SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-001022-199

DATE : May 5, 2025

BEFORE THE HONOURABLE SHAUN E. FINN, J.S.C.

ELEANOR LINDSAY
Representative Plaintiff
v.
PROCUREUR GENERAL DU QUÉBEC
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DU BAS—SAINT-LAURENT
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CIUSSS DU SAGUENAY - LAC-SAINT-JEAN
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CIUSSS DE LA CAPITALE-NATIONALE
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CIUSSS DE LA MAURICIE-ET-DU-CENTRE-DU-QUÉBEC
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CIUSSS DE L'ESTRIE - CENTRE HOSPITALIER UNIVERSITAIRE DE SHERBROOKE
-and-

SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CIUSSS DE L'OUEST-DE-L'ÎLE-DE-MONTRÉAL
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CIUSSS DU CENTRE-SUD-DE-L'ÎLE-DE-MONTRÉAL
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DE L'OUTAOUAIS
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DE L'ABITIBI-TÉMISCAMINGUE
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DE LA CÔTE-NORD
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DE LA GASPÉSIE
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DE CHAUDIÈRE-APPALACHES
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DE LAVAL
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DE LANAUDIÈRE
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DES LAURENTIDES
-and-
SANTÉ QUÉBEC, PERSONNE MORALE DE DROIT PUBLIC, AGISSANT PAR L'INTERMÉDIAIRE DE L'ÉTABLISSEMENT CISSS DE LA MONTÉRÉGIE-EST
Defendants

JUDGMENT

OVERVIEW

[1] The Representative Plaintiff filed an application for authorization to institute a class action alleging child abuse by health and social services centres (the **Application for Authorization**). The Application for Authorization was partly granted, and the class action is proceeding on the merits.

[2] The Defendants now jointly seek leave to conduct the pre-trial examination of 213 class members. In the alternative, they seek leave to examine 76 class members or, in the further alternative, 40 class members. The Defendants submit the proposed pre-trial examinations will enable them to verify the facts alleged in the Originating Application,[1] test the factual presumptions asserted against them, and better understand the case.

[3] The Representative Plaintiff contests the application to examine class members. She submits doing so would violate professional secrecy, frustrate the principle of proportionality, and provide no meaningful benefit to the Defendants or the Court.

ISSUE

[4] The application brought by the Defendants raises the following issue: Should the Court authorize the pre-trial examination of several class members in a class action involving allegations of longstanding physical, psychological, and sexual abuse?

[5] For the following reasons, the Court concludes it cannot authorize the pre-trial examination of 213, or even 76, class members because doing so would be contrary to the principles of civil justice. As for the examination of 40 class members, the proposed selection process would violate their right to professional secrecy.

[6] Nevertheless, the Court will authorize the pre-trial examination of class members who have allowed their personal information to be publicly alleged because they have

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[1] Demande introductive d'instance en action collective précisée.

renounced their right to professional secrecy. These pre-trial examinations will supplement the pre-trial examination of the Representative Plaintiff without improperly complicating or postponing the file.

ANALYSIS

1. THE APPLICATION TO EXAMINE IS PARTLY CONTRARY TO THE PRINCIPLES OF CIVIL JUSTICE

1.1 Position of the Parties

[7] While the Defendants recognize their application is broad, they point to the size of the class action. As authorized, it includes approximately 73 different centres and covers a 75-year period. Because class members find themselves in a wide variety of circumstances unknown to the Representative Plaintiff, pre-trial examinations are not only useful, but essential to deciding the common issues. Moreover, they will paint a "family portrait" (*portrait de famille*) that will enlighten the Court. The pre-trial examinations will also enable the Defendants to make full answer and defence to the allegations brought against them.

[8] For her part, the Representative Plaintiff submits there is no legal precedent for the "gargantuan" scope of the proposed pre-trial examinations.[2] If authorized, they would paralyse the class action and impede its progress for years to come. The 120-day deadline suggested for the pre-trial examinations is thus unrealistic. The Representative Plaintiff further submits the application to examine represents a sudden change in strategy by the Defendants that is not contemplated by the judicial contract.

1.2 Context

[9] The Representative Plaintiff filed the Application for Authorization against the Attorney General of Quebec and centres located throughout the province. According to the Representative Plaintiff, certain children were allegedly deprived of their residual freedom in these centres (or their institutional predecessors), while others were allegedly subjected to physical, psychological, or sexual abuse.

[10] On September 7, 2022, the Court partly authorized the class action (the **Authorization Judgment**).[3] Among other things, the Authorization Judgment describes the following class: "Any person, save for an *excluded person*, who was placed, on or after October 1, 1950, in a *centre* as per a *youth protection law*, when he or she was 17 years old or less and who was subject to *measures* or who was sexually assaulted [...]."[4]

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[2] Plan d'argumentation de la représentante, para. 7.
[3] *E.L.* c. *Procureur général du Québec*, 2022 QCCS 3044.
[4] *Ibid.*, par. 230 (italics in the original).

[11] Following the Authorization Judgment, the parties undertook different steps, including:[5]

- The pre-trial examination of the Representative Plaintiff;
- The communication of authorization forms by the Representative Plaintiff;
- The communication by the Defendants of various documents sought by the Representative Plaintiff;
- An application for the preapproval of a financing agreement that was later dismissed by the Court; and
- Discussions concerning the expert reports.

[12] On March 18, 2025, the Defendants filed an Amended Joint Application for Authorization to Conduct Pre-Trial Examinations of the Class Members (the **Application to Examine**).[6] The Application to Examine seeks:

> 1. […] l'autorisation du tribunal afin de procéder à l'interrogatoire préalable de deux-cent-treize (213) membres de l'action collective, soit un (1) membre par centre concerné et par période pertinente au litige; [**Option A**]
>
> 2. Subsidiairement, les Défendeurs soumettent les propositions subsidiaires suivantes, soit l'autorisation d'interroger :
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> a. Un (1) membre par établissement, à l'exception de ceux des régions de Québec et Montréal pour lesquels ils demandent l'autorisation d'interroger deux (2) membres de centres différents, par période pertinente au litige, soit un total de soixante-seize (76) membres; ou [**Option B**]
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> b. Un total de quarante (40) membres, lesquels doivent collectivement être représentatifs des lieux et des périodes pertinentes au litige; […] [**Option C**]

[13] For the purposes of Option A, the relevant periods identified by the Defendants are:[7]

- 1950 to 1978;

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[5] Joint letter of December 4, 2024.
[6] Demande conjointe des établissements défendeurs et du Procureur général du Québec pour obtenir l'autorisation d'interroger des membres de l'action collective préalablement à l'instruction (modifiée en date du 18 mars 2025).
[7] Application to Examine, par. 16.

- 1979 to 1990;
- 1991 to 2006; and
- 2007 to the present day.

[14] The Application to Examine outlines five themes it intends to explore during the proposed pre-trial examinations:[8]

> a. Les mesures abusives et autres gestes fautifs allégués, incluant notamment leur description, leur fréquence, leur auteur et le contexte;
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> b. La nature des dommages subis;
>
> c. Leur caractère systémique;
>
> d. La connaissance des fautes ou abus allégués, par le ou les défendeur(s) concerné(s);
>
> e. Les dénonciations qui ont été faites, le cas échéant;

[15] A hearing to debate the Application to Examine was held on March 21, 2025.

1.3 Discussion

[16] The *Code of Civil Procedure* (**Code** or **C.C.P.**) states in its Preliminary Provision that it "establishes the principles of civil justice […]." More specifically, the Code is "designed to ensure the accessibility, quality and promptness of civil justice, the fair, simple, proportionate and economical application of procedural rules, [and] the exercise of the parties' rights in a spirit of co-operation and balance […]."

[17] Article 18 C.C.P. provides that "[t]he parties to a proceeding must observe the principle of proportionality and ensure that their actions, their pleadings […] and the means of proof they use are proportionate, in terms of the cost and time involved, to the nature and complexity of the matter and the purpose of the application." In addition, "[j]udges must likewise observe the principle of proportionality in managing the proceedings they are assigned, regardless of the stage at which they intervene." Judges must "ensure that the measures and acts they order or authorize are in keeping with the same principle, while having regard to the proper administration of justice."

[18] According to the Supreme Court of Canada, "the requirement of proportionality in the conduct of proceedings reflects the nature of the civil justice system, which, while frequently called on to settle private disputes, discharges state functions and constitutes a public service."[9] Proportionality "means that litigation must be consistent with the

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[8] *Ibid.*, par. 15.
[9] *Marcotte* v. *Longueuil (City)*, 2009 SCC 43 (CanLII), [2009] 3 SCR 65, para. 43.

principles of good faith and of balance between litigants and must not result in an abuse of the public service provided by the institutions of the civil justice system."[10]

[19] Article 221 C.C.P. states that "[a] pre-trial examination, whether written or oral, may bear on any fact that is relevant to the dispute and on the evidence supporting such facts; it may also be for documentary disclosure purposes." As noted by the Court of Appeal, the principle of proportionality applies to pre-trial examinations, as it does to every aspect of civil procedure.[11]

[20] Finally, article 587 C.C.P. provides that "[a] party cannot subject a class member other than the representative plaintiff or an intervenor to a pre-trial examination [...], nor may a party examine a witness outside the presence of the court." The article stipulates, however, that "[t]he court may make exceptions to these rules if it considers that doing so would be useful for its determination of the issues of law or fact to be dealt with collectively."

[21] Pre-trial examinations conducted pursuant to article 587 C.C.P. play an exploratory role.[12] In deciding whether to authorize them, courts consider factors such as:[13]

- la preuve existante lors de la présentation de la demande pour interroger;
- la nature de la question collective qui est l'objet de la preuve visée;
- la force probante de la preuve visée par les interrogatoires dans le contexte du litige;
- la capacité du représentant à répondre aux questions utiles à la décision du tribunal sur les questions collectives;
- les autres moyens de preuve à la disposition de la partie qui demande l'autorisation d'interroger des membres; et
- le niveau de connaissance des faits au dossier de la partie demanderesse.

[22] The Court must also give due consideration to the nature of the class action, the composition of the class, and the claims asserted on behalf of its members.

[23] Ultimately, the decision is a discretionary one. According to a judge of the Court of Appeal, "*l'interrogatoire à ce stade est l'exception. Si le juge peut le refuser, il peut nécessairement le limiter ou en déterminer les modalités* [...] *toujours dans le cadre de*

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[10] *Ibid.*
[11] *Campagna* c. *Procureur général du Québec*, 2021 QCCA 1134.
[12] *Soeurs de la Charité de Québec* c. *D.L.*, 2023 QCCA 168, para. 20 [*Soeurs de la Charité de Québec*].
[13] Bruce Johnston and Yves Lauzon, *Traité pratique de l'action collective* (Montreal : Éditions Yvon Blais, 2021), p. 199.

son rôle de gestion et du gardien des principes fondateurs de la procédure et des intérêts des membres."[14]

1.4 The Application to Examine Does not Breach the Judicial Contract

[24] The Court does not agree that the Application to Examine is a breach of the judicial contract. Correspondence between the parties shows that, on January 20, 2023, the Establishment Defendants indicated in a draft case protocol that they "*se reservent le droit de presenter une demande pour interroger des members au préalable conformément à l'article 587 C.p.c. et/ou en fonction de la preuve obtenue et/ou interroger au préalable des membres identifiés dans la demande d'inscription* [...]."[15]

[25] There is no indication this reserve of right was ever withdrawn. Although the subject of the pre-trial examination of class members may not have been raised more recently, the Court recognizes that the procedural advancement of the file explains why the Defendants have chosen to bring their application at this time.

1.5 Option A and Option B Do Not Respect the Principle of Proportionality

[26] The Court concludes that it can authorize neither Option A nor Option B because doing so would violate the rules of civil justice. It would notably violate the principle of proportionality.

[27] The Court recognizes the class action is broad and complicated. It involves various centres throughout the province and covers distinct, historically significant periods. The Court also recognizes it is impossible for the Representative Plaintiff, or anyone else, to testify on what allegedly took place at all relevant times in all relevant places. This is a challenge for the Defendants, who must make full answer and defence. It is likewise a challenge for the Representative Plaintiff, who bears the burden of proof.

[28] Despite the obvious difficulties of this case, the Court does not agree it is uniquely complex. Other very complex class actions have been litigated on the merits. Yet none of the cases cited by the Defendants grant the sweeping pre-trial examinations they seek here.[16] Regardless of the legal basis, scope, or complexity of the class actions before them, courts have not allowed article 587 C.C.P. to be used to conduct a wide-ranging investigation into the personal situations of numerous class members.

[29] The reason no such cases exist is simple enough. Such an investigation would distort the class action, which exists precisely to avoid multiple trials involving "identical, similar or related questions of law or fact."[17] As noted by the Supreme Court of Canada, "by aggregating similar individual actions, class actions serve judicial economy by

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[14] *Frères du Sacré-Cœur* c. *F.*, 2021 QCCA 646, para. 50 [*Frères du Sacré-Cœur (CA)*].
[15] Exhibit R-1.
[16] Liste des autorités des établissements.
[17] Art. 575(2) C.C.P. See *Soeurs de la Charité de Québec, supra*, note 12.

avoiding unnecessary duplication in fact-finding and legal analysis."[18] What the Defendants propose would transform a collective procedure into an individualized one. Indeed, holding 213, or even 76, pre-trial examinations would far exceed anything any court has considered proportionate, regardless of the circumstances.

[30] Furthermore, its is important to note that the class action in issue involves allegations of physical, psychological, or sexual abuse. This fact is doubly relevant.

[31] In the first place, courts have shown themselves to be attuned to the impact pre-trial examinations can have on alleged victims of abuse.[19] This does not mean pre-trial examinations will not be authorized. It does mean, however, that courts will carefully tailor and adapt them as needed. Accordingly, "*[l]e droit des Membres à préserver leur intégrité, leur sécurité, leur dignité et leur honneur commande […] une approche rigoureuse des critères de l'utilité et de la pertinence.*"[20]

[32] In the second place, the Court agrees with the Representative Plaintiff that preparing class members for a pre-trial examination is a significant task. Unlike consumer, product liability, or securities class actions, those involving allegations of abuse can be highly emotional. The pre-trial examinations proposed by the Defendants will necessarily probe into personal, intimate aspects of the private lives of the class members examined. Much time and effort will likely be required by class counsel to obtain their trust and co-operation.

[33] The Court also concludes the 120-day timeframe suggested by the Defendants is unrealistic. It would be impossible to conduct 213, or even 76, pre-trial examinations over so short a period. Rather, the pre-trial examinations proposed by the Defendants could take years. This would have the effect of impairing the proceedings, which would not only be mired in pre-trial examinations, but objections, debates on objections, and undertakings. It would, moreover, indefinitely postpone the common issues trial. Such a result would short-circuit the class action, an eventuality the Court cannot allow to happen.

[34] As regards Option C, it does not clearly violate the rules of civil justice. The case law shows that it is situated at the outside limit of what the case law considers permissible.[21] Accordingly, the Court will pursue its analysis of the Application to Examine.

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[18] *Western Canadian Shopping Centres Inc.* v. *Dutton*, 2001 SCC 46 (CanLII), [2001] 2 SCR 534, para. 27.
[19] *F.* c. *Frères du Sacré-Cœur*, 2021 QCCS 792, para. 21-26 [*Frères du Sacré-Cœur (SC)*], application for leave to appeal denied, *Frères du Sacré-Coeur (CA)*, *supra,* note 14. See also *J.J.* c. *Province canadienne de la Congrégation de Sainte-Croix*, 2022 QCCS 4325, para. 136 [*J.J.*].
[20] *Ibid*, para. 25.
[21] *Lavoie* c. *Wal-Mart Canada Corp.*, 2023 QCCS 4218, para. 18.3.

2. OPTION C PARTLY VIOLATES PROFESSIONAL SECRECY

2.1 Position of the Parties

[35] The Defendants submit the Application to Examine does not violate the rights of the class members to preserve and protect their confidential information. It would be wrong to assume that they have expressed a total refusal to disclose this information. No evidence has been adduced to suggest otherwise. The sworn statement produced by the Mtre Lev Alexeev only states that members who contact class counsel are assured that all communications are kept confidential and are subject to professional secrecy.

[36] To protect class members, the Defendants suggest that they be selected randomly and that numbers be used instead of names. If selected, the class members could always refuse to be examined. The Defendants are also prepared to exclude from any pre-trial examinations class members who have allegedly suffered sexual abuse.

[37] The Representative Plaintiff responds that she does not know who the other class members are. As a result, her counsel will need to select them in the manner proposed by the Application to Examine. Yet these members were told that any information they provided to class counsel would be kept confidential and would be subject to professional secrecy. For class counsel to divulge the names or other confidential information of members who contacted them would violate professional secrecy.

[38] Furthermore, anonymity and professional secrecy are two separate concepts. While measures can be taken to ensure anonymity in certain circumstances, they cannot be used to attenuate or compromise the right to professional secrecy.

2.2 Discussion

[39] Article 9 of the *Charter of Human Rights and Freedoms* (***Charter***) provides that "[e]very person has a right to non-disclosure of confidential information."[22] As a result, "[n]o person bound to professional secrecy [...] may, even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him [...]."

[40] As this Court observed in a class action involving allegations of child sexual abuse, "*[i]l est important [...] de ne pas ordonner la divulgation des noms des membres qui se sont confiés d'une façon confidentielle aux procureurs de la demanderesse. Il faut éviter un bris de confiance de la relation entre procureur et client.*"[23] More recently, the Court of Appeal noted that "where class counsel contends that a class member's identity is confidential, he cannot disclose it at any stage in the proceeding for any purpose without

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[22] CQLR c C-12.

[23] *Centre de la communauté sourde du Montréal métropolitain* c. *Clercs de Saint-Viateur du Canada*, 2013 QCCS 4919

a clear and specific waiver from each class member whose identity he proposes to divulge."[24]

[41] Here, the Defendants propose that the pre-trial examinations unfold as follows:[25]

> a. Les membres interrogés seront choisis par la Demanderesse, en fonction des critères déterminés (Centres et Périodes pertinentes);
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> b. Au choix du membre, par l'intermédiaire d'un moyen technologique ou en personne, à proximité de son lieu de résidence;
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> c. Le membre peut être accompagné d'une personne de son choix […];
>
> d. La durée des interrogatoires sera limité à 1h30 et un seul procureur pour chacune des parties, à savoir les Établissements et le Procureur général du Québec, sera autorisé à poser des questions au membre visé;
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> e. Les interrogatoires devront être tenus dans un délai de cent vingt (120) jours du jugement les autorisant, le cas échéant;
>
> [Underlining added]

[42] In the Court's view, paragraph "a" of the proposed approach would violate the professional secrecy rights of any class members who have not clearly and specifically waived them.

[43] As the record shows, other than the Representative Plaintiff, the Application for Authorization contains allegations about class members L.P.L.,[26] Victor Malarek,[27] and K.V.[28] Class members L.P.L. and K.V. are also mentioned in the Authorization Judgment.[29] As for the Originating Application, it only contains allegations about the Representative Plaintiff. In other words, aside from these four persons, the proceedings disclose the confidential information of no other class members.

[44] In addition, unlike in *Belley* c. *TD Auto Finance Services Inc./Services de financement auto TD inc.*, class counsel did not file a list of the potential class members who contacted them directly.[30] The Originating Application simply alleges that "*[d]es centaines de membres du Groupe se sont manifesté (et continuent de se manifester) auprès des avocats de la Représentante, de façon confidentielle et privilégiée […].*"[31] Not

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[24] *Belley* c. *TD Auto Finance Services Inc./Services de financement auto TD inc.*, 2018 QCCA 1727, para. 41 [*Belley (CA)*].
[25] Application to Examine, par. 23.
[26] *Ibid.*, para. 3.48.2, 3.48.3.
[27] *Ibid.*, para. 3.48.4, 3.48.5.
[28] *Ibid.*, para. 3.48.6, 4.48.7.
[29] Authorization Judgment, para. 160, 163.
[30] *Belley (CA)*, *supra*, note 24, para. 42.
[31] Originating Application, para. 78 (underlining added).

only does the Originating Application provide no identifying information about these hundreds of class members, but it explicitly states that they have contacted class counsel on a confidential and privileged basis.

[45] This allegation is corroborated by the Authorization Judgment, where the Court observes that the Authorization Application indicates "*que 470 personnes auraient communiqué, sous le sceau du secret professionnel, avec les avocats pour dénoncer les abus qu'elles ont vécus.*"[32] It is further corroborated by the sworn statement of Mtre Alexeev, a member of one of the two law firms that act as counsel for the Representative Plainttiff. Mtre Alexeev states that "*[l]ors des communications intervenant entre les membres et nous dans le cadre de ce dossier, nous leur fournissons l'assurance que toutes nos communications sont confidentielles et couvertes par le secret professionnel de l'avocat.*"[33]

[46] While it is true there is no evidence class members have expressly refused that their names and other confidential information be disclosed, the Court is satisfied they were given an assurance by class counsel that this would not be done without their consent. In other words, class counsel considered that class members, by contacting them, did indeed have an expectation of confidentiality.[34] This is hardly surprising given the highly sensitive nature of the confidential information concerned.

[47] Were the Court to direct class counsel to select class members for pre-trial examinations, it would be asking them to disclose confidential information without a clear and specific waiver of the right to professional secrecy. This would violate section 9 of the *Charter* and force class counsel to breach their professional obligations. It could as well have a chilling, perhaps traumatizing, effect on class members who have indicated no willingness to become personally involved in the class proceedings. As the Superior Court recently noted, "*autoriser les interrogatoires des membres [...] serait contraire au principe d'accessibilité à la justice pour les victimes d'agressions sexuelles et pourrait même inciter ces membres à, purement et simplement, abandonner leur participation à l'action collective.*"[35]

[48] The Defendants have suggested different ways of anonymizing the class members and confirmed, during their representations, that they are prepared to only examine those who do not allege sexual abuse. In the Court's estimation, these accommodations do not resolve the underlying issue of professional secrecy, which cannot be compromised, in whole or in part, by class counsel. Nor can the alleged physical and psychological abuse of children be deemed less serious or worthy of consideration than their alleged sexual abuse.

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[32] Authorization Judgement, para. 180 (underlining added).
[33] Sworn Statement of Mtre Lev Alexeev dated March 18, 2025, para. 3 (underlining added).
[34] *Belley (CA)*, *supra*, note 24, para. 42.
[35] *J.J.*, *supra*, note 19, para. 144.

[49] As for the suggestion that class members could always refuse to be examined if selected by class counsel, the Court considers this "safety valve" contrary to the spirit of the case law. By not instructing class counsel to make allegations about them, members have expressed their refusal to participate publicly in the class action for reasons entirely their own. This personal decision should not be revisited.

3. THE COURT AUTHORIZES THE PRE-TRIAL EXAMINATION OF THREE CLASS MEMBERS

[50] The Court concludes it can only authorize the pre-trial examination of L.P.L., Victor Malarek, and K.V. These class members – whose personal situations are not the same – allowed their confidential information to be publicly alleged in the Application for Authorization, thereby clearly and specifically waiving their right to professional secrecy. In the Court's view, their testimony will prove useful to the determination of the issues of law or fact to be dealt with collectively. In effect, the Defendants must have the opportunity to verify "*la trame factuelle de plus d'une personne que le demandeur, le tout afin de tester les faits allégués par le demandeur, tester l'étendue potentielle des présomptions de faits qui pourront être argumentées par le demandeur et pour connaître d'avance une portion de la preuve qui leur sera opposée* […]."[36]

[51] The above result is consistent with the right of the Defendants to make full answer and defence because they will have the benefit of the pre-trail examination of the Representative Plaintiff and those of three other class members. The testimonies of these four witnesses will provide personal accounts sufficient to render a family portrait.

[52] In any event, as the Representative Plaintiff submits, the proof she intends to make at trial will largely turn on expert reports and documentary evidence, including newspaper articles, investigation reports, and studies. Some of this material has already been summarized in the Authorization Judgment.[37] There is therefore no reason to believe the Defendants will be taken by surprise.

[53] While it may be argued that four pre-trial examinations are few in relation to the scope of the class action, the Court reiterates that the burden of proof belongs to the Representative Plaintiff, not the Defendants. If the proof made in support of the Originating Application is insufficient, the consequences will be borne entirely by the former. The Court need not decide whether a single pre-trial examination would suffice as that question remains hypothetical.

[54] Even if the class action is granted on the merits, those claiming to be class members will have to establish their status, as well as the damages to which they are entitled, at the recovery stage. This will ensure that non-class members are not

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[36] *Ibid.*, para. 142.
[37] Authorization Judgment, para. 156-178.

compensated by the Defendants. In short, there will be a screening process beyond the pre-trial examinations to identify and eliminate any invalid claims.

[55] The above result is also consistent with the other principles of civil justice, most notably the principle of proportionality. It will enable the Defendants to conduct discoveries without inappropriately complicating or delaying the common issues trial.

[56] In terms of the themes proposed by the Defendants for the pre-trial examinations, the Court concludes those in paragraph 15 of the Application to Examine are relevant and proportionate. In terms of the conditions that should govern the pre-trial examinations, the Court concludes those in subparagraphs "b," "c," and "d" of paragraph 23 are appropriate and comparable to those already approved by the Superior Court.[38] Given these conditions, the pre-trial examinations can take place out-of-court. As for the applicable deadline, counsel are invited to confer and jointly propose one in their case protocol.

[57] Lastly, the Court declares that by conducting the pre-trial examinations of class members L.P.L., Victor Malarek, and K.V., the Defendants renounce their right to call them as witnesses during the common issues trial.[39]

CONCLUSIONS

[58] **FOR THESE REASONS, THE COURT:**

[59] **GRANTS** the Application to Examine, in part;

[60] **AUTHORIZES** the pre-trial examination of class members L.P.L., Victor Malarek, and K.V.;

[61] **AUTHORIZES** the Defendants to conduct pre-trial examinations of these class members with respect to the following themes:

- Les mesures abusives et autres gestes fautifs allégués, incluant notamment leur description, leur fréquence, leur auteur et le contexte;
- La nature des dommages subis;
- Leur caractère systémique;
- La connaissance des fautes ou abus allégués, par le ou les défendeur(s) concerné(s)
- Les dénonciations qui ont été faites, le cas échant;

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[38] *Frères du Sacré-Cœur (SC)*, *supra*, para. 106.
[39] *Soeurs de la Charité de Québec*, *supra*, note 12, p. 3, footnote 5.

[62] **AUTHORIZES** the Defendants to conduct the pre-trial examination of these class members subject to the following conditions:

- Au choix du membre, par l'intermédiaire d'un moyen technologique ou en personne, à proximité de son lieu de résidence;
- Le membre peut être accompagné d'une personne de son choix, étant entendu que cette personne :
    i. Doit s'identifier au début de l'interrogatoire;
    ii. Ne peut intervenir ni interférer de façon à nuire ou influencer le déroulement de l'interrogatoire;
    iii. Doit demeurer visible à la caméra si l'interrogatoire se déroule par l'intermédiaire d'un moyen technologique;
    iv. Ne pourra, sous aucune considération, témoigner lors de l'instruction;
- La durée des interrogatoires est limitée à 1h30 et un seul procureru pour chacune des parties, à savoir les Établissements et le Procureur général du Québec, es autorisé à poser des questions au membre visé;

[63] **INVITES** counsel jointly to propose a deadline for the pre-trial examinations authorized by this judgment in their case protocol;

[64] **DECLARES** that by conducting the pre-trial examinations of class members L.P.L., Victor Malarek, and K.V., the Defendants renounce their right to call them as witnesses during the common issues trial;

[65] **ALL OF WHICH**, with costs to follow.

SHAUN E. FINN, J.S.C.

Mtre Lev Alexeev
Mtre William Colish
Mtre Narek Chakhalyan
Alexeev Avocats s.e.n.c.r.l.
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Counsel for the Establishment Defendants

Hearing date: March 21, 2025