plaintiffs in Paragraph 8 thereof, due to the vast publicity of mounting a class action, including a documentary that appeared on CBC's The Fifth Estate as well as other miscellaneous documentaries broadcast on television and over the internet, another law firm known as

Consumer Law Group Inc. was engaged by Julie Gold, Marlene Levinson and Alan Tanny who were present at the meeting of members of SAAGA on May 20, 2018, without advising Plaintiffs and/or their undersigned attorney, to institute proceedings for a class action and these proceedings were not only instituted against the Defendants herein but against the United States Attorney General as well, representing the CIA, the whole as appears more fully from the class action bearing Superior Court file number 500-06-000972-196, produced as Plaintiffs' Exhibit P-67 in contestation to Defendants' Application for Partial Dismissal.

14. **THAT** as a consequence of the foregoing, Plaintiffs and their undersigned attorney decided that they would institute an action under Articles 91 and 92 C.C.P., that is referred to as a direct action, whereby Plaintiffs would represent themselves and act as mandataries for the SAAGA group as well as for other families who had a common interest with Plaintiffs in the proceedings under Article 91 C.C.P.

15. **THAT** in any event, Plaintiffs and their undersigned attorney were not interested in instituting proceedings against the United States Attorney General since such proceedings would only delay the authorization of any class action and that all the Plaintiffs and most of the mandators in the present action are elderly persons and are vulnerable and they were not interested in becoming involved in protracted litigation and being delayed often for more than 10 years, as confirmed by the more recent jurisprudence for the authorization of a class action as opposed to a direct action under Article 91 C.C.P. and following where the authorization of the action is not necessary.

16. **THAT** in fact, the foregoing class action instituted by Consumer Law Group Inc. has been vigorously contested by the United States Attorney General and their contestation has not yet even been adjudicated upon, and the Attorney General of Canada has also indicated that it intends to contest the said proceedings as well.

17. **THAT** Defendants' application for partial dismissal of Plaintiffs' proceedings is essentially based upon the following grounds:

a. Firstly, Defendants allege that Plaintiffs have not produced for around half of the

purported members the mandates and/or impact statements of the family members and this contestation is totally unfounded, and in fact Plaintiffs' undersigned attorney has drawn to the attention of Defendants' attorneys that to date almost every one of the purported members who are mandators have produced these impact statements, and in any event Article 92 C.C.P. provides that any defect in the mandate has no effect unless it is not remedied, which can be done even in appeal;

b. In response to Plaintiffs' position in this respect, Defendants' attorneys requested a video conference call between Plaintiffs' undersigned attorney and his stagiaire and Defendants' attorneys that took place on November 15, 2021, as confirmed by an email forwarded to Plaintiffs' undersigned attorney by the attorney representing the Attorney General of Canada, produced as Plaintiffs' Exhibit P-68 in contestation to Defendants' Application for Partial Dismissal;

c. As appears from this email, Plaintiffs' undersigned attorney and Defendants' attorneys have essentially resolved the issue raised by Defendants' attorneys in regard to the mandates and/or impact statements, although the Attorney General of Canada is of the opinion that each of the family members must file a separate mandate as a mandator notwithstanding the position of the Plaintiffs' undersigned attorney that it only requires the mandate from one member of the family to act as mandator for all members of the family;

d. In response to same, Plaintiffs' undersigned attorney advised Defendants' attorneys that if the Court is of the same opinion as the Attorney General of Canada, that Plaintiffs have no objection to obtaining mandates from each family member even though in regard to some mandates all members of the family signed the same mandate;

e. Secondly, Defendants have alleged that the Plaintiffs and the purported members do not share a common interest in the dispute and according to their interpretation of Article 91 C.C.P. and its application all parties must have a common interest related to each element of the cause of action against the Defendants and in the present case although they have

a common interest in regard to the treatments and experimentation inflicted upon their parents and/or siblings, there is no common interest related to each element of the action including damages sustained by each family member;

f. In response to same, Plaintiffs' undersigned attorney submits that this was not the intention of the legislator when it enacted Articles 91 and 92 C.C.P. and when it enacted Article 575(3) C.C.P. that deals with authorization of a class action, under the *Code of Civil Procedure*;

g. Plaintiffs' undersigned attorney submits that under Article 575(3) C.C.P., in order to obtain authorization of a class action it must be established that the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;

h. Plaintiffs' undersigned attorney submits that in enacting this requirement for class actions, the legislator intended that a broad and flexible interpretation be given to Article 91 C.C.P. and its application, as the Supreme Court has recently held in regard to class actions in the case of *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, 2019 SCC 35 [Plaintiffs' BoA, Tab # __], and that Articles 91 and 92 C.C.P. should be available to any members of any class action who have a common interest with the mandataries and who are not interested in being drawn into protracted litigation for many years, as hereinabove referred to;

i. The above interpretation and application by the Attorney General of Canada and the attorneys representing the Defendant hospitals is too restrictive and should not be applied to the present case since the present action as instituted under Article 91 C.C.P. is certainly not difficult or impracticable to apply to the rules for mandates consisting only of approximately 50 mandators;

j. Plaintiffs' undersigned attorney submits that the legislator would not have referred to Articles 91 and 92 C.C.P. in Article 575(3) C.C.P. if it intended to give a restricted interpretation and application to these articles;

k. Defendants' argument is that even though the treatments carried out by Dr. Ewen Cameron were essentially the same for parents and/or siblings of the mandators, the damages suffered for each family were vastly different;

l. There is no provision in Article 91 C.C.P. that a common interest in a dispute means that the mandators must have substantially the same damages as the mandataries;

m. The only requirement under Article 91 C.C.P. is that the mandators have the same common interest in the dispute as the mandataries;

n. Plaintiffs submit that the requirements in the present action are far less than the requirements for the authorization of a class action and therefore it is in the interests of justice and particularly access to justice that the present application and proceeding to partially dismiss the action of the Plaintiffs be dismissed;

o. In fact, it would be against the interests of justice if the Court maintains the present application of the Defendants and concludes that the only recourse available to the mandataries is a class action or individual actions by each of the purported members.

p. Thirdly, Defendants are claiming that the allegations on behalf of the purported members fail to disclose a common cause of action against Defendants and in a civil liability case both plaintiffs and mandators should have the same legal interest in each element of their claim;

q. Plaintiffs' undersigned attorney submits that Article 91 C.C.P. does not provide for this rigid and restrictive requirement and therefore is not a ground in support of Defendants' Application for Partial Dismissal of Plaintiffs' action and that this argument should not be decided and adjudicated upon by way of an exception to dismiss and should be decided and adjudicated upon by the Trial Judge when the present case is heard on its merits;

r. As appears from the Binders of Authorities submitted by the Defendants and their plans

of argument, Defendants cited many judgments in support of their Application for Partial Dismissal of the present action that were rendered in common law provinces of Canada;

s. Plaintiffs' undersigned attorney submits that these judgments are not relevant to the present case since none of these provinces provide provisions for authorizations of class action such as those required in Québec for the issuance of class actions, as provided for by Article 575(3) C.C.P.;

t. In any event and subsidiarily to the foregoing, it is against the interests of justice and against access to justice and the rule of proportionality if the Court maintains the Application for Partial Dismissal of the Defendants and concludes that the only recourse available to the mandators, as submitted by Defendants, is a class action or individual actions by each mandator, especially since all mandators opted for the present action and not the class action instituted by Consumer Law Group Inc.;

u. Furthermore, the mandators can always opt to renounce to Plaintiffs' direct action and join the class action if and when it is ever authorized by the Court;

v. Finally, the attorneys representing the Defendant hospitals in their Plan of Argument have cited the case of *Gail Kastner* -vs- *Hôpital Royal Victoria* at No. 2 of their Binder of Authorities;

w. Plaintiffs' undersigned attorney submits that this Judgment does not constitute chose jugé in regard to the present direct action since the plaintiff in that case was a patient of Dr. Ewen Cameron and was subsequently compensated by the Government as a result of a judgment of the Federal Court, produced by Plaintiffs as Exhibit P-7;

18. THAT in support of the foregoing and Plaintiffs' contestation to Defendants' Application for Partial Dismissal of Plaintiffs' Modified Originating Application, Plaintiffs refer this Honourable Court to its Book of Authorities.

<u>Dictionary Definitions</u>

"Commun" from Larousse online

Article 91 & 92 CPC

Solkin c. Procureur general du Canada 2019 QCCS 490

Aucoin c. Siino 2016 QCCS 5712

L'Oratoire Saint-Joseph du Mont-Royal v. J. J. 2019 SCC 35

Carle c. CBC/Radio Canada 2019 QCCS 3116

Interest

Morin Gonthier c. Bernstein 2018 QCCA 795

Ladoucer c. Ville de Dollard-des-Ormeaux 1993 RDJ 329

Vaillant c. 2527-9829 Québec Inc. (Estrie Auto centre) 2007 QCCQ 6133

Irrecevabilité

Légaré c. Ruel 2021 QCCQ 3458

Société d'habitation du Québec c. Leduc 2008 QCCA 2065

WESTMOUNT, November 19, 2021.

ME ALAN M. STEIN
Attorney for Plaintiffs
4 Carré Westmount, Suite 150
Westmount, Québec H3Z 2P9
T: 514-842-9994 (ext. 1812) / F: 514-842-1112
alanstein.avocat@gmail.com