SUPERIOR COURT
(Class action)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-06-000892-170

DATE: May 22, 2018

PRESENT: THE HONOURABLE DONALD BISSON J.S.C.

LES COURAGEUSES
Plaintiff
v.
GILBERT ROZON
Respondent

JUDGMENT TO BE RENDERED IN APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION

INTRODUCTION

[1] The plaintiff Les Courageuses is seizing the Court with an application for authorization to institute a class action for the following class, of which it claims that the designated member, Patricia Tulasne, is a member:

> [TRANSLATION]
>
> All the persons sexually assaulted and/or harassed by Gilbert Rozon[1]

JB 4644

[2] The plaintiff intends to institute against the respondent Gilbert Rozon on

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[1] See para. 1 of the *application for authorization to institute a class action and to be representative plaintiff* (the "Application for authorization") dated November 27, 2017.

behalf of the designated member and class members an action in extracontractual civil liability for compensatory damages and punitive damages on the grounds that, for decades, the respondent allegedly sexually abused and harassed many adult and minor women.

[3] In defence, Mr. Rozon is vigorously challenging the application and claims that three of the four conditions permitting the authorization of a class action are not even remotely present as regards:

[TRANSLATION]

- There is no appearance of right for the allegations of sexual assault against the designated member, since the latter has not alleged any specific evidence and contradicted herself in an interview with Radio Canada on October 19, 2017.[2] Nor is there any appearance of right in the allegations of sexual assault against other members of the class, as these allegations are not supported by any evidence to demonstrate their seriousness. In addition, the designated member's action is prescribed and her allegations of impossibility to act are insufficient;

- Assuming that there would be an appearance of right, the file contains only individual issues and does not contain identical, similar or related issues to advance the class members' file. Each alleged sexual assault must be studied individually, without any common thread between them, the analysis to be made eminently personal and subjective to each member of the proposed class, including consent. Moreover, there is a potential disparity among the class members with regard to the issue of prescription;

- The existence of a class is not demonstrated and, if there were one, it would depend on the outcome of the trial on the merits and it is not composed of enough members to justify a class action.

[4] Mr. Rozon is not contesting the representation of the plaintiff Les Courageuses.

[5] In his argumentation, Mr. Rozon submits in closing a [TRANSLATION] "final argument" that the proposed action in the application for authorization, in addition to not observing the criteria for authorization, is disproportionate in that it necessitates the individual analysis of the situation of each member before any possibility of joint analysis, for acts committed by a single respondent over an indefinite period, thus contravening article 18 of the *Code of Civil Procedure*[3] (the "CCP").

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[2] See Mr. Rozon's Exhibit R-1, a video copy of the interview and transcript. This exhibit bears the reference "R-1" but must not be confused with the Application for authorization exhibits, also bearing the reference "R". During the hearing, to avoid confusion, the plaintiff filed this element of evidence under Exhibit R-8.

[3] CQLR, c. C-25.01.

[6] A table of contents appears at the end of this judgment.

1. THE CONTEXT AND THE QUESTIONS IN DISPUTE

[7] Article 575 CCP requires that four conditions be met for the Court to grant an application for authorization to institute a class action:

> **575.** The court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that:
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> 1. the claims of the members of the class raise identical, similar or related issues of law or fact;
>
> 2. the facts alleged appear to justify the conclusions sought;
>
> 3. the composition of the class make 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; and
>
> 4. the class member appointed as representative plaintiff is in a position to properly represent the class members.

[8] The Court notes[4] that there is no [TRANSLATION] "fifth criterion" and that the rule of proportionality set out in article 18 CCP does not constitute a fifth independent condition as regards applications for authorization to institute a class action. Thus, Mr. Rozon's [TRANSLATION] "final argument" cannot be studied separately from the analysis of the criteria of article 575 CCP. Given its wording, this argument concerns a challenge of article 575(1) CCP.

[9] Recall that in 2014, the Supreme Court of Canada[5] summarized the state of the law according to which the procedural vehicle of class action has several objectives, including facilitating access to justice, modifying harmful behaviour and conserving judicial resources. In 2017, the Court of Appeal[6] clarified the application of these principles in the framework of class actions with respect to liability for sexual maltreatment:

> [TRANSLATION]
>
> - There is no reason to interfere with the effectiveness of a class action with respect to liability for sexual maltreatment;
>
> - The dual purpose pursued by this procedure–denunciation and

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[4] As the Court of Appeal recalls in *J.J. c. Oratoire Saint-Joseph du Mont-Royal,* 2017 QCCA 1460 (C.A.), at paras. 44 and 45 {application for authorization to appeal allowed by the Supreme Court of Canada, no. 37855, March 29, 2018), and as Mr. Rozon himself underscored in his argument plan.

[5] *Vivendi Canada Inc. v. Dell'Aniello,* 2014 SCC 1, at para. 1.

[6] *J.J. c. Oratoire Saint-Joseph du Mont-Royal, supra* note 4, at paras. 48, 49 and 51.

compensation–calls for a contextualized approach based on conditions conducive to the emergence of the truth;

- If the class action targets multiple victims for actions that took place over a long period of time, the potentially high number of potential victims, although unknown at the outset of the proceedings, fully justifies the institution of a class action;

- Initially, there may be only one victim who chooses to pursue a class action on behalf of her or himself and all other victims. It does not matter whether five, ten, fifty or one hundred victims join the class action once it is authorized. Although this number cannot be determined from the outset, a class action should be allowed to promote access to justice for victims of sexual violence, who already have to overcome enormous difficulties in the exercise of their individual remedies. Indeed, some Canadian courts have come to the conclusion that a class action is likely to help victims, who are particularly vulnerable;

- For the victims, if there is a possibility of their identity being revealed, the likelihood of them filing a claim is very low, which is contrary to the social objective of the class action, that is, to allow access to justice.

[10] The particularity of this case is that the application does not concern an institution in which the alleged offender was working, but the alleged offender alone. Notwithstanding this particularity, the Court does not see why the guiding principles set out by the Court of Appeal reproduced in the preceding paragraph would not apply here. The victims' identities and ages have no impact on these principles, which are universal.

[11] The Court will therefore address the following seven questions in order:

(1) Is there an appearance of right?

(2) Are there identical, similar or related issues?

(3) Does the composition of the class justify instituting the class action?

(4) Is the plaintiff's representation adequate?

(5) What must the class parameters and identical, similar or related issues be?

(6) What are the parameters of the authorization notice and the exclusion period?

(7) In which judicial district is the class action to take place?

2. ANALYSIS

[12] It is appropriate to begin[7] the analysis with the question of appearance of right (article 575(2) CCP), though this criterion is the second of those listed in article 575 CPC. In fact, before considering whether the members' individual claims are collective in nature, the apparent merit must first be analyzed, without which the application would, in any case, be doomed to fail.

2.1 Is there an appearance of right?

[13] Article 575(2) CCP provides the following condition: "the facts alleged appear to justify the conclusions sought". The Court of Appeal sums up the state of the law on this criterion in *Charles* c. *Boiron Canada Inc.*:[8]

> [TRANSLATION]
>
> [43] In short, this condition will be fulfilled when the plaintiff is able to show that the facts alleged in his claim justify, *prima facie*, the conclusions sought and that he thus has a defensible cause. However, vague, general or imprecise allegations are not sufficient to satisfy this burden. In other words, mere statements with no factual basis are insufficient to establish a defensible cause. The same will apply to hypothetical and purely speculative claims. According to author Shaun Finn, in case of doubt, the courts will argue in favor of the plaintiff unless, for example, the allegations are plainly contradicted by the evidence on the record.

[14] In the recent judgment *Asselin* c. *Desjardins Cabinet de services financiers inc.*[9], the Court of Appeal reiterated the following with respect to the analysis of the appearance of right:

> [TRANSLATION]
>
> - At the authorization stage, the petitioner must present but an arguable cause, that is, one that may be successful, without having to establish a reasonable or realistic possibility of such success;
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> - While it is true that one must not be satisfied with vagueness, generality and imprecision, it is not possible, for that matter, to close ones eyes when confronted with allegations that are perhaps not perfect, but whose true meaning nonetheless clearly emerges. It is thus

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[7] *Lambert (Gestion Peggy)* c. *Écolait Ltée,* 2016 QCCA 659 (C.A.), at para. 28. See also, for example: *Gaudet et Lebel* c. *P. & B. Entreprises Ltée,* 2011 QCCS 5867 (C.S.) at para. 41.

[8] 2016 QCCA 1716 (C.A.) at para. 43 (application for authorization to appeal dismissed by the Supreme Court of Canada, May 4, 2017, no. 37366). See also: *Belmamoun c. Ville de Brossard*, 2017 QCCA 102 (C.A.) at paras. 73 to 83.

[9] 2017 QCCA 1673 (C.A.), at paras 27 to 45, 91 and 104.

> important to know how to read between the lines;
>
> - Therefore, there is no question of requiring that the person seeking authorization to institute a class action provide the detail of anything that he or she intends to adduce in support of those allegations in the context of the trial on the merits;
>
> - The authorizing judge must be careful not to examine in every detail the elements produced by either party, at the risk of transforming the nature of the debate, which must not encroach on the merits, decide on them prematurely or deal with the respondent's defences;
>
> - The alleged facts must be taken to be true, unless they are flagrantly revealed to be false. This may occur, for example, where the allegations in the application for authorization are irreducibly contradictory on their face or even when the evidence–limited–produced by the parties is obviously–that is to say, it is seen with unquestionable certainty–to be false or void;
>
> - The possibility that it may be difficult to make the evidence on the merits is not a ground for not allowing a class action.

[15] Recall that here, in the case where the plaintiff is a legal person within the meaning of the third paragraph of article 571 CCP, the appearance of right must be analyzed in light of the designated member's personal circumstances and not in the light of the case of the whole class.

2.1.1 Alleged extracontractual breaches

[16] In the application for authorization, the plaintiff makes the following allegations as to the personal circumstances of the designated member, which should be reproduced in full:[10]

> [TRANSLATION]
>
> 2.10. In fact, in the spring of 1998, Rozon was charged not only with the sexual assault of a 19-year-old woman, but also with the assault and kidnapping of a 31-year-old woman;
>
> 2.11. In November 1998, Rozon pleaded guilty to sexual assault, but the Crown withdrew charges of forcible confinement and assault. These facts are reported in an article in the newspaper *Le Devoir* of December 1, 1998, Exhibit R-4;
>
> 2.12 Arguing that this was a first offence and that a criminal record would be embarrassing in the context of his major international activities, Rozon successfully appealed his sentence, which was to pay a fine of $1100. A

[10] Some of these paragraphs refer to all class members but include the case of the designated member and are thus relevant.

copy of the Superior Court judgment granting Rozon an absolute discharge for the sexual assault charge to which he had pleaded guilty has been filed as Exhibit R-5;

2.13 However, Roson's first sexual assault in 1998 was not his first, as he had already raped, brutalized and harassed many women who were unable to denounce him and seek justice;

2.14 Rozon took advantage of his victims' silence, fear, shame and impossibility to act and continued his predation without ever ceasing to gain prestige and popularity;

2.23 The designated member, Patricia Tulasne, is one of the founding members of Les Courageuses. She was sexually assaulted by Rozon in the summer of 1994 when she was 35 years old;

2.24 At that time, Ms. Tulasne, who was an actress, had a role in the play *Le dîner de cons*;

2.25 In August 1994, to celebrate the final performance, a dinner was held with the actors in the play. Rozon joined the team. It was the first time that Ms. Tulasne had met Rozon;

2.26 At supper, Rozon did not specifically speak with her or pay her any heed. Ms. Tulasne was thus not suspicious when Rozon offered her a ride home since they both lived in Outremont;

2.27 When Ms. Tulasne arrived home and about to disembark from the vehicle, Rozon asked her if he could accompany her to her house. Ms. Tulasne, who had no desire to spend time with Rozon and who was, moreover, in a relationship, replied no, and told him that she had to walk her dog and get up early the next day;

2.28 Rozon nevertheless imposed his presence, accompanying Ms. Tulasne in walking her dog. The walk went on forever, because Rozon did not want to leave;

2.29 After walking around the block several times, Ms. Tulasne was tired and told him that she must go to bed. Rozon followed her, against her will;

29.30 Rozon's behaviour then changed radically. He forced himself into her apartment, pushed Ms. Tulasne against the wall, threw himself on her, and began to unbutton her dress and forcibly kiss her;

2.31. Ms. Tulasne was frozen, in shock and extremely frightened. Rozon lowered his pants and, coldly, without putting on a condom, sexually assaulted her;

2.32. After ejaculating, Rozon pulled up his pants and left;

2.33. Ms. Tulasne was disgusted and trembling with fear;

2.34. A few years later, Ms. Tulasne was rehearsing for a skit when she saw Rozon. She was wearing a pink suit, and he exclaimed arrogantly and scornfully, [TRANSLATION] "You look like a big pink whore." This comment, coming from the person who had assaulted her, deeply humiliated Ms. Tulasne who trembled and held back her tears;

2.35. What Ms. Tulasne did not understand at the time, but realizes today since the wave of #metoo denunciations, is that the consequences of the assault were devastating for her and turned her life completely upside down;

2.36. After the sexual assault of the summer of 1994, Ms. Tulasne fell into a deep depression. She cried constantly and had dark thoughts. She abandoned her apartment in Montréal to live in the countryside because she wanted to be alone and did not want to have contact with anyone;

2.37. She left her partner, but never told him that she had been sexually assaulted, feeling unable to talk about it;

2.38. Ms. Tulasne has been single since that time. She has never had a serious relationship since the sexual assault, being unable to trust men. She has not started a family and lives alone with her dogs and cats;

2.39. Ms. Tulasne also lost interest in her career and had a hard time being productive and looking for roles, having lost confidence in herself;

2.40. She felt, and continues to feel, very guilty, mistakenly believing that the assault must have been her fault. She is ashamed, feels dirty, denigrated, manipulated and that she is worthless;

2.41. Before October 2017, when several of Rozon's victims had the courage to denounce him, Ms. Tulasne had never discussed the details of the sexual assault;

2.42. Before October 2017, Ms. Tulasne would never have been able to denounce Rozon. She could not imagine denouncing him since he was a very powerful public figure both in the artistic industry and in the political and social sphere. She saw him as an idealized and untouchable person;

2.43. Ms. Tulasne was afraid of social reproach, that she would be accused of having consented to the assault, that no one would believe her, that she would be called a seductress, and that the public would be against her for daring to accuse a man so revered in Québec society;

2.44. The #metoo wave of denunciation triggered her own history of abuse, which she had been trying to repress up to then;

2.45. As a result of the courage of the other women who came forward in

> October 2017, for the first time, Ms. Tulasne felt a moral and social obligation to denounce Rozon to help other victims and put an end to his behaviour;
>
> 2.46. Before October 2017, Ms. Tulasne had never made the connection between all the problems in her life and Rozon's sexual assault. She had repressed the experience and was unable to admit to herself that she had been sexually assaulted. Now, since the denunciation, she has been continually crying, trembles, relives the assault, suffers a high level of anxiety and is very frightened;
>
> 2.47. Even when she granted journalists an interview, she was not able to admit to being raped, as she feared being judged because she was psychologically incapable of resisting or struggling against Rozon;
>
> 2.48. She now realizes that she has been the victim of sexual assault, violence, manipulation and that Rozon is entirely responsible for it;
>
> 4.1. Sexually abused persons have a great deal of difficulty in denouncing these acts, especially when the perpetrator is someone who is idealized and highly esteemed in society, with the result being that it is virtually certain that many victims have not yet made themselves known;

[17] According to Mr. Rozon, these allegations do not show any appearance of right because the plaintiff has not provided any specific evidence to support the allegations of Mr. Rozon's sexual assault and harassment of the designated member. According to him, the latter has moreover contradicted herself. Finally, in his view, the designated member's action is prescribed and there are insufficient allegations concerning the impossibility to act.

[18] The Court disagrees, for the following reasons.

[19] **With respect to the sufficiency of the allegations,** in the Court's opinion, the allegations reproduced are factual and do not constitute opinions, unsustainable inferences or purely hypothetical or speculative elements. These factual allegations are held to be true, unless they are blatantly revealed to be false, notably by the evidence filed by Mr. Rozon.

[20] However, Mr. Rozon has not formally attempted to deny these events nor did he formally deny them.[11] It is rather their interpretation that he has challenged, as well as the prescription of the designated member's action and the inadequacy of the allegations concerning the impossibility to act.

[21] In the Court's view, the designated member is not required to make more specific allegations in addition to her version of the facts. Her version of the facts, as contained in the allegations reproduced above, is not a mere

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[11] For example by a sworn statement.

statement, but is itself evidence of the facts, consisting of specific allegations of particular facts and particular circumstances. This is what the Court of Appeal requires with respect to sexual maltreatment[12] and this is what the designated member alleged. It is unrealistic to ask that the designated member provide material evidence or an admission by her alleged offender, both of which, in any event, are not available, especially more than 20 years after the fact. In other words, the consequence of what Mr. Rozon is seeking would mean that no class action for sexual assault and moral injury could be allowed without evidence other than the victims' personal version of the facts. The Court disagrees with this position, which negates victims' stories.

[22] Moreover, in *J.J.* c. *Oratoire Saint-Joseph du Mont-Royal,* the factual allegations were based solely on his personal version of the facts. The Court of Appeal mentions this with respect to the appearance of right required:

> [TRANSLATION]
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> [89] . . . In the case of sexual assault, the explicit is the exception and the search for concrete facts often runs up against the victim's moral incapacity to denounce his aggressor. It is for these reasons that a flexible and generous approach must prevail in a class action if the objectives of denunciation and compensation pursued by this procedure of social vocation are to be achieved.
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> . . .
>
> [92] In short, the very nature of the abuse, the alleged aggressors' status and the victims' vulnerability were relevant elements (the context) that had to be taken into account when applying the correct legal standard to the conditions of article 575 CCP.
>
> [93] Again, with respect to the sufficiency of the facts alleged, I believe, in addition to the foregoing, that the following elements set forth in the application for authorization were grounds for instituting the class action:
>
> > (1) The evidence of Radio Canada's program "Enquête" of September 30, 2010 which discusses, among other things, the religious authorities' knowledge of their members' tortious activities;
> >
> > (2) the version that Wilson Kennedy, former brother of Saint-Croix, revealed through the program affirmed that the congregation was aware of the sexual assaults committed by its members; and
> >
> > (3) the list of the victims mentioning names of certain religious

[12] *J.J.* c. *Oratoire Saint-Joseph du Mont-Royal* , *supra* note 4, at paras. 89 to 93.

in positions of authority.

[23] These words apply here since:

- The designated member's version of the facts is sufficient, particularly precise and involves very specific circumstances;

- An article in the newspaper *Le Devoir* reports that nine women told the newspaper and the radio station 98.5 FM of being assaulted by Mr. Rozon.

[24] As noted by the Court of Appeal in relation to sexual assault, the explicit is the exception.

[25] On the same point, Mr. Rozon verbally argued at the hearing that to use his power to charm is not in itself a breach. Moreover, according to him, the alleged victims' consent must be questioned, as it is something that takes place in the latters' minds and that he thus could not be held responsible for such. The Court rejects these arguments because:

- They do not correspond to the factual allegations of the designated member, who was not [TRANSLATION] "charmed by her boss". On the contrary, Mr. Rozon imposed his presence to accompany the designated member while she walked her dog, he followed her against her will, he forced himself into her apartment, he pressed her against the wall, he threw himself on her, he began to unbutton her dress and forcefully kissed her, lowered his pants and, coldly, without putting on a condom, sexually assaulted her. He ejaculated, pulled his pants back up and left;

- There was therefore no consent, according to the allegations in the application for authorization;

- The designated member's case does not correspond to Mr. Rozon's crude and distorted trivialization;

- In addition, Mr. Rozon verbally harassed the designated member several years later.[13]

[26] **With respect to the alleged contradictions,** Mr. Rozon claims that the words of the designated member are contradictory and remove any appearance of right from her version of the story. According to Mr. Rozon, in an interview given to Radio Canada on October 19, 2017,[14] the designated member indicated that,

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[13] In this respect, in the Court's opinion, it appears that the words of the decision *Habachi c. Commission des droits de la personne du Québec*, 1999 CanLII 13338 (C.A., at 10 and 11), on the concept of verbal harassment, must be examined closely through the lens of 2018.

[14] Exhibit R-1 of Mr. Rozon or Exhibit R-8 of the application.

during the alleged sexual assault by Mr. Rozon of August 1994, she had consented to the act, that a sexual relationship that she did not want took place and that Mr. Rozon had not been violent. According to Mr. Rozon, the designated member spoke of a sexual relationship with consent and therefore denied the violence and rape, hence the absence of appearance of right of sexual assault and harassment.

[27] The following is the relevant portion of the free transcript of the interview:

> Interviewer: [TRANSLATION] "Me, I asked you how you qualified the relation. Can it be called rape, an assault . . . how would you qualify it all?"
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> Tulasne: [TRANSLATION] "Ouf! It's hard to say. It's hard, when it happened I didn't experience it like a rape . . . heu... strictly speaking since, somewhere I had . . .I had consented the act. But yes, there certainly was assault . . . my private space was invaded, there was a . . . a relation that I didn't want . . . there was a heu . . .was a heu . . .he wasn't violent but there was a . . there was very clearly he wanted, he wanted to reach his goal and . . .heu he did reach it though so it's certainly not a relation . . . me, I do not have any good memories, that's for sure."
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> . . .
>
> Interviewer: [TRANSLATION] "Did you ever think to file a complaint?"
>
> Tulasne: [TRANSLATION] "Never."
>
> Interviewer: [TRANSLATION] "And now?"
>
> Tulasne: [TRANSLATION] "No . . . I wouldn't file a complaint. . . because . . .because . . . hum . . . if . . . let's say if he had actually raped me . . .if . . . if a stranger rapes me in an alley, it's obvious that I will file a complaint . . . but I don't know why . . . somewhere, it's appalling to say that, then, now it . . . it falls under psychoanalysis, but . . . it's . . . I feel probably the same syndrome as the people who know their aggressor . . . and who don't necessarily want to denounce him, I don't know."
>
> . . .

[28] The Court disagrees with Mr. Rozon's argument since:

- The application for authorization itself explains this so-called contradiction, which, ultimately, is not one. Indeed, according to the application for authorization:

  [TRANSLATION]

> 2.47 Even when she granted journalists an interview, she was not able to admit to being raped, as she feared being judged because she was psychologically incapable of resisting or struggling against Rozon;
>
> 2.48 She now realizes that she has been the victim of sexual assault, violence, manipulation and that Rozon is entirely responsible for it;

-These allegations in the application for authorization thus respond to Mr. Rozon's argument and thwart him;

- The debate about who is telling the truth will be made on the merits of the class action, with all relevant evidence. This type of argument must be decided on the basis of merit, and not in advance;

- According to Mr. Rozon, the contradictory nature of the designated member's allegations arises from her words, and therefore an interpretation of the words used and their context. The Court notes that this argument does not stem from a statement by Mr. Rozon himself, made in the context of these proceedings, but rather from an item of evidence.[15] Thus, a fortiori, this type of debate is for the merits;

- In short, if any of the designated member's factual allegations were to be false, it is not blatantly obvious.

[29] **With respect to the prescription and impossibility to act,** Mr. Rozon presents an argument according to which the designated member's action has long been prescribed and, in any case, the latter did not adequately claim the impossibility to act.

[30] According to Mr. Rozon, the amendment of article 2905 of the *Civil Code of Québec* (the CCQ) and the addition of article 2926.1 CCQ by sections 6 and 7 of the *Crime Victims Compensation Act,* the *Act to promote good citizenship and certain provisions of the Civil Code concerning prescription*[16] (the "Act of 2013") have no impact on the designated member's action, which has been prescribed for a long time in light of the transitional provisions of the Act. These provisions are sections 12, 13 and 14 of the Act of 2013, which read as follows:

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[15] On the contrary, in a message on his Facebook page in October 2017 (reproduced in Exhibit R-7), Mr. Rozon stated this: [TRANSLATION] "To all those persons that I may have offended in the course of my life, I am sincerely sorry." The scope of his comments and their impact on Mr. Rozon's potential extracontractual liability are issues for the merits. It is apparent however that, *prima facie*, in October 2017, Mr. Rozon did not formally deny the allegations against him at that time.

[16] SQ 2013, c. 8.

> **12.** Suspension of prescription provided for in article 2905 of the Civil Code of Québec, enacted by section 6, applies to existing juridical situations only as of the coming into force of section 6.
>
> **13.** The prescriptive periods provided for in article 2926.1 of the Civil Code, enacted by section 7, apply to existing juridical situations taking into account the time already lapsed. The provisions of article 2926.1 of the Civil Code concerning the starting point of prescriptive periods are declaratory.
>
> **14.** This Act comes into force on 23 May 2013.

[31] Mr. Rozon states that the prescription applicable to the designated member's action is three years, as provided for in article 2925 CCQ; article 2926.1 CCQ is of no help to her. According to him, any claim for which the three-year prescriptive period was acquired on May 23, 2013, date of the coming into force of article 2926.1 CCQ., cannot [TRANSLATION] "be revived" because of this legislative amendment, which is not retroactive given the terms of article 13, according to the author Daniel Gardner.[17] Thus, the rights of action stemming from acts committed no later than May 22, 2010 are extinguished, which is the case of the designated member whose allegations date back to the 1990s.

[32] Mr. Rozon continued and added that, in any event, the designated member did not adequately plead that it was impossible to act, which counters her action. In his opinion, the application for authorization is limited to the designated member's statement of her particular situation and to her subjective assessment of what she could and could not do, and does not even contain a general allegation as to the broader reasons for the inability of other members of the proposed class to act. According to him, the impossibility to act requires[18] that the existence of a fear must be established that is subjectively determinative such that it is psychologically or physically impossible to have recourse to the courts, which is not alleged here.

[33] The Court disagrees with these arguments for the following reasons:

- The matters of prescription and the designated member's impossibility to act are complex elements requiring evidence and which, by definition, cannot be decided at the authorization stage unless it is obvious which, in the opinion of the Court, is not the case here;[19]

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[17] Danier Gardner, *Le préjudice corporel*, 4th ed. (Montréal: Yvon Blais, 2015), no. 32, at 50 and 51.

[18] According to *Gauthier c. Beaumont* [1998] 2 S.C.R. 3, at para. 73.

[19] There is even an old precedent according to which the prescription of the designated member's application can never be raised at the authorization stage: *Option Consommateurs c. Service aux marchands détaillants Ltée (Household Finance),* J.E. 2001-1018 (C.S.), at 5.

- This is all the truer as these questions need to be analyzed in the light of the new article 2926.1. of the *Civil Code of Québec* (the CCQ) and the amended article 2905 CCQ, which read as follows:

> **2926.1.** An action for damages for bodily injury resulting from an act which could constitute a criminal offence is prescribed by 10 years from the date the victim becomes aware that the injury suffered is attributable to that act. However, the prescriptive period is 30 years if the injury results from a sexual aggression, violent behaviour suffered during childhood, or the violent behaviour of a spouse or former spouse.
>
> If the victim or the author of the act dies, the prescriptive period, if not already expired, is reduced to three years and runs from the date of death
>
> **2905.** Prescription does not run against a child yet unborn.
>
> Nor does it run against a minor or a person of full age under curatorship or tutorship with respect to remedies they may have against their representative or against the person entrusted with their custody, or with respect to remedies they may have against any person for bodily injury resulting from an act which could constitute a criminal offence.

- The questions of retroactivity of these new provisions and the interpretation of the transitional provisions of the Act of 2013 are issues that require a factual context introduced formally as evidence, which can only be at the merits stage and not at the authorization stage. The starting point of the prescriptive period can be decided only on the merits;

- In any event, the application for authorization contains sufficient allegations that underlie the designated member's position of impossibility. Paragraphs 2.10 to 2.14 and 4.1 of the application for authorization refer to the impossibility to act as they bear notably on the judicial ruling of accusations of sexual assault, assault and unlawful confinement in 1998 against Mr. Rozon. Paragraphs 2.35 to 2.48 point specifically to the designated member's impossibility to act. They contain sufficient demonstration of the existence of a subjectively determinative fear such that it was psychologically or physically impossible to resort to the courts. The full debate will be on the merits.

[34] The Court is thus of the opinion that these factual allegations show the following arguable case: the commission of an extracontractual breach by Mr. Rozon against the designated member in the form of: (1) sexual assault and (2)

harassment prior to and subsequent to the assault.

[35] Of course, on the merits, all these elements must be put in evidence by the plaintiff and the designated member. It can be presumed that Mr. Rozon will then have several factual elements to prove in defence and legal arguments to draw from it. We are not yet there.

2.1.2 Alleged compensatory damages and causation

[36] The plaintiff claims that the designated person and the class members suffered moral and pecuniary damages as a direct result of Mr. Rozon's actions. In the case of the designated member, paragraphs 2.33 to 2.48 of the application for authorization reproduced above set out the moral and pecuniary damages that she alleges to have suffered. In addition, paragraph 2.54 refers to the multiple negative consequences of Mr. Rozon's misconduct, including sexual, physical, psychological, relational or social, including in particular: sexual dysfunction, depression, anxiety, isolation, fear of intimacy, suicidal ideation, post-traumatic stress syndrome, drug or alcohol abuse.

[37] The plaintiff estimates the moral damages suffered by the designated member to be $200 000 and the pecuniary damages to be $200 000. The plaintiff cannot quantify the quantum of the moral and pecuniary damages of the other class members, for which individual recovery is therefore being sought.

[38] Finally, at paragraphs 2.54 and 2.55 of the application for authorization, the plaintiff refers to the causal link between the fault and damages.

[39] The Court is of the opinion that these allegations by the plaintiff are sufficient to establish the appearance of right to moral and pecuniary damages and to the causation between fault and damage. There was no need to go into further detail. This is the teaching of the Court of Appeal: the plaintiff is not required to allege everything in detail and it is important to read between the lines.

[40] Moreover, as wrote Associate Chief Justice Eva Petras in *Centre de la communauté sourde du Montréal métropolitain* c. *Institut Raymond-* Dewar,[20] as soon as there is evidence of sexual assault on the class members, there is automatically injury. The Court adds that there is also automatically causation.

[41] Mr. Rozon has not presented any specific arguments on the matter of appearance of right with respect to compensatory damages and causation.

[42] In these circumstances, the Court finds that there is appearance of right to the damages claimed and causation.

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[20] 2012 QCCS 1146, at para. 75.

2.1.3 Alleged punitive damages

[43] Finally, in its application for authorization, the plaintiff is seeking damages in the amount of $10 000 000 for violation of the right to personal security, inviolability and dignity, under sections 1 and 49 of the *Charter of human rights and freedoms*[21] (the "Charter"), which read as follows:

> 1. Every human being has a right to life, and to personal security, inviolability and freedom.
>
> . . .
>
> 49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.
>
> In the case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

[44] An unlawful and intentional interference to the right to personal security and inviolability can give rise to punitive damages.

[45] The plaintiff is seeking the collective recovery of punitive damages.

[46] In *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St- Ferdinand*,[22] the Supreme Court of Canada, in the words of Claire L'Heureux-Dubé JSC defined the terms "unlawful and intentional interference" provided for in section 49 of the Charter, as follows:

> [121] Consequently, there will be unlawful and intentional interference within the meaning of the second paragraph of s. 49 of the *Charter* when the person who commits the unlawful interference has a state of mind that implies a desire or intent to cause the consequences of his or her wrongful conduct, or when that person acts with full knowledge of the immediate and natural or at least extremely probably consequences that his or her conduct will cause. This test is not as strict as specific intent, but it does go beyond simple negligence. Thus, an individual's recklessness, however wild and foolhardy, as to the consequences of his or her wrongful acts will not in itself satisfy this test.

[47] The allegations of the application for authorization respecting punitive damages are the following:

[TRANSLATION]

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[21] CQLR, c. C-12.

[22] [1996] 3 S.C.R. 211, at para. 121.

> Unnumbered introductory paragraph: The days when men of power sexually assault and harass the women around them with total impunity are over. Gilbert Rozon is a man of power who sexually assaulted and sexually harassed numerous women during decades. Some of his victims were minors. This action demands fair compensation for the victims, but also a condemnation to truly exemplary punitive damages in order not only to punish the author and dissuade similar conduct, but to indicate just how intensely our society denounces such conduct.
>
> 2.50. Sexual assault and harassment also constitute an intentional interference in the rights of victims to their personal inviolability and security, and to their dignity. Consequently, the victims are entitled to receive punitive damages;
>
> 2.51. As noted, punitive damages must be truly exemplary in this case. Indeed, Rozon acted with a contempt of the rights of his victims that deserves to be denounced as clearly as possible;
>
> 2.52. On the other hand, as mentioned, a criminal charge emanating from facts almost identical to the cases of many victims clearly did not deter Rozon from continuing to poison the lives of new victims;
>
> 2.58. The plaintiff will also ask the Court to condemn the respondent to pay the sum of $10 000 000 as punitive damages, to be recovered collectively;

[48] In addition, one of the identical, similar or related issues proposed by the plaintiff relates to the awarding of punitive damages for the violation of personal security and freedom.

[49] What decision must be made?

[50] With respect to authorization of punitive damages, the Court of Appeal recently set out the test to follow in *Union des consommateurs* c. *Bell Mobilité Inc.*:[23]

> [TRANSLATION]
>
> [42] While it is true that the authorizing judge must ensure that the application for authorization presents the facts justifying the conclusions sought, it remains that he must do so while keeping in mind the criteria established by the Supreme Court in *Vivendi*, that is, the little onerous burden of proving the existence of an arguable case. He must therefore be satisfied that the proceedings contain sufficient factual allegations to result in the conclusions sought in punitive damages. Under the circumstances, the accusations of breach of the C.P.A., which are detailed in the motion, appear likely to result in a claim for punitive

[23] 2017 QCCA 504 (C.A.), at para. 45.

> damages. It is not for the authorizing judge to dismiss them at this stage. Only after hearing the evidence will he be able to assess the respondent's conduct (before and after the alleged breach), as noted by the Supreme Court in *Richard v. Time Inc.*:
>
> [Italics in the original - emphasis added]

[51] Thus, does the application for authorization contain sufficient factual allegations to give rise to the conclusions sought in punitive damages? Remember that the Court must also be able to read between the lines.

[52] The Court is of the view that the allegations set out above (the unnumbered introductory paragraph and paragraphs 2.50, 2.51, 2.52 and 2.58) are more than sufficient to justify the appearance of right to punitive damages. At this stage of the proceedings, the Court finds that the sexual assault and sexual harassment constitute an intentional interference of the rights of the designated person and of the class members to personal security, inviolability and dignity.

[53] Mr. Rozon made no specific argument on the appearance of right to punitive damages.

[54] Consequently, there is appearance of right to the punitive damages claimed.

2.1.4 General conclusion on appearance of right

[55] The Court thus finds that the plaintiff has an appearance of right to claim all the damages sought.

2.2 Are there identical, similar or related issues?

[56] With respect to article 575(1) CCP, jurisprudence holds that the presence of a single identical, similar or related issue of law or fact is sufficient, provided it is sufficiently important to influence the outcome of the proceedings.[24] However, it does not have to be decisive as regards the resolution of the dispute. Indeed, it need only make it possible to proceed with a substantial proportion of the claims, with no need to repeat the legal analysis.

[57] The determination of identical, similar or related issues may indeed not constitute a complete resolution of the dispute, but rather give rise to short trials at the individual settlement stage of the claims. This is not an obstacle to a class action.

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[24] *Collectif de défense des droits de la Montérégie (CDDM)* c. *Centre hospitalier régional du Suroît du Centre de santé et de services sociaux du Suroît*, 2011 QCCA 826 (C.A.), at para. 22 (application for authorization to appeal dismissed by the Supreme Court of Canada, March 1, 2012, no. 34377), taken up again by the Supreme Court of Canada in the two decisions *Infineon Technologies AG v. Option Consommateurs*, 2013 CSC 59, at para. 72, and *Vivendi Canada Inc. v. Dell'Aniello, supra* note 5, at para. 58.

[58] As the Court of Appeal states,[25] the plaintiff is not required to demonstrate at the initial stage that an answer to the question alone provides a complete resolution of the entire dispute, just as the proposed question is not required to be inevitably common to all members of the class. As the law provides, it need only be "related".

[59] In short, the plaintiff in this case bears the burden of showing that once the answer(s) to one or more common questions have been obtained, the parties will have settled a substantial proportion of the dispute.

[60] Finally, the Court must not anticipate grounds of defence in order to rule on the identical, similar or related nature of the proposed issues.[26]

[61] In the context of class actions respecting sexual maltreatment, the Court of Appeal writes:[27]

> [TRANSLATION]
>
> [54] At the application for authorization stage, all J.J. needed to propose was one issue of law or fact that was identical, related or similar for all members of the class. The answer to this question was required only to contribute significantly to settling the dispute. It was therefore not necessary for each of the proposed questions to lead to a complete solution of the dispute or for them to be all of equivalent relevance.
>
> [55] I find that the judge's objections regarding this first condition are unfounded, at least not to the point of leading to the dismissal of the application for authorization. First of all, the argument held by the Judge concerning the possibility of holding a number of small trials within the main proceedings is not compelling:
>
> > [TRANSLATION]
> >
> > [23] It is quite possible that determination of the common questions does not constitute a complete resolution of the case, but rather gives rise to small trials at the individual settlement stage of claims. This does not preclude a class action.

[62] In the application for authorization, the factual allegations regarding the collective aspect of allegations of fault against Mr. Rozon are the following:

> [TRANSLATION]
>
> Unnumbered introductory paragraph . . . The days of men of power assaulting and sexually harassing women around them with impunity are

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[25] *Société québécoise de gestion collective des droits de reproduction (Copibec)* c. *Université Laval*, 2017 QCCA 199 (C.A.), at para. 51.

[26] *Société québécoise de gestion collective des droits de reproduction (Copibec)* c. *Université Laval, supra*, previous note, at paras. 67 to 74.

[27] *J.J.* c. *Oratoire Saint-Joseph du Mont-Royal, supra* note 4, at paras. 54 and 55.

over. Gilbert Rozon is a man with power who sexually assaulted and harassed numerous women for decades. Some of his victims were minors.
. . .

2.5. Rozon is a 63-year-old man who sexually assaulted and harassed many women and girls over a period of at least 34 years, so that he deserves the designation of sexual predator;

2.6. Rozon systematically abused his position of power and influence in the artistic, political and social sphere in order to attack members of the group with the expectation that his victims would not have the courage to denounce him/or fear that they would not be believed if they dared to accuse him in this way;

2.7. A lawyer by training, Rozon is a well-known producer and businessman in the entertainment and comedy industry. He founded *Juste pour rire* in July 1983;

2.8. Rozon is a regular in the circles of power and influence in Québec. As one writer wrote in *Voir* in 2002, [TRANSLATION] "Rozon is a man of influence, a rich rnan, a successful man who can afford to invite decision-makers to his table." A copy of *Voir* is filed as Exhibit R-2;

2.13. However, Rozon's first sexual assault in 1998 was not his first, as he had already raped, brutalized and harassed many women who were unable to denounce him and seek justice;

2.14. Rozon took advantage of his victims' silence, fear, shame and impossibility to act and continued his predation without ever ceasing to gain prestige and popularity;

2.15. In addition, his experience with the criminal justice system clearly did not deter him from continuing to assault women in his entourage;

2.21. Nine women recounted to the newspaper *Le Devoir* and on the radio station 98.5 FM that they had been assaulted by Rozon (Exhibit R-7);

2.22. Of the cases known by the plaintiff to date, at least 20 sexual assaults were committed between 1982 and 2016. It is clear that the victims known today represent only the tip of the iceberg;

3.1. All the class members were victims of sexual assault or sexual harassment by Rozon resulting in an injury;

[63] In the Court's view, these elements are factual allegations and do not constitute unsustainable opinions or inferences, or hypothetical or purely speculative elements. These factual allegations are held to be true unless they are blatantly shown to be false, in particular by the evidence filed by Mr. Rozon. No such evidence has been filed. Mr. Rozon has merely argued that the allegations are false. This argument cannot be accepted: without contradictory

evidence, these allegations have not been blatantly shown to be false. The Court also refers to the explanations provided in section 2.1 .1.

[64] Therefore, contrary to Mr. Rozon's claims, the allegations relating to his abuse of power are sufficient and are not opinions. They will obviously need to be proven at the merits stage.

[65] However, are these allegations sufficient for the Court to identify the presence of identical, similar or related issues within the meaning of article 575(1) CCP.

[66] Mr. Rozon disputes this, arguing that everything is individual in this case: each alleged sexual assault must be studied individually, with no common thread between them. According to him, the file does not contain any identical, similar or related issue allowing the class members' file to be significantly carried forward. Moreover,[28] the Court cannot authorize a class action since the proposed common issues present challenges such as the need for the Court to rule on individual questions before considering common questions. According to him, the consent of each victim is central and stands in the way of any class action.

[67] Mr. Rozon summarizes his position in his argumentation:

> [TRANSLATION]
>
> 36. In cases where the criterion of common issues was found to have been met, the alleged sexual assaults had been committed in a specific context, for example, by employees or members of organizations in the exercise of their functions;
>
> 37. There was no such element of context proposed here: the representative plaintiff wishes to sue the respondent on behalf of [TRANSLATION] "all those sexually assaulted and/or harassed", leaving it to the court to analyze whether such actions have occurred, were actually carried out by the respondent and whether the respondent thus committed a civil fault in the circumstances of each case, in addition to having to consider in particular the following elements:
>
> (a) If there was consent to sexual intercourse;
>
> (b) the context in which the alleged assault occurred;
>
> (c) the nature of the relationship with the defendant;
>
> (d) the prescription of the action and the factors that may explain the impossibility to act;

[28] Based on the decisions *Dupuis* c. *Canada (Procureur général)*, 2014 QCCS 3997, at paras. 255 and 261 to 263, and *Ohana* c. *Apple Canada Inc.*, 2015 CCQS 4748, at paras. 40 to 44.

> 38. In fact, the class that the plaintiff wishes to represent is not circumscribed precisely nor by contextual elements (places, type of relationship between the members proposed and the respondent) or temporal elements (period corresponding to a specific moment);
>
> . . .
>
> 42. On the contrary, in the majority of reported cases of civil liability concerning acts of sexual assault, employers or supervisors, in addition to individuals, are the subject of a claim under the principle of the liability of the principal mandatary;
>
> 43. In these cases, therefore, the question of employer misconduct in the surveillance of its employees is clearly a common factor and a restriction of the scope of the proposed class;
>
> . . .
>
> 45. In a similar context, the Supreme Court of British Columbia refused to allow a class action against the defendant alone, a prison guard, due in part to the absence of truly common issues;
>
> *Lakes v. MacDougall,* 2011 BCSC 1273, at paras. 18 and 19;
>
> . . .
>
> 46. On the other hand, in another decision, an Ontario court found that the question of whether a respondent had sexually assaulted each plaintiff necessarily led to an individual examination of each member's claim, which was otherwise inconsistent with the common issues test, such as interpreted by the Supreme Court [of Canada] :
>
> *Fehringer v. Sun Media Corp.,* [2002] 0.J. no. 411O (Ont. SCJ) (confirmed by 2003 O.J. no. 3918), at paras. 16 and 17, 21 and 26; . . .

[68] Moreover, according to Mr. Rozon,[29] the entire portion of the action based on sexual harassment requires a highly subjective and circumstantial interpretation which makes the analysis necessarily individual to each member of the proposed class.

[69] Finally, Mr. Rozon argues that there is a potentially large disparity between the class members with respect to the issues of prescription, its starting point and the impossibility of action. He sees it as being highly individual.

[70] In its application for authorization, the plaintiff proposes the following issues as identical, similar or related:

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[29] Citing *Janzen v. Platy Enterprises Ltd.,* [1989] 1 S.C.R. 1252, at 31, 32 and 36.

(1) Did the respondent Rozon systematically commit sexual assault and/or sexual harassment of girls and women?

(2) Did the respondent Rozon abuse his power and position of influence to commit sexual assault and/or sexual harassment?

(3) Did the respondent Rozon behave in a similarly abusive manner with girls and women?

(4) What are the types of damages, injuries and legacies common to victims of sexual assault and/or sexual harassment?

(5) Does being a victim of sexual assault and/or sexual harassment result in harm itself?

(6) What are the factors common to class members in relation to the impossibility to act?

(7) Did the respondent Rozon intentionally interfere with the class members' right to security, inviolability and dignity?

(8) Must the respondent Rozon pay punitive damages?

(9) What is the amount of punitive damages to which Rozon should be sentenced, collectively, in order to punish and deter his behaviour?

[71] What is to be said about that?

[72] The Court is of the view that, based on the factual allegations held to be true at this stage, the proposed issues are identical, similar or related within the meaning of the jurisprudence considered above, because:

- The plaintiff accuses Mr. Rozon of a similar *modus operandi* for all of the alleged sexual assaults and sexual harassment: Mr. Rozon allegedly committed several sexual assaults against targeted victims in his entourage and in the artistic, political and social spheres while he enjoyed a position of power and influence, thus committing systematic abuse of power for at least 34 years. As this element is supported by uncontradicted factual allegations, it is common to all members of the class and will benefit from common evidence. This element will also be introduced as evidence before the detailed individual case-by-case evidence of each victim, ensuring that this element, if proven, will make it possible for a substantial proportion of the claims to proceed, without a repetition of the claim's legal and factual analysis in this regard. However, it is obvious that several victims will have to testify with respect to their personal cases in order to try to prove this *modus operandi*. This does

not make the institution of a class action impossible;

- The question of the impossibility to act is also common since it stems either from the status of Mr. Rozon himself in his environment in relation to his victims or the results of criminal charges against him in 1998. These elements will be supported by common evidence, and the result will make it possible for a substantial proportion of the claims to proceed, without a repetition of the legal and factual analysis in this regard;

- The starting point for the class members' prescription, particularly in the light of article 2926.1 CCQ. and the analysis of this article also have common elements including, among others, those related to the victims' knowledge and Mr. Rozon's role in the acquisition of this knowledge;

- The claim for moral and pecuniary damages is also common in nature, since common evidence will surely inform the Court on the merits of the types of sequelae generally suffered by victims of sexual assault or sexual harassment as well as the hardships these victims face in coming forward. Here again, this element will make it possible for a substantial proportion of the claims to proceed, without a repetition of the legal and factual analysis in this regard;

- The claim for punitive damages is also based on common evidence relating to the purportedly intentional nature of the alleged sexual assault. In addition, joint evidence will enable the Court to assess, on the merits, the alleged gravity of the actions justifying the award of punitive damages. Once more, this element will make it possible, on the one hand, for a substantial proportion of the claims to proceed, without a repetition of the legal and factual analysis in this regard.

[73] In short, the proposed issues are at least related and all of them make a significant contribution to each member's file, even though they may not all impact on the resolution of the dispute, including the final award of a defined quantum of punitive damages.

[74] Moreover, with respect to identical, similar or related issues, the issues of prescription and the need to individually prove the impossibility to act do not constitute an obstacle to this stage of authorization of the action.

[75] The individual aspects identified by Mr. Rozon are not an obstacle to authorization. The Court notes that the consent of each victim will be analyzed one by one, at the appropriate time, based on the relevant factual determinations.

[76] The criterion of article 575(1) is satisfied. The Court will return to the wording of the questions it will authorize.

[77] With respect to the class aspect of the case, the Court adds that it is recognized that access to justice for victims of sexual assault is fraught with difficulties. Victims find it very hard to denounce the assaults, particularly because of the shame, the psychological consequences, the taboo, the fear of not being believed, and the fear of confronting the aggressor who is often a person of prestige in society, as is precisely the case here, according to the allegations of the application, and also because the victims often believe that they are alone and that the assault was their fault.

[78] Thus, a class action like this one enables all victims to understand that they are not alone, that the assaults are not their fault and that if they have the courage to come forward to denounce the sexual maltreatment suffered by them, they will make other victims' stories more probable. A class action will therefore provide the merits with a common proof that will benefit all class member victims.

[79] This ties in with the general objectives of the class action identified by the Supreme Court of Canada and stated by the Court of Appeal with respect to liability for sexual maltreatment, which the Court previously set out in section 1.

[80] At the trial on the merits, the judge hearing the case may handle the evidence and the sequence of evidence in order to manage the case and settle it. Similarly, the judgment that he renders will contain various legal and factual determinations that will affect the outcome of individual cases and the type of recovery process and its mechanics.[30]

2.3 Does the composition of the group justify instituting the class action?

[81] Pursuant to article 575(3) CCP, the composition of the class must make 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, that is, articles 88, 91 and 143 CCP (formerly articles 59 and 67 of the CCP prior to 2016).

[82] In article 575(3), the CCP does not mention [TRANSLATION] "impossible" but rather "difficult or impracticable".[31] Articles 88, 91 and 143 CCP provide for possibilities of mandates when a number of persons have a common interest in a dispute and the consolidation of a number of plaintiff parties in the same judicial application.

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[30] Take, for example, various types of factual and/or legal presumptions, as was done in a number a previous class actions, including notably *Tremblay* c. *Lavoie,* 2014 QCCA 3185, at paras. 305 to 320, on the impossibility to act in matters of sexual maltreatment. Mr. Rozon argues in the context of the authorization that all these presumptions will be useless to the members, but founds his argument on evidence not yet presented and analyzed. His argument is premature.

[31] *Morin* c. *Bell Canada,* 2011 QCCS 6166 (C.S.), at para. 89: [TRANSLATION] "The petitioners need not demonstrate that articles 59 and 67 C.C.P. cannot be applied; they must instead demonstrate that it is difficult or impracticable to apply these articles."

[83] The applicable criteria are again those presented by Mtre. Yves Lauzon in his work *Le recours collectif* published in 2001[32] and based on the former CCP article 1003, prior to 2016. The criteria are:

> [TRANSLATION]
>
> - the probable number of members;
> - the geographic location of the members;
> - the mental or physical state of the members;
> - the nature of the action undertaken;
> - the financial aspects of the action as the diverse costs involved, the amount in play for each member, the risks associated with the disbursements if unsuccessful and the financial assistance available; and
> - the practical and judicial constraints inherent to the use of the mandate and the consolidation of the parties in comparison with the class action.

[84] The number of members is obviously an important factor without, however, alone being a determinant or sufficient. There are no mathematical formulae related to the number of class members. In the class action framework for sexual maltreatment liability, the Court of Appeal[33] stated that a class composed of as few as five members may be valid.

[85] The jurisprudence also has it that where the importance of the class is in doubt, the doubt must go to benefit the plaintiffs.[34] Finally it is up to the plaintiff to provide a minimum of information on the size and essential characteristics of the class to enable the Court to verify the application of this provision.[35]

[86] The plaintiff alleges the following in the application for authorization:

> [TRANSLATION]
>
> 2.21. Nine women recounted the assaults inflicted on them by Rozon to the newspaper *Le Devoir* and on the radio station 98.5 FM (Exhibit R-7);

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[32] Yves Lauzon, *Le recours collectif (Cowansville, Québec:* Éd. Yvon Blais, 2001) at 38, 39 and 42. These criteria were taken up again with approval by the Superior Court in *Brière c. Rogers Communications,* 2012 QCCS 2733 (C.S.), at paras. 71 and 72.

[33] *J.J.* c. *Oratoire Saint-Joseph du Mont-Royal, supra* note 4, at para. 49.

[34] *Carrier* c. *Québec (Procureur général),* 2011 QCCA 1231 (C.A.), at para. 78.

[35] *Del Guidice* c. *Honda Canada Inc.,* 2007 QCCA 922 (C.A.), at para. 33.

> 2.22. Of the cases known to the plaintiff to date--at least 20--the sexual assaults were committed between 1982 and 2016. It is clear that the victims known at present represent only the tip of the iceberg;
>
> 4.1. Persons who are victims of sexual maltreatment have great difficulty denouncing these actions, particularly when the aggressor is an idealized person who is held highly in society, so that it is practically certain that a number of victims have not yet made themselves known;
>
> 4.2. Considering the ease and freedom with which Rozon assaulted and harassed the women, the plaintiff believes that it is highly probable that the class be composed of several tens of victims whose identities are not known at the moment;
>
> 4.3. The assaults took place over a number of years, and against people who do not know each other;
>
> 4.4. It is thus impossible for the plaintiff to contact all the members and all the more reason impossible to obtain a mandate from all the members;
>
> 4.5. The plaintiff wishes to represent the victims who are not yet ready to identify themselves and denounce Rozon, but who clearly have rights to assert;

[87] Mr. Rozon has stated that this is insufficient because the plaintiff did not provide a minimum of information on the size and essential characteristics of the class. According to him, it is impossible to know its exact size, as the plaintiff is merely pointing out that there are at least 20 known cases and that the victims currently known represent only the tip of the iceberg, which is an approximation that does not respect the burden imposed by article 575(3) CCP. Lastly, according to Mr. Rozon, the plaintiff's approach is more of a public inquiry whose sole purpose is to punish, something that is not permitted.

[88] The Court disagrees.

[89] In the present case, the application for authorization identifies a class of at least 20 known persons, and potentially several dozen currently unknown, all of whom purportedly suffered similar injuries and for which the fault(s) committed by Mr. Rozon and the resulting liability would be identical with respect to each of them. The plaintiff states that it does not have access to the contact information of all these persons and that, in any event, it would be impossible for it to obtain a mandate or power of attorney from each member.

[90] This is more than the minimum of information required. The plaintiff does not have to demonstrate the exact or final size of the class. In the framework of

a class action for sexual maltreatment liability, the Court of Appeal[36] accepted a class whose final size was completely unknown: in that case, only 41 potential victims out of several hundred were identified, which was deemed sufficient. The situation is even better here: the plaintiff reports 10 cases,[37] including her own, out of a possibility of at least 20.

[91] In addition, protecting the victims' anonymity by instituting a class action, contrary to the mechanisms of the mandate to take part in judicial proceedings on behalf of others or for consolidation of proceedings, militates in favour of the use of a class action. Victims seeking to protect their identity cannot be described as having a real opportunity to sue other than through this class action.

[92] In these circumstances, the Court is of the view that the criterion of composition of the class is satisfied.

[93] The Court will examine in section 2.5 below, Mr. Rozon's arguments as to the definition of the class.

2.4 Is the representation made by the plaintiff adequate?

[94] Mr. Rozon is not contesting this criterion. The Court must still decide whether or not it is satisfied.

[95] The representative plaintiff must meet three requirements to satisfy article 575(4) CCP: interest, competence and absence of conflict of interest. The representative here is the plaintiff, not the designated person.

[96] As for the designated person, article 571 CCP requires that he or she have a valid action, be a member of the class and have interest related to the purposes for which the representative legal person was constituted. Here, these three conditions are met, in that:

- the designated person has the required appearance of right, as explained above;

- the designated person is a member of the class, which is defined as: [TRANSLATION] "All the persons assaulted and/or harassed by Gilbert Rozon";

- the interest of the designated person is clearly related to the objects of the plaintiff, which are the following:[38]

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[36] *J.J. c. Oratoire Saint-Joseph du Mont-Royal, supra* note 4, at paras. 94 and 95.

[37] Exhibit R-7.

[38] See the plaintiff's letters patent, Exhibit R-1.

- Represent, in the context of a class action, the interests of Gilbert Rozon's victims;

- Defend the interests of the victims of sexual assault, maltreatment or harassment;

- Contribute to the prevention of sexual assault by any appropriate means.

[97] Let us move on to the case of the plaintiff. Recall[39] that the plaintiff Les Courageuses is a not-for-profit legal person founded for the purpose of representing the alleged victims of Mr. Rozon, notably in the context of this class action. The plaintiff took the name of "Les Courageuses" because, according to it, denouncing a sexual assault is an act of courage. It is made up with the goal of bringing together persons with similar claims because of sexual assault and/or harassment which Mr. Rozon allegedly committed.

[98] Thus, three conditions are required for representation by the plaintiff. First, the member designated by the plaintiff must have a personal interest in seeking the conclusions that the plaintiff proposes, which is the case here for the designated member. Second, if the plaintiff proceeds under article 91 CCP, it must be competent, that is, have the potential to act as mandatary in the proceeding. Third, there can be no conflict between the interests of the plaintiff and those of the class members. The Court of Appeal recalled the three criteria in *Charles* c. *Boiron Canada Inc.*,[40] a leading decision in the field that, to some extent, tempers all other previous decisions.

[99] Indeed, in the same judgment, the Court of Appeal adds, in paragraphs 65 and 66:

> [TRANSLATION]
>
> [65] . . . However, the factual situation of the appellant is the very example of the members of the class in question (hence its legal interest); it is not in a situation of conflict of interest with the other class members; the appellant has also invested enough of itself in the case so that we can consider recognizing the status it seeks.
>
> [66] On this last point, it should be remembered that the law does not require persons who wish to pursue a class action to be an activist in the case that they intend to defend, that they arduously devote themselves to it on a daily basis, be constantly on the front lines of the judicial fight, supervise it in its smallest details or hold the reins tightly, whether strategically or otherwise. The representatives cannot be required to have

[39] See paras 2.1 to 2.3 of the application for authorization, as well as the letters patent, Exhibit R-1.
[40] *Supra* note 8, at para. 55.

> more than an interest in the case (in the familiar sense of the term today, that is, the opposite of indifference), a general understanding of its ins and outs and therefore the ability to make, as needed and knowingly, the decisions needed to benefit the whole class and other than in an egotistical perspective. It is otherwise normal that while paying attention to the progress of the action, the persons rely on the lawyers representing them, as do the majority of ordinary litigants acting through a member of the Barreau.
>
> [Emphasis added.]

[100] In *Martel* c. *Kia Canada Inc.*[41] the Court of Appeal states that the level of research that a representative plaintiff must perform depends essentially on the nature of the action it intends to pursue and its characteristics. Of course, if a large number of people find themselves in an identical situation, it becomes less useful to try to identify them. Here again, this judgment is a precedent in that matter and in a way tempers all previous decisions.

[101] In short, as to representation, it is a [TRANSLATION] "minimal" requirement.[42] As the Supreme Court of Canada points out in *Infineon*,[43] "[n]o proposed representative should be excluded unless his or her interest or competence is such that the case could not possibly proceed fairly".

[102] As regards competence and absence of a conflict of interest, the plaintiff submits the following elements in the application for authorization, not contested by Mr. Rozon:

> [TRANSLATION]
>
> 11.1. The plaintiff was set up on the initiative of Rozon's victims and its statutes oblige it to act in the interest of the members;
>
> 11.2. The plaintiff's members, including the members of its board of directors, are willing to invest all the time and effort required to advance this class action;
>
> 11.3. Some class members met and agreed to have the plaintiff claim the status of representative plaintiff and designated Ms. Tulasne as designated person;
>
> 11.4. The plaintiff, the members of its board of directors and the designated person are acting in good faith to allow Rozon's victims the opportunity to seek justice that otherwise would not be available to them;

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[41] 2015 QCCA 1033 (C.A.) at para. 29.

[42] *J.J. c. Oratoire Saint-Joseph du Mont-Royal*, *supra* note 4, at para. 46.

[43] *Supra* note 24, at para. 149.

11.5. The plaintiff and the designated person have spent considerable time discussing this case, have participated in drafting this proceeding, and intend to be involved in it, including contacting class members to support them and to appear at hearings before the Court;

11.6. The plaintiff has retained the services of lawyers with extensive experience in class actions;

11.7. It has cooperated with and has committed to working with prosecutors at all stages of the case to ensure that the class action moves forward;

11.8. It is willing to take the necessary steps to finance the class action;

11.9. The members of the plaintiff's board of directors wish to facilitate access to justice for the class members and have chosen to form a non-profit organization to bring this class action, although they could have filed individual proceedings that would not benefit other members of the class;

11.10. It wishes to allow the class members the opportunity to express themselves in all confidentiality;

11.11. There is no conflict of interest between the plaintiff and the class members;

11.12. The plaintiff is acting in good faith;

[103] In the Court's view, the plaintiff's submissions amply demonstrate competence and absence of conflict of interest.

[104] In these circumstances, the Court finds that the plaintiff meets the criteria of article 575(4) CCP.

2.5 What must the class parameters and identical, similar or related issues be?

[105] The Court has now concluded that the four criteria of article 575 CCP are met by the plaintiff's application for authorization. The class action must, in principle, be authorized. Pursuant to article 576 CCP, it must now be determined whether the proposed class and the identical, similar or related issues proposed are consistent with the facts alleged and the jurisprudence and, if not, what the Court can or must do accordingly.

[106] **The definition of the class.** The definition of the class must be objective, limited in time and space and correspond to the evidence contained in the file at the authorization stage.[44]

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[44] With respect to the requirements to define the class (time and space) and the Court's powers

[107] Here, the plaintiff proposes the following class: [TRANSLATION] "All persons assaulted and/or sexually harassed by Gilbert Rozon".

[108] Mr. Rozon claims that this definition is not only inappropriate, but that no definition is possible at all, hence the consequence: the authorization must be denied. According to him, the definition of the class is circular and depends on the outcome of the litigation, contrary to the requirements of the Court of Appeal in *George c. Procureur général du Québec*.[45]

[109] Mr. Rozon refers to the 2009 decision, *A. K.* c. *Kativik School Board,*[46] in a class action for sexual maltreatment, in which the Superior Court was seized of the following definition of the class:

> All students of the Respondent who were the victims of the sexual, emotional and mental abuse perpetrated by the Respondent's employee, servant, or agent Roger Garceau.

[110] The Superior Court, pursuant to *George c. Procureur général du Québec,* indicated that, had it authorized the class action, it would have modified the definition of the class to read:

> All former students of the Respondent who claim to have been the victims of the sexual, emotional and mental abuse perpetrated by the Respondent's employee, servant, or agent Roger Garceau.

[111] According to Mr. Rozon, the definition proposed by the plaintiff cannot be redrafted and, in any event, it involves a highly subjective and circumstantial characterization of the acts allegedly committed by him and the alleged injury suffered by each member of the proposed class, which is a barrier to authorization. Finally, Mr. Rozon submits that by describing the class so broadly in time and space, any woman who has been in contact with him at any time, regardless of place or context, could consider having a right of action, which is nonsensical.

[112] What decision is to be made?

[113] In *J.J.* c. *Oratoire Saint-Joseph du Mont*-Royal,[47] the Court of Appeal adopted the following definition of the class for the authorized class action:

> [TRANSLATION]
>
> All natural persons residing in Québec, who have been sexually abused

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in that regard, see the detailed analysis made in *Kennedy* c. *Colacem Canada Inc.*, 2015 QCCS 222 (C.S.), at paras. 209 to 219.

[45] 2006 QCCA 1204, at para. 40.

[46] 2009 QCCS 4152, at paras. 40 and 41.

[47] *Supra* note 4, at paras. 96 to 102.

> by members of the Province canadienne de la Congrégation de Sainte-Croix, at any educational institution, residence, summer camp or any other place located in Québec, as well as at the Saint Joseph's Oratory of Mount Royal, with the exception of those who attended Collège Notre-Dame du Sacré-Coeur during the period of September 1, 1950 to July 1, 2001, the Collège de Saint-Césaire during the period of September 1, 1950 to July 1, 1991, and the Notre-Dame de Pohénégamook school during the period from January 1, 1959 to December 31, 1964;

[114] The Court is of the opinion that this definition constitutes the standard definition of class in class actions for sexual maltreatment, even if it somewhat overturns, or modulates, previous decisions.

[115] Given this precedent, the definition proposed here is the correct one. It meets the applicable criteria and the evidence on file. As the Court of Appeal stated in paragraph 96 of *J.J.* c. *Oratoire Saint-Joseph du Mont-Royal,* the lack of evidence of the locations of the assaults and the lack of serious investigation into the number of victims do not constitute compelling factors against the collective action or against the proposed definition.

[116] Moreover, again, as the Court of Appeal points out in the same judgment, the judge hearing the case may always, during management of the case, and even after, review the composition of the class to ensure the viability of the class action.

[117] As for the temporal parameters, a closing date is generally required when defining the class, since the latter cannot remain [TRANSLATION] "open indefinitely" and cannot generally end on a date after the judgment defining it.

[118] However, in this case, the circumstances are quite unusual, in that the majority of class members are in a situation of impossibility to act. In addition, several members of the class are still unknown and the dates of their alleged assaults are also unknown. As such, this is a case where it is not desirable to pre-determine a starting point and a closing point for the class as of now. It will be up to the judge on the merits to do so, and only at the trial, not before.

[119] Thus, the Court concludes that the proposed definition of the class is sufficiently precise.

[120] The Court therefore adopts the following definition of the class, in French:

> Toutes les personnes agressées et/ou harcelées sexuellement par Gilbert Rozon.
>
> [TRANSLATION]

All persons sexually assaulted and/or harassed by Gilbert Rozon.

[121] **The identical, similar or related issues.** The Court accepts as such the wording of the issues proposed by the plaintiff. There is no need to reformulate them.

[122] **Recovery.** In the conclusions of its application for authorization, the plaintiff is seeking the collective recovery of the punitive damages claimed. No one has challenged this request, which the Court grants at this stage. The evidence at trial will determine whether or not there should be collective recovery in this regard and, if so, determine the total amount of the damages.

2.6 What are the parameters of the authorization notice and what is the opting-out period?

[123] The Court is postponing the analysis of these issues and its decision. The matter of the English translation of the notice will be settled at the same time.

[124] However, the Court notes in passing that in the majority of the jurisprudence,[48] the cost of publishing notices of authorization falls under legal costs and must be borne by the respondent against whom class action is allowed. However, the Court is postponing the decision in this regard.

2.7 In which judicial district must the class action take place?

[125] Pursuant to article 576 CCP, the Court has determined that the district of Montréal will be the judicial district in which the class action will be commenced. Indeed, the events upon which the class action is founded took place in the district of Montréal. In addition,[49] Mr. Rozon resides in this district, as do the lawyers filing the application, the plaintiff has its head office there and the Court assumes that the majority of class members also reside in the district.

3. CONCLUSION

[126] The Court will authorize the institution of the class action proposed by the plaintiff. In the past,[50] the procedural vehicle of class action has proven its effectiveness in sexual assault cases, since it has allowed hundreds of victims to have access to justice in Québec. Were the plaintiff not allowed to bring this class action, it is highly likely that many victims would be deprived of the exercise of their rights in court.

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[48] See *Kennedy* c. *Colacem Canada Inc., supra* note 44, at paras. 257 to 260, and jurisprudence cited.

[49] See paras. 12.1 to 12.3 of the application for authorization.

[50] Reference will notably be made to the following decisions: *Sebastian c. English Montreal School Board (Protestant School Board of Greater Montreal)*, 2007 QCCS 2107; *Tremblay c. Lavoie*, 2010 QCCS 5945; *Centre de la communauté sourde du Montréal métropolitain* c. *Institut Raymond-Dewar, supra* note 20; *X* c. *Thibault*, 2016 QCCS 389; *A* c. *Frères du Sacré-Cœur*, 2017 QCCS 5394; *Association des jeunes victimes de l'église c. Harvey*, 2016 QCCS 2252; *J.J.* c. *Oratoire Saint-Joseph du Mont-Royal, supra* note 4; *Association des amis du Patro Lokal de St-Hyacinthe c. Trudel*, 2017 QCCS 3965.

[127] In conclusion, the Court adds that it will order the use of pseudonyms for the identification of the class members in the proceedings, exhibits and any other document produced in the Court's record, in order to protect their identities.[51]

THEREFORE, THE COURT:

[128] **ALLOWS** the *application for authorization to institute a class action and to be representative plaintiff;*

[129] **AUTHORIZES** the institution of the following class action:

> Action respecting extracontractual civil liability for compensatory damages and punitive damages;

[130] **ATTRIBUTES** to the plaintiff Les Courageuses the status of representative for the purpose of instituting this class action on behalf of the following class:

> [TRANSLATION]
>
> All the persons sexually assaulted and/or harassed by Gilbert Rozon.

[131] **IDENTIFIES** as follows the main questions of fact or law that will be dealt with collectively:

> (1) Has the respondent Rozon systematically sexually assaulted and/or sexually harassed girls and women?
>
> (2) Did the respondent Rozon abuse his power and position of influence to commit sexual assault and/or sexual harassment?
>
> (3) Did the respondent Rozon behave in a similarly abusive manner to girls and women?
>
> (4) What are the types of damages, injuries and sequelae common to victims of sexual assault and/or sexual harassment?
>
> (5) Does being a victim of sexual assault and/or sexual harassment result in harm itself?
>
> (6) What factors are common to the class members in relation to the impossibility to act?
>
> (7) Did the respondent Rozon intentionally interfere with the class members' right to security, inviolability and dignity?

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[51] As was done, for example, in *Tremblay c. Lavoie, supra* previous note, at para. 73.

(8) Must the respondent Rozon pay punitive damages?

(9) What amount of punitive damages should Rozon be ordered to pay, collectively, to punish and deter his conduct?

[132] **IDENTIFIES** as follows the conclusions sought:

> **ALLOW** the class action of the plaintiff;
>
> **CONDEMN** the respondent Rozon to pay the designated person, Patricia Tulasne, the sum of $200 000 for moral damages and the sum of $200 000 for pecuniary damages, including her loss of productivity and earning capacity, increased by interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec,* since service of the *application for authorization to institute a class action and to be representative plaintiff*;
>
> **CONDEMN** the respondent Rozon to pay to each class member a sum as moral and pecuniary damages to be determined according to the parameters taking into account the nature of acts, damages and sequelae suffered, increased by interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec,* since service of the *application for authorization to institute a class action and to be representative plaintiff* and to be recovered individually;
>
> **CONDEMN** the respondent Rozon to pay 10 million dollars as punitive damages, to be recovered collectively;
>
> **THE WHOLE** with legal costs, including costs of notice, administration costs and expert fees;

[133] **DECLARES** that unless they opt out, the class members will be bound by any judgment to be rendered on the class action in the manner provided by the law;

[134] **POSTPONES** to a subsequent hearing the determination of the opting-out period and its starting point;

[135] **ORDERS** the publication of a notice to the members according to the terms and conditions to be determined by the Court in a subsequent hearing;

[136] **DETERMINES** that the class action will be exercised in the judicial district of Montréal;

[137] **PERMETS** the use of pseudonyms for the identification of class members in the procedures, exhibits and any other document filed in the Court

record, in order to protect their identity;

[138] **THE WHOLE** with legal costs in favour of the plaintiff, excluding, for the moment any decision relative to the costs to publish the notices.

(s)
Donald Bisson J.S.C.

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AU DOCUMENT DÉTENU PAR LA COUR

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TABLE OF CONTENTS