File number: 41029

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

BETWEEN:

JULIE TANNY

APPLICANT
(Appellant**)**

AND:

UNITED STATES ATTORNEY GENERAL

RESPONDENT
(Defendant**)**

- and -

ROYAL VICTORIA HOSPITAL
MCGILL UNIVERSITY
ATTORNEY GENERAL OF CANADA

IMPLEADED PARTIES
(Impleaded Parties)

APPLICATION FOR LEAVE TO APPEAL
*(*Article 40 of the *Supreme Court Act*, RSC 1985, c S-26 and Rule 25 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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TABLE OF CONTENTS

APPLICANT'S MEMORANDUM OF ARGUMENT

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Not only does the present case involve issues of national interest, but it also engages Canada's international interest in terms of Canada's place within the international community.

2. The present case runs in the opposite direction of the almost exact same case that was decided by the U.S. Supreme Court in 2004. It is paradoxical that here, the U.S. government is advancing the same arguments that were rejected by its own Supreme Court, and expecting a different result in Canada. If the situation was reversed and the Canadian government had injured American citizens on U.S. soil, there is no question that the U.S. courts would exercise jurisdiction. There is no reason why the same result should not occur in Canada. Does America protect its citizens better than Canada protects theirs? That would be an outrageous result.

3. The U.S. Supreme Court in *Republic of Austria* v. *Altmann*, 541 U.S. 677 (2004) [*Altmann*] (a lawsuit made famous by the Hollywood movie "Woman in Gold") was called upon to decide whether the *Foreign Sovereign Immunities Act, 1976*, 28 U.S.C. 97 (FSIA) applied to conduct that took place prior to its enactment. In that case – like the present – the defendant moved to dismiss based on, *inter alia*, the two-part claim that: (1) in 1948, when much of their alleged wrongdoing took place, they would have enjoyed absolute immunity from suit in U.S. courts, and that (2) nothing in the FSIA retroactively divests them of that immunity. In a 6-3 decision, it was decided that the FSIA applies to all cases arising from conduct occurring before 1976 (i.e. it is retroactive).

4. In brief, the main issue in *Altmann* was whether Ms. Altmann could sue Austria in the U.S. to recover her uncle's Gustav Klimt painting of her aunt that had been stolen by the Nazis and then appropriated by the government of Austria after World War II. The answer was: yes.

5. Much of the U.S. Supreme Court's reasoning is transposable to this case. For example:

(a) A foreign state has no absolute right to immunity. "Foreign sovereign immunity is a matter of grace and comity rather than a constitutional requirement".[1] This is based on the reasoning of the seminal case, generally viewed as the source of foreign sovereign immunity jurisprudence, *The Schooner Exchange* v. *McFaddon and others*, 11 (7 Cranch) U.S. 116 (1812),

[1] *Republic of Austria* v. *Altmann*, 541 U.S. 677 (2004), Opinion of the Court, p. 689 ["*Altmann*"].

which states that the jurisdiction of a country over persons and property within its territory "is susceptible of no limitation not imposed by itself", and thus foreign sovereigns have no ***right*** to immunity in our courts; however, ***as a matter of comity***, members of the international community have implicitly agreed to waive the exercise of jurisdiction over other sovereigns in certain classes of cases, such as those involving foreign ministers or the person of the sovereign.[2] Consequently, while a foreign state prior to 1976 may have had a "justifiable expectation that, as a matter of comity, United States courts would grant them immunity … they had no right to such immunity".[3]

(b) The FSIA defies a characterization of procedural rights versus substantive rights. The FSIA "defies" the simple "categorization" of "whether the Act affects substantive rights (and thus would be impermissibly retroactive if applied to preenactment conduct) or addresses only matters of procedure (and thus may be applied to all pending cases regardless of when the underlying conduct occurred)."[4]

(c) State Immunity is not based on acting in reliance, like in private matters. The presumption against retroactive application of statutes "while not strictly confined to cases involving private rights, is most helpful in that context. ("[T]he great majority of our decisions relying upon the antiretroactivity presumption have involved intervening statutes burdening private parties"). The aim of the presumption is to avoid unnecessary *post hoc* changes to legal rules on which parties relied in shaping their primary conduct. But the principal purpose of foreign sovereign immunity has never been to permit foreign states and their instrumentalities to shape their conduct in reliance on the promise of future immunity from suit in United States courts. Rather, such immunity reflects current political realities and relationships, and aims to give foreign states and their instrumentalities some present "protection from the inconvenience of suit as a gesture of comity."[5]

(d) Previous caselaw held that present tense use of the word "IS" means that some parts of the FSIA apply at the time that suit is brought and not when the conduct occurred. The U.S. Supreme Court decided that "(M)any of the Act's provisions unquestionably apply to cases arising

[2] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of the Court, p. 688.
[3] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of the Court, pp. 694-695.
[4] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of the Court, Page p. 694.
[5] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of the Court, p. 696; see also Opinion of Breyer, J & Souter, J., Concurring, pp. 710-711.

out of conduct that occurred before 1976. In *Dole Food Co.* v. *Patrickson*, 538 U. S. 468 (2003),[6] for example, we held that whether an entity qualifies as an "instrumentality" of a "foreign state" for purposes of the FSIA's grant of immunity depends on the relationship between the entity and the state at the time suit is brought rather than when the conduct occurred."[7]

(e) Sovereign immunity is a jurisdictional defense. A claim of sovereign immunity, "merely raises a jurisdictional defense, the act of state doctrine provides foreign states with a substantive defense on the merits."[8]

(f) Immediate effect should be given to statutes that alter a court's jurisdiction, whether eliminating or expanding jurisdiction. This means that "even when the *effect* of a jurisdiction-restricting statute in a particular case is to "deny a litigant a forum for his claim entirely, or [to] leave him with an alternate forum that will deny relief for some collateral reason." The logical corollary of this last statement is that a jurisdiction-expanding statute should be applied to subsequent cases even if it sometimes has the effect of creating a forum where none existed."[9]

(g) The FSIA affects substantive rights only accidentally, and not as a necessary and intended consequence. "The Foreign Sovereign Immunities Act, and the regime that it replaced, do not by their own force create or modify substantive rights; respondent's substantive claims are based primarily on California law. Federal sovereign-immunity law limits the jurisdiction of federal and state courts to entertain those claims, but not respondent's right to seek redress elsewhere. It is true enough that, as to a claim that no foreign court would entertain, the FSIA can have the accidental effect of rendering enforceable what was previously unenforceable. But unlike a Hughes Aircraft-type statute, which confers or limits "jurisdiction" in every court where the claim might be brought, the FSIA affects substantive rights only accidentally, and not as a necessary and intended consequence of the law. Statutes like the FSIA do not "*spea[k]* ... to the

[6] The U.S. Supreme Court wrote at p. 478: "To be entitled to removal under § 1441(d), the Dead Sea Companies must show that they are entities "a majority of whose shares or other ownership interest **is** owned by a foreign state." § 1603(b)(2). We think the plain text of this provision, because it is expressed in the present tense, requires that instrumentality status be determined at the time suit is filed." In Canada, the comparable provision is s. 2 of the SIA, which states: "In this Act, agency of a foreign state means any legal entity that **is** an organ of the foreign state but that is separate from the foreign state;" This is also expressed in present tense and, while this hasn't been decided by any Canadian Court, it would no doubt lead to the same interpretation.
[7] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of the Court, p. 698.
[8] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of the Court, p. 700.
[9] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of Scalia, J, Concurring, p. 703.

substantive rights of the parties," *Hughes Aircraft*, *supra*, at 951, even if they happen sometimes to affect them."[10]

(h) The FSIA's temporal reach is not limited like similar legislation in the UK and Europe. Comparative law tells us that not incorporating language used elsewhere is intentional. "Several similar statutes and conventions limit their temporal reach by explicitly stating, for example, that the Act does "not apply to proceedings *in respect of matters that occurred before the date of the coming into force of this Act*." State Immunity Act 1978, § 23(3), 10 Halsbury's Statutes 829, 845 (4th ed. 2001 reissue) (U.K.); see also State Immunity Act 1979, § 1(2) (Singapore); Foreign States Immunities Act 1985, § 7(1) (Austl.); European Convention on State Immunity, Art. 35(3). The 1976 Act says nothing explicitly suggesting any such limitation."[11]

(i) State immunity refers to a defendant's status at the time the action is filed, not about conduct. "(t)he legal concept of sovereign immunity, as traditionally applied, is about a defendant's status at the time of suit, not about a defendant's conduct before the suit."[12]

(j) Applying the FSIA to past conduct will not open the floodgates. "(o)ther legal principles, applicable to past conduct, adequately protect any actual past reliance and adequately prevent (in the dissent's words) "open[ing] foreign nations worldwide to vast and potential liability for expropriation claims in regards to conduct that occurred generations ago, including claims that have been the subject of international negotiation and agreement." For one thing, statutes of limitations, personal jurisdiction and venue requirements, and the doctrine of f*orum non conveniens* will limit the number of suits brought in American courts."[13]

6. While the wording of the Canadian *State Immunity Act*, RSC 1985, c S-18 (SIA) and the U.S. *Foreign Sovereign Immunities Act, 1976*, 28 U.S.C. 97 are not identical, each one of the points that U.S. Supreme Court addressed remain relevant. Unfortunately, both the Superior Court of Quebec and the Court of Appeal did not address these principles and did not even cite this important decision in their respective judgments, yet it was submitted to them by the Applicant.

7. It is the Applicant's position that:

[10] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of Scalia, J, Concurring, pp. 703-704.
[11] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of Breyer, J & Souter, J., Concurring, p. 708.
[12] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of Breyer, J & Souter, J., Concurring, pp. 708 & 715.
[13] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of Breyer, J & Souter, J., Concurring, p. 713.

i) The cause of action (vs. the underlying facts) arose or crystallized ***after*** the coming into force of the SIA in 1982. In case of doubt, dismissal of the class action is premature;

ii) The SIA is retrospective based on a comparison of similar international legislation (the U.S., the U.K., and Europe), as well as on its own provisions (i.e. s. 7) and the use of the present tense ("IS"). As such, the SIA applies to the present action, including its exceptions to state immunity found at s. 5 (commercial activity) and s. 6 (territorial tort);

iii) There is no presumption against retroactivity with respect to state immunity as it is procedural, attributive of a status, and jurisdictional. While it may "affect substantive rights only accidentally", this is not the object of the statute. The SIA is "intended as protection for the public rather than as punishment of a prior event";[14]

iv) The funding arrangement between the privately-owned CIA-front organization, the *Society for the Investigation of Human Ecology, Inc.* and Dr. Cameron was a commercial activity. A private player, acting in the private sphere performs commercial acts, where the nature of the activity was commercial (the predominant test), its purpose is looked at to help contextualizes it, and there is a relationship between the litigation and the commercial act. A court should not look at the purpose-behind-the-purpose lest every governmental activity be public. Commercial activity is an exception to state immunity whether under s. 5 of the SIA or under the common law in force prior to the enactment of the SIA;

v) The law at the time of the facts underlying the cause of action was restrictive immunity (as opposed to absolute immunity). Though the mere necessity of performing such a hypothetical analysis, when one of the purposes behind the SIA was consistency, further confirms that the SIA was intended to be retrospective;

vi) Under s. 6 of the SIA, family members are permitted to make a claim as the wording « *dommages corporels* » allows for the recovery of all victim damages, including bodily, moral, material, economic, non-pecuniary and including ricochet victims (indirect victims) once there is a physical breach of personal integrity of the immediate victim in Canada.

B. Statement of Facts

[14] E. A. Driedger, *Statutes: Retroactive Retrospective Reflections*, 1978 CanLIIDocs 18, p. 276.

8. The facts as set out by the Quebec Court of Appeal at para. 6, citing the facts by the Superior Court of Quebec at paras. 3-13 are not in dispute. However, a few facts ought to be emphasized.

9. On January 24, 2019, the Appellant filed an Application to Authorize the Bringing of a Class Action & to Appoint the Applicant as Representative Plaintiff (the "AforA") on behalf of:

> "All persons who underwent depatterning treatment at the Allan Memorial Institute in Montreal, Quebec, between 1948 and 1964 using Donald Ewen Cameron's methods (the "Montreal Experiments") and their successors, assigns, family members, and dependants;"

10. The term "Montreal Experiments" refers to Dr. Cameron's (unscientific) experiments of breaking a person down though "depatterning" and then, theoretically, creating a new personality through "repatterning", the procedure of which included: (i) the administration of various barbiturates (sedative-hypnotics drugs), muscular paralytic and/or psychedelic drugs; (ii) "Psychic driving" (subjection to a repeated audio message on a looped tape to alter behaviour); (iii) massive doses of intensive electroconvulsive therapy ("ECT"); (iv) complete sensory deprivation involving the covering of eyes, ears, and skin and the denial of food, water, and oxygen.[15]

11. Informed consent was never requested or received by the unwitting patients or their families, who were not even aware the supposed "treatment" was brainwashing experimentation. The trauma caused patients to suffer from retrograde, psychogenic or dissociative amnesia for the rest of their lives and to have to relearn basic skills, including bladder and bowel control.[16] In most cases, the patients were permanently brain-damaged and psychologically shattered.[17]

12. The Respondent and Impleaded Parties participated in, knew about, approved and recommended for funding, oversaw, monitored, encouraged, directed, and aided and abetted the inception, the growth, and/or the continuation of the Montreal Experiments in various manners.[18]

13. Referring to the United States specifically, it is alleged that its involvement in the Montreal Experiments took place between 1957-1960, where 3 funding grants were awarded to Cameron. The CIA used the covert cover of a legitimate private organization to enable it to conceal its involvement; funding was arranged through the private corporation called the Society for the Investigation of Human Ecology, Inc. (the "Human Ecology Fund").[19]

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[15] AforA, paras. 2-7.
[16] AforA, paras. 8-10.
[17] AforA, para. 147.
[18] AforA, para. 218.
[19] AforA, para. 25.

14. Internal documents indicate that this funding was part of the CIA's secret mind-control program called "MKULTRA" with the Montreal Experiments being "Sub-Project No. 68". The existence of the Montreal Experiments and the United States' participation therein was kept deliberately clandestine; illicit measures having been taken to destroy all evidence of its involvement. On January 31, 1973, the then-CIA director ordered that all MKULTRA files (including those evidencing the Montreal Experiments) be destroyed, which seriously hampered investigative efforts and made it impossible to determine the full extent of its operations.[20] The only evidence that the U.S. was ever even involved in the Montreal Experiments surfaced in the summer of 1977 when some previously undiscovered financial records were discovered.[21]

15. All investigations into the matter were met with obstacles. From the perspective of a victim of the Montreal Experiments, they would have to be able to self-identify as such (i.e. assuming they had not experienced dissociative amnesia). Second, they would have had to make a request, and successfully gain access to, remaining portions of their decades-old medical records (which, in the unlikely scenario of being provided, were heavily redacted). Third, they would have to relive the trauma. Fourth, they would have to face a lawsuit despite their cognitive shortcomings and other remaining side effects of the Montreal Experiments – all formidable tasks to overcome.[22]

16. On October 26, 2017, a program aired on CBC National News entitled "Compensation for CIA-funded brainwashing experiments paid out to victim's daughter 60 years later."[23] Thereafter, victims for whom the subject of the program brought back vague, forgotten, and/or repressed memories made contact. Over the course of several months, an email chain was formed amongst approximately 20 people, including the Applicant, and they began to notice the similarities in their collective past. On December 15, 2017, CBC released episode 43 of the documentary series, The Fifth Estate, entitled "Brainwashed: The Secret CIA Experiments in Canada".[24] The group began posting on social media to find others who had been affected by the Montreal Experiments. On May 20, 2018, approximately 60-65 victims from across Canada met in Montreal for the first time.

17. On March 24, 2021, the Respondent filed its Application to Dismiss for state immunity. On August 23, 2022, the Honourable Justice Morrison, J.S.C. rendered judgment granting the

[20] AforA, para. 46 and Exhibits R-8 and R-12.
[21] AforA, para. 52.
[22] AforA, para. 152.
[23] Exhibit R-77 [https://youtu.be/Sov_sbVCpr0?si=dg8TdNdv4QnnECWT].
[24] Exhibit R-78 [https://youtu.be/i82trFGtY24?si=dnhiVBGXGF1mOkj8].

Application and dismissing the AforA as against the Respondent ("Judgment in First Instance"). On October 2, 2023, the Honourable Justices Dutil, Hamilton, and Lavallée JJ.A. rendered judgment dismissing the appeal (the "Judgment in Appeal").

PART II – STATEMENT OF THE QUESTIONS IN ISSUE

18. This proposed appeal raises the following questions of law which are of public importance and which have never been considered by the Supreme Court:

(1) When does the cause of action arise when the underlying facts are such that the fault, damages, and causal connection span 60 years?

(2) Does the SIA govern a foreign states' immunity for actions prior to its enactment in 1982 (i.e. is the SIA retroactive, retrospective, or prospective)?

(3) Should Canada grant immunity under s. 5 of the SIA (or the common law) where a foreign state secretly acts through a legitimate private corporation, operating in the private sphere, and enters into business transactions?

(4) Was the law in Canada in the 1960s restrictive or absolute immunity and is it appropriate for a court to perform this exercise?

(5) Are victims of *dommages corporels* on Canadian soil the only persons that can claim damages under s. 6 of the SIA or are immediate family members also protected?

PART III – STATEMENT OF ARGUMENT

ISSUE 1: When does the cause of action arise when the underlying fats are such that the fault, damages, and causal connection span 60 years?

19. If the cause of action arose after July 1982, then the SIA inarguably applies. There is no need to analyze anything further and the Application to Dismiss should have been rejected.

20. It is submitted that the SIA applies to the present case because the "cause of action arose" after July 15, 1982 (the date the SIA came into force), meaning that the fault, damages, and causal connection crystalized in either late 2017 or early 2018 – which is what is alleged in the AforA.

21. The first premise to this argument is that the 3 elements to civil liability: fault, damages, and causal connection – typically occur close in time – but not always. By example, someone hires a contractor to install a gate around their pool and the installation is faulty, though it isn't obvious to the naked eye. Five years later, a child gets through the enclosure and drowns. When

did the cause of action arise? Present day. The fault took place 5 years ago, the damage is now, and presumably there was an ability to link the injury with the faulty gate installation. There are "underlying facts" leading to the "cause of action" that are 5 years old, but that is not when the "cause of action arose" as there is no ability to sue until all 3 elements of civil liability crystalized.

22. This distinction was not made in the Judgment in First Instance. Instead, the Court equated the underlying facts to when the cause of action arose.[25] The Court of Appeal found no error on this issue and stated that the Appellant had conflated discoverability with statutory limitations.[26] With respect, that was an error. It is alleged that the U.S. government's fault took place when it funded the Montreal Experiments from 1957-1960. The damages to the patients were sometimes immediate, other times ongoing. The damages to family members took time to materialize, and continue today. But the causal connection between the fault and the damages didn't take place until the end of 2017 or beginning of 2018. The causal connection materialize earlier for several reasons; some attributable to the U.S. government, some due to the types of injuries suffered and the ensuing psychological effects, and some just because they were not discoverable earlier.

23. A clear relationship exists between prescription/ limitations and a cause of action arising – prescription can't begin to run until the cause of action crystallizes.[27] This is why either the SIA applies and the U.S. government's Motion to Dismiss should be rejected outright or else it is too early to make that determination and their motion should be dismissed, but without prejudice.[28]

24. When jurisdiction is a pure question of law and the facts have no effect on this determination, state immunity should be decided at the earliest opportunity. However, where the issue of when the "cause of action arose" has a factual element or there is any doubt as to this issue, *Schreiber* v. *Canada (Attorney General)*, 2002 SCC 62 is controlling:

> "18 The defence of sovereign immunity can be raised by a defendant state to be determined in a preliminary motion, as a matter for summary judgment or at trial. As noted by Doherty J.A., a number of sovereign immunity cases before the Court of Appeal for Ontario have been determined on a preliminary motion on the premise that the motion judge was obligated to determine the immunity claim on its merits: ... However, even if a defendant state fails in its

[25] *Tanny* c. *Royal Victoria Hospital*, 2022 QCCS 3258, paras. 38, 41, 60, 62, & 68 wherein the Judge uses the wording "(t)he facts giving rise to the cause of action having occurred prior to the SIA coming into force …" or "where the events giving rise to a cause of action precede the SIA".
[26] *Tanny* c. *Procureur général des États-Unis*, 2023 QCCA 1234, paras. 33-34.
[27] *Tracy v. Iran (Information and Security)*, 2017 ONCA 549, paras. 33, 80 & 83.
[28] The U.S. government, having filed their Motion to Dismiss in the record immediately, cannot be said to have submitted to the jurisdiction of a Canadian and can argue state immunity claim at a later stage.

bid to dismiss the action at a preliminary motion, it is not precluded from raising the immunity defence sometime during the trial, as the case develops."

ISSUE 2: Does the SIA govern a foreign states' immunity for actions prior to its enactment in 1982 (i.e. is the SIA retroactive, retrospective, or prospective)?

25. If the SIA is applicable in the present case, the Application to Dismiss must be rejected. The SIA is retrospective for at least 4 reasons. The first is based on comparative international law. The SIA was not created from nothing; *Kuwait Airways Corp.* v. *Iraq*, 2010 SCC 40 states:

> "[14] The *SIA* was based on similar legislation that had been enacted a few years earlier in the United States (the *Foreign Sovereign Immunities Act of 1976*,…) and the United Kingdom (the *State Immunity Act 1978*). Parliament's intention in enacting it was to clarify the law on the immunities to which sovereign states are entitled in Canadian courts, as the courts themselves had wavered between absolute and restrictive theories with respect to this principle."[29]

26. In chronological order, we find the following similar international statutes with the following clear language of non-retrospective wording:

> *European Convention on State Immunity* - Basle, 16.V.1972 – art. 35:
>
> 1. The present Convention shall apply only to proceedings introduced after its entry into force.
>
> 3. Nothing in this Convention shall apply to proceedings arising out of, or judgments based on, acts, omissions or facts prior to the date on which the present Convention is opened for signature.
>
> U.K. *State Immunity Act 1978*, 1978 c. 33 – s. 23(3):
>
> Subject to subsection (4) below, Parts I and II of this Act do not apply to proceedings in respect of matters that occurred before the date of the coming into force of this Act...

27. The Canadian legislature was purposeful in its decision to omit similar clear non-retrospective language. Instead, the SIA follows the U.S. example in the FSIA (1976) – was this happenstance? Justices Breyer and Souter reasoned that not limiting similar states' and conventions' temporal reach was intentional: "First, the literal language of the statute supports Altmann ... The 1976 Act says nothing explicitly suggesting any such limitation".[30]

28. Second, the wording of the SIA itself indicates that it was intended to be retrospective. S. 3 of the SIA provides that a "foreign state *is* immune"; had the legislature intended the immunity to be prospective only, it would have used limiting language such as "a foreign state *shall be* immune". It did not do so. Similarly, ss. 5 and 6 of the SIA also provide the same language, but in the negative: "A foreign state *is not* immune" – if the intent was to create prospective law only, the legislature would have used the words "*shall not be*".

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[29] *Re Canada Labour Code*, 1992 CanLII 54 (SCC), p. 73 makes a similar statement.
[30] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of Breyer, J & Souter, J., Concurring, p. 708.

29. The U.S. Supreme Court case *Dole Food Co.* v. *Patrickson*, 538 U. S. 468 (2003) [cited in *Altmann*], established that the use of the present tense ("is") meant that such "provisions unquestionably apply to cases arising out of conduct that occurred before 1976".[31] The wording in question of the FSIA states: "§1603 (b) An "agency or instrumentality of a foreign state" means any entity—(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest ***is*** owned by a foreign state or political subdivision thereof." This language led the U.S. Supreme Court to write: "We think the plain text of this provision, because it is expressed in the present tense, requires that instrumentality status be determined at the time suit is filed."[32] The same interpretation should be given to the SIA.

30. The wording of s. 7(1) [Maritime Law] and s. 7(2) [Cargo] of SIA illustrate the distinction between "underlying facts" and the "cause of action", if we compare it to s. 6 of the SIA.

Death and property damage 6 A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to (a) any death or personal or bodily injury, or (b) any damage to or loss of property that occurs in Canada.	Maritime law 7 (1) A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to (a) an action *in rem* against a ship owned or operated by the state, or (b) an action *in personam* for enforcing a claim in connection with a ship owned or operated by the state, if, at the time the claim arose or the proceedings were commenced, the ship was being used or was intended for use in a commercial activity.

31. Are we to understand that the Canadian legislature added retroactive or retrospective rights (i.e. more rights) to claims related to maritime law and cargo, but not for the death? The Judgment in First Instance indicates as much.[33] Does the legislator consider cargo to be more important than life? A more conceivable interpretation is that s. 6 of the SIA was meant to be retrospective and s. 7 of the SIA gave less rights, not more. What is missing from s. 7 of the SIA? The words "when the claim arose" (which is the crystallization of fault, damages, and causal connection) are present; the date that the action is filed is present. What is missing are the "facts giving rise to the cause of action", meaning, the "underlying facts".

[31] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of the Court, p. 698.
[32] *Dole Food Co.* v. *Patrickson*, 538 U. S. 468 (2003), p. 478.
[33] *Tanny* c. *Royal Victoria Hospital*, 2022 QCCS 3258, paras. 46-47.

32. Third, there is no presumption against retrospectivity in the SIA. The SIA defies categorization (like the U.S. FSIA) – it is procedural, attributive of a status, and jurisdictional.[34] While it may "affect substantive rights only accidentally", this is not the object of the statute. The SIA is "intended as protection for the public rather than as punishment of a prior event". The Supreme Court implicitly appears to agree with this "mixed bag" classification when it stated in *Kuwait Airways Corp.* v. *Iraq*, 2010 SCC 40: "[12] … I will merely observe that the *SIA* is not solely procedural in nature".

33. There is convincing authority that state immunity is procedural. *Kazemi Estate* v. *Islamic Republic of Iran*, 2014 SCC 62 states:

> "[34] Functionally speaking, state immunity is a "procedural bar" which stops domestic courts from exercising jurisdiction over foreign states…
>
> [118]…State immunity is a procedural bar that blocks the exercise of jurisdiction before a hearing can even take place. Therefore, it is irrelevant that a person's substantive claim has not been extinguished. The existence of state immunity means that regardless of an underlying substantive claim and of its merits, no jurisdiction exists in Canada to adjudicate that claim.
>
> [160] Substantive rights are frequently implemented within a framework of procedural limitations. There are numerous examples of substantive rights with procedural limitations in Canada. For instance, Canadians have a right to be free from defamation or libel, but in order to sue in Canada, the plaintiff must prove that there is a real and substantial connection between the alleged tortious action and the forum (*Breeden v. Black*, 2012 SCC 19, [2012] 1 S.C.R. 666). Further, Canadians have a right to be free from assault, but in order to sue for consequential relief, they must bring their claim within a specified period of time.
>
> [161] Similarly, individuals have a right to be free from torture, but state immunity is a procedural bar which prevents an individual from bringing a civil claim against a foreign state. State immunity regulates a state's exercise of jurisdiction over another foreign state, which is a procedural matter. This regulation is distinct from the substantive law which would determine whether the alleged acts of torture were lawful (Germany v. Italy, at para. 93; Fox and Webb, at p. 21)."

34. The case *Jurisdictional Immunities of the State (Germany v. Italy : Greece Intervening), Judgment, I.C.J. Reports 2012, p. 99* states:

> "58. The Parties are thus in broad agreement regarding the validity and importance of State immunity as a part of customary international law. They differ, however, as to whether (as Germany contends) the law to be applied is that which determined the scope and extent of State immunity in 1943-1945, i.e., at the time that the events giving rise to the proceedings in the Italian courts took place, or (as Italy maintains) that which applied at the time the proceedings themselves occurred… The relevant German acts — which are described in paragraph 52 — occurred in 1943-1945, and it is, therefore, the international law of that time which is applicable

[34] It is a "jurisdictional defense" and "jurisdictional-expanding"; *Altmann*, 541 U.S. 677 (2004), *supra* note 1, pp. 700 & 703.

> to them. The relevant Italian acts — the denial of immunity and exercise of jurisdiction by the Italian courts — did not occur until the proceedings in the Italian courts took place… Moreover, as the Court has stated (in the context of the personal immunities accorded by international law to foreign ministers), the law of immunity is essentially procedural in nature (*Arrest Warrant of 1 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 25, para. 60). It regulates the exercise of jurisdiction in respect of particular conduct and is thus entirely distinct from the substantive law which determines whether that conduct is lawful or unlawful. For these reasons, the Court considers that it must examine and apply the law on State immunity as it existed at the time of the Italian proceedings, rather than that which existed in 1943-1945.
>
> …
>
> 93… The rules of State immunity are procedural in character and are confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State. They do not bear upon the question whether or not the conduct in respect of which the proceedings are brought was lawful or unlawful. That is why the application of the contemporary law of State immunity to proceedings concerning events which occurred in 1943-1945 does not infringe the principle that law should not be applied retrospectively to determine matters of legality and responsibility."

35. Just as the "substantive claims are based primarily on California law" in *Altmann*, so too are the substantive claims based on Quebec law at the time of the underlying facts (i.e. art. 1053 of the *Civil Code of Lower Canada*).

36. There is convincing authority that state immunity is attributive of a status:

> "[25] The statute contains no transitional provisions and appears, on its terms, to be applicable in respect of any claim of immunity made after it has come into force. I am, of course, well aware of the presumption against retrospective application of statutes; that presumption, however, normally applies only where a statute attaches new consequences to an event which happened prior to its enactment; it does not apply where the statute attaches consequences to a status or characteristic which may have existed prior to the enactment but which continues to exist afterwards: see, in this respect, Elmer A. Driedger, Construction of Statutes, 2nd ed. (1983), pp. 185 to 203.
>
> [26] Sovereignty is, of course, a status and it is that status alone which can give rise to a claim of immunity. If the status ceases, so does the immunity. By the same token, if the status continues but the immunity is declared no longer to attach, it is gone absolutely and not only with respect to matters subsequently taking place.
>
> [27] Although it is sometimes expressed in jurisdictional terms, sovereignty is not, strictly speaking, a question of jurisdiction in the sense that the court lacks any power to deal with either the subject-matter or the person before it. Jurisdiction can never be acquired by consent, but even the most absolute theory of sovereign immunity admits that it may be waived.[35]
>
> [28] Accordingly, I am inclined to the view that the State Immunity Act should apply to the present case;"[36]

[35] In fact, s. 4 of the SIA deals specifically with how and when a foreign state can waive immunity and submit to the jurisdiction of the court.
[36] *The Ship 'Atra' v. Lorac Transport*, 1986 CanLII 3996 (FCA).

37. We find similar reasoning in *Altmann* "(t)he legal concept of sovereign immunity, as traditionally applied, is about a defendant's status at the time of suit, not about a defendant's conduct before the suit."[37]

38. Fourth, the object of the SIA is not to punish or penalize a foreign state for prior events, but is intended to protect the public; the presumption against retrospectivity does not apply. As the author E.A. Driedger (who is repeatedly quoted in the case law on this subject) states:

> "In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply."
> …
> 3. The presumption does not apply unless the consequences attaching to the prior event are prejudicial ones, namely, a new penalty, disability or duty.
>
> 4. The presumption does not apply if the new prejudicial consequences are intended as protection for the public rather than as punishment for a prior event."[38]

39. The U.S. government does not have a "new" duty not to injure Canadians on Canadian soil. That "duty" was always there. The difference is that as a gesture of grace and comity to an equal sovereign, a Canadian court would respect their status and agree not to exert jurisdiction over them; it also had no right to act in "reliance on the promise of future immunity from suit in" Canada.[39]

ISSUE 3: Should Canada grant immunity under s. 5 of the SIA (or the common law) where a foreign state secretly acts as a legitimate private corporation, operating in the private sphere, and enters into business transactions?

40. The distinction between a sovereign/ public act (*jure imperii*) as opposed to private/ commercial (*jure gestionis*) is relevant if s. 5 of the SIA applies to the present or if the principle of restrictive immunity was the law in the 1960s (assuming the SIA does not apply). This is where the distinction in this case arises; the party that was the author of the prejudice to Class Members (via a secret private entity), was pretending to operate in the private sector when, in reality, it was the CIA. No one knew that at the time and, if the CIA had succeeded in destroying all the records of its involvement, no one would even know today.

41. *Kuwait Airways Corp.* v. *Iraq*, 2010 SCC 40 and *Re Canada Labour Code*, 1992 CanLII 54 (SCC) establish that there are 3 steps to determine whether an act is commercial or private: 1)

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[37] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, Opinion of Breyer, J and Souter, J., Concurring, pp. 708 & 715.
[38] E. A. Driedger, *Statutes: Retroactive Retrospective Reflections*, 1978 CanLIIDocs 18, pp. 275-276.
[39] *Altmann*, 541 U.S. 677 (2004), *supra* note 1, pp. 696 & 710-711.

the "nature" of the activity – the predominant test and the most important element; 2) the "purpose" to help contextualize it; 3) the relationship between the litigation and the commercial act.

> "… By excluding the qualifying language found in the American model, Parliament, it seems to me, must have intended that purpose was to have some place in determining the character of the relevant activity. The utility of "purpose", albeit limited, should not be overlooked in characterizing the activity in question.
> …
> I would draw one simple lesson from the common law and the American experience in applying a statutory restrictive immunity model: the proper approach to characterizing state activity is to view it in its entire context. This approach requires an examination predominantly of the nature of the activity, but its purpose can also be relevant. As at least one Canadian academic has suggested, if a consideration of the purpose of an activity is helpful in determining its nature, Parliament has not excluded the possibility of doing so.
>
> With this lesson in mind, I turn to the specific questions facing us ... Two questions were outlined earlier: first, what is the "nature" of the activity in question…and second, are the proceedings in this case -- a certification application -- "related" to that activity?"[40]

> "[30] Thus, in both U.S. and English law, the characterization of acts for purposes of the application of state immunity is based on an analysis that focusses on their nature. It is therefore not sufficient to ask whether the act in question was the result of a state decision and whether it was performed to protect a state interest or attain a public policy objective. If that were the case, all acts of a state or even of a state-controlled organization would be considered sovereign acts. This would be inconsistent with the restrictive theory of state immunity in contemporary public international law and would have the effect of eviscerating the exceptions applicable to acts of private management, such as the commercial activity exception.
>
> [31] In Canadian law, La Forest J. recommended in *Re Canada Labour Code* that this analytical approach be adopted to resolve the issues related to the application of the *SIA*. But he also made it clear that the Canadian commercial activity exception requires a court to consider the entire context, which includes not only the nature of the act, but also its purpose:
>
> > It seems to me that a contextual approach is the only reasonable basis of applying the doctrine of restrictive immunity. The alternative is to attempt the impossible — an antiseptic distillation of a "once-and-for-all" characterization of the activity in question, entirely divorced from its purpose. It is true that purpose should not predominate, as this approach would convert virtually every act by commercial agents of the state into an act *jure imperii*. However, the converse is also true. Rigid adherence to the "nature" of an act to the exclusion of purpose would render innumerable government activities *jure gestionis*. [p. 73]
>
> …
> [33] For the purposes of this appeal, therefore, the first step is to review the nature of the acts in issue…in their full context, which includes the purpose of the acts. It is not enough to determine whether those acts were authorized or desired by Iraq, or whether they were performed to preserve certain public interests of that state. The nature of the acts must be examined carefully to ensure a proper legal characterization."[41]

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[40] *Re Canada Labour Code*, 1992 CanLII 54 (SCC), pp. 74 & 76.
[41] *Kuwait Airways Corp.* V. *Iraq*, 2010 SCC 40, pp. 588-589.

42. Applying these principles to the present, an apparent private party (the Human Ecology Fund) enters into a financing arrangement with another private party (Dr. Cameron) – the "nature" of the act is two private contracting parties. Exhibit R-6 indicates the following on the Human Ecology Fund's letterhead and signed on March 25, 1957.

> "Dear Dr. Cameron:
> Attached is the first cheque in partial payment of the grant which our Society is making to you. The following conditions apply in the utilization of these funds:
> …
> 6. Any technical reports or papers which grow out of the studies supported under this grant shall contain the following notice: "These studies were supported in part by a grant from the Society for the Investigation of Human Ecology."

43. The "purpose" of the act was psychiatric research on human subjects. Dr. Cameron's Application for Grant dated January 21, 1957 states:

> "1. General Purposes: We are requesting a grant to support studies upon the effects upon human behavior of the repetition of verbal signals."[42]

44. The purpose of the act can also be gleaned from the CIA's internal MKULTRA Briefing Book for Sub-Project No. 68 (the designation of the Montreal Experiments), which states:

> "OBJECTIVE AND DETAILS OF WORK: To study the effect upon human behavior of the repetition of verbal signals. This work resulted from a request to the society for the Investigation of Human Ecology from the Allan Memorial Institute of Psychiatry for a grant: "to study the effects upon human behavior of the repetition of verbal signals"...There is no indication in the file as to whether the patients were witting.
> SIGNIFICANT ASPECTS: Testing of LSD on human beings, and covertly funding research in a Canadian University.
> COVER MECHANISM: Society for the Investigation of Human Ecology
> RESEARCH PARTICIPANT: Dr. D. Ewen Cameron, unwitting"[43]

45. The U.S. government's "purpose-*behind*-the-purpose", can be postulated as to ultimately have a brainwashing/ military purpose – but the caselaw does not allow a court to go that far because, if you look at the purpose-behind-the-purpose of most *any* action by *any* state, it will always lead to some sovereign element – this would render the analysis futile as, every act, by every state could be considered "sovereign" – there is always a state purpose when a state acts.[44] The Courts should only have considered the immediate purpose and not considered at the purpose-

[42] Exhibit R-6.
[43] Exhibit R-17.
[44] *Schreiber* v. *Canada (Attorney General)*, 2002 SCC 62, p. 287: "[32] … One of the problems inherent in the purpose test, and carried through in the concept of acts *jure imperii* is the whole notion that a state always acts, in one sense at least, in a sovereign capacity. It cannot act in any other capacity."

behind-the-purpose; in so doing, an error of law was committed.[45]

46. And how does the U.S. government's impugned activity relate to this action? It was this funding (in part) that enabled Dr. Cameron to have the resources to perform, intensify, and continue the Montreal Experiments. Dr. Cameron himself wrote a letter to the Human Ecology Fund acknowledging his "great indebtedness", describing the assistance as "invaluable", and expressing a "considerable sense of indebtedness" for the funding.[46]

47. Today, the CIA is attempting to "have their cake and eat it too". They machinated a private persona to enter into private acts with private people and, when it got caught, it pulled off its disguise and claimed to be a sovereign state all along. For our purposes, it doesn't matter *why* the U.S. government pretended to be a private entity – it did so – and now it must live with the consequences that attach to a private citizen, including the requirement to make reparations when you cause injury to another. As the expression goes: you wanted it, you got it.

ISSUE 4: Was the law in Canada in the 1960s restrictive or absolute immunity and is it even appropriate for a court to perform this exercise?

48. This discussion supports issue 1; that the SIA was intended to apply retrospectively. How can a court today predict what a court may have decided 60 years ago? This analysis of going back in time to have a theoretical debate about what a Quebec court in the 1960s might have done is exactly what the SIA was intended to avoid; *Kuwait Airways Corp.* v. *Iraq*, 2010 SCC 40 states: "[14] … Parliament's intention in enacting it was to clarify the law on the immunities to which sovereign states are entitled in Canadian courts, as the courts themselves had wavered between absolute and restrictive theories with respect to this principle."

49. If a guessing game must be played, it is submitted that a Quebec court in the 1960s would have favoured restrictive immunity, including the commercial activity exception to state immunity.

50. By 1968, the Quebec Court of Appeal had concluded that absolute immunity was already obsolete, and it was high time to apply restrictive immunity[47]:

> "In my opinion it is time our Courts repudiated the theory of absolute sovereign immunity as outdated and inapplicable to today's conditions. This theory may have been workable in the past when. Government acts were more limited in scope. It may have been an apt theory when

[45] *Tanny* c. *Royal Victoria Hospital*, 2022 QCCS 3258, paras. 76-81; *Tanny* c. *Procureur général des États-Unis*, 2023 QCCA 1234, paras. 56-61.
[46] Exhibit R-6.
[47] This case was reversed by the Supreme Court of Canada in 1971, but on different grounds; *Gouvernement de la République Démocratique du Congo v. Venne*, 1971 CanLII 145 (SCC), p. 1003.

> foreign sovereigns were in many cases personal despots. However, today, instead of starting from the principle that every sovereign State enjoys jurisdictional immunity unless the other party can demonstrate some established exception to this rule, I believe we should reverse the process. Sovereign immunity is a derogation from the general rule of jurisdiction. Any attorney seeking immunity from jurisdiction on behalf of a sovereign State should be called upon to show, to the Court's satisfaction, that there is some valid basis for granting such immunity. Mere proof that the party seeking immunity is a sovereign State or any agency thereof and the invocation of the doctrine of absolute sovereign immunity is no longer sufficient. (p. 138)"[48]

51. The next year, in 1969, the Quebec Court of Appeal again stated the law as restrictive immunity in *Penthouse Studios Inc. v. Government of the Sovereign Republic of Venezuela et al.*, 1969 CanLII 905 (QC CA).

52. But even before 1968, the chances of establishing that restrictive immunity governed the day was still pretty high. When reverse-engineering the history, we find that the only time that absolute immunity was firmly espoused was in *Dessaulles v. Republic of Poland*, 1944 CanLII 41 (SCC). But by the time 1962 rolled around, *Flota Maritima Browning de Cuba S.A. v. Republic of Cuba*, 1962 CanLII 71 (SCC)[49] was rendered, and while it was decided on other grounds, Justice Richie writing for the Court gave "some indications that the Supreme Court of Canada might no longer consider the doctrine of sovereign immunity to be absolute".[50] Then in 1971, the Supreme Court when deciding *Gouvernement de la République Démocratique du Congo v. Venne,* 1971 CanLII 145 (SCC), Justice Ritchie made a comment in *obiter* that again showed his doubt about the legitimacy of absolute immunity when he stated "whatever view be taken of the doctrine of sovereign immunity" (p. 1008). Justice Laskin commented further on absolute immunity (p. 1016):

> "I make two observations on this statement. First, it is clear that the absolute doctrine is not today part of the domestic law "de tous les pays civilisés". Second, neither the independence nor the dignity of States, nor international comity require vindication through a doctrine of absolute immunity. Independence as a support for absolute immunity is inconsistent with the absolute territorial jurisdiction of the host State; and dignity, which is a projection of independence or sovereignty, does not impress when regard is had to the submission of States to suit in their own courts."

53. Finally, in *Zodiak International Products Inc. v. Polish People's Republic,* 1977 CanLII 1851 (QC CA), the Quebec Court of Appeal states (p. 659):

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[48] *Venne v. Democratic Republic of the Congo*, 1968 CanLII 764 (QC CA).
[49] Pp. 607-608: "Most States including the United States have now abandoned or are in the process of abandoning the rule of absolute immunity of foreign States with regard to what is usually described as acts of private law nature…That Sovereign States which engage in the sea-carrying trade should be relieved of the obligations to which private shipowners are subject is unjust, if indeed not preposterous."
[50] *Venne v. Democratic Republic of the Congo*, 1968 CanLII 764 (QC CA), pp. 136-137.

> "I accept this caution, but even if we were to disregard the American jurisprudence — and, with respect, I am not convinced that we should — I would still hold that it is open for this Court to reaffirm its belief in the existence, in Canada, of a doctrine of restrictive sovereign immunity.
>
> Nothing, in my view, was said by the Supreme Court of Canada either in Congo or, nine years before, in the *Cuba* case, *Flota Maritima Browning de Cuba S.A. v. SS. "Canadian Conqueror" et al. and Republic of Cuba* [1962] S.C.R. 598, which would rule out, albeit by judicial interpretation, an expansion of the ancient but, by now, quite obsolescent rule."

ISSUE 5: Are victims of *dommages corporels* on Canadian soil the only persons that can claim damages under s. 6 of the SIA or are immediate family members also protected?

54. S. 6 of the SIA (the territorial tort exception) does not distinguish between a state act as *jure gestionis* or *jure imperii* and is based on the type of injury, on Canadian soil.[51]

55. In accordance with the class definition, Class Members consist of immediate victims and their immediate family members. There is no doubt that placing humans in a drug-induced coma for days/weeks/months, whilst repeating a negative triggering message half of a million times with a forced sound system through a helmet, and/or massive unchartered electroshocks to the point that a person forgets how to go to the bathroom or tie their shoes, qualifies as "personal or bodily injury". But what about their family – parents, siblings, children? The question becomes whether they too experienced "personal or bodily injury" as a result and are covered by s. 6 of the SIA.

56. For this analysis, one must look to *Schreiber*, which makes the point that the wording of s. 6 a) of the SIA is consistent with the Quebec civil law term of « *dommage corporel* » or « *préjudice corporel* ».[52] Much of the Supreme Court's interpretation on this point was based on the important classification of damages in Quebec civil law, which provides for damages related to the "nature of the injury itself", which "tends to overlap and, at least in part, to subsume other categories, like moral and material damages". The main case on this point, quoted in *Schreiber*, is the 2001 Quebec Court of Appeal case of *Montréal (Ville de) c. Tarquini,* 2001 CanLII 13065 (QC CA), which sets out the principle that once it is established that a victim has suffered a physical breach of personal integrity – that is the « *dommage corporel* » – all damages for all categories (bodily, moral, material, economic, non-pecuniary) flow from it, including third parties, as long as those damages are still considered direct.

> « [94] L'onde de choc que provoque la nature de la perte initiale, la blessure, est aussi susceptible de rejoindre des tiers, des personnes autres que la victime qui a perdu la jambe. Ses proches

[51] *Schreiber v. Canada (Attorney General)*, 2002 SCC 62, para. 36. Under s. 6 of the SIA, damages may only be claimed for: (a) "death or personal or bodily injury"; or (b) "damage to or loss of property" that occurs in Canada.
[52] Paras. 55, 58-65, & 80.

> peuvent souffrir de voir un être cher diminué, devenant ainsi victimes d'un préjudice extrapatrimonial. Ils peuvent aussi perdre tout ou partie du soutien financier que la victime immédiate leur procurait et subir alors un préjudice patrimonial. En France, comme ici, la doctrine et la jurisprudence parlent de victimes médiates ou par ricochet et de préjudices réfléchis.
> …
> [102] Avec le plus grand respect pour l'opinion de mon collègue Chamberland, je ne vois pas au nom de quel principe de logique il faudrait réserver le qualificatif « corporel » à la seule victime immédiate. En effet, contrairement à la compréhension première qu'on peut en avoir, la victime atteinte dans son intégrité physique n'est pas la seule à subir un préjudice qui réponde à la définition dégagée ci-haut, même si elle est la seule à subir le préjudice moral qui découle de l'existence de la blessure elle-même. »

57. Not only are the Dr. Cameron's "patients" covered by s. 6 of the SIA, their family members that suffered damages of any kind or category as a result of the Montreal Experiments are as well, so long as they are direct. It should also be noted that it was common for patients to return home and treat their families violently, causing them to suffer their own independent « *dommage corporel* ». The Appellant's personal story is explained in the AforA at paras. 271-272:

> "271. Mr. Tanny…started physically abusing the Applicant regularly;
> 272...her efforts only served to escalate the physical abuse into beatings which continued into her 20's."

58. As in *Andrusiak c. Montréal (Ville)*, 2004 CanLII 32989 (QC CA), paras. 45-50, on a motion to dismiss, these allegations are sufficient and it should be left to a judge at trial to determine the existence or not of a « *préjudice corporel* ».

59. With regard to *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, it is submitted that it does not address the question that we are faced with in this case. In that case, Ms. Kazemi was tortured and killed in Iran, so she did not satisfy the "Canadian soil" requirement of art. 6. *Because* of that, the Supreme Court had to ask whether the son, Mr. Hashemi, could satisfy the requirement of s. 6, on his own. It was held that his damages were not sufficient. The part that was left unanswered is – what if Ms. Kazemi's injury did take place in Canada, can Mr. Hashemi's injury, not alone, but as a ricochet victim of his mother's injury satisfy s. 6?

PART IV – SUBMISSIONS IN SUPPORT OF ORDER CONCERNING COSTS

60. The Applicant leave this matter at the discretion of the Court.

PART V – ORDER SOUGHT

61. The Applicant requests an order under subsection 40(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, granting leave to appeal from the Judgment of the Court of Appeal of Quebec of October 2, 2023 and that the Respondent's *Application to Dismiss* be dismissed.

ALL OF WHICH is respectfully submitted this 1st day of December, 2023.

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PART VI – TABLE OF AUTHORITIES

Tab	Legislative Enactments	Paragraph(s)
1	*European Convention on State Immunity* - Basle, 16.V.1972	5(h), 7ii), 26
2	*Foreign Sovereign Immunities Act, 1976*, 28 U.S.C. 97 (United States)	3, 5(b), (d), (g), (h), (j), 6, 25, 27, 29, 32
3	*State Immunity Act 1978*, 1978 c. 33 (United Kingdom)	5(h), 25, 26
4	*State Immunity Act*, RSC 1985, c S-18 (Canada)	6, 7, 18-20, 23, 25, 27-32, 38, 40-41, 48, 54-57

Tab	Case Law and Doctrine	Paragraph(s)
5	*Andrusiak c. Montréal (Ville)*, 2004 CanLII 32989 (QC CA)	58
6	*Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, 2002 ICJ 3 (Feb 3, 2002)	34
7	*Dessaulles v. Republic of Poland*, 1944 CanLII 41 (SCC)	52
8	*Dole Food Co. v. Patrickson*, 538 U. S. 468 (2003)	5(d), 29
9	E. A. Driedger, *Statutes: Retroactive Retrospective Reflections*, 1978 CanLIIDocs 18	7iii), 36, 38
10	*Flota Maritima Browning de Cuba S.A. v. Republic of Cuba*, 1962 CanLII 71 (SCC)	52, 53
11	*Gouvernement de la République Démocratique du Congo v. Venne*, 1971 CanLII 145 (SCC)	52, 53
12	*Jurisdictional Immunities of the State (Germany v. Italy : Greece Intervening), Judgment, I.C.J. Reports 2012, p. 99*	34
13	*Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62	33, 59
14	*Kuwait Airways Corp. v. Iraq*, 2010 SCC 40	25, 32, 41, 48,

15	*Montréal (Ville de) c. Tarquini*, 2001 CanLII 13065 (QC CA)	56
16	*Penthouse Studios Inc. v. Government of the Sovereign Republic of Venezuela et al.*, 1969 CanLII 905 (QC CA)	51
17	*Re Canada Labour Code*, 1992 CanLII 54 (SCC)	25, 41
18	*Republic of Austria v. Altmann*, 541 U.S. 677 (2004)	3, 4, 5, 27, 29, 32, 35, 37, 39,
19	*Schreiber v. Canada (Attorney General)*, 2002 SCC 62	24, 45, 54, 56
20	*The Schooner Exchange v. McFaddon and others*, 11 (7 Cranch) U.S. 116 (1812)	5(a)
21	*The Ship 'Atra' v. Lorac Transport*, 1986 CanLII 3996 (FCA)	36
22	*Tracy v. Iran (Information and Security)*, 2017 ONCA 549	23
23	*Venne v. Democratic Republic of the Congo*, 1968 CanLII 764 (QC CA)	50, 52
24	*Zodiak International Products Inc. v. Polish People's Republic*, 1977 CanLII 1851 (QC CA)	53