

C A N A D A

S U P E R I O R C O U R T  
(Class Action)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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██████████ PARTOUCHE

N<sup>o</sup> : 500-06-000701-140

-and-

██████████ EDERY

-and-

██████████ MIKE

Petitioners

-vs-

LACHINE HOSPITAL / HÔPITAL DE  
LACHINE

Respondent

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**RE-AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A  
CLASS ACTION (...)  
(AMENDMENT FOR SETTLEMENT PURPOSES)  
(Art. (...) 574 C.C.P. and following)**

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TO THE HONOURABLE JUSTICE GUYLÈNE BEAUGÉ OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONERS RESPECTFULLY STATE THE FOLLOWING:

1. Petitioners wish to institute a class action on behalf of the following group, of which Petitioners are a member, namely:

(...)

All persons (including their estates, executors or personal representatives) who underwent a bariatric surgery at the Lachine Hospital between March 2012 and March 2014 inclusively, and who were sent a notification letter from the McGill University Health Centre dated April 1, 2014 or August 5, 2014

confirming that the cleaning process of an instrument used during the surgical procedure may have been incomplete or inadequate, or any other Group or Sub-Group to be determined by the Court;

(hereinafter Class Members are collectively referred to as "Class Member(s)", "Group Member(s)", the "Group", the "Class" or "Patients");

2. At all relevant times, Respondent the Lachine Hospital / Hôpital Lachine operated a hospital in the City of Lachine, Province of Quebec, and was and is a hospital centre integrated into the McGill University Health Centre;
3. Petitioner Partouche (hereinafter "**Petitioner P**") is a 52 year old woman that underwent a bariatric surgery at the Lachine Hospital on February 27, 2013, the whole as more fully detailed hereinbelow;
4. Petitioner Edery (hereinafter "**Petitioner E**") is a 54 year old woman that underwent a bariatric surgery at the Lachine Hospital on February 27, 2014, the whole as more fully detailed hereinbelow;
- 4.1. Petitioner Mike (hereinafter "**Petitioner M**") is a 39 year old woman that underwent a bariatric surgery at the Lachine Hospital on February 11, 2014, the whole as more fully detailed hereinbelow;

#### **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS:**

##### **PETITIONER [REDACTED] PARTOUCHE:**

5. Petitioner [REDACTED] Partouche ("**Petitioner P**") is a 52 year old woman that underwent a bariatric surgery at the Lachine Hospital on February 27, 2013 and was discharged on March 3, 2013;

6. Over one year later, namely on April 5, 2014, Petitioner P received the following letter dated April 1, 2014 from the Lachine Hospital, on McGill University Health Centre letterhead and signed by Antoine Hoang, MD, Associate Director Professional Services, MUHC, a copy of which letter is filed herewith as **Exhibit R-1** (hereinafter the "**Notification Letter(s)**"):

Centre universitaire  
de santé McGill



McGill University  
Health Centre

Montreal, April 1st 2014

**PARTOUCHE**

**Subject: Cleaning of an Instrument used in bariatric surgery**

Dear Mrs. or Mr. PARTOUCHE,

Our records indicate that you underwent bariatric surgery at the Lachine Hospital on 3/3/2013.

The purpose of this letter is to inform you that, within the continuous quality improvement process, we have discovered that the cleaning process of one of the instruments used during your surgery may have possibly been incomplete. Although the instrument was sterilized before each procedure, it is possible that the cleaning of the instrument was sub-optimal. Rest assured, all necessary corrective measures have already been implemented to ensure the complete cleaning of the instrument in question.

We want to assure you that the risk is very low and that, to date, there have been no reports of any transmission of infection. However, and only for precautionary purposes, the MUHC believes it would be prudent to proceed with the appropriate blood tests.

We invite you to please communicate with the Infection Prevention and Control Service of the MUHC at (514) 637-2351 ext. 77614. A nurse will be available between 8:00 and 16:00 from Monday to Friday to answer your questions and offer you an appointment at one of our clinics specifically set up for this purpose.

During your visit, the nursing staff of the Lachine Hospital will welcome you and will ensure proper follow-up. Please bring this letter with you to your appointment. We apologise for any inconvenience this situation may cause you and we thank you for your understanding.

Sincerely,

Antoine Hoang, MD  
Associate Director Professional Services, MUHC

7. For the additional reasons detailed below and since Petitioner P and Petitioner E received identical Notification Letters (addressed to each of them separately of course), Petitioner P and Petitioner E presumed that identical (or at the very least very similar) copies of the Notification Letter were also sent to the other Patients by the Respondent. Respondent is therefore being summoned to file into the Court record, before the hearing, the list of said Patients who were sent such a Notification Letter, to confirm which Patients indeed signed for and received the said Notification Letter, and to confirm which Patients did not actually receive the Notification Letter (for whatever reason including but not limited to change of address);
8. As the Notification Letter confirms, Respondent admits that the cleaning process of one of the instruments used during Petitioner P's bariatric surgery, may have been incomplete or sub-optimal;
9. Following her surgical procedure, Petitioner P was not made aware by the Respondent of any problems or incidents with her above-mentioned surgery which would cause concern or which would require further testing;
10. In fact, it was only in April 2014, nearly 13 months after her surgery, that Petitioner P received the Notification Letter informing her that the instruments used during her surgery were not properly sterilized, and as a result blood transmitted diseases such as but not limited to HIV or Hepatitis could have been transmitted;
11. The Notification Letter informed that the instruments used during her surgery were not properly sterilized and, as a result, a nurse would be available between 8:00 and 16:00 from Monday to Friday to answer questions and to offer appointments for the necessary blood tests required in order to test for the

transmission of the above mentioned infections;

12. Shocked by the fact that she was now at risk of contracting such serious diseases, Petitioner P immediately called the telephone number for the Prevention and Control service of the MUHC clinic (hereinafter "**Clinic**"), listed on the Notification Letter, in order to schedule an appointment to get screened for all possible transmitted diseases and to complete the necessary blood tests;
13. On April 8, 2014, Petitioner P went to her above-mentioned appointment to complete all necessary blood tests;
14. She met with the supervising nurse on duty, who is the expert infection control practitioner at the Lachine Hospital (hereinafter the "**Supervising Nurse**", although her full name will be confirmed to the Court at the eventual hearing(s) herein);
15. Petitioner P questioned the Supervising Nurse about the incident leading to the incomplete sterilization of the instruments used during her surgery and Petitioner P expressed her great concern at the risk of contracting diseases as a result of the Lachine Hospital's fault and negligence;
16. Instead of being sympathetic, the Supervising Nurse replied to Petitioner P's concerns in a very offensive and very inappropriate manner by telling Petitioner P that she could have contracted disease such as HIV or Hepatitis B and C by sharing needles and drugs with other infected users;
17. Shocked and offended by this response, Petitioner P informed the Supervising Nurse that she does not partake in any such activities that would put her at risk of contracting such diseases;
18. Shaken by her experience at the Clinic, Petitioner P contacted Lachine Hospital's Ombudsman by telephone in order to file a formal complaint against the

Supervising Nurse. The Ombudsman simply explained to Petitioner P that the nurse's comments and responses were standard procedure. Petitioner P never received any documents or correspondence from the Ombudsman thereafter;

19. On April 19, 2014, namely several days following her blood tests, Petitioner P received a call from a clerk at the Clinic informing her that her blood test results came back negative (the clerk did not give his name). The telephone conversation was then cut short by the clerk before Petitioner P can even ask any other questions about any follow up required;
20. Following her surgery, Petitioner P joined an online facebook support group for patients that underwent bariatric surgery, Montreal, Quebec Bariatric WLS Support-Montreal, Québec Soutien Bariatrique (hereinafter the "**Facebook Support Group**");
21. After having received the Notification Letter and having experienced the above-detailed stressful events, Petitioner P posted a message on the said Facebook Support Group in order to see if other bariatric surgery patients had also received a similar Notification Letter, the whole as more fully appears from the print-out of Petitioner P's April 16, 2014 post on the Facebook wall, communicated herewith as **Exhibit R-2** ;
22. To Petitioner P's surprise, many of the group members of the Facebook Support Group had received a similar Notification Letter from the Lachine Hospital and were experiencing the same stress and anxiety that Petitioner P was experiencing, the whole as more fully appears from a copy of the Facebook group members' responses and Facebook posts, communicated herewith as **Exhibit R-3**;
23. Petitioner E, one of the multiple group members that responded to Petitioner P's facebook post, informed Petitioner P that she had contacted the undersigned

attorneys to inquire about pursuing legal action against the Lachine Hospital;

24. Therefore, after discussions with several other group members, Petitioner P then contacted the undersigned attorneys and expressed her interest to institute the present proceedings and act as Petitioner and eventually as Class Representative against the Lachine Hospital;
- 24.1 On September 8, 2014, still distraught over the risk of having contracted a blood born disease, Petitioner P went to the Infectious Disease Clinic of the Jewish General Hospital to undergo another set of blood tests. On September 15, 2014, Petitioner P returned to the above-mentioned clinic where Dr. Portnoy informed her that her results were negative;
25. Ever since receiving the Notification Letter (R-1), and as detailed above, Petitioner P has suffered damages in stress, anxiety, fear, pain, in having to undergo blood screening tests, and in loss of time, the whole as a result of Respondent's negligence and faults;

**PETITIONER [REDACTED] EDERY:**

26. Petitioner [REDACTED] Edery ("**Petitioner E**") is a 54 year old woman that underwent a bariatric surgery on February 27, 2014 at the Lachine Hospital and was discharged on March 1, 2014;
27. On April 3, 2014, Petitioner E also received the R-1 the Notification Letter from the Lachine Hospital, an identical copy of the Notification Letter in question addressed to Petitioner E specifically is filed herewith as **Exhibit R-4**;
28. As is the case for Petitioner P, the Notification Letter received by Petitioner E indicates that the cleaning process of instrument(s) used during Petitioner E's bariatric surgery performed on February 27, 2014 may have been incomplete or

suboptimal;

29. Following the surgery, Petitioner E was not made aware by the Respondent of any problems or incidents with the above-mentioned surgery which would cause concern or which would require further testing;
30. After reading the Notification Letter, Petitioner E panicked and tried contacting the Clinic at the telephone number indicated in said letter;
31. However, contrary to what is stated in the Notification Letter, Petitioner E was not able to reach anybody at the above-mentioned Clinic and had no choice but to leave a message in order to book her appointment as soon as possible;
32. It was only 2 days later, on April 6, 2014, that the same above-mentioned Supervising Nurse from the Clinic returned Petitioner E's call and scheduled an appointment. During said telephone conversation, Petitioner E questioned the Supervising Nurse about the incident leading to the incomplete sterilization of the instruments and expressed her concern of the risk of contracting disease as a result of the Lachine Hospital's fault and negligence;
33. Adding insult to injury (but in line with her inappropriate comments toward Petitioner P), the Supervising Nurse replied to Petitioner E's concerns in an inappropriate manner by telling Petitioner E that she could have contracted diseases such as HIV and Hepatitis B and C by having sexual relations with multiple partners;
34. It is clear from the above that the Supervising Nurse, acting on behalf of Respondent, was attempting to somehow lessen Respondent's liability by blaming the Patients who were calling in or coming in for blood tests, following the receipt of the Notification Letters;



35. On April 8, 2014, Petitioner E went to her appointment at the Clinic to complete all the necessary blood tests. Upon arrival, Petitioner E was introduced to the Clinic's available doctor (whose name Petitioner E does not recall) to answer questions. The doctor explained the cause of the incident to Petitioner E;
36. The explanation provided by the doctor was that the instrument in question, a liver retractor which has multiple moving parts and/or sections, was improperly cleaned, leaving behind incrustated blood and/or other human tissue and fluid from previous patients;
37. The doctor continued by asking Petitioner E several questions to assess whether or not she was at risk of contracting sexually transmitted diseases or blood transmitted diseases;
38. After several questions by the doctor and the previous comments made by the Supervising Nurse during her April 8, 2014 telephone conversation, Petitioner E was made to feel that in the event her blood tests came back positive, Respondent was getting ready to take the position that it would not have been caused by the unsterilized instrument(s) used during her surgery;
39. In fact, the doctor did not want to perform any blood tests on Petitioner E and explained to her that the purpose of the appointment was simply to assess whether or not the patients were "at risk individuals";
40. Furthermore the doctor explained to Petitioner E that any of the diseases for which she was at risk of contracting would take a minimum of three (3) months to show up in a blood test and therefore another appointment would need to be scheduled for then (since her surgery had been conducted less than 3 months prior);
41. In fact, once a person is infected, it may take up to six (6) months for hepatitis B

and C to show up on a blood test, the whole as more fully appears from informational page found on the Canadian Centre for Occupational Health and Safety website, communicated herewith as **Exhibit R-5**;

42. Therefore, during this six (6) months period, Petitioner E required blood tests in order to test for Hepatitis B and C;
43. This reaffirmed Petitioner E's fear of not only being at risk of carrying the above-mentioned diseases but also the risk of transmitting the said diseases to her husband. In fact, after receiving her Notification Letter and as a result thereof, Petitioner E stopped having sexual relations with her husband, the whole until such time as she received final confirmation that she is not carrying any of the diseases in question;
44. Notwithstanding the doctor's explanation, Petitioner E was very stressed and fearful and she insisted on having all necessary blood tests completed immediately, so that she could compare the results to the tests that would be performed 3 months later. Although that request was very justified, Petitioner E had to insist and argue. Finally, with enough insistence, the doctor accepted and all necessary tests were performed that day;
45. The Supervising Nurse mentioned to Petitioner E that she would contact her sometime in May 2014 to schedule an appointment to perform a follow up of the screening blood tests;
46. Approximately two (2) weeks following the April 8, 2014 appointment, and not having heard back from the Clinic or Respondent at all, Petitioner E called to inquire on the results of the blood test performed. She was informed that all the results were negative. No explanation was given as to why no one had contacted Petitioner E to give her the results;

47. Still very distraught over the risk of carrying diseases such as HIV and Hepatitis B and C due to Lachine Hospital's negligence, Petitioner E contacted the undersigned attorneys to inquire as to what her legal rights may be under the circumstances;
48. On or about May 27, 2014, and considering that the Supervising Nurse had failed to follow up with her to schedule the new set of blood tests, Petitioner E called the Clinic and left several messages on the Supervising Nurse's voicemail in order to schedule the appointment;
49. On June 6, 2014, the Supervising Nurse finally returned Petitioner E's calls and explained to her that the Clinic was now closed since they had finished screening 120 Patients. However, since the doctor had prescribed a follow up blood test for Petitioner E, a second appointment was scheduled for June 17, 2014;
50. On June 17, 2014, Petitioner E went to the Lachine Hospital for the second set of blood tests. On or about June 25, 2014, Petitioner E was told that her results were negative;
51. Following her surgery, Petitioner E also joined the online Facebook Support Group of which Petitioner P is also a member of;
52. A couple of days later, Petitioner E saw on the said Facebook Support Group Petitioner P's above-detailed post in regards to the Notification Letter and the incomplete sterilization process of the instruments (Exhibit R-2). Surprised that she was not the only one that had received the letter, Petitioner E responded to Petitioner P's facebook post and informed her that she had contacted the undersigned attorneys, the whole as it appears from Petitioner E's May 5, 2014 comment on the Petitioner P's post (Exhibit R-2);
53. After discussions with Petitioner P and other Facebook Support Group members,

Petitioner E then contacted the undersigned attorneys for a second time and expressed her interest to institute the present legal proceedings and act as Petitioner and eventually as Class Representative against the Lachine Hospital;

54. Moreover, Petitioner E attends monthly in person support group meetings for patients who underwent bariatric surgeries. On June 18, 2014, in her attempt to locate other Class Members having received Notification Letters, Petitioner E e-mailed the mailing list of the above-mentioned support group to inform them that she had retained the services of the undersigned attorney to institute a class action in this matter, the whole as more fully appears from a copy of the June 18, 2014 e-mail sent by Petitioner E, communicated herewith as **Exhibit R-6**;
55. Following the sending of her above-mentioned email (Exhibit R-6), Petitioner E received responses from three (3) other Class Members who had also received a notification from the Lachine Hospital and who were interested in pursuing legal action against Lachine Hospital;
56. On June 19, 2014, Petitioner E also posted a message on the wall of the Facebook Support Group with her personal e-mail and phone number, informing all members that she had retained the services of the undersigned attorney to institute a class action and that anyone interested can contact her for additional information, the whole as more fully appears from a screenshot of the facebook post on June 19, 2014, communicated herewith as **Exhibit R-7**;
57. After receiving the Notification Letter, and as detailed above, Petitioner E suffered damages in stress, anxiety, fear, pain, in having to undergo blood screening tests, and in loss of time, the whole as a result of Respondent's negligence and faults. Moreover, after receiving the Notification Letter, Petitioner E also stopped having sexual relations with her husband because of the fear of placing him at risk of contracting any possible diseases for which she had become at risk of carrying, which had a strenuous effect on Petitioner E's marital

relationship;

**PETITIONER [REDACTED] MIKE:**

- 57.1 Petitioner [REDACTED] Mike ("**Petitioner M**") is a 39 year old woman that underwent a bariatric surgery on February 11, 2014 at the Lachine Hospital and was discharged on February 13, 2014;
- 57.2 Following the surgery, Petitioner M was not made aware by the Respondent of any problems or incidents with the above-mentioned surgery which would cause concern or which would require further testing;
- 57.3 On July 29, 2014, namely over five (5) months after her surgery, Petitioner M received a call from her friend who had heard that morning's CJAD news radio broadcast, which reported on the Lachine Hospital's above-detailed recall of patients who had underwent bariatric surgery;
- 57.4 Since Petitioner M had never received a notification letter from the Lachine Hospital, nor had she ever been otherwise contacted (by telephone or e-mail), she felt confident that she was not part of the group of patients in question;
- 57.5 However, to be certain, on July 30, 2014, Petitioner M left a message with the Bariatric Clinic at the Royal Victoria Hospital (which had referred Petitioner M to the Lachine Hospital for her surgery) (hereinafter the "**Royal Victoria Clinic**") in order to inquire if the unsterilized instrument in question had been used during her surgical procedure and consequently if she was part of the group of patients at risk;
- 57.6 That same day, the Royal Victoria Clinic returned Petitioner M's call and advised her to contact the same above-mentioned Supervising Nurse at the Lachine

Hospital, since she was the one that could answer her questions. Immediately following said telephone call, Petitioner M became very nervous and anxious at the possibility of being infected by a blood borne disease;

57.7 Over the course of July 30, 2014, Petitioner M attempted several times to reach the Supervising Nurse. However, it was only on the morning of July 31, 2014 that Petitioner M was finally able to speak to the Supervising Nurse. It is at that time that the Supervising Nurse informed Petitioner M that she was indeed part of the group that was at risk and therefore that Petitioner M needed to undergo all necessary screening blood tests for HIV and Hepatitis;

57.8 Deeply concerned by the risk of contracting such serious diseases as a result of the Lachine Hospital's fault and negligence, Petitioner M questioned the Supervising Nurse as to whether the unsterilized instrument had been used during her surgery. However, the Supervising Nurse refused to provide any answers to Petitioner M;

57.9 During the said conversation, Petitioner M also asked the Supervising Nurse why she had not been contacted or notified previously, and why she had not received a notification letter like other Patients had apparently received. The Supervising Nurse was not able or was unwilling to provide any explanations and simply informed Petitioner M that her notification letter had apparently "bounced back", that she could not find the original letter that had been allegedly sent, and that although Petitioner M was part of the group, she was not on the Supervising Nurse's list of patients to contact;

57.10 These explanations seemed implausible and were not acceptable to Petitioner M, since, as she confirmed to the Supervising Nurse during that call:

a) she has been residing at the same address for the past fourteen (14) years;

- b) she has had the same telephone number since 1998;
- c) all of the contact information provided by Petitioner M when registering for her surgery at the Lachine Hospital, as well as the information appearing on her Lachine Hospital card, were all still valid and accurate;
- d) a simple search on Respondent's own computer system would have shown that Petitioner M is a research secretary at the St-Mary's Hospital and that she could have easily been contacted through the hospital directory and/or through her hospitals' internal "lotus" e-mail system. In fact, during said call, the Supervising Nurse confirmed that she was already aware that Petitioner M worked at the St-Mary's Hospital;

57.11 There was therefore no reason whatsoever why the Lachine Hospital would not have been able to contact Petitioner M. The Lachine Hospital was therefore grossly negligent when it failed to notify Petitioner M and perhaps other Class Members in the same situation;

57.12 Completely devastated that nearly 4 months had gone by since the Lachine Hospital had sent out the original Notification Letters to certain Class Members, and that she had still not received any letter or notification, Petitioner M insisted that the Supervising Nurse send her a copy of the letter which had apparently "bounced back". The Supervising Nurse agreed to send her the copy of the letter but to this date never has;

57.13 Indeed, despite several requests for a copy of said letter by Petitioner M to the Supervising Nurse, the Lachine Hospital has refused and/or failed to send Petitioner M the copy of the letter in question. Petitioner M hereby summons Respondent to file into the Court record the original notification letter that allegedly "bounced back", together with a copy of the returned envelop that was purportedly sent by registered mail, thereby evidencing Respondent's alleged attempt to deliver said letter to Petitioner M;

- 57.14 After the July 31, 2014 call with the Supervising Nurse ended, Petitioner M. broke down crying and called her husband to support her. Her husband, who was about to leave for work that morning, immediately called in sick to his work in order to support his wife and accompany her to her necessary screening blood tests;
- 57.15 Petitioner M. obviously feared for her health and safety but also the health and safety of her husband as well, whom she was obviously kissing and having relations with before learning this terrible news. Petitioner M. decided to cease any physical contact with her husband until her blood results were in;
- 57.16 Petitioner M therefore had all the necessary blood tests performed that very day (July 31, 2014) at her General Practitioner's office, since she no longer trusted (justifiably) in the competency of the Lachine Hospital to conduct the tests safely and to not lose her records;
- 57.17 From July 31, 2014 to August 5, 2014, when Petitioner M's blood test results finally came back negative, Petitioner was unable to sleep, she experienced extreme fear and anxiety, she feared for her health and safety and that of her family, and she obviously pondered her own mortality;
- 57.18 On August 5, 2014, having still not received a copy of the original notification letter apparently sent by the Respondent, which copy the Supervising Nurse promised to send to Petitioner M on July 31, 2014, Petitioner M e-mailed the Supervising Nurse again asking for a copy of said letter. She received an automatic response e-mail from the Supervising Nurse stating that the Supervising Nurse was out of the office until August, 17, 2014, the whole as more fully appears from a copy of the e-mail exchanges between Petitioner M and the Supervising Nurse from July 31, 2014 to August 5, 2014, communicated herewith as though recited at length herein, as **Exhibit R-9**;



- 57.19 Respondent had therefore in effect brushed Petitioner M off, adding to her suffering and damages;
- 57.20 It was only on August 9, 2014 that Petitioner M received a notification letter from the Lachine Hospital, which was only dated August 5, 2014 (therefore not the original notification letter that the Supervising Nurse alleged had been sent to Petitioner M). Upon closer review of the said letter, it is clear that the notification letter is worded differently as compared to the original Notification Letters sent to Petitioner P and Petitioner E, the whole as more fully appears from a copy of the notification letter sent to Petitioner M, dated August 5, 2014, communicated herewith as **Exhibit R-10**;
- 57.21 Petitioners do not know why Respondent chose to change the wording of the notification letter sent to Petitioner M (Exhibit R-10), for instance but without limitation the subject heading of the R-10 letter replaces "Cleaning of an instrument used in bariatric surgery" in the original Notification Letter to "Sterilization of an instrument used in bariatric surgery". Respondent is therefore summoned to explained the reasoning for the different wording in the letters sent to Class Members and to file copies of all different letters sent to Class Members;
- 57.22 On August 1, 2014, while awaiting her blood test results as mentioned above, Petitioner M was informed by one of her colleagues that other Patients had taken action against the Lachine Hospital. Following said conversation, Petitioner M conducted an online search in order to verify if an action had indeed been filed against the Lachine hospital. She then discovered that the present class action proceedings had been instituted by the undersigned attorneys and were still pending. She in fact located and reviewed in its entirety the original Motion to Authorize the Bringing of a Class Action filed in this matter, which had been posted on the undersigned attorneys' website;
- 57.23 Petitioner M then contacted the undersigned attorneys to express her interest to act as Petitioner and eventually as Class Representative in these proceedings;

57.24 Petitioner M has suffered damages in stress, anxiety, fear, pain, in having to undergo blood screening tests, and in loss of time, the whole as a result of Respondent's negligence and faults. Moreover, as mentioned above, after learning about the possible risk of infection, Petitioner M feared that she had possibly infected her husband and therefore ceased all intimate contact with her husband for a period of 3 months. This obviously had a strenuous effect on Petitioner M's marital relationship;

#### **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

58. Each of the Class Members (including the Petitioners) underwent a surgical procedure at the Lachine Hospital and likely most Class Members were addressed an identical or similar Notification Letter as the one filed as Exhibit R-1. However, in this regard, Petitioner M represents an example of those Class Members who were not notified of the serious issue by the Respondent until after the present legal proceedings had been filed (if at all);
59. Each Class Member and the Petitioners have and will suffer stress, fear, pain and anxiety after receiving the Notification Letter (if they even received it at all);
60. Each of the Class Members, including the Petitioners, feared and fear that they have contracted diseases such as HIV and Hepatitis B or C, which could have been avoided had the Lachine Hospital properly completed the cleaning process of the instruments used during their surgeries;
61. Most if not all of the Class Members had to and/or will have to undergo blood tests, which in and of itself is an inconvenience, a loss of time and possible money (including wages, parking) and is painful;
- 61.1 The Class Members also feared for the health and wellbeing of their spouses, intimate relationships, etc., and they also suffered further damages while ceasing

intimate contact with said spouses, etc. until receiving their negative test results, which caused damages to the Patients (...) in question, damages for which Respondent is solely liable;

### CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

62. The composition of the Group makes (...) it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (Article 575 (3) C.C.P.) for the following reasons:

a) the Class Members are likely scattered across the City of Montreal, and possibly other cities;

b) the Class Members cannot be reached by Petitioners or their attorneys since only the Respondent have the list of the Class Members;

c) all the facts alleged in the preceding paragraphs make the application of Articles 59 or 67 C.C.P. impossible;

d) in fact, and since Petitioner P's surgery and Petitioner E's surgery were one year apart, it is clear that the number of Class Members represents at least one full year of surgeries conducted at the Lachine Hospital, if not longer;

e) (...) Respondent has now confirmed to this Honorable Court that the exact number of Class Members, including the Petitioners, is 152 Patients (...);

f) as appears from the first page article published on July 29, 2014 in the 24h newspaper, it appears that Respondent has admitted that 150 Patients are involved, regarding bariatric surgeries conducted at the Lachine hospital from the end of 2012 to the beginning of 2014, with apparently 11% of the said Patients having not been notified by the Respondent, and at least 1 patient being a carrier of hepatitis prior to the surgery, the whole as more fully appears from said news article discovered by Petitioner P, communicated herewith, as **Exhibit R-8**;

g) in this regard, Petitioners communicates herewith, confidentially as **Exhibit R-11 under seal**, various e-mails and/or other online submissions received from certain Class Members since the proceedings herein were initially

instituted, the whole as recited at length herein. Petitioners rely on said submissions from Class Members, including the comments detailed therein, in order to further fulfill their burden to show an arguable case and, if need be, additional submissions will be added to said Exhibit before the hearing of the present (...) Application;

63. The (...) claims of the class members raise identical, similar or related (...) issues of law and fact (Article 575 (1) C.C.P.), namely:

a) Did Respondent negligently conduct an improper or incomplete sterilization of the surgical instruments used during the Class Members' surgeries?

b) Was Respondent negligent in the manner in which it reviewed or controlled the sterilization process of the instruments?

c) Was Respondent negligent in the manner and delays in which it notified the Class Members?

c) Is Respondent liable to pay compensatory damages to the Class Members, and if so in which amounts?

d) Is Respondent liable to pay moral damages to the Class Members, and if so in which amounts?

e) is Respondent liable to pay punitive or exemplary damages to the Class Members, and if so in which amounts?

64. The interests of justice favour that this (...) Application be granted in accordance with its conclusions;

65. The action that Petitioners wish to institute for the benefit of the Class Members is an action in damages;

66. The facts alleged herein appear to justify the conclusions sought by the Petitioners (Article 575 (2) C.C.P.), namely the following conclusions (...) that Petitioners wish to introduce by way of an originating application:

**GRANT** Plaintiffs' action against Defendant;

**CONDEMN** Defendant to pay to Plaintiffs and the Class Members compensatory damages in an amount to be determined by the Court;

**CONDEMN** Defendant to pay to Plaintiffs and the Class Members moral damages in an amount to be determined by the Court;

**CONDEMN** Defendant to pay to Plaintiffs and the Class Members punitive or exemplary damages, in an amount to be determined by the Court;

**GRANT** the class action of Plaintiffs on behalf of all the Class Members;

**ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternatively by individual liquidation, the whole in accordance with (...) the C.P.C.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Class Members;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full legal costs and expenses including experts' fees and publication fees to advise members;

67. Petitioners suggest that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

a) the Lachine Hospital is located in the judicial District of the Montreal;

b) the surgical procedures in question were therefore all conducted in the judicial District of Montreal;

c) most if not all of the Class Members, including the Petitioners, reside in the judicial District of Montreal;

d) the undersigned attorneys representing the Petitioners practice law in the judicial District of Montreal;

68. Petitioners who are requesting to (...) be appointed as Representative Plaintiffs are in a position to properly represent the Class Members (Article 575 (4) C.C.P.) for the following reasons:

- a) Petitioners underwent their surgeries at the Lachine Hospital and Petitioners P and E received the Notification Letter informing them of the unsterilized instruments, although Petitioner M did not receive the Notification Letter, the whole as more fully detailed above;
- b) Petitioners had several blood tests completed and may be required to have routine blood tests performed to test for possible diseases, as more fully detailed above;
- c) Petitioners have already and will continue to suffer anxiety, inconvenience, stress and loss of time as a result thereof;
- d) Petitioners also feared and fear for the health and wellbeing of their respective husbands;
- e) Petitioners understand the nature of the action and have the capacity and interest to fairly and adequately protect and represent the interest of the Class Members;
- f) Petitioners are available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard and Petitioners are ready and available to manage and direct the present action in the interest of the Class Members that Petitioners wish to represent;
- g) Petitioners are determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
- h) Petitioners' interests are not antagonistic to those of other Class Members;
- i) Petitioners have given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;

j) Petitioners, with the assistance of the undersigned attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

k) Petitioners P and E found each other and were able to find, contact and communicate with other Class Members before deciding to institute the present proceedings, the whole as more fully detailed above;

l) Petitioners have given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members. It was in this way that many Class Members, including Petitioner M, were able to locate and contact the undersigned attorneys, as mentioned above and as appears from Exhibit R-11;

m) Petitioner P in fact discovered and alerted the undersigned attorneys to the R-8 news article published the day of the filing of the original motion herein;

69. The present (...) Application is well founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present (...) Application;

**AUTHORIZE** the (...) institution of a class action in the form of an origination application (...) in damages;

(...) **Appoint** the Petitioners as the Representative Plaintiffs representing all (...) persons included in the group herein described as:

(...)

All persons (including their estates, executors or personal representatives) who underwent a bariatric surgery at the Lachine Hospital between March 2012 and March 2014 inclusively, and who were sent a notification letter from the McGill University Health Centre dated April 1, 2014 or August 5, 2014 confirming that the cleaning process of an instrument used during the surgical procedure may have been incomplete or inadequate, or any other Group or Sub-Group to be determined by the Court;

**IDENTIFY** the principle (...) issues of law and fact to be treated collectively as the following:

- a) Did Respondent negligently conduct an improper or incomplete sterilization of the surgical instruments used during the Class Members' surgeries?
- b) Was Respondent negligent in the manner in which it reviewed or controlled the sterilization process of the instruments?
- c) Was Respondent negligent in the manner and delays in which it notified the Class Members?
- c) Is Respondent liable to pay compensatory damages to the Class Members, and if so in which amounts?
- d) Is Respondent liable to pay moral damages to the Class Members, and if so in which amounts?
- e) is Respondent liable to pay punitive or exemplary damages to the Class Members, and if so in which amounts?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** Plaintiffs' action against Defendant;

**CONDEMN** Defendant to pay to Plaintiffs and the Class Members compensatory damages in an amount to be determined by the Court;

**CONDEMN** Defendant to pay to Plaintiffs and the Class Members moral damages in an amount to be determined by the Court;

**CONDEMN** Defendant to pay to Plaintiffs and the Class Members punitive or exemplary damages, in an amount to be determined by the Court;

**GRANT** the class action of Plaintiffs on behalf of all the Class Members;

**ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternatively by individual liquidation, the whole in accordance with (...) the C.P.C.;



**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Class Members;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full legal costs and expenses including experts' fees and publication fees to advise members;

**DECLARE** that all Class Members that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the (...) time limit for opting out of the class at 30 days from the date of the publication or notification of the notice to the Class Members;

**ORDER** the publication or notification of a notice to the Class Members in accordance with Article (...) 579 C.C.P. and convene the parties to a subsequent hearing in this regard;

**THE WHOLE** with legal costs against the Respondent on the present (...) Application, including the costs related to preparation and publication/notification of the notices to Class Members, and the costs of any experts.

**MONTREAL, (...) MARCH 29, 2016**

**LEX GROUP INC.**

(s) Lex Group Inc.

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Per: David Assor  
Attorneys for Petitioners