

Court File No.

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

BETWEEN:

LES COURAGEUSES

Applicant
(Respondent)

- and -

GILBERT ROZON

Respondent
(Appellant)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that Les Courageuses applies for leave to appeal to the Supreme Court of Canada, under s. 40(1) of the *Supreme Court Act*, RSC 1985, c S-26 and s. 25(1) of the *Rules of the Supreme Court of Canada*, SOR/2002-156, from the judgment of the Quebec Court of Appeal made on January 8, 2020;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. The Applicant, Les Courageuses, is a non-profit devoted to advocating for the rights of victims of sexual violence. In the present proceedings, it seeks the restoration of the Quebec Superior Court's decision to authorize a class action on behalf of numerous women and minor-age girls who were sexually abused or harassed by the Respondent, which was overturned by a majority of the Quebec Court of Appeal (Hamilton and Vauclair J.J.A., Bélanger J.A. dissenting).

2. The decision of the majority of the Court of Appeal raises the following issue of fundamental public importance:

- a. Can a class action for sexual assault proceed against an individual perpetrator alone (i.e., in the absence of an institutional co-defendant)?

3. The answer to this question will have consequences for survivors of sexual abuse, assault, and harassment seeking access to justice across the country — and particularly in Quebec. The decision of the majority of the Court of Appeal provides a shield to individuals who abuse their status and power to commit sexual violence against women and girls. Its decision amplifies our justice system's larger failure to hold perpetrators of sexual violence accountable, and reinforces a culture of silence, fear and shame.

4. The judgment of the majority of the Court of Appeal also destabilizes binding appellate jurisprudence at the authorization stage of class actions in Quebec by:

- a. Distorting the test for determining whether class members' claims raise common issues and calling into question whether matters of fault, prescription and the availability of compensatory or punitive damages can be treated collectively in a wide range of future cases where similar faults are committed against different individuals over a period of time;
- b. Departing from settled legal principles by drawing a legal distinction between the existence of "identical, similar or related issues of law or fact" (which are a requirement for authorization) and "issues to be dealt with collectively" (which are set out in the authorization order); and
- c. Referring to the criminal law standard for admissibility of similar fact evidence to determine whether the proposed class action should be authorized, despite the fact that the case involves incidents of serial sexual assault and harassment committed by a sexual predator with a specific *modus operandi* in a purely civil trial.

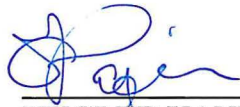
5. The public importance of this appeal lies in its consequences for other sexual assault class actions and the fact that it arises during a moment of profound social, political and legal change. The movement for survivors of sexual violence is global, and courts throughout the country are bound to face similar proceedings. Without this Court's intervention, the majority reasons will be leveraged to restrict access to justice for survivors in other provinces.

6. The Court of Appeal's judgment will also undermine the legislative intent that animates the *Code of Civil Procedure* and the *Civil Code of Quebec*, which privileges access to justice, the principle of proportionality, and the essential truth-seeking function of the civil trial.

7. Should leave to appeal be granted, the Applicant will seek an order allowing the appeal and restoring the Order and Decision of the Honourable Justice Donald Bisson of the Quebec Superior Court granting Les Courageuses authorization to institute a class action on behalf of numerous women and minor-age girls who were sexually abused or harassed by the Respondent.

8. The case is of public importance for all survivors of sexual violence, and will have a decisive impact on the rights of those whose circumstances preclude any claim against an institutional co-defendant. This Court's intervention is required in order to maintain public confidence in the justice system's ability to hold perpetrators of sexual violence accountable, and to protect the stability of the civil law.

Dated at Montreal, QUÉBEC, this 4th day of March, 2020.



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NOTICE TO THE RESPONDENT OR INTERVENER: A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the *Supreme Court Act*.