

## SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000816-161

DATE: November 20, 2025

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**BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.**

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**OPTION CONSOMMATEURS**

and

**CHANTAL GAGNON**

Plaintiffs

v.

**SAMSUNG ELECTRONICS CANADA INC.**

and

**SAMSUNG ELECTRONICS CO., LTD**

Defendants

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### JUDGMENT

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#### **OVERVIEW**

[1] The Court is seized with the following demands:

- 1.1. An Application for access to real evidence, approval of an inspection protocol and authorization to file inspection reports; and
- 1.2. A notice of case management seeking the disqualification of Plaintiffs' lawyer.

[2] The backdrop is a class action (the "**Class Action**") authorized in April 2018 and filed in July 2018 related to allegedly defective washers.

## **CONTEXT**

[3] In the fall of 2016, Samsung Electronics Canada Inc. (“**Samsung Canada**”) and Samsung Electronics Co., Ltd (“**Samsung Electronics**” and together with Samsung Canada, “**Samsung**” or the “**Defendants**”) proceeded to voluntarily recall (the “**Recall**”) certain models of washing machines sold in Canada (the “**Washers**”) to address the risk of excessive vibration which can cause the lid of the washers to detach.<sup>1</sup>

[4] The Recall offered consumers two choices: a free in-home repair combined with a one-year extension of the manufacturer’s warranty (the “**Recall Repair**”), or a rebate that could be applied towards the purchase of a new Samsung washer (the “**Recall Rebate**”).

[5] Plaintiffs, Option Consommateurs and the designated person, Ms. Chantal Gagnon (together “**Plaintiffs**”) filed proceedings the Authorization Motion shortly after the Recall notice on the basis that the Recall was insufficient to compensate the damages suffered by consumers.

[6] On or about April 26, 2018, Justice Suzanne Courchesne authorized a class action (the “**Authorization Judgment**”)<sup>2</sup> against Samsung for the benefit of Quebec consumers who had purchased certain models of Washers manufactured by the Defendants (the “**Class Members**”) and which were the subject of the Recall.

[7] Plaintiffs filed their claim on July 6, 2018.

[8] Samsung filed its plea on December 7, 2020. It alleges that most consumers will not experience the problems which led to the decision to proceed with the Recall. For those who were susceptible to having an issue, it contends that the Recall Repair or Recall Rebate resolved the problem and that no damages were caused.

[9] At least six judgments of this Court were issued on issues related to examinations, objections and requests for documents.<sup>3</sup> A database, the Global Customer Interaction Center (“**GCIC**”), which records customer interactions between Samsung and its customers, was central to many of these debates.

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<sup>1</sup> Exhibit D-1.

<sup>2</sup> *Option Consommateurs c. Samsung Electronics Canada inc.*, 2018 QCCS 1751 (Permission to appeal denied, 2018 QCCA 1057).

<sup>3</sup> *Option Consommateurs c. Samsung Electronics Canada Inc.*, 2021 QCCS 3842 (Appeal denied, 2023 QCCA 132) (the “**September 2021 Judgment**”); *Option Consommateurs c. Samsung Electronics Canada Inc.*, C.S.M.: 500-06-000816-161, October 28, 2021 (the “**October 2021 Judgment**”); *Option Consommateurs c. Samsung Electronics Canada Inc.*, 2022 QCCS 1067 (Appeal granted in part in case no. 500-09-029740-214; appeals granted in cases nos. 500-09-029791-217 and 500-09-029964-228, 2023 QCCA 19) (the “**March 2022 Judgment**”); *Option Consommateurs c. Samsung Electronics Canada Inc.*, 2023 QCCS 2388 (the “**July 2023 Judgment**”); *Option Consommateurs c. Samsung Electronics Canada Inc.*, 2023 QCCS 4408 (the “**November 2023 Judgment**”), *Option Consommateurs c. Samsung Electronics Canada Inc.*, 2025 QCCS 70 (the “**January 2025 Judgment**”).

## 1. Inspection of Washers

### A. Applicable Law

[10] Article 251 of the *Code of Civil Procedure* (“**C.C.P.**”) states that a party in possession of real evidence is required to preserve this evidence until the end of the trial. Upon request, it must present it to the other parties or, subject to the conditions agreed with them, submit it to an expert. When the parties can’t agree or when the evidence is in the hands of a third party, a motion may be presented to the court to force disclosure or authorize an expertise.

[11] As is the case with other provisions of the C.C.P. dealing with pre-trial matters, article 251 must be interpreted broadly and liberally. In general, the court should protect a party’s right to a full defense and ensure that all parties are on an equal footing.<sup>4</sup>

[12] While the inspection must be relevant, such relevance must be assessed in relation to the allegations of the proceedings, ensuring that the expertise is likely to advance the debate. The relevant criterion is therefore usefulness rather than necessity.<sup>5</sup>

[13] The need to protect and preserve evidence for trial purposes is an important consideration.<sup>6</sup>

[14] An inspection that entails visiting a party’s home must be respectful of that party’s right to privacy and peaceful enjoyment of his premises. However, the rights of a property owner must generally yield to the search for truth, the right to a fulsome defense and the principle of complete disclosure.<sup>7</sup>

[15] A party seeking permission to inspect property in the hands of another party must identify the expert selected, the duration and terms of their mandate, the location where the expertise will be carried out, and the parameters of their work.<sup>8</sup>

[16] The party asked to submit to an expert inspection may require the presence of its own expert at the time of the examination.<sup>9</sup>

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<sup>4</sup> *Frenette c. Métropolitaine (La), compagnie d’assurance-vie*, [1992] 1 SCR 647; *Westfalia Surge Canada Company c. Ferme Hamelon (JFD) et Fils*, 2005 QCCA 514, para. 3; *Saint-Laurent (Ville) c. Laurentienne générale, compagnie d’assurances*, 1993 CanLII 4245 (QC CA), para. 8; *Syndicat des copropriétaires du 1200 Ouest c. Tours 1200 Ouest inc.*, 2019 QCCS 3701 (Permission to Appeal denied, 2019 QCCA 1847), para. 12; *Mag Energy Solutions inc. c. Falconer Cloutier*, 2016 QCCS 2830, para. 29; *Babin c. ING du Canada*, 2006 QCCS 1394, para. 8.

<sup>5</sup> *Groupe TVA inc. c. Boulanger*, 2023 QCCA 687, paras. 6 and 18.

<sup>6</sup> *Syndicat des copropriétaires du 1200 Ouest c. Tours 1200 Ouest inc.*, *supra*, note 4, para. 14; 3688828 *Canada inc. c. Navistar Canada inc.*, 2011 QCCS 7382, para. 8 (Leave to appeal dismissed, 2014 QCCA 1051).

<sup>7</sup> *Fédération des infirmières et infirmiers du Québec c. Hôpital Laval*, 2006 QCCA 1345, para. 16; *Syndicat des copropriétaires du 1200 Ouest c. Tours 1200 Ouest inc.*, *supra*, note 4, para. 15.

<sup>8</sup> *Desmarteau c. Ontario Lottery and Gaming Corporation*, 2013 QCCA 2090, paras. 89 and 92; *Syndicat des copropriétaires du 1200 Ouest c. Tours 1200 Ouest inc.*, *supra*, note 4, para. 25.

<sup>9</sup> *Syndicat des copropriétaires du 1200 Ouest c. Tours 1200 Ouest inc.*, *supra*, note 4, para. 16.

[17] In all cases, parties must respect the principles of cooperation and proportionality, and their conduct must facilitate the progress of the proceedings rather than having it delayed, complicated, or even jeopardized by the introduction of evidence that does not assist in establishing the rights being advanced (articles 18, 19 and 20 C.C.P.).<sup>10</sup>

B. Discussion

[18] Samsung asks that it be authorized to inspect the Washers of 45 Class Members and that it be allowed to file a complementary expert report to provide the Court with the results of these inspections.

[19] The Authorization Judgment identifies the questions to be decided at trial. These include:

- 19.1. Whether the risk of explosion associated with normal use of the Washers and the loss of use resulting from the precautions taken to prevent this risk constitutes a latent defect affecting the Washers?
- 19.2. Whether the implementation of the Recall precludes the Class Members' claims?
- 19.3. Whether the Class Members are entitled to a reimbursement or damages (including punitive damages)?

[20] If damages are awarded, the trial judge will also need to decide whether the recovery should be individual or collective.<sup>11</sup> The burden to demonstrate that collective recovery is possible lies with Plaintiffs. They must establish the existence of a loss shared by all Class Members.<sup>12</sup>

[21] Since he has been appointed to manage this case in March 2023, the undersigned has had numerous occasions to discuss the scheduling of this matter with counsel.

[22] During these discussions, the parties made it clear that the existence of a defect affecting all Washers sold in Quebec, the existence of the damages suffered by all Class Members and, if so, whether collective recovery is possible will be hotly debated issues.

[23] As early as November 2023, the Court noted:

[112] Plaintiffs have also indicated that they intend to have certain Class Members testify at trial and that they intend to file sworn declarations of other clients.

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<sup>10</sup> *Pétrolière Impériale v. Jacques*, 2014 SCC 66, para. 85; *Limmer c. Promutuel Vallée de l'Outaouais, société mutuelle d'assurance générale*, 2023 QCCS 4088, para. 12; *3688828 Canada inc. c. Navistar Canada inc.*, *supra*, note 6, para. 9.

<sup>11</sup> Art. 592 C.C.P.

<sup>12</sup> *Marcotte v. Fédération des caisses Desjardins du Québec*, 2014 SCC 57, para. 32; *Trépanier-Bouchard c. Section locale 2323 de l'Association internationale des machinistes et des travailleurs et travailleuses de l'aérospatiale*, 2023 QCCS 679, paras. 75 and 76.

[113] Defendants ask that a deadline should be set for Plaintiffs to identify the Class Member witnesses and to file their sworn declarations. Indeed, they have advised the Court that they may wish to proceed with an expert analysis of the Washers belonging to such Class Members. They have also expressed the wish to examine certain of these Class Members out of court.

[114] Plaintiffs oppose the request alleging that pre-trial depositions of Class Members are usually not allowed. They add that the usual practice is to announce witnesses in the declaration of readiness.

[115] With regard to the communication of Class Member files, the Court indicated that Plaintiffs could not proceed in stages and should – in the event that the parties can't agree on same - present a single motion asking for all files they wish to be communicated.

[116] With regard to the other issues, while the parties' respective positions have merit, the Court believes that in the present context, it makes sense for a deadline to be scheduled for the filing of sworn declarations and the identification of Class Members who will testify at trial. This deadline should precede the filing of the declaration of readiness. This could avoid the presentation of motions after the declaration of readiness.

[117] However, the Court asked the parties to explore the possibility that the examinations of Class Members form part of the record. This could reduce the time requested for trial and allow an earlier trial date.

[118] In all cases, firm deadlines should be indicated in the case protocol. If the parties can't agree on the process for the identification and examination of witnesses, deadlines should be indicated in the case protocol for the filing of motions on these issues.

[24] The Parties couldn't agree.

[25] In November 2024, Defendants filed an initial *Application for Access to Real Evidence in Possession of Class Members, to Obtain Information and for Case Management* (the “**First Application to Inspect**”) in which they asked: 1) that Plaintiffs confirm the identity of Class Members who will testify; 2) that Plaintiffs provide information on the Washers belonging to the trial witnesses; and 3) that the Court order an examination of the Washers of all proposed Class Member trial witnesses.

[26] The sterile debate continued as to the timing of the motions to be presented. Defendants wanted Plaintiffs to first identify who would testify at trial and what they would be testifying about prior to conducting inspections. Plaintiffs wanted to delay this determination until the filing of the declaration of readiness. They stated that they needed additional information regarding some Class Members before deciding on the witness list. Plaintiffs also wanted Defendants to position themselves regarding the number of Class Members to be examined in open court and those who could file sworn declarations in lieu of testimony (with cross-examinations out-of-court that would form part of the record).

[27] The Court invited the Parties to agree on a process that would protect their procedural rights while being respectful of the scarcity of judicial resources. The Court proposed that a template of possible sworn declarations be sent to Defendants to allow them to position themselves.

[28] In the January 2025 Judgment, the Court allowed Plaintiffs to request all information that Samsung holds on up to 175 Class Members (including the 112 for which information has already been disclosed) regardless of whether it complies with some of the search requirements used to create the 2025 GCIC Extract.

[29] The hope was that the parties could then agree on the identity of the Class Members who would be examined at trial and those who could be cross-examined out-of-court. The Court anticipated that this would also allow the parties to determine whose Washers could be inspected and establish an inspection protocol (the “**Inspection Protocol**”) for those Washers.<sup>13</sup>

[30] The relevant conclusions of the January 2025 Judgment are as follows:

[147] **PRAYS ACT** of the Parties’ undertaking to agree on a Case Protocol that complies with the present judgment and file it within thirty days of the present judgment;

[148] **SUGGESTS** that the Case Protocol include:

148.1. A delay for the filing of sworn declarations in lieu of direct testimony;

148.2. An agreement as to the minimal information required for such sworn declarations;

148.3. A delay for the identification of a limited number of witnesses who will testify at trial;

148.4. A protocol for the examination of the Washers of a limited number of Class Members;

[149] If the parties disagree on any of the steps included in the preceding paragraph, **ORDERS** that a case management notice be filed within sixty days of the present judgment;

[31] The Parties were not able to agree.

[32] Defendants maintained their request for adjudication of their First Application to Inspect.

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<sup>13</sup> January 2025 Judgment, paras. 127 to 131.

[33] On March 18, 2025, Plaintiffs filed a case management notice in which they allege that Samsung failed to provide an Inspection Protocol and thus that the Parties were not able to agree on a case protocol. The notice also asked that Samsung be ordered to provide additional information regarding the disclosure ordered in the January 2025 Judgment.

[34] Samsung asked for time to respond.

[35] On March 31, 2025, the Court received a case management notice from Samsung (the “**Samsung Case Management Notice**”) asking that members of Class Counsel’s firm submit to a written examination regarding personal contacts they have had with Samsung regarding their Washers. Samsung alleged that some Class Counsel were personally involved as Class Members and had communicated directly with Samsung to avail themselves of remedies made available further to the recall of the Washers. They alleged that such conduct amounts to inappropriate discovery. Class Counsel denies the allegations. An amended version of the Samsung Case Management Notice will be dealt with in the following section of this judgment.

[36] A case management conference was held on April 4, 2025, to determine how to deal with both case management notices.

[37] In its *procès-verbal*, the Court noted that:

At the outset of the conference, the Parties agreed that the file should proceed despite (and without prejudice to) the Samsung Case Management Notice.

[...]

However, despite a two-hour discussion exploring various possibilities, it became clear that any hope of a potential agreement on creative ways to reduce the duration of an eventual trial was overly optimistic.

As such, the Court will simply schedule the remaining steps prior to the filing of the declaration of readiness and will deal with any issues surrounding the scheduling of the trial after the declaration of readiness is filed.

Regarding the Samsung Case Management Request, the Parties asked that the Court schedule a half-day hearing. [...].

[38] The conclusions of the *procès-verbal* include:

**PRAYS ACT** of the Parties’ agreement that the file can proceed despite (and without prejudice to) the Samsung Case Management Notice;

[...]

**ORDERS** that the deadline for Plaintiffs to identify up to 175 Class Members for which it requires additional information (including the 112 for which information has already been disclosed) be extended to May 30, 2025;

**ORDERS** Defendants to provide all additional information they possess with regard to such 175 Class Members prior to June 27, 2025;

**ORDERS** Plaintiffs to provide by August 1, 2025, the names of all Class Members they would like to have testify as witnesses at trial;

**ORDERS** that, if Defendants wish to file a request for permission to file additional expert reports, they will have to present a motion to this effect prior to August 29, 2025;

**ORDERS** that any such motions by the Defendants will have to include:

- the identity of the Class Members for whom they wish to proceed with an expertise of their Washer;
- an expert examination protocol indicating:
  - o the type of examination that is contemplated;
  - o the time required for each examination;
  - o the deadline for the filing of any report;
  - o whether Defendants agree to the filing of a reply report by Plaintiffs and if so, within which delay;

**PRAYS ACT** of the Parties' agreement that a hearing of half a day (one hour for each party for representations and one hour reading time by the Court) is sufficient for the hearing of the Samsung Case Management Notice;

[39] In retrospect, the Court's decision to postpone the decision on the Class Members who would testify at trial was ill-advised.

[40] Far from recognizing that the scarcity of judicial resources and the proportionality rule dictated that Plaintiffs "limit" the number of Class Member witnesses, on August 1, 2025, Plaintiffs sent Defendants a list of 120 purported Class Members who they would like to have testify at trial (the "**Proposed Class Trial Witnesses**") (either *viva voce* or out-of-court). At the same time, Plaintiffs indicated that many of these witnesses (around 70%) no longer possessed their Washers.<sup>14</sup>

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<sup>14</sup> Exhibit R-2 of the Amended Application to Inspect.

[41] On August 29, 2025, Defendants filed an Amended application to inspect (the “**Amended Application to Inspect**”) accompanied by an Inspection Protocol. The Amended Application to Inspect asks that:

- 41.1. Samsung be allowed to inspect the Washers of 35 of the Proposed Class Trial Witnesses (Table 1).
- 41.2. Samsung be allowed to inspect the Washers of 10 additional Class Members among those that formed part of the 175 Class Members for which Plaintiffs sought complete information, and which were not selected as Proposed Class Trial Witnesses (Table 2).

[42] Plaintiffs opposed the inspections on various bases:

- 42.1. Class Members are not “parties” to the litigation;
- 42.2. The inspections constitute inappropriate discovery;
- 42.3. The necessity of the inspection has not been established;
- 42.4. The request infringes the prohibition relating to the filing of multiple expert reports on the same subject matter;
- 42.5. The Inspection Protocol is overly intrusive, and the number of inspections is exaggerated.

*i) The Status of Class Members*

[43] The first argument can be summarily dealt with. While Class Members are not parties *per se*, they have been considered “quasi-parties”.<sup>15</sup> There is no doubt that the Court can order Class Members to be examined out of court (article 587 C.C.P.) or submit relevant evidence for an inspection (article 251 C.C.P.).<sup>16</sup> In any event, as article 251 C.C.P. also applies to evidence in the hand of third parties, the status of Class Members as parties is a red herring that is not determinative of Samsung’s Amended Application to Inspect.

*ii) An Inspection is not a Pre-Trial Deposition*

[44] Plaintiffs are correct to point out that inspections under article 251 C.C.P. are governed by similar rules than those applicable to other pre-trial disclosures.

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<sup>15</sup> *Meubles Léon Itée c. Option consommateurs*, 2020 QCCA 44, para. 74 (Motions for Leave to Appeal to the Supreme Court dismissed (C.S. Can., 2020-10-22) 39132); *Filion c. Québec (Procureure générale)*, 2015 QCCA 352, paras. 41, 43 and 48; *Société des loteries du Québec c. Brochu*, 2006 QCCA 1117, para. 21.

<sup>16</sup> *Ibid.*, para. 41; *Robitaille c. Mazda Canada inc.*, 2011 QCCS 602, para. 26.

[45] For example, the article is interpreted broadly and relevance must be assessed generously.

[46] This being said, inspections of material evidence differ from pre-trial examinations in two important ways.

[47] For one, a pre-trial examination is a form of “rehearsal” of the testimony that will eventually take place before the trial judge. A party denied the right to depose a witness during the pre-trial phase does not lose the right to examine that witness at trial.

[48] Not so for inspections. A party who is prevented from examining real evidence during the pre-trial phase will generally not be able to proceed with an expertise at trial. Experts can only testify on the contents of their report and such reports must be filed prior to the declaration of readiness. Therefore, denying a party the right to proceed with an inspection affects their capacity to defend themselves way more than denying them the right to conduct a pre-trial discovery.

[49] Secondly, a pre-trial inspection is a means of conserving evidence to make sure that it is available at trial. Inspecting the Washers today is important given that many Class Members no longer possess theirs. Furthermore, the anticipated difficulties of the parties to agree on a declaration of readiness and the potential duration of an upcoming trial lead the Court to conclude that a trial is not likely to take place in the near future.

[50] It follows that the decisions relied on by Plaintiffs that limit pre-trial depositions of Class Members<sup>17</sup> are not persuasive in the present context.

[51] Article 587 C.C.P. specifically prohibits pre-trial examinations of Class Members unless the courts deems the examination useful to adjudicate the identified collective questions. It is telling that the article makes no mention of inspections.

[52] Finally, the owners of the Washers to be inspected were not chosen at random. They were all chosen among the Class Members for which Plaintiffs requested additional information. Seventy-five percent of the owners were chosen among the Class Members that Plaintiffs proposes to call as witnesses at trial. Therefore, the inspection is meant to provide factual information to be used during cross-examination at trial and not during the pre-trial phase.

[53] It is true that, at present, it remains unclear whether the Proposed Class Trial Witnesses will indeed be allowed to testify at trial. The Court has already indicated to the parties that given the scarcity of judicial resources it will simply not be possible to hear

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<sup>17</sup> *J.J. c. Province canadienne de la Congrégation de Sainte-Croix*, 2022 QCCS 4325, paras. 131 and 150; *F. c. Frères du Sacré-Coeur*, 2021 QCCS 792, paras. 16, 62, 63 and 64 (Permission to appeal denied, 2021 QCCA 646); *Lespérance c. Ville de Gatineau*, 2020 QCCS 4078 (Motion for leave to appeal dismissed, 2021 QCCA 175); *Jean-Paul c. Uber Technologies Inc.*, 2018 QCCS 4127; *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 4090, paras. 21 and 23 to 26 (Confirmed in appeal, 2012 QCCA 2013).

*viva voce* evidence from 120 Class Members. The possibility of out-of-court cross-examinations for some of the Proposed Class Trial Witnesses cannot be counted on as Defendants have voiced their opposition to such a process. Plaintiffs' application in this regard will be filed within 60 days of the present judgment. This being said, if sworn statements with out-of-court cross-examinations are granted, it is unlikely that permission will be granted for 120 Class Members.

[54] Nonetheless, the fact remains that the vast majority of Class Members whose Washers are the subject of the Amended Application for Inspection have been identified as potential trial witnesses by the Plaintiffs themselves.

*iii) The Inspections are Useful*

[55] Thirdly, Plaintiffs submit that the examinations are unnecessary. They point out that their expert has concluded that all Washers are plagued with a design defect in that the Washers' dampers do not sufficiently stabilize the Washers' bucket. Thus, spin cycle interruptions, excessive vibrations, and/or explosion events may occur, though not systematically. In fact, in the twenty-eight tests conducted by Plaintiffs' expert, a problem occurred in approximately 25% of cases. Plaintiffs state that additional spin cycles may not yield relevant information.

[56] This argument is also unpersuasive. The inspections of the Washers are relevant and rationally connected to the issues to be decided at trial. Necessity is not the appropriate criterion. It suffices that the inspections be useful. As the existence of a defect and the consequences of such defect are issues at the heart of the Class Action, it seems obvious that an inspection of a limited number of Washers is useful and relevant, especially given the broad interpretation of relevance at this stage.

[57] Inspections will be useful to the Court's adjudication of the common issues, including how the alleged defect affects the use of the Washers. Inspections may also shed additional light on the frequency of potential issues and the appropriateness of collective recovery if need be.

[58] Most of the inspections relate to Washers belonging to Class Members identified by Plaintiffs as potential witnesses at trial. One must take it for granted that Plaintiffs consider their testimony to be relevant to answer the common questions.

[59] Defendants also ask that inspections be conducted on a limited number of Washers belonging to Class Members not selected by Plaintiffs to testify.

[60] This request is reasonable and will give the Court a broader picture of the range of issues that may affect Class Members.

[61] The request also protects Defendants' right to provide a fulsome defense.

[62] In addition, this case concerns Washers that were sold between 2011 and 2016. This means that the Washers are already between 10 and 15 years old. So far, Ms. Gagnon is the only Class Member whose Washer was inspected. Despite articles 20 and 251 C.C.P., it appears that approximately 70% of Class Members no longer possess the Washers at issue. Unfortunately, the extensive delays incurred so far and the significant lack of cooperation between the parties will only increase this percentage. As such, it is important that evidence be preserved to allow the trial judge to properly decide this case.

*iv) The Prohibition against Filing more than one Expertise on a Given Subject*

[63] As a fourth argument, Plaintiffs invoke article 232 C.C.P. which states that, unless the court authorizes otherwise, a party “cannot seek more than one expert opinion, whether joint or not, per area or matter of expertise”.

[64] The obvious purpose of the rule is to avoid undue duplication. Thus, multiple expert reports can be authorized when the experts come from different disciplines or when the subject matter of the reports differ. Article 232 C.C.P. must be interpreted in a fair and flexible manner that considers the principle of caution that applies to the admissibility or inadmissibility of an expert opinion at the preliminary stage of the proceedings, the parties’ right to a full defense, and the principle of proportionality and other guiding principles of procedure.<sup>18</sup>

[65] There is no possible overlap here as the proposed inspections concern Washers that were not the subject of previous expert reports.

*v) The Inspection Protocol*

[66] Finally, on the last objection, the Court finds that, for the most part, the Inspection Protocol respects the principle of proportionality, and the criteria set out in the relevant case law.

[67] The Inspection Protocol identifies the experts who will proceed with the inspection and will prepare the complementary report.

[68] It provides details of each contemplated step (including setup, visual inspection, operating parameters, etc.). These steps will be documented using video and/or photography. The content of the wash loads is similar to what was used by Defendants’ expert in his previous expertise.

[69] Attendance of Plaintiffs’ experts is provided for.

[70] The duration of the test is indicated and is reasonable.

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<sup>18</sup> *Elco Motors Inc. c. Venmar Ventilation*, 2023 QCCA 1237, para. 23; *Palarma c. Tamvakou*, 2025 QCCS 2550, paras. 33 and 35; *Ouellette c. Compagnie de chemin de fer Canadien Pacifique*, 2020 QCCS 4145, paras. 20 to 22.

[71] After the filing of the Amended Application to Inspect, additional details were added to the Inspection Protocol to address some of Plaintiffs' concerns.

[72] Defendants agree that every inspection will be documented in the supplementary report.

[73] However, given that inspections will take place in Class Members' homes and that Washers are normally installed in areas where the space is restricted, the number of people assisting will be reduced. Up to two representatives of the experts for each side will be authorized. No lawyers will be present. The parties will be allowed to agree on the identity of a neutral third party to attend and facilitate the inspections.

[74] Each party will assume the costs of their own experts. The costs of the neutral observer will be borne by the Defendants but will form part of the expert costs to be adjudicated at trial.

[75] As to the overall number of Washers to be examined, the number may appear to be high, however, it was determined after Plaintiffs themselves identified 120 Class Members they wished to have testify for trial (either in court or out of Court).

[76] Unfortunately, Plaintiffs have not contacted the 45 Class Members identified by Defendants in their Amended Application to Inspect. Thus, it is unclear how many of these Class Members still own their Washers and if so, what is the state of their Washer. Defendants cannot be faulted for not considering this information.

[77] The Court will order that Class Counsel confirm to Defendants which of the 45 Class members listed in Tables 1 and 2 attached to the present judgment still own their Washers.

[78] The Court will authorize the inspection of 20 Washers belonging to Class Members in the Proposed Class Trial Witness list (Table 1) and five Class Members to be selected within the names listed in Table 2.

[79] Twenty-five inspections is a relatively low number when one considers that the parties estimate that the Class contains approximately 60,000 customers.

[80] Additional inspections may be allowed when the Court rules on Plaintiffs' application to determine how many Class Members will be allowed to testify at trial (in or out of court).

## **2. Disqualification**

[81] On September 5, 2025, Defendants filed an *Amended Case Management Notice and Application for Disqualification* (the "**Application to Disqualify**") in which it seeks essentially three remedies:

- 81.1. A declaration that class counsel cannot use their status as Class Members to contact the Defendants, their employees or their directors;

- 81.2. A declaration that Mtre Léanie Cardinal be disqualified to act in the present proceeding;
- 81.3. An Order forcing Mtre Cardinal to divulge the name and coordinates of the individual(s) who acquired her Washer.

[82] In support of its application, Samsung alleges that it has discovered that two of the Plaintiffs' lawyers were personally involved in the case as Class Members and had personal contacts with Samsung employees to avail themselves of the Recall remedies.

A. Applicable Law

[83] Article 193 of the C.C.P. allows the court to disqualify a lawyer from acting in a proceeding, "as when the lawyer is in a conflict of interest situation and does not take steps to remedy it, has disclosed or is likely to disclose confidential information to another party or a third person, or is called to testify in the proceeding on essential facts". When the disqualification is sought because the lawyer may be called to testify, "the lawyer may only be declared disqualified for serious cause".

[84] A court seized with a motion to disqualify must balance two important but often conflicting values:

- 84.1. The concern to preserve the high standards of the legal profession and the integrity of our judicial system; and
- 84.2. The right of a litigant to retain counsel of his or her choice and not to be unreasonably deprived of such right.<sup>19</sup>

i) *Preserving the High Standards of the Profession and the Integrity of the Judicial System*

[85] On the one hand, compliance with the exacting standards of the profession is essential to maintain public confidence in the integrity of the administration of justice.<sup>20</sup>

[86] Thus, courts must intervene to uphold the lawyer's duty of loyalty to his or her client and to protect the client (or former client) from harm that could result from:

- 86.1. The lawyer's misuse of confidential information obtained from a client; and

<sup>19</sup> *Compagnie de chemins de fer nationaux du Canada c. McKercher LLP*, 2013 SCC 39, para. 22; *R v. Neil*, 2002 SCC 70, para. 19; *Succession MacDonald c. Martin*, [1990] 3 RCS 1235; *Fédération des médecins spécialistes du Québec c. Association des médecins hématologistes-oncologistes du Québec*, [1988] R.J.Q. 2067, p. 2074 (C.A.).

<sup>20</sup> *Compagnie de chemins de fer nationaux du Canada c. McKercher LLP*, *supra*, note 19, para. 12; *Succession MacDonald v. Martin*, *supra*, note 19, pp. 1245 and 1246; *Ville de Montréal c. 3286916 Canada inc. (Excavation Gricon)*, 2022 QCCA 893, para. 15.

86.2. The lawyer’s “muting” of the representation of his or her client in his or her own interests, those of another client, or those of a third party.<sup>21</sup>

[87] Courts may also intervene, if serious grounds justify it, when: a) a lawyer is called to testify in a proceeding; b) his or her testimony is necessary; and c) the evidence cannot be obtained by other means.<sup>22</sup> The purpose of the rule is to preserve the lawyer’s independence and credibility.<sup>23</sup>

[88] Furthermore, the use of the words “as when” (“*notamment*” in the French version) confirms that the potential grounds for disqualification provided for in article 193 C.C.P. are not exhaustive.<sup>24</sup> Admittedly, lawyers must zealously represent their clients’ interests, but as officers of justice, they also have obligations to the court, witnesses, and even other parties.<sup>25</sup> For example, they must maintain their integrity and professional independence<sup>26</sup> and refrain from facilitating illegal or fraudulent conduct on the part of their clients.<sup>27</sup>

[89] Disqualification may therefore be justified when it is necessary to preserve public confidence, or of a party, in the administration of justice, even in the absence of opposition from the client of the lawyer in question. Preserving the integrity and reputation of the administration of justice may, on its own, justify a declaration that a lawyer is unfit to act in a particular matter.<sup>28</sup>

[90] Because the integrity of the system will only be guaranteed if it is seen to be protected, the test must be assessed in terms of the perception of a member of the public who is properly informed of the facts of the case.<sup>29</sup>

<sup>21</sup> *Compagnie de chemins de fer nationaux du Canada c. McKercher LLP*, *supra*, note 19, para. 23; *R. c. Neil*, *supra*, note 19, para. 19; *Code of Professional Conduct of Lawyers*, RLRQ, c. B-1, r. 3.1 (“**Code of Conduct**”), art. 60 to 75 and 83 to 89.

<sup>22</sup> *7983786 Canada inc. c. Syndicat de la Copropriété du sous-bois 3 104 802*, 2016 QCCA 766, paras. 12 and 13; *Berenbaum c. Berenbaum Reichson*, 2014 QCCA 1630, para. 22; *CAE Laprade Trois-Rivières inc. c. Société de location d’avion Symphony inc.*, 2010 QCCA 1506, para. 19; *Lagarde c. Berthiaume (Succession de Lupien)*, 2024 QCCS 978, paras. 43 and 44; *Succession de M.B.*, 2021 QCCS 180, paras. 71 to 73; *G.R. c. Savoie*, 2019 QCCS 1033, para. 21; *Kato c. Association des membres de Fraser’s Landing*, 2018 QCCS 4716, para. 12; *Condax c. Charron*, 2014 QCCS 3297, paras. 55 to 59; *Code of Conduct*, art. 76.

<sup>23</sup> *Fédération des médecins spécialistes du Québec c. Association des médecins hématologistes-oncologistes*, *supra*, note 19, p. 2074; *Hornstein c. Hornstein*, J.E. 2006-284 (C.S.), paras. 15 and 16.

<sup>24</sup> *Dussault c. 9007-5433 Québec inc.*, 2020 QCCA 853, paras. 21 and 22; *Heafey c. Dormani*, 2018 QCCA 421, paras. 30 to 32.

<sup>25</sup> *Castor Holdings Ltd. (Syndic de)*, [1995] R.J.Q. 1665 (C.A.); *Scripta.net.inc c. B.C.E. Emergis inc.*, J.E. 2002-2010 (C.S.), paras. 33 and 34; *Code of Conduct*, art. 111 to 128.

<sup>26</sup> *Code of Conduct*, art. 13.

<sup>27</sup> *Code of Conduct*, art. 14.

<sup>28</sup> *Faure c. Goulet*, 2021 QCCA 308, para. 16; *Dussault c. 9007-5433 Québec inc.*, *préc.*, note 24, paras. 24 to 27; *R. c. Harrison*, 2017 QCCA 263, para. 46; *Dentons Canada, l.l.p. c. Bazinet*, 2016 QCCA 1700, paras. 13 and 14; *Walter c. Ligue de hockey junior majeur du Québec*, 2025 QCCS 670, para. 43.

<sup>29</sup> *Succession MacDonald v. Martin*, *supra*, note 19, p. 1262.

ii) *The Right to Choose Counsel*

[91] Nevertheless, courts have repeatedly recognized the importance of respecting a party's right to be represented by the lawyer of their choice. Only in the presence of "serious and compelling" reasons will a party be deprived of this right.<sup>30</sup>

[92] It is therefore up to the petitioner to demonstrate why disqualification is necessary to preserve the integrity of the judicial system, from the perspective of a reasonably well-informed person.<sup>31</sup> When the grounds for disqualification relate to a specific lawyer (for example, when the disqualification results from the lawyer's dual role as a lawyer and witness), the applicant must also justify any prohibition that would extend to all lawyers of the firm.<sup>32</sup>

[93] The court must be particularly vigilant about a challenge brought by a third party rather than by a lawyer's client. For example, when the lawyer is summoned to appear as a witness by the opposing party, the court must ensure that the motive for disqualification is serious enough not to render the application of the rule unfair or at least premature, considering the overall circumstances.<sup>33</sup> Indeed, the use of a motion to disqualify for strategic purposes or on the basis of speculative allegations is just as likely to undermine public confidence in the administration of justice.<sup>34</sup>

B. Discussion

[94] Defendants allege that upon reviewing the GCIC, they noticed that two lawyers of Class Counsel's firm were part of the Class and had availed themselves of the Recall after communicating with Samsung's representatives.

94.1. Mtre Jean-Philippe Lincourt contacted Samsung regarding issues with a Washer on December 25 and 27, 2018.

<sup>30</sup> *Carrier c. Mayaux*, 2025 QCCA 542, para. 3; *Ville de Montréal c. 3286916 Canada inc. (Excavation Gricon)*, *supra*, note 20, para. 15; *Fédération des médecins spécialistes du Québec c. Association des médecins hématologistes-oncologistes*, *supra*, note 19; *Kazandjian c. Burger King Restaurants of Canada inc.*, 2015 QCCA 646, para. 7; *Ste-Marie c. Prytula*, 2013 QCCA 985, para. 1.

<sup>31</sup> *Ville de Montréal c. 3286916 Canada inc. (Excavation Gricon)*, *supra*, note 20, para. 15; *Baril c. Woods*, 2022 QCCA 277, para. 27 (Leave to appeal to the Supreme Court of Canada denied, no. 40127, 2022 CanLII 78992 (SCC)).

<sup>32</sup> *Dion c. Simard*, 2015 QCCA 1946, paras. 7 and 8; *Ste-Marie c. Prytula*, *supra*, note 30, para. 3; *Donohue inc. c. Barvi Itée*, J.E. 2000-973 (C.A.), para. 18; *Orange de luxe inc. c. Grégoire*, [1994] R.D.J. 479 (C.A.), para. 5.

<sup>33</sup> *Fédération des médecins spécialistes du Québec c. Association des médecins hématologistes-oncologistes*, *supra*, note 19, pp. 2074 and 2075, cited in *Mangadlao c. Sanderson*, 2016 QCCA 587, paras. 29 to 31 and 34 (Leave to appeal to the Supreme Court of Canada dismissed, November 3, 2016, no. 37048); *Hornstein c. Hornstein*, *supra*, note 23, para. 14.

<sup>34</sup> *Onirade inc. c. Bio-Bon inc.*, 2021 QCCA 641 (single judge), paras. 11 and 16; *Ste-Marie c. Prytula*, *supra*, note 30, para. 5; *Conseil de la magistrature du Québec c. Procureur général du Québec*, 2024 QCCS 14, paras. 27; *Delage c. Chadi*, 2022 QCCS 3652, paras. 98 and 99; *Garneau c. Jolin*, 2019 QCCS 420, para. 32; *Robinson c. Weinberg*, J.E. 2002-1498 (C.S.), para. 20.

94.2. Mtre Léanie Cardinal had at least two undisclosed communications with Samsung's customer service on March 10 and 28, 2023 with respect to the Recall Repair.<sup>35</sup> She also received the visit of a Samsung authorized service provider at her residence to apply the Recall Repair.

[95] Samsung alleges that these communications occurred directly with Samsung's customer service during the proceedings, and unbeknownst to Defendants' counsel.

[96] On February 27, 2025, Defendants' counsel sent an email to Mtre Cardinal to request information on her interactions with Samsung.<sup>36</sup>

[97] On February 28, 2025, Mtre Cardinal answers.<sup>37</sup> She explains that when she purchased her condo in 2018, a Washer, covered by the Recall, was included in the sale. She learned that the previous owners had not taken advantage of the Recall. When she decided to sell the condo (with the appliances), she needed to have the Recall Repair completed.<sup>38</sup> She indicated that the actions she undertook were purely personal and had nothing to do with her role as Class Counsel. She stated that she kept no records of her interactions with the Samsung customer service or with the Samsung authorized service provider who carried out the Recall Repair at her residence.

[98] In the same email, Mtre Cardinal informs Defendants' counsel that her colleague, Mtre Jean-Philippe Lincourt, also communicated with Samsung during the proceedings.

[99] On March 6, 2025, Defendants' counsel sent an email to Class Counsel to obtain additional information on Mtre Lincourt's Washer and his interactions with Samsung. Defendants also request that Mtre Cardinal confirm the price she obtained for her Samsung Washer and the date she received payment.<sup>39</sup>

[100] On March 11, 2025, Mtre Lincourt answers.<sup>40</sup> Mtre Lincourt explains that he contacted Samsung's customer service department in December 2018 when his Washer became unusable because it no longer completed its cycles and systematically returned error codes. He states that he took advantage of the Recall Rebate to purchase another washing machine. He confirms that he did not take notes or keep records related to these entirely personal steps. Mtre Lincourt also informs the Defendants that, after investigation, an employee of the firm, owns a washing machine of a model covered by the Recall but that he cannot confirm whether it is part of the Class Action. He provides the serial number of the washing machine. This employee never contacted Samsung and it isn't clear whether their washer was subject to the Recall.

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<sup>35</sup> Exhibit R-1 to the Application to Disqualify.

<sup>36</sup> Exhibit R-2 to the Application to Disqualify.

<sup>37</sup> Exhibit R-3 to the Application to Disqualify.

<sup>38</sup> Section 8 of the *Canada Consumer Product Safety Act* (S.C. 2010, c. 21) prohibits the sale of an item that the seller knows is covered by a recall.

<sup>39</sup> Exhibit R-4 to the Application to Disqualify.

<sup>40</sup> Exhibit R-5 to the Application to Disqualify.

[101] On March 31, 2025, Samsung notifies the Samsung Case Management Notice asking that members of Class Counsel's firm submit to a written examination regarding the personal contacts they have had with Samsung regarding their Washers.

[102] On April 2, 2025, Class Counsel responds with answers to most of the questions asked.<sup>41</sup>

[103] On April 4, 2025, the case management conference referred to above occurred. The Court indicated that it would provide dates for a hearing in the fall as soon as the calendar was available.

[104] The hearing was initially scheduled for September 24, 2025. It was postponed to October 14, 2025, because one of the counsel had a health issue.

[105] On September 5, 2025, Samsung filed its Application to Disqualify in which it asks for three remedies:

- 105.1. A declaration that class counsel cannot use their status as Class Members to contact the Defendants, their employees or their directors;
- 105.2. A declaration that Mtre Léanie Cardinal be disqualified to act in the present proceeding;
- 105.3. An Order forcing Mtre Cardinal to divulge the name and coordinates of the individual(s) who acquired her Washer.

*i) The Prohibition to Contact Samsung*

[106] It is not unusual – nor objectionable - for members of class counsel's team to be part of the class at issue in a given class action. Furthermore, the fact that lawyers act as class counsel does not necessarily prevent them from availing themselves of their rights related to the matters at issue.

[107] The *Code of Conduct* provides that a lawyer must not communicate in a matter with a person whom he knows to be represented by a lawyer, except in the presence or with the consent of that lawyer or unless he is authorized to do so by law.<sup>42</sup> However, this rule generally limits the prohibition to employees with: a) a decision-making role in the company combined with active participation in the events giving rise to the dispute; or b) involvement in legal proceedings or holding a senior position when the legal proceedings took place.<sup>43</sup>

[108] This was not the case here.

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<sup>41</sup> Exhibit R-8 to the Application to Disqualify.

<sup>42</sup> *Code of Conduct*, s. 120.

<sup>43</sup> *Ville de Montréal c. 3286916 Canada inc. (Excavation Gricon)*, *supra*, note 20, paras. 22 to 24; *Churchill Falls (Labrador) Corporation Ltd. c. Hydro-Québec*, 2015 QCCA 782, para. 27.

[109] This being said, in the particular litigious context of the present case, it appears highly imprudent for members of Class Counsel's team in charge of the present Class Action to have had interactions with Samsung's customer service department without advising Defendants' counsel.

[110] Mtre Lincourt joined Class Counsel's firm in October 2018. Mtre Cardinal joined in November 2021. Both have been involved in the present case since they joined the firm.

[111] Mtre Lincourt and Mtre Cardinal both state that they informally advised Defendants' counsel, on several occasions, that they previously owned a Washer. However, neither of them mentions that they advised Defendants' counsel of their contacts with Samsung prior to the spring of 2025.

[112] This should undoubtedly have been done to avoid foreseeable problems.

[113] Mtre Lincourt's interactions took place in December 2018 after the Class Action was authorized and after the Class Action was filed.

[114] Mtre Cardinal's interactions took place in March 2023, in the midst of several out-of-court examinations and objection debates that focussed primarily on interactions between Samsung and its customers, and the type of information recorded in the GCIC.

[115] Nonetheless, while this conduct may have bordered on recklessness, the Court has no reason to doubt that the interactions were instigated for purely personal reasons. Furthermore, the Court accepts Class Counsel's explanation that no information was gathered for the purpose of assisting the conduct of the litigation.

[116] When asked to give details of their interactions, both Mtre Cardinal and Mtre Lincourt were transparent about what had occurred. The information they gave is supported by the GCIC Extracts.

[117] After the hearing, the Court was provided with recordings of two calls involving Mtre Cardinal which were already in Samsung's possession prior to the hearing. The first call was less than five minutes long and focussed on the availability of stickers to be affixed to the Washer after the repair being completed. The second call was initiated by Samsung, was also less than five minutes long and focussed on the timing of the repair by a Samsung authorized technician. The Court gave both parties the chance to file additional written representations on the impact of the recordings.

[118] The recordings support Mtre Cardinal's assertion to the effect that her objective was purely personal and was not conducted as a parallel discovery process.

[119] The Court concludes that it is not necessary to disqualify Mtre Cardinal or Mtre Lincourt to protect the integrity of our judicial system.

[120] Defendants ask that Class Counsel be prohibited to further communicate with Samsung's customer service department regarding the Washers at issue in the Class Action.

[121] Such an order appears superfluous given that neither Mtre Cardinal nor Mtre Lincourt still own Washers.

[122] However, Class Counsel was open to undertake to ensure that members of the team affected to the present Class Action will not contact Samsung regarding the Washers involved in the present Class Action without first advising Defendants' counsel.

[123] The Court will pray act of this undertaking.

*ii) Disqualifying Mtre Cardinal because she will be a Witness at Trial*

[124] Article 193 C.C.P. states that a lawyer may be disqualified if they may be called to testify.

[125] The *Code of Conduct*<sup>44</sup> adds an important *caveat*. A lawyer may continue to act:

- 125.1. if the fact of not acting is of a nature to cause serious prejudice to the client;  
or
- 125.2. if his testimony only refers to:
  - (a) an uncontested matter;
  - (b) a question of form and there is no reason to believe that serious proof will be offered to contradict such testimony; or
  - (c) the nature or value of the professional services rendered by him to the client or, as the case may be, by another professional who engages in his activities within the same firm.

[126] Relevant case law also requires that the testimony be: a) necessary; and b) consist in evidence that is not available through other means.

[127] Based on the above, disqualification is not an appropriate remedy here.

[128] Disqualifying Mtre Cardinal would cause serious prejudice to the Class. Mtre Cardinal has been involved in the case since November 2021. She has extensive knowledge about the matters at issue.

[129] Moreover, her testimony is not required.

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<sup>44</sup> *Code of Conduct*, s. 76.

[130] Defendants submit that Mtre Cardinal's testimony would be essential on the following issues:

- 130.1. The fact that some Class Members were owners, users, resellers and purchasers of Washers;
- 130.2. Class Members had varied and unique experiences with their Washers;
- 130.3. Class Members that resold or continued using their Washer after the Recall Repair were confident enough in the Recall repair to do so;
- 130.4. Class Members were satisfied with their Washers and the Washers were performing to the satisfaction of Class Members who continued using their Washers without issues;
- 130.5. Class Members were able to resell their Washers and, in some instances, the Washers were sold and resold multiple times;
- 130.6. Class Members who resold their Washers were appropriately and adequately compensated;
- 130.7. Class Members who purchased their Washers second-hand did so at an adequate price;
- 130.8. The Recall Repair was adequate;
- 130.9. Class Members, whether they were owners, users, resellers or purchasers of Washers, suffered no damages; and
- 130.10. If so, which is denied, there is no ground for collective recovery.

[131] The Court disagrees.

[132] For one, Mtre Cardinal is probably not the only Class Member who has availed herself of the Recall Repair and subsequently sold her Washer. Let us not forget that Samsung has access to the GCIC which contains 59,754 tickets, each of which relates to an allegation or vibration complaint associated with a Washer in Quebec. These tickets contain the identity and often the precise contact details of the customer for whom the ticket is opened.

[133] More importantly, the answers that Mtre Cardinal provided in Exhibit R-8 are sufficient to support Defendants' arguments in this regard. Examining Mtre Cardinal would yield no further significant information. Credibility is not an issue as the information is confirmed by Defendants' own records and the audio recordings.

[134] Plaintiffs have agreed to consign the responses provided in Exhibit R-8 as an admission for trial purposes. The Court will pray act of this undertaking.

*iii) The Name and Coordinates of the Individuals who Acquired Mtre Cardinal's Washer*

[135] Defendants wish to obtain the name and coordinates of the purchaser of Mtre Cardinal's Washer to assign them as witnesses and have their Washer examined.

[136] This is unnecessary.

[137] The Court has already allowed the inspections of Washers including some belonging to customers not included in Plaintiffs Proposed Trial Witness list.

[138] Examining the purchasers of Mtre Cardinal's Washer is not required.

**3. The Case Protocol**

[139] In its November 2023 Judgment,<sup>45</sup> the Court had indicated that it made sense to set a deadline for Plaintiffs to identify Class Member trial witnesses and to file sworn declarations for some of them in lieu of testimony. The Court noted that the deadline should precede the filing of the declaration of readiness to avoid the presentation of motions after the case has been declared ready.

[140] In its January 2025 Judgment,<sup>46</sup> the Court reiterated that it would be open to allow Plaintiffs to file a sworn declaration regarding some Class Members to avoid multiple Class Members testifying at trial. It proposed that Samsung be allowed to cross-examine these customers and proceed to a limited examination of their Washer (if still available) but these examinations would take place out of Court and would form part of the record.

[141] The Court asked the parties to try and negotiate a case protocol that incorporates all remaining steps prior to the case being ready. It also asked the parties to take into consideration that the Court's limited resources simply did not allow for numerous Class Members to be examined in open court.

[142] That did not work.

[143] A case management hearing took place on April 4, 2025.

[144] The Court noted that "despite a two-hour discussion exploring various possibilities, it became clear that any hope of a potential agreement on creative ways to reduce the duration of an eventual trial was overly optimistic".

[145] The Court decided that it would be best to adjudicate the remaining steps prior to the filing of the declaration of readiness and deal with any issues surrounding the scheduling of the trial after the declaration of readiness is filed.

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<sup>45</sup> November 2023 Judgment, para. 116.

<sup>46</sup> January 2025 Judgment, paras. 127 to 136.

[146] As mentioned above, this decision now appears to have been unwise.

[147] It is now clear that the decisions related to the number of inspections that Defendants should be allowed to conduct and the identity of the Class Members whose Washers should be inspected are intertwined.

[148] The Court has now authorized a first round of inspections.

[149] The balance can be addressed at the same time as Plaintiffs' application for permission to file sworn declarations in lieu of testimony.

[150] Plaintiffs have agreed to file their motion in this regard within 60 days of the present judgment.

[151] At a minimum, this motion will need to include:

- 151.1. The proposed number of Class Members that Plaintiffs wish to have testify at trial;
- 151.2. An estimated time required for the examination in chief of each Class Member witness (aside from the representative Plaintiff);
- 151.3. The proposed number of sworn declarations to be filed in lieu of direct testimony;
- 151.4. A template or an actual example of a sworn declaration of a Class Member that will be filed;
- 151.5. A proposed deadline for the filing of all remaining sworn declarations.

[152] Once the motion is filed, the parties will advise the court if a hearing is required and agree on a schedule for the exchange of written arguments.

[153] In its written arguments, Defendants will indicate how long they need to cross-examine each Class Action Witness (aside from the representative Plaintiff) whether in court or out-of-court.

#### **4. Costs**

[154] Both parties ask that costs be assessed in their favour.

[155] Given that each party was partially successful, the Court orders costs to follow suit.

#### **FOR THESE REASONS, THE COURT:**

[156] **GRANTS** the Amended Application for Access to Real Evidence, Approval of an Inspection Protocol, and Authorization to File Inspection Reports;

[157] **APPROVES** Defendants' Revised Inspection Protocol, Exhibit R-1 (as modified per the transmission to this Court on October 8, 2025) subject to the following adjustments:

- 157.1. No attorneys will be present. The parties may agree on the presence of a neutral third party to attend and facilitate the inspection;
- 157.2. Each party will bear the costs of its experts. The cost of the neutral observer and facilitator will be borne by Defendants. All costs will form part of expert costs that may be awarded by the trial judge;

[158] **ORDERS** Class Counsel to confirm to Defendants which of the 45 Class Members listed in Tables 1 and 2 (attached to the present judgment) still own their Washers within thirty days of the present judgment;

[159] For those Class Members whose names appear in Table 1 or 2 and still own their Washers, **ORDERS** Class Counsel to advise the Class Members to not get rid of their Washers without giving Class Counsel a 30-day prior notice and **ORDERS** Class Counsel, upon receipt of such notice, to immediately advise Defendants' counsel of same;

[160] **ALLOWS** Defendants to conduct an inspection of the Washers of up to 20 Class Members to be selected among the individuals listed in Table 1 and up to five Class Members listed in Table 2;

[161] **DISMISSES** Defendants' Amended Case Management Notice and Application for Disqualification;

[162] **PRAYS ACT** of Class Counsel's undertaking to the effect that members of the team affected to the present Class Action will not contact any of the Defendants' employees or representatives regarding the Washers involved in the present Class Action without first advising Defendants' counsel;

[163] **PRAYS ACT** of Plaintiffs' undertaking to consign the responses provided in Exhibit R-8 as admissions for trial purposes;

[164] **ORDERS** that Plaintiffs file their motion for permission to file sworn declarations in lieu of trial evidence within 60 days of the present judgment which motion will, at a minimum, include:

- 164.1. The proposed number of Class Members that Plaintiffs wish to have testify at trial;
- 164.2. An estimated time required for the examination in chief of each Class Member witness (aside from the representative Plaintiff);
- 164.3. The proposed number of sworn declarations to be filed in lieu of direct testimony;

164.4. A template or an actual example of a sworn declaration of a Class Member that will be filed;

164.5. A proposed deadline for the filing of all remaining sworn declarations.

[165] **ASKS** that, once the motion is filed, the Parties advise the court if a hearing is required and agree on a schedule for the exchange of written arguments;

[166] **ORDERS** that, in its written arguments, Defendants indicate how long they need to cross-examine each Class Action Witness (aside from the representative Plaintiff) whether in court or out of court;

[167] **ORDERS** that the inspections allowed above (paragraph [159]) may take place after the Court has ruled on Plaintiffs' motion to file sworn declarations in lieu of direct testimony;

[168] **THE WHOLE** with costs to follow suit.

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MARTIN F. SHEEHAN, J.S.C.

Mtre Maxime Nasr  
Mtre Jean-Philippe Lincourt  
Mtre Léanie Cardinal  
**BELLEAU LAPOINTE, S.E.N.C.R.L.**  
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Mtre Joséane Chrétien  
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**McMILLAN S.E.N.C.R.L., S.R.L.**  
Counsel for the Defendants

Hearing date:     October 14, 2025  
                          Additional representations received October 24, 2025

<b>Table 1 – Proposed Class Trial Witness list</b>	
Chantal Martel	Francine Côté
Victor Fournier	Daniel Boyer
Maxime Arsenault	Lise Paré
Linda Harvey	Geneviève L'Allier
Caroline Morin	Andrée Bourbonnais
Marie-Josée Rancourt	Claude Landry
Josée Bouchard	Maxime Daigneault
Josée Labrie	Brigitte Boucher
Corinne Bruley	Sarah Allard
Éric Oliver	Nadine Brillant
Stéphanie Comeau	Isabelle Potvin
Lyne Bélanger	Claudia Charland
Caroline Nadeau	Sébastien Maltais
Dyane Laramée	Marie-Pierre Guertin
Jacqueline Philippe	Nadia Rousseau
Manon Auger	Gabriel Castonguay
Angèle Laflamme-Archambault	Christian Clément
Maryse Bonsaint	

<b>Table 2 – Class Members not Retained as Proposed Class Trial Witnesses</b>	
Judith Paquin	Sylvie Dauphinais
Cynthia Therrien	Francine Patry
Lucie Vervaet	Dominique Bruneau-Collette
Guylaine Beaudoin	Suzel Perron
Micheline Vincent et André Arseneault	Steve Felszegi