C A N A D A

COURT OF APPEAL

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

C.A.M.: 500-09-
S.C.M.: 500-06-000942-181

MICHAEL CARRIER, residing and domiciled at Building No 249-2, in the City of Kangirsuk, District of Abitibi, Province of Quebec, J0M 1A0

APPELLANT - Petitioner

v.

ATTORNEY GENERAL OF QUEBEC, ès qualité representative of the *Directeur des poursuites criminelles et pénales, du Ministère de la justice et du Ministère de la sécurité publique*, having a place of business at 1 Notre-Dame Street East, Suite 8.00, in the City and District of Montreal, Province of Quebec, H2Y 1B6

RESPONDENT - Respondent

NOTICE OF APPEAL
(Article 352 C.C.P.)
Appellant
August 6, 2020

INTRODUCTION

1. The Appellant appeals from a judgment rendered June 29, 2020 by the Quebec Superior Court (the Honourable Gary D.D. Morrison), which authorizes the Appellant to institute a class action against the Respondent, but only in part (the "**First Instance Judgment**"). A copy of the First Instance Judgment is included herewith as **Schedule 1**.

2. The date of the notice of judgment of the First Instance Judgment is July 3, 2020.

3. The duration of the hearing was two (2) days.

4. This file is not confidential.

5. As hereinafter set forth, the First Instance Judgment correctly accepts that all of the conditions set forth in Article 575 C.C.P. for authorization of a class action are met, however the decision only authorizes the proposed class action to claim punitive damages, and denies authorization to claim damages.

FACTS AND GROUNDS OF APPEAL

6. The class action proposed by the Appellant relates to the failure of the Respondent ("**AGQ**") to implement a bail hearing system in Nunavik which respects constitutional rights guaranteed to all detainees.

7. Section 516 of the *Criminal Code ("***Cr.C.***")* stipulates that any individual arrested and detained has the absolute right to have a bail hearing **no later than three (3) clear days** following an appearance before a Justice of the Peace, unless that person specifically consents to a longer delay (the "**3-Day Rule**").

8. The 3-Day Rule safeguards the respect of constitutional rights guaranteed by both the Canadian Charter of Rights and Freedoms ("**Canadian Charter**") and Quebec's Charter of Human Rights and Freedoms ("**Quebec Charter**"), including every individual's fundamental right to the presumption of innocence. Section 516 Cr.C. is a pillar of the preventive detention system in Canada, entailing that no person may be detained and deprived of liberty without just cause.

9. Although it is imperative for the AGQ to implement a system ensuring the respect of the 3-Day Rule, the system implemented in Nunavik (the "**Nunavik System**") blatantly fails to do so. On the contrary, the Nunavik System renders it **inevitable** that individuals arrested will be detained for far longer than three clear days before their bail hearing.

10. Judges[1], politicians[2], police officers[3], Crown prosecutors[4], the Quebec Bar[5], the Protecteur du Citoyen[6] and the Viens Commission[7] have decried the Nunavik System for years as it not only violates constitutional rights embodied in Section 516 Cr.C., but it also predominantly affects Inuit individuals, whose historical disadvantages within the justice system are well-known.

11. The Appellant proposes a class action seeking the following remedies:

    a. **Charter Damages Claim** - Damages arising from the Nunavik System's failure to respect the 3-Day Rule, resulting in the violation of each Class member's constitutional rights. The Appellant proposes to establish the quantum of the Charter Damages Claim based on $10,000 per day of detention beyond the three clear days allowed by Section 516 Cr.C.

    b. **Punitive Damages Claim** – Punitive damages for the systematic and *intentional* failure of the AGQ to respect the Class members' Charter rights, to be calculated based on $50,000 per Class member.

12. While the First Instance Judgment correctly concludes that the Appellant has an arguable case to claim punitive damages from the AGQ for the *intentional* violation of Class members' Charter rights, the First Instance Judgment erroneously denies authorization of the Charter Damages Claim, preventing Class members from recovering damages for the violation of their Charter rights.

13. The First Instance Judgment denies authorization of the Charter Damages Claim on the **sole basis** that a claim for *moral damages* constitutes an impermissible collateral attack of remand orders issued by Justices of the Peace, which risks

---

[1] Exhibit P-15, p. 171, p. 194 ff.
[2] Exhibit P-12, p. 1 ff.
[3] Exhibit P-17, p. 83 ff.
[4] Exhibit P-20, p. 98 ff.
[5] Exhibit P-8, p. 27.
[6] Exhibit P-2, p. 49-58.
[7] Exhibits P-15, p. 233ff.; Exhibit P-20, p. 101ff.

bringing the administration of justice into disrepute. The First Instance Judgment concludes that this claim fails to meet the criterion set forth in Article 575 (2) C.C.P.

14. Thus, the only issue in the present appeal is whether the criterion set forth in Article 575 (2) C.C.P. is met with respect to a claim for damages for the violation of rights guaranteed to Class members by the Canadian Charter and the Quebec Charter, or whether such a claim is absolutely barred by the doctrine against collateral attacks.

FACTS DEEMED TO BE TRUE

15. It is settled law that Article 575 (2) C.C.P. must be determined based on the facts alleged and deemed to be true in respect of the proposed class representative, the Appellant Michael Carrier ("**Carrier**"). The facts pertaining to Carrier are alleged in the Application for Authorization to Institute a Class Action[8] ("**Application**").

16. Carrier was arrested in the community of Kangirsuk (Nunavik) on July 5, 2018. He appeared before a Justice of the Peace (via telephone) on the day of his arrest. During Carrier's initial appearance, the State advised that it opposed his release pending trial, thus triggering the 3-Day Rule set forth in Section 516 Cr.C.

17. The *only* authority possessed by the Justice of the Peace was to issue a remand order for a bail hearing to take place in Amos, where bail hearings for individuals arrested in Nunavik take place. The Justice of the Peace issued a *pro forma* remand order for July 10, 2018, which was **five (5) days after Carrier's appearance**.

18. Carrier was then shackled in order to embark on a grueling journey by plane and bus from Kangirsuk to Kuujjuaq, then from Kuujjuaq to Montreal, then from Montreal to St-Jérôme, and then from St-Jérôme to Amos. During his journey, Carrier was forced to undergo four (4) strip-searches and had limited ability to communicate with an attorney.

---

[8] *Demande d'autorisation re-modifiée pour exercer une action collective et pour être désigné représentant*, pars. 40 et seq.

19. On July 10, 2018, a different Justice of the Peace issued a remand order scheduling Carrier's bail hearing on July 13, 2018, which was the first date available. Thus, Carrier's bail hearing was scheduled to take place **eight (8) days after his appearance**, and five days beyond the maximum of three clear days set forth in Section 516 Cr.C.

20. On July 13, 2018, the State withdrew its opposition to Carrier's detention pending trial. Carrier then made the long and grueling journey back from Amos and arrived in his community on July 15, 2018, **ten (10) days** following his arrest and initial appearance.

21. The contravention of the 3-Day Rule was not an isolated event in Carrier's case; the Nunavik System entails that the Charter rights of *all* Class members are similarly violated.

FIRST INSTANCE JUDGMENT

22. The First Instance Judgment erroneously denies authorization to proceed with the Charter Damages Claim on the basis that such a claim before Quebec Superior Court constitutes a "collateral attack" of remand orders issued within criminal proceedings.

23. As only the Quebec Superior Court has the jurisdiction to award damages and to hear class actions, the reasoning of the First Instance Judgment necessarily entails that in order for any Class member to recover damages for the violation of his/her Charter rights, it is necessary for each individual to *first* institute proceedings seeking to "directly" appeal or annul the remand order(s) issued by the Justice(s) of the Peace. The First Instance Judgment reasons that, otherwise, there will be "re-litigation" of issues previously litigated before Justices of the Peace.

ERRORS OF LAW AND MANIFEST AND DETERMINANT ERRORS OF FACT

THE DOCTRINE AGAINST COLLATERAL ATTACKS DOES NOT APPLY

24. With great respect, the Authorization Judge erred in law by denying authorization of the Charter Damages Claim on the grounds that same would constitute an impermissible collateral attack of a remand order, for the following reasons:

a. The doctrine against collateral attacks is intended to prevent a party from circumventing the effects of a decision that has been rendered, and to guard against the re-litigation of facts that were previously litigated and adjudicated in another forum[9].

The proposed class action does not, and cannot possibly, circumvent or undo the effect of remand orders; such remand orders resulted in detentions for longer than the maximum period of three clear days set forth in Section 516 Cr.C., such that the remand orders can only be challenged once the "damage is done", i.e., after the individual has already been detained beyond three clear days.

Furthermore, no facts are litigated before the Justice of the Peace. The Justice of the Peace only has the ability to schedule a bail hearing and, as a result of the Nunavik System, the first available date for such a bail hearing is systematically after three (3) clear days have already elapsed from the time of the appearance. The Charter Damages Claim therefore does not, and cannot possibly, lead to an impermissible re-litigation of facts.

b. The First Instance Judgment's acknowledgement that there is an arguable case that the AGQ *intentionally* violated the Charter rights of the Class members (par. 91 of the First Instance Judgment) which justifies the Punitive Damages Claim cannot be reconciled with denying authorization to Class members to recover damages for the violation of *their* rights.

---

[9] *Canada (Attorney General) v. TeleZone Inc.,* 2010 SCC 62, pars. 35 et seq.; *R. v. Bird*, 2019 SCC 7, pars. 21 et seq.; and *Toronto v. C.U.P.E., Local 79*, 2003 SCC 63, pars. 33-34.

c. The Authorization Judge also erroneously characterizes the Charter Damages Claim as seeking only *moral damages*, even though the Application seeks damages for violations of the Charter. It is settled law that damages arising from Section 24 (1) of the Canadian Charter are not moral damages, but are of a hybrid nature, having both compensatory and punitive aspects. Charter damages are subject to their own analytical framework, as set out by the Supreme Court of Canada in *Vancouver (City) v. Ward*[10].

25. This error of law is overriding. Indeed, the First Instance Judgment concludes that the Charter Damages Claim constitutes an arguable case for purposes of Article 575 (2) C.C.P. (First Instance Judgment, par. 58), however authorization is denied based only on the doctrine against collateral attacks. Thus, if this Honourable Court agrees that the doctrine against collateral attacks does not apply (or that it ought to be set aside), authorization of the Charter Damages Claim necessarily follows.

THE DOCTRINE AGAINST COLLATERAL ATTACKS IS NOT ABSOLUTE

26. Subsidiarily, even if this Court were of the view that the Charter Damages Claim somehow constitutes a collateral attack (which is denied), the Charter Damages Claim must *still* be authorized.

27. It is settled law that the doctrine against collateral attacks is *not* absolute, and must be set aside when "fairness dictates that relitigation should be allowed", when the original process was tainted by "fraud or dishonesty" and/or if the detainee has an "inadequate incentive" to challenge the remand order(s) within his/her criminal proceeding[11].

28. Fairness dictates granting the Charter Damages Claim in Quebec Superior Court for the following reasons:

---

[10] 2010 SCC 27, pars. 20 et seq.
[11] *Toronto v. C.U.P.E., Local 79*, 2003 SCC 63, pars. 52-53.

a. The Class members seek remedies for serious and intentional violations of Charter rights, and Courts must give broad access to such remedies[12].

b. The Supreme Court of Canada has repeatedly remarked that the Canadian criminal justice system has tragically failed this country's indigenous peoples, and the Authorization Judge accepts that the Appellant has presented an arguable case that this has occurred once again (First Instance Judgment, par. 152).

c. The First Instance Judgment accepts (First Instance Judgment, par. 151) the reasoning of Justice Mandeville in *Cayen c. Procureur general du Québec*[13]:

> « Il est aussi du devoir d'agir des tribunaux d'intervenir s'ils constatent que l'État a adopté un système qui compromet ou met en péril les droits des justiciables et est susceptible de déconsidérer l'administration de la justice.(…)
>
> Il serait injuste en l'espèce d'exiger de chaque personne arrêtée et qui a comparu devant un juge de paix magistrat en vertu du système de comparution téléphonique qui ne respecterait pas les droits fondamentaux, de porter le fardeau d'entreprendre les procédures pour faire reconnaître ses droits et à l'encontre d'une saine administration de la justice de trancher au cas par cas les effets d'un système qui mènerait à des violations systématiques. »

d. It is certainly *arguable* that the original process giving rise to the remand orders is tainted; section 516 Cr.C. simply prohibits issuing a remand order for more than three clear days without the detainee's consent, yet the Nunavik System fails to enable the Justice of the Peace to respect this delay.

e. Numerous participants in the criminal justice system have decried for many years that the remand orders issued for arrested individuals in Nunavik are

---

[12] See *Henry v. British Columbia (Attorney General)*, 2015 SCC 24, par. 64; *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2020 SCC 13, par. 171.

[13] 2019 QCCS 4089, pars. 53-55.

made in violation of the Class members' rights[14] (First Instance Judgment, pars. 90-91).

f. The remand orders do not rule on or in any way discuss the systemic failures of the AGQ, which are at the heart of the present case.

g. The "hearing" giving rise to the remand orders bears none of the hallmarks of due process and procedural fairness: the accused is unaware and is not informed of his or her rights, does not benefit from the assistance of legal counsel, is given no opportunity to prepare, does not benefit from the services of an interpreter despite a commonly poor command of English/French, and no actual debate leading to a "finding" takes place as the remand is issued "automatically".

h. The remand order is not a definitive judgment on the merits of an issue which the doctrine against collateral attacks seeks to protect, but rather an administrative process accessory to setting a date.

i. There is no effective and useful way for a detainee to "directly" attack a remand order, as by the time any type of review might in theory be filed, let alone heard, the adjournment period would have elapsed, and the review would be moot. There is thus an "inadequate incentive" for detainees to seek to appeal or annul remand orders.

j. Moreover, a bail hearing often takes place after the issuance of multiple remand orders – in Petitioner's case, there were two remand orders. It is manifestly unjust to require individuals to institute multiple (moot) reviews to quash each remand order in order for them to have the ability to claim civil damages in Quebec Superior Court arising from their detention for longer than the delay permitted by Section 516 Cr.C.

[14] See paragraph 10 herein.

29. Under the circumstances, it was erroneous for the Authorization Judge to conclude that “re-litigation” must be denied, especially at the authorization stage, when the Court is to refrain from deciding mixed questions of law and fact.

30. Paragraphs 74, 75 and 78 of the First Instance Judgment imply that a collateral attack *necessarily* constitutes an inadmissible affront to the integrity of the judicial process. This is an error of law, as the Supreme Court of Canada has affirmed that re-litigation may enhance, rather than impeach, the integrity of the judicial process[15].

31. Considering that the Nunavik System routinely violates the 3-Day Rule, and systematically deprives predominantly Inuit Class members of their constitutional rights, *barring re-litigation* in the present case brings the administration of justice into disrepute.

32. The foregoing error is overriding. By deciding that a Charter Damages Claim would bring the administration of justice into disrepute by attacking remand orders rendered by Justices of the Peace, the First Instance Judgment essentially renders the doctrine against collateral attacks *absolute*, when the Supreme Court of Canada has affirmed the contrary.

33. If this Honourable Court agrees that the Charter Damages Claim should be authorized to proceed, the common questions and conclusions corresponding to this aspect of the claim must also be reinstated.

CONCLUSIONS

34. The Appellant accordingly asks that this Honourable Court:

a. **ALLOW** the appeal;

b. **MODIFY** the First Instance Judgment, such that the questions of law and fact identified, and the conclusions sought in respect of said questions are modified as follows:

---

[15] *Toronto v. C.U.P.E., Local 79*, 2003 SCC 63, par. 52.

IDENTIFIES as follows the main issues of fact and law to be dealt with collectively:

a) Has Defendant infringed or denied class members' rights or freedoms guaranteed by sections 7, 9, 11, 12 and 15 of the *Canadian Charter of Rights and Freedoms* by not enabling the holding of interim release hearings in accordance with sections 515 and 516(1), *Criminal Code*?

b) If so, are class members entitled to damages as a just and appropriate remedy in accordance with section 24 (1) of the *Canadian Charter of Human Rights and Freedoms*?

c) Has Defendant infringed or denied class members' rights or freedoms guaranteed by Articles 1, 10, 24, 25, 31 and 33 of the *Charter of Human Rights and Freedoms* by not enabling the holding of interim release hearings in accordance with sections 515 and 516(1), *Criminal Code*?

d) If so, are class members entitled to damages as a just and appropriate remedy in accordance with Article 49(1) of the *Charter of Human Rights and Freedoms*?

e) Has Defendant unlawfully and intentionally interfered with any of the class members' rights or freedoms protected by Articles 1, 10, 24, 25, 31 and 33 of the *Charter of Human Rights and Freedoms* by not enabling the holding of interim release hearings in accordance with sections 515 and 516(1), *Criminal Code*?

f) If so, are class members entitled to punitive damages in accordance with Article 49(2) of the *Charter of Human Rights and Freedoms*?

IDENTIFIES as follows the principal conclusions sought in relation to the aforementioned issues:

GRANT Plaintiff's action on behalf of all class members;

ORDER Defendant to pay each class member an amount of $10,000 per day spent in illegal detention (i.e. per day after three clear days have elapsed from the time of the initial appearance) for the violation of their fundamental rights, the whole with interest at the legal rate and the additional indemnity provided by law since the filing of the *Demande pour autorisation d'exercer une action collective*;

ORDER Defendant to pay to each class member an amount of $50,000 in punitive damages;

ORDER the collective recovery of all the […] damages to be paid to all class members;

RECONVENE the parties within 30 days of the final judgment with a view to establishing the method of distribution;

THE WHOLE with costs, including the costs of all experts, notices, and administrator's expenses, if any.

c. **MODIFY** the First Instance Judgment, such that it:

AUTHORIZES the institution of the class action in damages and punitive damages against the Procureur générale du Québec;

THE WHOLE, with legal costs both in first instance and on appeal.

This notice of appeal has been served on the Attorney General of Quebec, notified on Mes Émilie Fay-Carlos, Gabriel Lavigne and Charles-Etienne Bélanger of Bernard Roy, Attorneys of the Respondent in first instance, and to the Office of the Superior Court of Quebec, District of Montreal.

Montreal, August 6, 2020.

Coupal Chauvelot

COUPAL CHAUVELOT
Attorneys for Appellant

Me Victor Chauvelot
Me Louis Nicholas Coupal-Shmidt
1065 Pratt Avenue
Montreal, Quebec H2V 2V5
Tel. : 514 903-3390
Fax : 514 843-8529
victor@coupalchauvelot.com
lnc@coupalchauvelot.com

Kugler Kandestin LLP

KUGLER KANDESTIN LLP
Counsel for Appellant

Me Robert Kugler
Me Alexandre Brosseau-Wery
Me William Colish
1 Place Ville Marie, Suite 1170
Montreal, Quebec H3B 2A7
Tel. : 514 878-2861
Fax : 514 875-8424
rkugler@kklex.com
awery@kklex.com
wcolish@kklex.com

C A N A D A

COURT OF APPEAL

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

C.A.M.: 500-09-
S.C.M.: 500-06-000942-181

MICHAEL CARRIER

APPELLANT - Petitioner

v.

ATTORNEY GENERAL OF QUEBEC

RESPONDENT - Respondent

LIST OF SCHEDULES IN SUPPORT OF NOTICE OF APPEAL

Appellant

August 6, 2020

SCHEDULE 1: Judgment rendered by the Honourable Gary D.D. Morrison of the Quebec Superior Court rendered June 29, 2020.

SCHEDULE 1

SUPERIOR COURT
(Class Action Chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000942-181

DATE : June 29, 2020

PRESIDING : THE HONOURABLE GARY D.D. MORRISON, J.S.C.

MICHAEL CARRIER
Applicant

v.

PROCUREUR GÉNÉRAL DU QUÉBEC
Respondent

JUDGMENT
(Application for Authorization to Institute a Class Action)

---

[1] Michael Carrier ("Carrier"), from Kangirsuk in Nunavik, seeks authorization to institute a class action.

[2] During the Court's deliberation, Carrier has sought to amend the description of the class in keeping with certain representations made during the Hearing. The purpose of the modification is to remove the word *délibérément* (deliberately) from the context of giving consent to certain delays. The Procureur général du Québec ("PGQ") does not object to the proposed modification, and the Court accordingly authorizes Applicant's amended version of the class definition, which now reads as follows:

> *Toute personne qui, ayant été inculpée sur le territoire du Nunavik d'une infraction criminelle après le 4 septembre 2015, a été détenue sur une période excédant trois jours francs sans qu'une enquête sur mise en liberté provisoire ne soit tenue conformément à l'article 515 du Code criminel, sauf si cette personne a (...) consenti à une telle détention.*

[3] Although ninety percent of the Nunavik population are alleged to be Inuit, as is Applicant, the class action as defined does not limit membership on that bases.

[4] According to Carrier, the PGQ, in failing to respect section 516(1) *Criminal Code* as regards the stipulated maximum three-clear-day delay for adjournment and remand, is violating members' fundamental rights protected by the *Canadian Charter of Rights and Freedoms*[1] and the Quebec *Charter of Human Rights and Freedoms.*[2]

1- CONTEXT

[5] In order to better comprehend the issues, one need take into consideration both sections 515(1) and 516(1) *Criminal Code*, which read as follows:

515(1): Subject to this section, when an accused who is charged with an offence other than an offence listed in section 469 is taken before a justice, the justice shall, unless a plea of guilty by the accused is accepted, make a release order in respect of that offence, without conditions, unless the prosecutor, having been given reasonable opportunity to do so, shows cause, in respect of that offence, why the detention of the accused in custody is justified or why an order under any other provision of this section should be made.	*515(1): Sous réserve des autres dispositions du présent article, lorsqu'un prévenu inculpé d'une infraction autre qu'une infraction mentionnée à l'article 469 est conduit devant un juge de paix, celui-ci, sauf si un plaidoyer de culpabilité du prévenu est accepté, rend une ordonnance de mise en liberté sans conditions à l'égard de cette infraction, à moins que le poursuivant, ayant eu la possibilité de le faire, ne fasse valoir à l'égard de cette infraction des motifs justifiant la détention du prévenu sous garde ou des motifs justifiant de rendre une ordonnance aux termes de toute autre disposition du présent article.*
516(1): A justice may, before or at any time during the course of any proceedings under section 515, on application by the prosecutor or the	*516(1): Un juge de paix peut, avant le début de procédures engagées en vertu de l'article 515 ou à tout moment au cours de*

1 R.S.C. (1985), App. II, no. 44.
2 CQLR, c. C-12.

accused, adjourn the proceedings and remand the accused to custody in prison by warrant in Form 19, but no adjournment shall be for more than three clear days except with the consent of the accused.	*celles-ci, sur demande du poursuivant ou du prévenu, ajourner les procédures et renvoyer le prévenu à la détention dans une prison, par mandat selon la formule 19, mais un tel ajournement ne peut jamais être de plus de trois jours francs sauf avec le consentement du prévenu.*

[6] These provisions, as well as their related sections and subsections, govern the judicial interim release process. In the event that any proceeding under section 515, and not only 515(1), is adjourned and the accused is remanded in the meantime, the adjournment is to be no longer than three clear days ("*trois jours francs*") except if the accused consents.

[7] The objective is to ensure that bail hearings and other means of releasing a detained person are not unduly delayed, and this so as to reduce an accused's detention during the criminal justice process.

[8] Carrier argues that adjournments beyond three clear days result in unlawful detention, unless there has been consent and, further, that Quebec has failed to provide a justice system which would enable accused from Nunavik to have their bail hearings held within three clear days whenever the prosecutor has objected to a release at the time of arraignment. When the prosecutor so objects, the accused is placed in preventive detention until a bail hearing is conducted.

[9] It is this alleged systemic and systematic failure and the unlawful detentions which are said to violate the rights of accused in Nunavik.

[10] Those responsible, according to Carrier, are the Ministry of Justice ("MJQ"), the Ministry of Public Security ("MSP") and the *Directeur des poursuites criminelles et pénales* ("DPCP"), who he alleges collectively control the administration of justice in criminal matters in Nunavik, for whom the PGQ is acting in this matter.

[11] The PGQ argues that other entities are also involved in the administration of justice in Nunavik, and this as a result of certain laws and agreements. These entities include the *Administration régionale Kativik* ("ARK"), the *Corps de police régionale Kativik* ("CPRK") and the *Société Makivik*, the latter being the successor of the Northern Quebec Inuit Association.

[12] Although that may well be the case, the Court considers that the argument is not germane to the issues to be decided at the authorization phase in the present matter. Neither party is presently seeking to amend the Application.

2- ALLEGATIONS OF FACT

[13] For the purposes of an application in authorization, the alleged facts are to be held as true. The Court treats the following alleged facts accordingly.

[14] On Thursday, July 5, 2018, Carrier was arrested in his home village of Kangirsuk. That same day, he was arraigned at the Kangirsuk police station.

[15] At that stage of the proceedings, the prosecutor objected to his interim release. A remand warrant[3] was issued by a justice of the peace, causing him to be detained until Tuesday July 10, 2018, more than three clear days later.

[16] From Kangirsuk, Carrier was transferred to Kuujjuaq. On or about July 7th, he was transported to Montreal, and from there to a detention center located in Saint-Jérôme. On arrival there, he underwent his first strip-search.

[17] On July 9th, he was then transferred to a detention center in Amos. He underwent another strip-search on his departure from Saint-Jérôme, and then a third on his arrival in Amos.

[18] On July 10th, he appeared from the Amos detention center. His bail hearing was adjourned to July 13, 2018, and a new remand warrant was issued further remanding Carrier in custody until that date.[4]

[19] On July 13th, the prosecutor changed position and consented to Carrier's release on the bases of certain undertakings by him.[5]

[20] Carrier was then transported back home, undergoing his fourth strip-search before being released in Amos. He then had to travel back to his home village of Kangirsuk, where he arrived on July 15th 2018, being ten days after his arrest.

3- DAMAGES

[21] An amount of $10,000 per day of alleged illegal detention is claimed as damages resulting from the violation of each member's fundamental rights.

---

3 Exhibit P-3.
4 Exhibit P-4.
5 Exhibit P-5.

[22] Moreover, an amount of $50,000 per member is claimed as punitive damages by reason of the allegedly unlawful, intentional and malicious conduct of Respondent in relation to the systemic and systematic failure to satisfy the stipulated maximum delay.

4- POSITION OF THE PGQ

[23] The PGQ contests the authorization of the proposed class action on numerous grounds, being principally the following:

- Carrier's detention was lawful, having been authorized by Court order, pursuant to section 516 *Cr. C.*;
- the proposed class action constitutes a form of collateral attack and, as such, is abusive and cannot form the valid bases of a class action ;
- there are insufficient detailed, specific and tangible facts to support the alleged systemic violation of rights, the award of punitive damages and a valid legal syllogism;
- Applicant has failed to adequately define a viable class;
- Applicant has failed to identify a significant common question;
- Applicant is proposing to create a class action which would require a multitude of painstaking individual trials, such that a class action in such circumstances is not the appropriate procedure;
- Applicant is not himself a member of the putative class, and accordingly cannot provide proper representation; and
- the proposed class action would fail to respect the principle of proportionality.

5- APPLICABLE LAW

[24] In addition to the requirements set forth at Article 574 *Code of Civil Procedure* ("**C.C.P**."), the Court must be of the opinion that the criteria stipulated at Article 575 C.C.P. have been met, in which case the proposed class action is to be authorized. Those criteria are the following:

> ***575.*** (...)
>
> *(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 makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and

(4) the class member appointed as representative plaintiff is in a position to properly represent the class members.

[25] These requirements are cumulative, such that failure to satisfy any one of them is grounds to refuse authorizing the class action.[6]

[26] In performing the analysis of these criteria, the Court is to avoid determining the merits of the proposed action. The authorization phase is only intended to act as a filter, and this for the purposes of preventing cases going forward that are not "defendable" or "arguable"[7], otherwise said not to constitute a *prima facie* case or not to have a serious appearance or a good colour of right. In other words, the Court is to filter out cases that are not arguable, defensible, justifiable or supportable, or which are frivolous, untenable or clearly unfounded.[8] All these terms have been recognized by the courts as conveying the same message.

[27] In order to establish that he has an arguable case, an applicant at this stage has a burden of demonstration, such that, as mentioned above, the facts alleged are held to be true.[9] Accordingly, the authorization stage is generally not the time for a contestation as to alleged facts, which is more appropriate post-authorization. In other words, the Court is not to analyze grounds of defence based on contested alleged facts.

[28] That said, in order to constitute a fact that is worthy of being held to be true, the allegation cannot be vague, general and imprecise, nor can it simply be an inference, a conclusion, an unverified hypothesis, an opinion or a legal argument.[10]

[29] If, however, the allegation of fact is not sufficiently precise *per se*, then essential allegations need generally be supported by proof so as to qualify as being arguable.[11]

---

6 *Baratto* c. *Merck Canada inc.**, 2018 QCCA 1240.
7 *Infineon Technologies AG* v. *Option consommateurs*, [2013] 3 SCR 600, paras. 61-65; *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, 2019 SCC 35, at para. 61.
8 *Fortier* v. *Meubles Léon ltée*, 2014 QCCA 195, para. 70.
9 *Infineon*, supra, note 7, at para. 67; *J.J.*, *supra*, note 7, at para. 109.
10 *Option Consommateurs* v. *Bell Mobilité*, 2008 QCCA 2201, at para. 38; *Harmegnies* v. *Toyota Canada Inc.*, 2008 QCCA 380, at para. 44.
11 *J.J.*, *supra*, note 7, at para. 59.

[30] Moreover, the individual who seeks to act a class representative must be in a position to ensure an adequate representation of the members. This is generally not a difficult criteria to satisfy, albeit, for the most part, that person must have an arguable case to the effect that he has a claim that makes him a member of the class.

[31] The Court of Appeal has recently confirmed anew the factors to be considered for the purposes of assessing the status of representative[12]:

> *[25] La jurisprudence enseigne que les facteurs pertinents pour apprécier le critère relatif au statut de représentant, énoncé au paragraphe 575(4°) C.p.c., sont l'intérêt du représentant à poursuivre, sa compétence et l'absence de conflit d'intérêts. Ces facteurs doivent être interprétés de manière libérale. Comme la Cour suprême l'écrit dans Infineon Technologies AG c. Option consommateurs, « [a]ucun représentant proposé ne devrait être exclu, à moins que ses intérêts ou sa compétence ne soient tels qu'il serait impossible que l'affaire survive équitablement ».*
>
> *[26] Ici, la juge de première instance constate la « réelle motivation des demandeurs à remplir un tel rôle »* et *« leur capacité pour ce faire ». La capacité, l'intérêt sincère et légitime des appelants ainsi que l'absence de conflit d'intérêts sont établis. Les exigences additionnelles imposées par la juge — concernant les tentatives faites par les appelants pour contacter d'autres personnes intéressées et la démonstration du nombre de personnes visées par le Groupe - ne sont pas pertinentes pour statuer sur leur statut de représentants.*

[32] Satisfying the criteria applicable to the representative plaintiff appears to now be treated as a form of presumption, thereby requiring a respondent to demonstrate the existence of an exception as defined in the above citation. The nature and level of proof that is required in this regard is to be determined on a case by case basis.

[33] As confirmed through prior case law, the objective of class actions generally is to facilitate access to justice for class members so as to avoid each of them having to bring their own separate action. Therefore, the proposed class action must actually constitute an action at law, such that the putative member who seeks to be the designated representative is generally required to demonstrate that he or she has an arguable action. The questions of law or fact raised in that particular action must essentially be "*identical, similar or related*" to those of all the other putative class members. That said, even one such question has been held to suffice.[13]

[34] Insofar as proportionality is concerned, notwithstanding the overriding importance of the principle in Quebec civil procedure, it has been determined that it does not constitute a fifth (5th) criteria. There are only four essential criteria.

---

12 *D'Amico* v. *Procureure générale du Québec*, 2019 QCCA 1922.
13 *Vivendi Canada Inc* v. *Dell'Aniello*, [2014] 1 SCR 3, at para. 60.

Accordingly, the authorization judge is to assess, where appropriate, the principle of proportionality within the analysis of each of these criteria.[14]

[35] Ultimately, in case of doubt as to whether or not to authorize, the courts have applied the approach of authorizing the class action and deferring it to a judge in the post-authorization phase to make the necessary decisions taking into consideration the more detailed proof provided by all parties.

6- ANALYSIS

6.1 The defendable case (Art. 575(2) C.C.P.)

[36] The essence of the proposed action, as mentioned above, is that the Quebec government has failed to provide to detained accused in Nunavik a system whereby a bail hearing can take place within a three clear day delay as required by Section 516(1) Criminal Code. This systemic deficiency is argued to give rise to unlawful detentions.

[37] Applicant cites the decision of Justice Martin of the Court of Queen's Bench of Manitoba in the matter of *R. v. Balfour and Young*[15] which describes *a disturbing chronicle of a dysfunctional bail system*. The decision, although it does not involve a civil claim, does reflect many of the issues raised by Applicant.

[38] Justice Martin refers to systemic problems inherent to the bail system that adversely affect the Charter rights of northern Manitobans, especially indigenous persons living in remote communities. Much of what is addressed involves remand custody and delayed bail hearings. Although the Judge concluded that there was no bases for compensatory damages notwithstanding certain Charter violations, he nevertheless ordered the government to reimburse the expenses of the accuseds' lawyers and to pay partial compensation for their legal services.

[39] Although that decision is not legally binding in relation to the authorization of a Quebec class action, it is nonetheless of contextual interest to the present matter.

Quebec class actions involving criminal matters

[40] This is not the first time that the Superior Court has been called upon to authorize a class action involving alleged infringements of accused's Charter rights in relation to pre-trial detention during the course of criminal proceedings.

[41] The following three class actions have been approved in the recent past.

---

14 *Ibid., at* para. 66.
15 2019 MBQB 167.

[42] In *Barbeau* v. *Procureure générale du Québec*[16], Justice Chantal Corriveau authorized a class action in relation to strip searches conducted in two Montreal area detention centres of detainees awaiting to appear by video conference. The putative members did not allege that such strip searches, conducted pursuant to legislative authority, were either illegal or unconstitutional.[17]

[43] That said, the Judge refused to authorize a portion of the action relating to the arbitrary nature of the continued temporary detention following a release order, as being too vague and imprecise and, ultimately, frivolous.

[44] Shortly thereafter, Justice Chantal Lamarche, in *Atchom Makoma* v. *Procureure générale du Québec*[18], authorized a class action in relation to detainees being held in excess of twenty-four hours prior to appearing before a justice of the peace, and this by reason of the fact that during the time-frame covered by the claim, appearances before a justice of the peace in that particular jurisdiction were not possible on Sundays and statutory holidays. In other words, according to the class members, the PGQ had put into place a system which violates the *Criminal Code* and, as a result, their Charter rights.

[45] It is interesting to note that in *Atchom Makoma*, the PGQ raised the defence of immunity. The Judge concluded that the issue of relative immunity is not to be determined at the authorization phase, keeping in mind that it is a fact-driven defence, which accordingly is to be raised and analyzed on the merits.[19]

[46] Even more recently, Justice Corriveau rendered a decision, subsequent to the Hearing in the present case, in the matter of *Martin* v. *Procureure générale du Québec*[20], in which the Judge authorized a class action on behalf of detainees awaiting trial who have not been brought before a judge to reassess detention conditions every ninety days in relation to crimes, and every 30 days in summary conviction offences.

[47] These decisions take into consideration the principles enunciated by the Supreme Court of Canada in *Vancouver (City of)* v. *Ward*[21] and in *R.* v. *Myers*[22], and more particularly the keystone principle repeated by the Chief Justice of Canada Richard Wagner to the effect that the release of accused persons is the "*cardinal rule*" and detention the exception.[23]

---

16 2019 QCCS 2900.
17 *Barbeau*, *Ibid.*, at para. 41.
18 2019 QCCS 3583.
19 *Ibid.*, at paras. 36 et seq.
20 2020 QCCS 972
21 [2010] 2 SCR 28.
22 [2019] SCC 18.
23 *Ibid.*, at paras. 25-26.

[48] In *Myers*, Chief Justice Wagner underscored the importance of respecting time limits stipulated in the *Criminal Code*, stating it this way[24]:

> (...). *It may well be that administrative reforms are required in order to ensure that s. 525 applications are made on time every time, for every eligible accused person. Delays in routine bail and detention matters are a manifestation of the culture of complacency denounced by this Court in Jordan, and must be addressed.*

[49] In light of the foregoing, the Applicant's legal syllogism based on alleged systematic and systemic failures to respect the delays applicable to the judicial interim release process stipulated at section 516(1) does not appear on its face to be frivolous within the context of the class action authorization process.

[50] The systemic and systematic components raised by the claim, as well as the allegation of unlawful, intentional and malicious conduct in that regard, is certainly more in keeping with the exercise of a class action than in requiring each accused to individually raise and establish those components of the claim.

[51] In this regard, the Court considers appropriate to cite the following comments by Justice Catherine Mandeville in the matter of *Cayen* v. *Procureure générale du Québec*[25]:

> *[53] Il est aussi du devoir d'agir des tribunaux d'intervenir s'ils constatent que l'État a adopté un système qui compromet ou met en péril les droits des justiciables et est susceptible de déconsidérer l'administration de la justice.*
>
> *[54] Ainsi, si les pouvoirs prévus à la LTJ n'autorisent pas les juges de paix magistrats à se décharger des obligations constitutionnelles prévues aux articles 503, 515 à 519 et 524 du C.cr. et/ou si les choix faits par la Cour du Québec d'assigner aux juges de paix magistrats les comparutions téléphoniques selon certains horaires font en sorte que les personnes arrêtées ne bénéficient pas de comparutions faites dans le respect de leurs droits constitutionnels, la Cour supérieure devrait intervenir pour que la loi soit déclarée inconstitutionnelle et/ou que le système soit réformé.*
>
> *[55] Il serait injuste en l'espèce d'exiger de chaque personne arrêtée et qui a comparu devant un juge de paix magistrat en vertu du système de comparution téléphonique qui ne respecterait pas les droits fondamentaux, de porter le fardeau d'entreprendre les procédures pour faire reconnaître ses droits et à l'encontre d'une saine administration de la justice de trancher au cas par cas les effets d'un système qui mènerait à des violations systématiques.*

---

24 *Ibid*., at par. 38.

25 2019 QCCS 4089, at paras. 53-55.

[52] In addition to the foregoing, the PGQ pleads that Applicant Carrier has failed to demonstrate that he personally has the appearance of a valid claim.

[53] However, the alleged facts demonstrate at this stage that in his case, the maximum three-clear-day window was not respected.

[54] Nor is it necessary at this stage, contrary to what the PGQ argues, for Applicant to demonstrate that he was prepared to proceed prior to the expiration of the remand warrant. In the same vein, Applicant is also not required, for the purposes of authorization, to demonstrate that the use of a 45-minute telephone hearing for urgent matters would not have been sufficient.

[55] What the PGQ appears to be suggesting is that the Applicant should address, in his application for authorization, the potential defences which Respondent might seek to raise. That is not the state of class action law. These issues are best suited for treatment by a merits judge at a later stage.

[56] Moreover, the PGQ raises the issue that the Applicant accepted a delay to July 13, 2018, and hence consented to an extended delay.

[57] With respect, that is a highly factual-driven argument. In the Court's view, that issue is not as clear-cut as the PGQ argues it is in the present matter. The judge assigned to the merits will be better positioned to either assess the facts or to manage the issue at a stage subsequent to the common issues. So too the other arguments raised by the PGQ.

[58] In the Court's view, the foregoing would support the position that Applicant has demonstrated an arguable case.

[59] The analysis does not stop there, however.

Collateral attacks

[60] The PGQ also argues that the present application must fail given that the proposed class action would constitute a collateral attack on the justice's remand warrant issued in relation to the adjournment of the interim release process.

[61] This, the PGQ asserts, would undermine the validity of judgments and would likely bring the administration of justice into disarray. Moreover, the PGQ pleads that such attacks are abusive.[26]

---

[26] *Toronto (City of)* v. *S.C.F.P., section locale 79*, [2003] 3 S.C.R 77, at para. 37.

[62] The issue involving collateral attacks against court orders and judgments is described by the Supreme Court of Canada in *Wilson* v. *The Queen*[27], as follows:

> (...). *It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally - and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.* (...).

[63] Such collateral attacks in relation to criminal and penal matters have been held[28] to constitute an unlawful bases for an action at law, including class actions.

[64] By way of example, in *Moscowitz v. Procureure générale du Québec*[29] the claimant was not seeking the reversal of his guilty plea or of the resulting judgment. Instead, he was seeking to be reimbursed the fine he had paid as a consequence thereof. It is in that context that the application to authorize a class action was refused by reason of it constituting a collateral attack.

[65] The PQG argues that in the present matter, the essence of Applicant's claim is that the judge ordered an extended delay beyond that stipulated in section 516(1) *Criminal Code* without the accused's consent and, accordingly, the Court would need determine whether that judgment and the resulting detention were lawful or unlawful.

[66] Moreover, the PGQ insists that the issue is a question of law, such that it is the authorization judge, as opposed to the merits judge, who must decide the issue.

[67] The Court agrees with that premise. Being a question of law on which the outcome of the class action would depend, the judge seized of the application in authorization is to decide the issue.[30]

[68] In the present matter, would the proposed class action constitute a collateral attack?

[69] In order to respond to this critical question, it is necessary to distinguish between the claim for moral damages and the one for punitive damages.

---

27 [1983] 2 S.C.R 594, p. 599.

28 *R.* v. *Wigman*, [1987] 1 S.C.R. 246; *Moscowitz* v. *Procureure générale du Québec*, 2020 QCCA 412; *Cirillo* v. *Ontario*, 2019 ONSC 3066.

29 *Moscowitz, ibid.*

30 *L'Oratoire Saint-Joseph du Mont-Royal*, *supra*, note 7, at para. 35, Justice Brown; *Benabu* v. *Bell Canada*, 2019 QCCA 2174, at para. 7; *McEniry* v. *Procureure générale du Québec*, 2019 QCCS 3608, at paras. 40-42.

[70] As regards the claim for moral damages, being in the amount of $10,000 per day of unlawful detention ("*détention illégale*"), for the reasons that follow, the Court is of the view that it does indeed constitute a collateral attack.

[71] At the time of the Hearing, the PGQ presented the first-instance decision of this Court in the matter of *Moscowitz* v. *Attorney General of Quebec*[31] whereby the authorization of a class action was refused by reason of the rule against collateral attacks.

[72] Thereafter, the Court of Appeal confirmed the decision in first instance, thereby reaffirming the rule, as mentioned above, that collateral attacks are not to be condoned, including in class actions. That point was made clearly, as follows[32]:

> *[38] L'action collective prévue au Code de procédure civile ne peut donc servir afin d'attaquer indirectement les jugements définitifs rendus dans les affaires pénales. Notre Cour et la Cour supérieure en ont d'ailleurs ainsi décidé dans Vena c. Montréal (Ville de) (« Venat») et Drolet-Caron c. Québec (Ville de) (« Drolet-Caron »), des affaires qui présentent des similitudes frappantes avec celle dont nous sommes saisis.*

[73] The Court does not understand from this statement that the Court of Appeal was deciding that the principle against collateral attacks only applies to final judgments. As mentioned above, the Supreme Court specifically stated in *Wilson* v. *The Queen* that the principle applies to both court orders and judgments. What the Court takes from this Court of Appeal citation is that class actions are not an exception to the principle and, accordingly, cannot be used as a collateral attack.

[74] In any event, in the present matter, Applicant's claim for moral damages based on unlawful detention would indeed require the Court to conclude that the adjournment and remand order, which was never attacked directly through appeal or otherwise, gave rise to an unlawful result for which the class members should be compensated.

[75] That the Court will not do, and this by reason of the rule against collateral attacks. To do so would risk bringing the administration of justice into disrepute, even if the order was null *ab initio*. This Court, in the context of a class action proceeding, is not sitting in appeal or in review of such orders

[76] Applicant cites the decision of the Supreme Court on Canada in the matter of *Garland v. Consumers' Gas Co.*[33] in favour of its position to the effect that the principle

---

31 *Moscowitz, supra*, note 28.

32 *Ibid.*, at para. 38. The Court has been informed that a Motion for leave to appeal has been made to the Supreme Court of Canada.

33 2004 1 S.C.R. 629, at paras.70-71.

of collateral attack does not apply where the object of the action at law is not to invalidate or render an order inoperative. In that case, the action sought the recovery of money that was illegally collected. The Court considers that the *Garland* decision provides no support to Applicant. To the contrary, that decision confirms that it would be necessary for this Court to conclude that the judge's remand order was illegal, and that is exactly where the problem lies.

[77] Moreover, in the Court's view, this is not a case where there has been fraud or dishonesty or, otherwise, that the concept of fairness would open the door to authorizing a class action.[34]

[78] One must also keep in mind that beyond the principle against collateral attacks *per se* there is a more general principle against attacking the integrity of judgments and the judges who render them. For this Court to conclude in a future class action that the detentions ordered by a judge were "unlawful" would be an affront to the integrity of both the judgment and the judge. This would also risk bringing the administration of justice into disrepute.

[79] Nor does the Court consider that it has the discretionary authority to modify the claim, as it does with certain other elements of an authorization proceeding. The moral damage calculation method based on each day of alleged unlawful detention, confirms the nature of that claim and its integral attachment to the adjournment and remand order. The Court cannot alter that so as to try and avoid the fatal consequences of the rule against collateral attacks. To do so, would be to completely alter the nature and essence of the claim in moral damages. The Court considers that it does not possess such powers.

[80] As for the punitive damage claim, however, the Court considers that a different outcome is appropriate.

[81] The notion of awarding punitive damages in relation to violations of Charter rights was described by the Supreme Court of Canada in the matter of *Hinse* v. *Canada (Attorney General)*[35] :

> *Section 49 of the Charter provides that, "[i]n case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages." This Court explained what "unlawful and intentional interference" means in Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand, [1996] 3 S.C.R. 211:*

---

[34] *Toronto (City of)*, *supra,* note 26, at para.52.
[35] [2015] 2 S.C.R. 621, at para. 164.

> *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 probable 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. [Emphasis added; para. 121.]*

[82] The objective of awarding punitive damages, also known as exemplary damages, is not to compensate the victim but rather to punish and deter. Through the words of Justice Lebel in the matter of *de Montigny* v. *Brossard (Succession)*[36], the Supreme Court of Canada describes that objective as follows:

> *[47] While compensatory damages are awarded to compensate for the prejudice resulting from fault, exemplary damages serve a different purpose. An award of such damages aims at expressing special disapproval of a person's conduct and is tied to the judicial assessment of that conduct, not to the extent of the compensation required for reparation of actual prejudice, whether monetary or not.* (...)*:*
>
> (...).
>
> *[49] Because of the exceptional nature of this right, the Quebec courts have so far been quite strict in giving effect to the preventive purpose of exemplary damages under art. 1621 C.C.Q. by using them only for punishment and deterrence (both specific and general) of conduct that is considered socially unacceptable (Béliveau St-Jacques, at paras. 21 and 126; St-Ferdinand, at para. 119). An award of exemplary damages seeks to punish a person who commits an unlawful act for doing so intentionally and to deter that person, and members of society generally, from repeating the act by condemning it as an example.* (...).

[83] Just recently, Chief Justice Richard Wagner, speaking on behalf of the majority of the Supreme Court of Canada, in the matter of *Conseil scolaire francophone de la Colombie-Britannique v. Colombie-Britannique*[37], confirmed, without specifically referring to punitive damages, that Charter damage awards generally can also be used in relation to government policies, stating it as follows:

---

36 [2010] 3 S.C.R.. 64.
37 2020 SCC 13, at para. 171.

> *On the contrary, the possibility of damages being awarded in respect of Charter-infringing government policies helps ensure that government actions are respectful of fundamental rights.*

[84] Moreover, in *de Montigny*, the Supreme Court also confirms the autonomous nature of punitive damages. Accordingly, the absence of compensatory damages does not *per se* prevent an award of punitive damages.[38]

[85] The real essence of this portion of Applicant's claim is the alleged systematic and systemic violation of class members' Charter rights by the government of Quebec in failing to provide a system which is designed to respect the rights stipulated in section 516(1).

[86] The issue of whether a claim can be authorized only in connection with punitive damages pursuant to section 49 of the Charter has been addressed in the case law.

[87] The Court gives serious consideration to the reasoning of Justice Daniel Dumais in the matter of *Association québecoise de lutte contre la pollution atmosphérique v. Volkswagen Group Canada Inc.*[39], in which he reviewed the relevant case law and doctrine pertaining to the right to claim only punitive damages pursuant to section 49 of the Charter, without any concurrent claim for compensatory damages. The Judge concluded that notwithstanding a lack of uniformity in the approach taken by the courts regarding this issue, the class action was of such interest that it could not be viewed as being frivolous. It was approved for punitive damages only. The Court of Appeal dismissed the ensuing appeal[40], as did the Supreme Court of Canada.[41]

[88] A similar approach was adopted by Justice François P. Duprat in *Boulet v. LoyaltyOne, Co. (Programme de récompense Air Miles)*.[42]

[89] It is certainly not at the authorization stage that the Court is to determine the validity of the claim. However, it is the role of the authorization judge to determine whether the claim is arguable as opposed to frivolous. In the Court's view, the present matter is also of such interest that it should not be considered frivolous.

[90] In support of its claim in this regard, Applicant refers to the testimony of various witnesses who appeared before *La Commission d'enquête sur les relations entre les autochtones et certains services publics*, often referred to as the Viens Commission[43],

---

38 *Ibid*., at paras. 38-48.
39 2018 QCCS 174.
40 2018 QCCA 1034.
41 2019 SCC 53.
42 2019 QCCS 3371; leave to appeal dismissed, 2018 QCCA 1034; confirmed by the Supreme Court of Canada, 2019 CSC 53.
43 Exhibits P-11, P-15 to P-20.

as well as to statistics[44], documents[45] and reports[46]. According to Applicant, this proof demonstrates that the PGQ knew and intentionally violated the fundamental rights of putative class members.

[91] The PGQ is correct to say that as the motions judge, I do not have all the relevant facts. That is precisely why this is an issue to be determined by the judge assigned to the merits of the claim based on more detailed proof. At this stage, the Court is of the view that this portion of the claim is arguable for the purposes of authorizing a class action.

[92] Moreover, this specific portion of the claim relating solely to punitive damages, in the Court's view, does not constitute a collateral attack. The Court need not determine in relation to the punitive damage claim that the adjournment and remand orders were, either cumulatively or individually, unlawful per se. The focus is on the process that precedes the orders and not the lawfulness of the resulting orders themselves. In other words, what would need be qualified as unlawful is the alleged infringement of accused's Charter rights resulting from the failure of the government to provide a system capable of respecting statutory delays.

[93] One final comment regarding the claim for punitive damages seems appropriate. By authorizing a class action for any damages, including punitive damages, the Court at this stage is not taking a position in favour of the amount claimed. It is generally not at this stage that the Court is in a position to either approve or modify the amount claimed. The Judge responsible for the merits would be in a better position to assess the reasonableness thereof. Moreover, although in certain circumstances the amount claimed may be seen as having an impact on the court's assessment of the claim generally, the amount sought in this matter does not influence the overall validity of the proposed action.

[94] The PGQ raises additional arguments regarding the defendable case issue.

The appropriate court

[95] The PGQ submits that the Superior Court, Class Action Chamber, is not the court best suited to provide a form of Charter repairs to putative class members. The criminal courts who hear the cases of Nunavik accused, it argues, are empowered to provide repair in the form of damages pursuant to section 24 (1) of the Canadian Charter. Accordingly, it asserts that those judges are best placed to make the analysis on a case-by-case bases. The PGQ concludes that the civil chamber of the Superior Court should decline exercising jurisdiction in such matters.

---

44 Exhibit P-10 and P-21.
45 Exhibits P-8, P-22 and P-24.
46 Exhibit P-2.

[96] The argument, with respect, is not convincing. The same argument was actually rejected by Justice Corriveau in *Martin v. Procureure générale du Québec.*[47]

[97] Albeit true that the judges who hear criminal cases have knowledge of the individual cases within their jurisdiction, the decision of an accused not to make a claim at that point in time does not automatically preclude him from ever claiming later, and this before any court of competent jurisdiction, including the Superior Court. In certain cases, as has been explained by the Supreme Court of Canada, the latter should decline to exercise its jurisdiction. However, that is not an absolute rule, such that the Superior Court is not always to decline exercising its jurisdiction, especially in circumstances where the Superior Court may be better suited to hear the matter.

[98] In that regard, the PGQ's position does not reflect the Court's understanding of the decision rendered by the Supreme Court of Canada in the matter of *Mills* v. *The Queen*.[48] In the Court's view, the Supreme Court did not decide that the Superior Court should renounce to the exercise of its exclusive jurisdiction to hear class actions or, as a corollary, that there should be no class actions in relation to criminal matters heard by courts created by provincial statute.

[99] In the matter of *R.* v. *Rahey*[49], the Supreme Court clarified the issue further in the following manner:

> *16. As was decided in Mills v. The Queen, supra, a court of competent jurisdiction for the purposes of s. 24(1) in an extant case is, as a general rule, the trial court. It is the judge sitting at trial who would have jurisdiction over the person and the subject matter and would have jurisdiction to grant the necessary remedy. In Mills, it was also decided that the superior courts should have "constant, complete and concurrent jurisdiction" for s. 24(1) applications. But it was therein emphasized that the superior courts should decline to exercise this discretionary jurisdiction unless, in the opinion of the superior court and given the nature of the violation or any other circumstance, it is more suited than the trial court to assess and grant the remedy that is just and appropriate. The clearest, though not necessarily the only, instances where there is a need for the exercise of such jurisdiction are those where there is as yet no trial court within reach and the timeliness of the remedy or the need to prevent a continuing violation of rights is shown, and those where it is the process below itself which is alleged to be in violation of the Charter 's guarantees. The burden should be upon the claimant, in this case Mr. Rahey, to establish that the application is an appropriate one for the superior court's consideration.*

---

47 *Supra*, note 20, at paras. 48-51.
48 [1986] 1 SCR 863.
49 [1987] 1 SCR 588, at para. 16.

[100] Thereafter, in *R.* v. *974649 Ontario Inc.*[50], the Supreme Court established that the analysis as to whether a court has the power to grant a remedy sought in a criminal matter pursuant to section 24(1), Canadian Charter, is to be based on the central considerations of the "*function and structure*" of the courts.[51]

[101] After a detailed analysis of the existing case law, the then Chief Justice Beverley McLachlin defined the state of the law as follows:

> *In summary, the jurisprudence of this Court on s. 24(1) demonstrates a dominant concern with discerning legislative intent in light of the tribunal's function and the practical limits imposed by its structure. At heart, this is a functional and structural analysis.* (...).[52]

[102] As regards function, one must keep in mind that the Quebec Legislator decided to grant the Quebec Superior Court exclusive jurisdiction to hear and determine class actions[53]. This is a specific statutory jurisdiction, and not only a residual one. As well, there are no structural limits to exercising that jurisdiction. Moreover, in the present matter, the claim in punitive damages is intended to deter the alleged continued violation of Charter rights.

[103] These elements, coupled with the Legislator's objective to increase access to justice through the use of class actions, leads the Court to conclude that not only does it have jurisdiction in the present matter but that it would be inappropriate to decline the exercise of that jurisdiction.

The issue of consent

[104] The PGQ adds to that position by arguing that there can never be a valid class action in relation to section 516 *Criminal Code*.

[105] This view is based on the fact that adjournments can extend beyond three days should the accused consent thereto. This, the argument suggests, would require a detailed analysis of each accused's file, including listening to the transcripts of the various hearings in order to determine whether consent was given, creating an overly complex process that would contradict the principle of proportionality.

[106] The issue of consent is not raised solely as one of complexity. It is also presented as a more substantive issue based on the premise that questions in relation to obtaining informed consent raise facts that are so individual and subjective in nature

---

50 [2001] 3 SCR 575.
51 *Ibid.*, at paras. 48 and 59.
52 *Ibid.*, at para. 68.
53 Article 33. C.C.P.

as to be inappropriate for a class action.[54] The Court will now deal with the issue relating to complexity and proportionality in the present section, leaving the more substantive issue of subjectivity to the debate relating to the definition of the class, which is addressed later in the present judgment.

[107] At the risk of stating the obvious, in the present case, it is not the class members who would be required to individually prove the absence of consent. To the contrary, it would be the PGQ who would presumably seek to raise an accused's consent as a defence given the statutory exception.

[108] The fact that the PGQ might want to look at each and every member's case in order to determine whether a defence could be made based on consent does not, in the Court's view, justify refusing authorization on the grounds of the issue being too complex. By way of analogy, it would be like refusing to authorize a latent defect class action because the product vendor would want to analyse each product owner's case in order to determine whether the latter had prior knowledge of the alleged defect.

[109] In addition, and contrary to what the PGQ suggests, the Court would not be well advised to refuse an authorization on the grounds that class members have failed to demonstrate, from the outset, that they had valid reasons not to formulate, at the time of their initial appearance, a strong objection to the hearing dates that extended beyond the three-clear-day delay. At the risk of being repetitive, at this stage, the Court is generally not to assess a respondent's defences and the contradictory alleged facts, if any, on which they are based.

[110] In keeping with the position that the proposed action is too complex because too many issues will need be considered, the PGQ further argues that a detailed analysis of each accused's file will need be conducted in order to determine whether in fact the delay actually extended beyond three "clear" days.

[111] Although such an analysis may require a detailed document review, and for the same reasons as mentioned above, it is not sufficiently complex as to justify refusing a class action simply on that bases.

[112] At the appropriate time, the parties can conduct an initial review and then submit, if necessary, any uncertain cases to the presiding judge for determination at the appropriate time.

---

[54] *Louisméus* v. *Compagnie d'assurance-vie Manufacturers (Financière Manuvie)*, 2017 QCCS 3614, at paras. 91-95; *Baulne* v. *Bélanger*, 2016 QCCS 5387.

[113] As determined recently by the Court of Appeal[55], so as to avoid multiple trials, individual issues should be left for the distribution phase and not form part of the common issues to be debated on the merits of the class action.

[114] In the Court's view, none of these complexity issues raised by the PGQ constitute an affront to the principle of proportionality or otherwise justify refusing authorization.

Relative Immunity

[115] An additional observation should be made regarding the issue of the defendable case. Although certain of the case law cited by the PGQ refers to the issue of relative immunity, that issue was not actually argued by the PGQ at the authorization stage. Carrier nonetheless has argued it. But given that there is no true debate at this stage, the Court need not decide the issue. In any event, relative immunity is generally a matter to be decided by the judge responsible for the merits of a class action in cases where it is raised as a defence.

Conclusion

[116] Notwithstanding the other issues raised by the PGQ with a view to contesting authorization, the Court is of the view that Applicant has satisfied its burden to demonstrate that his claim is not frivolous and should be approved. In this regard, he has met the requirement of Article 575(2) C.C.P. The judge responsible for the merits of the claim will determine the validity thereof.

[117] Any of the remaining issues raised by the parties will be dealt with either later in this judgment in relation to other authorization criteria or on the merits of a class action, if authorized.

6.2 The class definition

[118] The PGQ correctly argues that a class action requires the presence of a true class whose definition is based on objective criteria with a rational foundation.[56] Respondent argues that such a class definition is absent in the present matter.

[119] In this regard, the PGQ raises the following issues regarding the class definition:

a) it is circular and subjective; and

---

55 *Comité des citoyens inondés de Rosemont* v. *Ville de Montréal*, 2020 QCCA 696.

56 *Sibiga* v. *Fido Solutions inc.*, 2016 QCCA 1299, at para. 138; see also *George* v. *Québec (Procureur général)*, 2006 QCCA 1204, at para. 40.

b) it is imprecise, lacking sufficient clarity.

[120] Is the class definition actually circular and subjective?

[121] The Court of Appeal, in the matter of *Lambert (Gestion Peggy)* v. *Écolait ltée*[57], confirmed that people must be able to know, on reading the class definition, whether or not they are a class member. The Court stated:

> *[60] Il est vrai que l'appelante avait initialement ajouté les mots « et qui en raison de l'utilisation des clauses abusives d'un tel contrat ont subi des pertes ». L'appelante admet que cet ajout rendait la description du groupe circulaire. Telle que ci-haut décrite et sans cet ajout, la description du groupe n'est pas circulaire et les personnes touchées sont en mesure, à la lecture de cette description et sans attendre le jugement final, de savoir si elles font partie du groupe, ou non.*

[122] In other words, when membership in a defined class is dependent on the outcome of the trial, the class definition is circular. In such cases, either the Court can, in cases where it is appropriate, slightly modify the definition or, if not able to do so, then the matter is not one which is appropriate as a class action.

[123] In the present matter, and as mentioned above, the PGQ argues that the issue of consent is fatally problematic to the class definition. The wording in the definition considered as such by the PGQ is the following: "*sauf si cette personne a* (...) *consenti à une telle détention*". Such consent obviously refers specifically to the adjournment and remand custody, being for a length which exceeds the maximum three clear days stipulated at section 516(1).

[124] Neither section 516(1), nor the amended class definition, refer specifically to deliberate and informed consent. However, case law has recognized that evidence may demonstrate that even where consent appears to have somehow been given, an accused's consent to extended delays in criminal matters may result from misunderstanding or an "acquiescence in the inevitable".[58] There is a great deal of case law on informed and deliberate consent.

[125] The PGQ contends that in the present matter, in order for a person to determine whether or not they qualify as a class member, it would be necessary for a person to subjectively consider whether he gave consent, and this in each and every case, such that accused will need await the final judgment before being able to understand whether they qualify as members.

---

[57] 2016 QCCA 659, at para. 60.

[58] *R.* c. *Brassard*, [1993] 4 SCR 287; *Rochette* v. *Directeur de l'établissement de détention de Québec*, 2017 QCCA 503.

[126] However, and as mentioned above, the absence of consent need not be established by each accused in order to qualify as class members, and this because it is not a common issue. Quite the opposite, as the existence of consent would likely be an issue raised in defence regarding certain class members on an individual bases.

[127] If consent is not a common issue, should it form part of the class definition?

[128] By way of analogy, Justice Suzanne Courchesne in the matter of *Baulne* v. *Bélanger*[59], adopted the view that it would be inappropriate to add to the class definition the subjective component that would exclude those who did not suffer damages and consequently had no right of action. The Judge observed that it went without saying that only those persons who suffered damages could be indemnified, thereby excluding automatically those who were satisfied with the treatments received. Hence, there was no valid reason to add that subjective element to the class definition.

[129] In the present matter, it also goes without saying that those who consented to extended delays would not be entitled to recover punitive damages if the action were to be successful. Incorporating the absence of consent into the heart of the definition, thereby requiring the demonstration of a negative, that no consent was given, is unnecessary and puts the authorization of common issues at risk.

[130] That said, raising the issue of consent may be a bar to authorizing a class action. In both *Louisémus* and *Baulne*, cases cited by the PGQ, what was being addressed involved the failure to inform and the resulting vitiated consent. Both judges in first instance expressed the view that such consent issues are not appropriate for a class action. This Court's understanding is that in those cases, every member would have been required to establish that their consent had been vitiated. In other words, vitiated consent was a common issue.

[131] However, as mentioned above, that is not the case in the present matter, where the issue of consent is not a common issue but one that is to be dealt with in defense.

[132] Does this justify the Court intervening to remove the reference to consent in the class definition?

[133] In the Court's view it does. The difficulties associated with establishing consent as a common issue do not apply in the present matter, for the reasons expressed above. Being an entirely individual issue, it should not form an integral part of the class definition.

---

[59] *Supra*, note 54, at paras. 105-107.

[134] Although the Court has certain discretion to modify the definition of the class[60], as stated above, it should not attempt to actually create a class or to narrow a class with a view to allowing the action to be authorized. But removing the reference to consent in this case does neither. The essence of the claim is unaltered, and the common issues for the class members will continue to include the delay beyond three clear days, and this during the same chronological period of time. Should the claim be successful in relation to the common issues, and should the PGQ raise the defence of consent in light of section 516(1) Criminal Code, that issue can then be handled during the individual recovery stage.[61]

[135] Accordingly, the Court will make the necessary modification to the definition by removing the reference to consent.

Judicial notions

[136] In addition to the foregoing, the PGQ also argues that the calculation as to the period in excess of "three clear days" ("*trois jours francs*") is a judicial notion which requires a legal interpretation, one which need be conducted on a case by case bases.

[137] This too, claims Respondent, involves a highly subjective and circular component which results in putative members not really knowing whether they qualify as members.

[138] With respect, the fact that a legal word or expression forms part of the class definition should not automatically result in the refusal of a class action authorization application. For example, in latent defect claims, the acquisition of a product involves a legal notion, whether it be sale, lease or otherwise, but the courts certainly do not refuse applications simply on that bases.

[139] In the Court's view, a putative class member in the present matter would not be required to await final judgment in order to determine whether he can be considered a class member in view of the expression "three clear days" ("*trois jours francs*"). Accordingly, it is not a circular component of the definition.

[140] In addition, Respondent raises additional arguments in opposition to the authorization of a class action in the present matter.

Imprecision and lack of clarity

[141] As mentioned above, the PGQ also argues that overall, the class definition is imprecise, lacking objective non-arbitrary parameters and sufficient clarity. Since the amendment to the definition, four different arguments are raised in this regard.

---

60 *Lallier* v. *Volkswagen Canada Inc.*, 2007 QCCA 920, at para. 17-18.

61 *Comité des citoyens inondés de Rosemont*, *supra*, note 55, at paras. 10, 22, 25 *et seq*.

[142] The first argument refers to the absence of distinction between accused who are liberated at the end of their bail hearing and those who remain in detention. With respect, the Court is of the view that no such distinction need be made at this stage. That does not justify refusing the requested authorization. It is an issue to be raised in defense.

[143] Secondly, the definition refers to "*toute personne qui*" (all persons who) were detained without stipulating who in fact detained such persons. In the Court's view, the PGQ has failed to demonstrate that authorization should be refused on this bases. This argument is also more focused on a form of defence to be raised at the merits stage. As mentioned above, the fact that other parties are not presently identified as respondents is not germane for the purposes of authorization.

[144] The third argument refers to the fact that a detention in excess of three days is described by the class definition as relating to an extended delay without a provisional release hearing having been held, which the PGQ argues may not be applicable in all cases. It questions what is to be done in those cases where no bail hearing is eventually conducted, for example where an accused has eventually renounced to a bail hearing.

[145] With respect, at this stage, the argument is purely theoretical. Should there be a need to make such distinctions, the judge responsible for the merits of the case will be in a better position, with more extensive proof in hand, to make the required distinctions and, perhaps, create sub-groups, if appropriate.

[146] The fourth argument raised by the PGQ relates to the possibility that class members, given the definition, will also include accused who were detained awaiting trial or those who are already serving a sentence for other criminal offences. As with the previous argument, the PGQ is raising a theoretical issue which the judge responsible for the merits of the case will be in a better position to handle based on the proof at hand.

[147] In the Court's view, the foregoing arguments make reference to issues that may become relevant in defense as an eventual class action moves forward, but at this stage, they are insufficient to justify the refusal of the requested authorization.

[148] Whatever shortcomings may eventually become apparent due to the proof advanced later in a possible class action, they are not sufficiently serious to justify presently refusing the application for authorization, contrary to the situation which existed in the matter of *Citoyens pour une qualité de vie / Citizens for a Quality of Life* v. *Aéroports de Montréal*.[62]

---

[62] 2007 QCCA 1274.

Indigenous peoples

[149] Although not exclusively so, many of the putative class members risk being Inuit, like the Applicant. The latter alleges that ninety per cent of the Nunavik population are of Inuit origin.

[150] The Supreme Court of Canada has, on more than one occasion[63], concluded that the Canadian criminal justice system has tragically failed this country's indigenous peoples.

[151] The Court cannot conclude at the authorization phase that such is the case in the present matter, or that it is relevant to the conclusion on the merits, but it is too important an issue to be ignored.

[152] The Court considers that Applicant has demonstrated at this stage an arguable case based on an arguable legal syllogism, one that is not frivolous.

6.3 Common Questions (Art. 575(1) C.C.P.)

[153] The PGQ argues that in the present matter, one cannot identify a single common question that would be susceptible of advancing the legal debate in any significant manner.

[154] Over time, the appellate courts have taught that this is not a difficult criteria to satisfy. The criteria has been interpreted in such a manner as to require the existence of only one such common question. The purpose of the criteria, of course, is to ensure the existence of a certain commonality and this, to "*avoid duplication of fact-finding or legal analysis*."[64]

[155] Moreover, in determining the existence of one common issue or question, the Supreme Court of Canada in *Vivendi*[65] reminds motion judges that the authorization exercise requires a certain flexibility and, as well, an emphasis on identifying what is common as opposed to the number of individual issues that need to be analyzed:

> *[58] There is one common theme in the Quebec decisions, namely that the C.C.P.'s requirements for class actions are flexible. As a result, even where circumstances vary from one group member to another, a class action can be authorized if some of the questions are common: Riendeau v. Compagnie de la Baie d'Hudson, 2000 CanLII 9262 (Que. C.A.), at para. 35; Comité d'environnement de La Baie, at p. 659. To meet the commonality requirement of art. 1003(a) C.C.P., the applicant must show that an aspect of the case lends*

---

63 *R.* v. *Ipeelee*, 2012 SCC 13, at paras. 57-60; *R.* v. *Boudreault*, 2018 SCC 58.
64 *Vivendi*, *supra*, note 13, at paras. 40-42 and 57-60.
65 *Ibid*.

> *itself to a collective decision and that once a decision has been reached on that aspect, the parties will have resolved a not insignificant portion of the dispute: Harmegnies, at para. 54; see also Lallier v. Volkswagen Canada inc., 2007 QCCA 920, [2007] R.J.Q. 1490, at paras. 17-21; Del Guidice v. Honda Canada inc., 2007 QCCA 922, [2007] R.J.Q. 1496, at para. 49; Kelly v. Communauté des Sœurs de la Charité de Québec, [1995] J.Q. n° 3377 (QL), at para. 33. All that is needed in order to meet the requirement of art. 1003(a) C.C.P. is therefore that there be an identical, related or similar question of law or fact, unless that question would play only an insignificant role in the outcome of the class action. It is not necessary that the question make a complete resolution of the case possible: Collectif de défense des droits de la Montérégie (CDDM), at paras. 22-23.*
>
> *[59] In short, it can be concluded that the common questions do not have to lead to common answers. At the authorization stage, the approach taken to the commonality requirement in Quebec civil procedure is a flexible one. As a result, the criterion of art. 1003(a) may be met even if the common questions raised by the class action require nuanced answers for the various members of the group.*
>
> *[60] In light of these principles, we are of the opinion that the motion judge was mistaken in emphasizing the possibility that numerous individual questions would ultimately have to be analyzed. He should instead have inquired into whether the condition provided for in art. 1003(a) was met, that is, whether the applicant had established the existence of a common question that would serve to advance the resolution of the litigation with respect to all the members of the group, and that would not play an insignificant role in the outcome of the case.*

[156] Accordingly, there must exist at least one question of fact or law that will advance the resolution of the litigation with respect to all members of the class in a manner that is not insignificant, regardless of whether or not it results in a complete resolution of the proposed action.

[157] The Supreme Court, in *Infineon Technologies AG* v. *Option consommateurs*[66], further confirms that at the authorization stage, the threshold is low for the present criteria.

[158] In the Court's view, such a common question does exist in the present matter.

[159] As mentioned, the claim should be limited to one in punitive damages. In order to succeed pursuant to section 49 of the Quebec Charter, it will be necessary to establish not only an unlawful interference by the government, but also an intentional one.

---

66 *Supra*, note 7, at para. 72.

[160] That issue alone is sufficient to satisfy the common question criteria, as it is one that should not have to be debated anew for each and every class member, and, as well, that would both serve to advance the litigation for all members and play a significant role in the outcome of the case.

[161] Moreover, another such issue exists, and this as regards the alleged systemic and systematic failure to satisfy the delays of section 516(1) as regards class members. In *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*[67], Justice Russell Brown of the Supreme Court of Canada, on behalf of the majority, identified "systemic" negligence as a common issue.

[162] In addition to the foregoing, the PGQ invites the Court to conclude that the individual issues are so numerous and complex that they dominate the common questions. This position relates primarily to the issue of the three-clear-day delay and the absence of consent.

[163] The Court declines to refuse the authorization simply due to certain evidentiary requirements at the merits level. In the matter of *J.J.*[68], the Supreme Court confirms that even the issues of prescription, damages and causality, which might give rise to small trials at the stage of individual settlement of claims, does not justify *per se* the dismissal of the authorization application.

[164] The PGQ has raised numerous additional arguments of contestation regarding the common question criteria, all of which are essentially a different take on a common theme, being the complexity, subjectivity and disproportionality of the proposed action.

[165] The Court, as mentioned above, respectfully does not share the PGQ's view, the latter having failed to demonstrate that the application should be refused for these reasons.

[166] The Court is of the opinion that Applicant has satisfied the criteria of Article 575(1) C.C.P.

6.4 The composition of the group (Art. 575(3) C.C.P.)

[167] The PGQ has adopted the position to the effect that Applicant has failed to define the class in an appropriate manner.

[168] For the reasons described above, the Court does not share that view.

---

67 *Supra*, note 7, at para. 33.
68 *Ibid.*, at para. 15.

6.5 The representative plaintiff criteria (Art. 575(4) C.C.P.)

[169] The PGQ contests Applicant's position that this criteria has been satisfied. The argument is based on the view that Applicant has not demonstrated an appearance of right as to his own personal claim.

[170] The Court has concluded that Applicant has sufficiently satisfied his burden of demonstration at this stage.

[171] No other grounds of contestation in this regard having been raised, the Court concludes that his criteria has been satisfied.

[172] Ultimately, the proposed class action is arguable and is, contrary to the position advanced by the PGQ, neither frivolous nor abusive.

6.6 The appropriate judicial district

[173] Although from Nunavik, Applicant seeks to have the class action instituted before the Superior Court, District of Montreal. The PGQ, who has an office in that district, does not contest that demand. The Court is not aware of any reason not to grant Applicant's reasonable request in this regard.

FOR THESE REASONS, THE COURT:

GRANTS the application for authorization to institute a class action and to appoint the representative plaintiff;

AUTHORIZES the institution of the class action in punitive damages against the Procureur général du Québec;

APPOINTS Michael Carrier as representative plaintiff for the purposes of instituting a class action on behalf of a class of persons described as follows[69]:

> *All persons who, having been charged within the territory of Nunavik with a criminal offence after September 4, 2015, was detained for a period exceeding three clear days without an interim release hearing being held in accordance with Section 515 of the Criminal code.*
>
> *……*

---

[69] The Court understands from representations by Applicant's counsel and from proof submitted by Respondent that Mr. Carrier and many class members speak English more than French, hence the language of the present judgment and the definition of the class being expressed in both languages.

Toute personne qui, ayant été inculpée sur le territoire du Nunavik d'une infraction criminelle après le 4 septembre 2015, a été détenue sur une période excédant trois jours francs sans qu'une enquête sur mise en liberté provisoire ne soit tenue conformément à l'article 515 du Code criminel.

IDENTIFIES as follows the main issues of fact and law to be dealt with collectively:

a) Has Defendant infringed or denied class members' rights or freedoms guaranteed by sections 7, 9, 11, 12 and 15 of the *Canadian Charter of Rights and Freedoms* by not enabling the holding of interim release hearings in accordance with sections 515 and 516(1), *Criminal Code*?

b) Are class members entitled to punitive damages by virtue of section 24(1) of the *Canadian Charter of Rights and Freedoms*?

c) Has Defendant unlawfully and intentionally interfered with any of the class members' rights or freedoms protected by Articles 1, 10, 24, 25, 31 and 33 of the *Charter of Human Rights and Freedoms* by not enabling the holding of interim release hearings in accordance with sections 515 and 516(1), *Criminal Code*?

d) In the affirmative, are class members entitled to punitive damages in accordance with the second paragraph of Article 49, Quebec Charter?

IDENTIFIES as follows, the principal conclusions sought in relation to the aforementioned issues:

GRANT Plaintiff's action on behalf of all class members;

ORDER Defendant to pay an amount of $50,000 in punitive damages for each class member;

ORDER the collective recovery of all the punitive damages to be paid to all class members;

RECONVENE the parties within 30 days of the final judgment with a view to establishing the method of distribution;

THE WHOLE with costs, including the costs of all experts, notices and administrator's expenses, if any.

DECLARES that class members who have not opted out are bound by all judgments to be rendered in the class action in the manner provided by law;

FIXES the time limit for opting out of the class action at sixty (60) days after the date of the notice to class members;

ORDERS the publication of a notice to class members pursuant to Article 579 C.C.P. in accordance with the Court's future determination, including the issue as to the payment of costs required for publication;

DECLARES that the class action is to be conducted in the judicial District of Montreal.

THE WHOLE with judicial costs.

Gary D.D. Morrison, J.C.S.

Mtre. Victor Chauvelot
Mtre. Louis Nicholas Coupal-Shmidt
Coupal Chauvelot
Attorneys for Applicant

Mtre. Robert Kugler
Mtre. Alexandre Brosseau-Wery
Mtre. William Colish
Kugler Kandestin
Counsel for Applicant

Mtre. Émilie Fay-Carlos
Mtre. Gabriel Lavigne
Mtre. Charles-Étienne Bélanger
Bernard Roy (Justice-Québec)
Attorneys for Respondent

Date of Hearing: January 29, 2020

Supplementary written representations: June 17, 2020

Application to amend the class definition: June 22, 2020

C.A.M.:
S.C.M.: 500-06-000942-181

COURT OF APPEAL OF QUEBEC

DISTRICT OF MONTREAL

MICHAEL CARRIER, Building No 249-2, in the City of Kangirsuk, District of Amos, Province of Quebec, J0M 1A0

APPELLANT - Petitioner

v.

ATTORNEY GENERAL OF QUEBEC, 1 Notre-Dame Street East, Suite 8.00, in the City and District of Montreal, Province of Quebec, H2Y 1B6

RESPONDENT - Respondent

NOTICE OF APPEAL, LIST OF SCHEDULES IN SUPPORT OF NOTICE OF APPEAL and SCHEDULE 1

Appellant
August 6, 2020

COUPAL CHAUVELOT
Me Victor Chauvelot | Me Louis Nicholas Coupal-Shmidt
1065 Pratt Avenue
Montreal, Quebec H2V 2V5
Tel. : 514 903-3390 | Fax : 514 843-8529
victor@coupalchauvelot.com | lnc@coupalchauvelot.com

-and-

Me Robert Kugler | Me Alexandre Brosseau Wery | Me William Colish
KuglerKandestin
1, Place Ville Marie, Suite 1170
Montréal (Québec) Canada H3B 2A7
T: 514 878-2861 | F: 514 875-8424
rkugler@kklex.com | awery@kklex.com | wcolish@kklex.com

BG 0132 6717-001

Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal. (Article 358, para. 2 C.C.P.).

The parties shall notify their proceedings (including briefs and memoranda) to the appellant and to the other parties who have filed a representation statement by counsel (or a non-representation statement). (Article 25, para. 1 of the Civil Practice Regulation)

If a party fails to file a representation statement by counsel (or non-representation statement), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine.

(Article 30 of the Civil Practice Regulation)