SUPERIOR COURT
Class Actions

CANADA
PROVINCE OF QUEBEC
DISTRICT DE MONTREAL

N°: 500-06-001020-193

DATE: May 4, 2022

PRESIDING: THE HONORABLE DONALD BISSON J.S.C. (JB4644)

JON-ERIK DILLON
NICOLE DILLON
Plaintiffs
v.
WAYLAND GROUP CORP.
Defendant

JUDGMENT
(On Motion for Authorization of a Class Action)

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1.1 INTRODUCTION

[1] On September 19, 2019, the Plaintiffs Jon-Erik Dillon and Nicole Dillon issued their motion seeking the Court's authorization to bring a class action against Defendant Wayland Group Corp. (Wayland) on behalf of the following group of investors[1]:

> All Québec residents, other than Excluded Persons, who acquired Wayland's Securities, on or after January 26, 2018 through April 23, 2019, inclusive, and who held some or all of those Securities until after the release of at least one of the Public Corrective Disclosures.

[2] The "Public Corrective Disclosures"[2] are alleged misrepresentation that are stated to have been released on October 1, 2018, November 28, 2018, February 21-22, 2019, and April 23, 2019.

[3] After the alleged final Public Corrective Disclosure, on May 6, 2019, Wayland's securities ceased trading at $0.74 per share on the Canadian Securities Exchange. On August 2, 2019, Wayland's auditor, MNP LLP, resigned, citing vague reasons but referencing the conduct of Benjamin Allan Ward, Wayland's former Chief Executive Officer. On the same day, Wayland announced that Mr. Ward was resigning, effective immediately.

[4] On September 24, 2019, the Plaintiffs served Wayland with a copy of their motion for authorization to institute a class action and to obtain representative status.

[5] The Plaintiffs claim that the proposed class members, who invested in Wayland's securities, suffered monetary damages when the value of their securities dropped as a result of the disclosure of Wayland's misrepresentations.

[6] The Plaintiffs seek the Court's permission to sue Wayland under Article 1457 of the *Civil Code of Québec* ("CCQ"), which is the general civil liability regime in Québec.

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1 Par. 1 of the Amended Application for Authorization to Bring a Class Action dated March 11, 2022.
2 As defined at par. 2(u) of the Amended Motion for Authorization.

The Plaintiffs also raise Art. 1463 CCQ related to the presumed fault of principals for their subordinates.

[7] Instead of filing a response, Wayland entered into bankruptcy proceedings under the *Companies' Creditors Arrangement Act*[3] on December 2, 2019 (the "CCAA Proceeding"), before the Ontario Superior Court of Justice (Commercial List). As a result, the motion for authorization of Plaintiffs was stayed. However, the CCAA Proceeding concluded on February 22, 2022 and the stay of proceedings that previously applied no longer does apply.

[8] Wayland is currently in essence non-existent. In addition, whether prior to the stay under the CCAA Proceedings, during the stay or subsequent to the lifting of the stay, no counsel has formally appeared to represent Wayland.[4] As a result, the Court finds that Wayland is in default and Plaintiffs have proceeded by default against it.

[9] For the reasons that follow, the Court finds that the authorization to bring a class action should be granted.

1.2 ALLEGATIONS IN SUPPORT OF THE PROPOSED CLAIM

[10] The Plaintiffs filed their Motion for Authorization to Institute a Class Action on September 19, 2019, initially claiming a violation of the Quebec *Securities Act*[5] ("QSA"). The Motion was later modified on March 11, 2022, after the lifting of the CCAA stay, in order to allege only a violation of the CCQ (the "Amended Application for Authorization"). The Court is of the opinion that all proposed modifications meet the criteria of Art. 206 of the *Code of Civil Procedure* ("CCP") and therefore authorizes them.

[11] Plaintiffs notified their Amended Application for Authorization on Osler, Hoskin & Harcourt LLP's offices in Montreal and Toronto, and filed Affidavits of Notification for both of these Notifications in the court record. No response was subsequently filed by Defendant.

[12] The relevant allegations of facts are at paragraphs 3 to 46 of the Amended Application for Authorization.

[13] Wayland is a federal licensed producer and distributor of cannabis with production facilities in Canada and in Europe. During and prior to the Class Period, defined as January 26, 2018 to April 23, 2019, Wayland listed its common shares on the Canadian Securities Exchange and on the Frankfurt Stock Exchange.

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3 R.S.C. 1985, c. C-36.

4 Class counsel indicated to the Court that, despite without any formal response having been filed, the law firm Osler, Hoskin & Harcourt LLP in both Montreal and Toronto gave them the impression it was acting on behalf of Wayland. But it was not finally.

5 RLRQ, c. V-1.1.

[14] The Plaintiffs argue that throughout the Class Period, Wayland released documents containing misrepresentations (comprising both false statements of material fact and omissions of material fact rendering the disclosure misleading), regarding its business, finances and operations.

[15] They further allege the Vicarious Liability of Wayland for the acts and omissions of its officers, directors, and employees and any other coventurers in their capacity as "subordinates" during the Class Period. Plaintiffs refer to Art. 1463 CCQ.

[16] The Plaintiffs conclude that as a result of the Public Corrective Disclosures, the value of Wayland securities dropped significantly (approximately 80% during the Class Period). They note that by the tenth trading day following the release of the final Public Corrective Disclosure, trading in Wayland's securities had been halted on May 7, 2019, by Order of the Ontario and British Columbia Securities Commissions as well as being in default of the Canadian Securities Exchange Policy 3. As of May 6, 2019, Wayland's shares listed on the Canadian Securities Exchange halted at $0.74.

[17] The trading of Wayland's securities never resumed and, as a result, all investors were forced to hold their securities until October 9, 2020, when Wayland's securities were delisted from the Canadian Securities Exchange.

1.3 ANALYSIS

1.3.1 The Test for Authorization to Bring a Class Action under the *CCP*

[18] Before a person can be authorized to bring a class action on behalf an entire group and be appointed as the class's representative, that person bears the burden of demonstrating that the four conditions set out in Article 575 CCP are met:

> **575.** The court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that
>
> a) the claims of the members of the class raise identical, similar or related issues of law or fact;
>
> b) the facts alleged appear to justify the conclusions sought;
>
> c) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and
>
> d) the class member appointed as representative plaintiff is in a position to properly represent the class members.

[19] As repeatedly outlined in the case law, the authorization stage of a class action is merely a procedural filtering process and the role of the motion judge is limited at this stage[6]:

- The judge's function at the authorization stage is only one of filtering out untenable claims;

- The law does not impose an onerous burden on the person seeking authorization. He or she need only establish a 'prima facie case' or an 'arguable case';

- A motion judge must not deal with the merits of the case, as they are to be considered only after the motion for authorization is granted.

[20] The Court will address each of the criteria of Article 575 CCP in turn, starting with the second criterion since it seems logical to address the three other criteria once the Court has determined the nature of the causes of action which could move forward.

1.3.2 Whether the Facts Alleged Appear to Justify the Conclusions Sought (Article 575(2) CCP)

[21] It is well established that in applying this criterion, the Court must take as true the allegations of the Application for Authorization, provided that they are accompanied by ***some*** evidence to form an arguable case. Vague, general or imprecise assertions should not be taken as true and mere assertions without any foundation insufficient. Nevertheless, any review of evidence pertaining to issues on the merits should be left for trial.[4]

[22] An Applicant is not required to prove that his claim will likely be successful. He is only required to present an arguable case, and even if, ultimately, the action may be dismissed on the merits, the class action should be allowed to proceed.

1.3.3 Jurisdiction of the Québec Courts

1.3.3.1 Whether the Québec Courts appear to have jurisdiction to hear the present matter

[23] The Québec courts will have jurisdiction to hear the present matter if any one of the criteria of Article 3148 *CCQ* is satisfied:

> **3148.** In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:
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> [...]

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6 *Sibiga* v. *Fido Solutions inc.*, 2016 QCCA 1299, par. 34; *Infineon Technologies AG* v. *Option consommateurs*, 2013 SCC 59; *Vivendi Canada Inc.* v. *Dell'Aniello*, 2014 SCC 1.

> 3. a fault was committed in Québec, injury was suffered in Québec, an injurious act or omission occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;
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> [Emphasis by the Court]

[24] The only relevant criterion in the present matter is the one provided at Article 3148 (3) CCQ. As long as it appears that "a fault was committed in Québec", **or** that an "injury was suffered in Québec", the Québec courts have jurisdiction over the matter.

[25] Here, the Plaintiffs allege that they held their shares in accounts in Québec and as such suffered their financial losses in Québec, and that Wayland had a continuous disclosure obligation as an "Issuer" in Quebec[7] which it breached in Québec with the release of core documents on the System for Electronic Document Analysis and Retrieval ("SEDAR") such that "a fault was committed in Québec".

[26] The Court finds that, at the authorization stage, taking the facts alleged as true, this is enough. The Québec courts have therefore jurisdiction to hear the proposed class action on both of these grounds.

1.3.3.2 Whether a fault was committed in Québec

[27] This action is brought pursuant to Article 1457 CCQ. Wayland's duties to its shareholders as an Issuer in Québec and a "Reporting Issuer" in Ontario and elsewhere in Canada, and its breaches of those duties, are informed by its continuous disclosure obligations in Québec and throughout Canada as a company whose shares were outstanding and traded on the TSX.

[28] Reporting Issuers must select one province as their primary regulator, and then rely on the vast similarities between each province's *Securities Act* (each being an "Equivalent Securities Act") to achieve compliance across Canada with each province's continuous disclosure regime.

[29] Wayland's primary regulator during the Class Period was Ontario, which means that Wayland was required to comply with Part XVIII of the *Ontario Securities Act*. The equivalent in Quebec is Title III of the QSA.

[30] Wayland was not a Reporting Issuer in Quebec during the Class Period but was an Issuer (i.e., it had securities outstanding) (see section 5 QSA). Section 74 of the QSA states that "An issuer that is not a reporting issuer [in Québec; like Wayland] shall provide any disclosure prescribed by regulation in accordance with the conditions determined by regulation." The applicable regulation in Québec is *REGULATION 51-102 RESPECTING CONTINUOUS DISCLOSURE OBLIGATIONS*, which is nearly identical to National Instrument 51-102 "Continuous Disclosure Obligations".

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7 See section 74 of the QSA and *Regulation 51-102 Respecting Continuous Disclosure Obligations*.

[31] Residents of Québec who purchased Wayland shares did so at least in part in reliance, directly or indirectly, upon the representations from management about the Company and its business, operations and finances as disclosed in its public SEDAR filings.

[32] The Plaintiffs allege that Wayland made misrepresentations of material fact in the core documents it publicly filed on SEDAR. These misrepresentations included faulty representations of material fact and faulty omissions of material fact which rendered the disclosure misleading.

[33] The Plaintiffs allege that Wayland's representations about its business, operations and finances were faulty in that, *inter alia*, it represented that:

> 1) Phase One of Wayland's Langton Facility expansion was fully funded when it was not (in its March 28, 2018 Prospectus), and then did not correct this representation in future disclosures leading up to additional funds being raised for the same thing (as stated in its October 1, 2018 Prospectus);
>
> 2) Phase One of the Langton Facility was on budget and on time for completion by firstly "end of Q2 2018", then "end of Q4 2018", and later "by January 30, 2019", when in fact Wayland did not have sufficient books and records to know if it was on budget, and insufficient corporate governance to know if it was on schedule. Ultimately the Langton Facility was liquidated unfinished in the CCAA Proceeding;
>
> 3) Phases Two and Three of the Langton Facility expansion would be completed by end of 2018, resulting in substantial additional production capacity that never came to be and which was unreasonable to promise to investors when those statements were made given the then state of the Langton Facility and Wayland's books and records to account for same; and
>
> 4) How the proceeds from the Company's public offerings would be used when it did not have sufficient internal controls to account for those funds, resulting in its failure to file financial statements when required, resulting in its shares being halted by the OSC at $0.74 per share and never resuming trading.

[34] The continuous disclosure regime in Quebec (s.73 of the QSA) and Ontario (s.75 of the *Ontario Securities Act*[8]) also requires Reporting Issuers to disclose "Material Changes" (as distinct from "Material Facts") within ten days of the date on which the change occurred. This is a higher threshold not alleged in this case. The Plaintiffs in this case do not allege that Wayland failed to report Material Changes as required, but rather only that the core documents it did file contained misrepresentations of Material Fact. Given the obligation is of result, Wayland's liability is strict.

[35] Therefore, at this stage, the Court concludes that it is clear that a fault was committed in Québec pursuant to Article 3148 (3) CCQ. This is alone sufficient to establish

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8 R.S.O. 1990, c. S.5.

the Court's jurisdiction at this stage, not only with respect to the Plaintiffs, but also the whole class as defined.

1.3.3.3 Whether an injury was suffered in Québec

[36] Based on the teachings of the Court of Appeal in the matter of *Infineon*,[9] properly interpreted in conjunction with *Poppy Industries* and *Spar Aerospace,* the Plaintiffs argue that damages have been suffered in Québec. The Court agrees.

[37] In *Poppy Industries Canada Inc.* v. *Diva Delights Ltd.*, Justice Roy, writing for the Court of Appeal, recalls that where financial damage is merely recorded in Québec, that fact is not sufficient to ground jurisdiction under Article 3148 (3).

[38] However, Justice Roy goes on to explain that Article 3148 sets out a broad basis for jurisdiction. As indicated in *Infineon*, purely economic damage is not *per se* excluded from the scope of Article 3148 *CCQ* and economic damage can serve as a connecting factor, as long as it is suffered in Québec:[10]

> [40] Much has been written on the situs of the injury when the loss is an economic loss: some suggest a broader interpretation of Article 3148 (3) C.C.Q., others prefer a more restrictive approach. In 2013, the Supreme Court of Canada addressed the issue in *Infineon Technologies AG v. Option consommateurs*, in a judgment authorizing a class action. It referred to the distinction between damage suffered in Québec and damage simply recorded in Québec:
>
> [45] Damage suffered in Québec is an independent factor under art. 3148(3): the damage does not need to be tied to the locus of the injury or of the fault, unlike in the case of art. 3168, to give one example. Any one of the four individual factors listed in art. 3148(3) would constitute a sufficient connection with the province to ground jurisdiction [...]. <u>In terms of the type of damage covered by art. 3148(3), there is no principled reason to exclude purely economic damage from its scope</u>. The plain language of art. 3148(3) does not preclude economic damage from serving as a connecting factor, nor is the recovery of a purely economic loss prohibited in Québec civil law [...]. It is clear from the Québec jurisprudence that economic damage can serve as a connecting factor under art. 3148(3) [...].
>
> [46] *Quebecor Printing*, a case the appellants rely on, should not be read so broadly as to systematically exclude a purely economic loss as a type of damage to which art. 3148(3) applies. <u>Rather, that case indicates that where financial damage is merely recorded in Québec, that fact is not sufficient to ground jurisdiction under art. 3148(3). To satisfy the requirement of art. 3148(3), the damage must be *suffered* in Québec</u>. As Kasirer J.A. explained in the judgment of the Court of Appeal in the case at bar, there is a distinction between damage that is substantially suffered in

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[9] *Option Consommateurs* v. *Infineon Technologies, a.g.*, 2011 QCCA 2116, par. 64, conf'd *Infineon Technologies AG* v. *Option consommateurs*, 2013 SCC 59, par. 46.

[10] *Poppy Industries Canada Inc.* v. *Diva Delights Ltd.*, 2018 QCCA 163, par. 40-41.

Québec and damage that is simply recorded in Québec on the basis of the location of the plaintiff's patrimony:

> [*Préjudice*] is to be distinguished from the "*dommage*/damage" that is the subjective consequence of the injury relevant to the measure of reparation needed to make good the loss. As a result, in specifying "damage was suffered in Québec/un préjudice y a été subi" as the relevant connecting factor, article 3148(3) seeks to identify the substantive *situs* of the "bodily, moral or material injury which is the immediate and direct consequence of the debtor's default" (article 1607 C.C.Q.) and not the *situs* of the patrimony in which the consequence of that injury is recorded. [para. 65]

[47] This application of the C.C.Q. is not, as the appellants assert, a novel, or undue, extension of Québec's jurisdiction. Rather, it is based on the language of art. 3148(3) and on the jurisprudence. As this Court stated in *Spar Aerospace*, at para. 58, "[t]here is abundant support for the proposition that art. 3148 sets out a broad basis for jurisdiction."

[41] The legislator replaced the word "damage" with the word "injury" in May 2014, as part of a series of amendments made to ensure terminological uniformity without changing the substance of the text, as allowed by section 3 of the Act respecting the Compilation of Québec Laws and Regulations.

[References omitted] [Emphasis by the Court]

[39] Here, the Court finds that on a *prima facie* basis, there is a disputable argument to be made that the loss alleged to have been incurred by the Plaintiffs was not merely a loss recorded in Québec, but rather an injury that was really suffered in Québec. Based on the facts as pleaded, the Plaintiffs:

a) Reside in Québec;

b) Made their purchase and sell orders for Wayland securities in Québec;

c) Received confirmation of their purchase and sell orders in Québec;

d) Held the securities in Québec; and

e) Suffered monetary loss in Québec.

[40] This is alone sufficient to establish the Court's jurisdiction at this stage, not only with respect to the Plaintiffs, but also the whole class as defined.

1.3.4 Whether The Plaintiffs appear to have a valid cause of action in damages

[41] The Plaintiffs' proposed claim is based on Article 1457 CCQ which reads as follows:

> **1457.** Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.

> Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.

[42] The requisite elements for a claim in damages based on extra-contractual liability under Article 1457 CCQ are the following: (i) that the defendant committed a fault, (ii) that the plaintiff suffered an injury, and (iii) that there is a causal link between the fault and the injury.

[43] The legal syllogism put forward by the Plaintiffs is straightforward. They argue that pursuant to Article 1457 CCQ, Wayland was required to disclose facts that could affect the price of its securities as well as the decision of a reasonable investor to acquire Wayland's securities, or conversely, that Wayland was required not to disclose facts that it knew or ought to have known to be false or constitute misrepresentations. According to the Plaintiffs, the failure to respect these obligations constituted a fault and the loss suffered by the proposed class members results from that fault.

[44] To succeed at trial, the Plaintiffs will need to prove the allegations on the balance of probabilities. At the authorization stage, all that is required to do, however, it is to demonstrate (not prove) that they appear to have a valid cause of action (not that they have). In sum, his burden is merely to demonstrate a *prima facie* or arguable case in light of the alleged facts and the applicable law.[11]

[45] The Court is satisfied that the Plaintiffs have alleged facts with sufficient particularity to support his legal syllogism and the civil liability claim:

> a) With respect to the fault, it is alleged that Wayland committed a fault by making misrepresentations about its business, operations and finances;
>
> b) With respect to injury, it is alleged that the Plaintiffs purchased Wayland securities and suffered damages from the loss of value of those securities once the Public Corrective Disclosures were published; and
>
> c) With respect to the causal link, it is alleged that the injury was caused by Wayland's misrepresentations.

[46] The Court notes that the Plaintiffs are not required to prove reliance under Québec law.

[47] This Court distinguishes causality and reliance. These are two different, though sometimes overlapping concepts. But Art. 1457 CCQ only requires causality.

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[11] *Infineon Technologies AG* v. *Option consommateurs*, 2013 SCC 59, par. 65-67 and 127.

[48] Here, the Plaintiffs claim that the causality element is satisfied in that as a result of Wayland's fault, its stock was artificially inflated during the class period and plummeted after the publication of the Public Corrective Disclosures, thus causing the alleged injury.

[49] At the authorization stage, these allegations appear to justify the conclusions sought.

[50] The possibility that the Plaintiffs only reviewed some of the financial information of Wayland as opposed to the entirety of its annual reports is irrelevant at this stage because the Plaintiffs complain that Wayland made false representations in several of its financial documents. Claiming that the Plaintiffs should have reviewed the annual reports to rely on an absence of disclosure is a *non sequitur*.

[51] In the Annex to the present judgment, the Court has made a summary of the relevant allegations of facts with reference to the relevant exhibits. All these facts are enough to demonstrate a cause of action.

[52] In sum, the Plaintiffs' legal syllogism covers all the requisite elements for a claim in damages under Article 1457 CCQ and is supported by allegations that are accompanied by some evidence to form an arguable case.

[53] With regards to the argument of Vicarious Liability, Art. 1463 CCQ provides that "The principal is bound to make reparation for injury caused by the fault of his subordinates are in the performance of their duties; [...]" The Court agrees with the argument of Plaintiffs that, as broadly drafted and interpreted, the damages resulting from actions or omissions of directors, officers and other employees is to be compensated by the company. In this case, Defendant, Wayland Group Corp., is vicariously liable for the faults, whether they be acts or omissions, causing financial loss to the Plaintiffs and class members. This is sufficient at this stage.

1.3.5 Whether the Claims Raise Identical, Similar or Related Issues of Law or Fact (Article 575(1) *CCP*)

[54] The Court must apply a flexible approach to the assessment of this criterion. The identification of only one common issue is sufficient if that issue allows the resolution of a portion of the dispute which is not insignificant[12].

[55] According to the Court, the question of whether Wayland committed a fault by releasing core documents containing misrepresentations raises common issues of law and fact. That question is far from being insignificant and the answer provided will significantly advance the claim for the benefit of the entire class.

[56] That alone suffices for the criterion of Article 575(1) *CCP* to be met.

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[12] *Sibiga* v. *Fido Solutions inc.*, 2016 QCCA 1299, par. 122; *Infineon Technologies AG* v. *Option des consommateurs*, 2013 SCC 59, par. 60 and 72-73; *Vivendi Canada Inc.* v. *Dell'Aniello*, 2014 SCC 1, par. 41-47, 53, 55 and 57-58.

[57] Although individual queries may arise as to the circumstances surrounding the purchase of securities from each member or the assessment of individual damages, considering the importance of the common issue identified by the Court, the possibility that such individual questions arise is not sufficient to negate the fact that the criterion of Article 575(1) CCP is easily met in this case. Furthermore, without deciding the matter, the Court notes that it is possible that the judge hearing the merits of this case will rely on presumptions and inference to answer these questions.[13]

[58] In their Amended Application for Authorization, the Plaintiffs propose that the following questions of fact and law be dealt with collectively:

a) Are the Class Members entitled to damages and in what amount?

b) Did the Defendant commit a fault, including under Article 1457 *CCQ*?

c) Did the Defendant's fault result in financial losses to Class Members?

d) Did each of the Impugned Statements contain one or more misrepresentations within the meaning of the QSA?

e) Did the Defendant's officers and directors commit a fault when failing to disclose materials facts to the Class Members?

f) Is the Defendant liable to the Class Members under Article 1457 *CCQ*?

g) Is the Defendant vicariously liable for the acts or omissions of its officers and directors?

[59] The Court will authorize these questions because the qualification of the nature of the fault alleged to have been committed by Wayland may be relevant under Article 1457 CCQ. Indeed, even if intent to harm and willingness to cause damages are not required in order to find a civil fault, the distinction between an intentional act and an involuntary act may be of some interest in the assessment of the compensation to be awarded or, in some instances, in the determination of causation.

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[13] *Catucci* v. *Valeant Pharmaceuticals International Inc.*, 2017 QCCS 3870, par. 322-323; *Ménard* v. *Matteo*, 2011 QCCS 4287, par. 51 and 61-69; *Comité syndical national de retraite Bâtirente inc.* v. *Société financière Manuvie*, 2011 QCCS 3446, par. 98-99; *Biondi* v. *Syndicat des cols bleus regroupés de Montréal (SCFP-301)*, 2010 QCCS 4073, par. 131, 136-143, varied on appeal 2013 QCCA 404 although not on the principles.

1.3.6 Whether the Composition of the Class makes it Difficult or Impracticable to Apply the Rules for Mandates or Consolidation of Proceedings (Article 575(3) CCP)

[60] To meet the Article 575(3) CCP requirement, the Plaintiffs must show, at a minimum, that there is a class, and that the class is of a size or nature that makes the procedural alternatives to class procedure difficult or impracticable.

[61] To determine whether the Plaintiffs have met their burden, the Court must generally be provided with some information as to the potential size of the group and its essential characteristics.

[62] The Plaintiffs assert that the criterion of Article 575(3) has been met because there are, with certainty, hundreds or thousands of other Québec residents who purchased Wayland securities or are in a situation similar to that of their own.

[63] The proposed class includes residents of Québec who purchased Wayland securities during the Class Period.

[64] In that context, the Court finds that the allegations of the Amended Application for Authorization are sufficient to satisfy this criterion. In particular, paragraphs 6, 7 and 60 notably allege the following:

> a) In 2018 alone, Wayland raised approximately $135 million issuing new shares to investors;
>
> b) Wayland's securities were publicly traded on worldwide stock exchanges, namely the TSX, CSE and Frankfurt Stock Exchange and the average trading volume when its securities were active included hundreds of thousands of securities daily; and
>
> c) There are thousands of investors located in Québec who are members of the putative Class.

[65] In this instance, it is reasonable to take these facts for granted and infer the existence of a class.[14]

1.3.7 Whether the Representative Plaintiff is Adequate (Article 575(4) CCP)

[66] To satisfy Article 575(4) CCP, the representative plaintiff must establish that he or she is (1) competent, (2) has a sufficient interest in the proposed action, and (3) is not in a conflict of interest with the proposed class members.[15] In *Infineon*, the Supreme Court

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[14] *Lévesque* v. *Vidéotron, s.e.n.c.*, 2015 QCCA 205, par. 27.

[15] *Fortier* v. *Meubles Léon ltée*, 2014 QCCA 195, par. 141.

specifies that "No proposed representative should be excluded unless his or her interest or competence is such that the case could not possibly proceed fairly."[16]

[67] In shareholder misrepresentation class action, the threshold for adequate representation should be considered easily met. The ability of a person to adequately represent the proposed class is assessed liberally and the threshold to satisfy this criterion is low, if not minimalist.[17] A Representative may not be excluded unless his or her interest or competence would make it impossible for the collective action to proceed in an equitable manner.

[68] In this case the Plaintiffs allege that, as proposed Representatives, they are (i) keenly interested in the proceedings; (ii) most certainly competent, and (iii) have indicated no conflicts of interest with any of the class members.

[69] Considering these factors and the absence of contestation and the allegations of the Amended Application for Authorization, the Court agrees that this criterion is satisfied.

1.4 CONCLUSION

[70] In sum, the Court finds that the Plaintiffs have met all the authorization requirements of Article 575 CCP. The Plaintiffs are thus authorized to bring a class action against Wayland.

[71] The Court also decides under Art. 576 CCP that the class action will proceed in the judicial district of Montreal.

[72] The Court also orders that Defendant pay for the costs of the notice to class members[18].

FOR THESE REASONS, THE COURT:

[73] **CONFIRMS** that Defendant is in default;

[74] **AUTHORIZES** the modifications by Plaintiffs to the initial Application for Authorization to Bring a Class Action and **AUTHORIZES** the filing by Plaintiffs of the Amended Application for Authorization to Bring a Class Action dated March 11, 2022;

[75] **GRANTS** the Amended Application for Authorization to Bring a Class Action;

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16 *Infineon Technologies AG* v. *Option consommateurs*, 2013 SCC 59, par. 149.

17 *Infineon Technologies AG* v. *Option consommateurs*, 2013 SCC 59, par. 149-150; *Lévesque* v. *Vidéotron, s.e.n.c.*, 2015 QCCA 205, par. 23.

18 *Conseil pour la protection des malades* c. *Centre intégré de santé et de services sociaux de la Montérégie-Centre*, 2020 QCCS 1663.

[76] **APPOINTS** the Plaintiffs Jon-Erik Dillon and Nicole Dillon, to act as representative of the persons included in the class described as:

> All Québec residents, other than Excluded Persons, who acquired Wayland's Securities, on or after January 26, 2018 through April 23, 2019, inclusive, and who held some or all of those Securities until after the release of at least one of the Public Corrective Disclosures.

[77] **IDENTIFIES** the issues to be dealt with collectively as follows:

a) Are the Class Members entitled to damages and in what amount?

b) Did the Defendant commit a fault, including under Article 1457 CCQ?

c) Did the Defendant's fault result in financial losses to Class Members?

d) Did each of the Impugned Statements contain one or more misrepresentations within the meaning of the Quebec Securities Act?

e) Did Defendant's officers and directors commit a fault when failing to disclose materials facts to the Class Members?

f) Is the Defendant liable to the Class Members under Article 1457 CCQ?

g) Is the Defendant vicariously liable for the acts or omissions of its officers and directors?

[78] **AUTHORIZES** the class action proceedings to seek the following conclusions:

a) **ALLOW** the class action of the Representative Plaintiffs and the members of the Class against the Defendant;

b) **GRANT** the Plaintiffs' action against the Defendants in respect of the rights of action asserted against the Defendant under Article 1457 of the CCQ;

c) **DECLARE** that each of the Impugned Statements released by the Defendant contain misrepresentations because the documents omitted material facts regarding the cost and timing of the expansion of the Langton Facility, misrepresented that the expansion was fully-funded from prior public offerings, misrepresented how proceeds from each public offering conducted during the Class Period would be used, and misrepresented the amount of production the Company would be able to achieve in 2019;

d) **DECLARE** that the misrepresentations were publicly corrected on October 1, 2018, November 28, 2018, February 21-22, 2019 and finally on April 23, 2019;

e) **DECLARE** that Defendant Wayland is vicariously liable for the acts and omissions of its employees, officers and directors;

f) **CONDEMN** the Defendant to pay the Representative Plaintiffs and the Class Members an amount equal to their share price losses incurred during the Class Period, beginning on January 26, 2018 and ending April 23, 2019, said amount presently being estimated at $25.9 million;

g) **ORDER** that the above condemnation be subject to collective recovery;

h) **ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of any collective recovery, with interest and costs;

i) **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

j) **CONDEMN** the Defendant to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders as well as costs, interest, and the additional indemnity from the date the Defendant is served; and

k) **RENDER** any other order that this Honourable Court shall determine.

[79] **ORDERS** the publication of a notice to the class members in accordance with Article 579 of the *Code of Civil Procedure*, pursuant to a further order of the Court approving the content of the notice and the modes of publication, and **ORDERS** Defendant to pay for said publication costs;

[80] **DIRECTS** counsel for the parties to submit to the Court the proposed notice and distribution plan no later than 45 days from the present judgment, or at any other date that may be authorized by the Court, as the case may be, upon request of counsel;

[81] **FIXES** the delay for a class member to opt out of the class at 60 days from the date of the publication of the notice to the members and **DECLARES** that all members of the class who have not requested their exclusion from the class in the prescribed delay will be bound by any judgment to be rendered on the class action to be instituted;

[82] **DECIDES** that under Art. 576 CCP the class action will proceed in the judicial district of Montreal;

[83] **THE WHOLE**, with legal costs against Defendant, including the costs of publication of notice to class members.

DONALD BISSON, J.S.C.

Me Charles O'Brien
LORAX LITIGATION
Attorneys for the Plaintiffs

Defendant, not represented, in default.

Date of hearing: May 3, 2022

ANNEX – Allegations of facts of Plaintiffs

During the proposed class period

[84] During the proposed class period of January 26, 2018 to April 23, 2019 (the Class Period):

a) Wayland was a federally licensed producer and distributor of cannabis with production facilities in Canada and Europe;

b) Its main production facility was located in Langton, Ontario and was undergoing a multi-phase expansion (the Langton Facility);

c) Its shares traded on the Toronto Stock Exchange, Frankfurt Stock Exchange and the United States Over-the-Counter market; and

d) Wayland was a Reporting Issuer in Ontario such that it had a duty to provide continuous disclosure to its shareholders in order to remain publicly traded.

[85] Wayland's alleged misrepresentations during the Class Period related to:

a) How much each phase of the expansion of the Langton Facility would cost and when it would be completed;

b) That the expansion of Phase One of the Langton Facility was fully funded when it was not;

c) How the proceeds from the Company's public offerings would be used; and

d) How much cannabis the Company would produce beginning in 2019 (statements that were not reasonable when made).

[86] The proposed Class Period begins on January 24, 2018, with the release of Wayland's Annual Information Form (AIF) for the year ended December 31, 2016, as well as the CEO and CFO certifications attesting that the 2016 AIF did not contain any misrepresentations (Exhibit P-1). The price for Wayland shares on the TSX at the commencement of the proposed Class Period was $4.11 per share (see Wayland Trade Data at Exhibit P-17).

[87] The proposed Class Period ends on April 23, 2019, when Wayland announced that it was not able to file its 2018 audited annual financial statements and MD&A, causing the price for Wayland shares to close that day at $0.90 per share, and foreshadowed the financial losses and lack of internal controls at the Defendant company and lack of integrity of its founder and former Chief Executive Officer, Benjamin Ward, that would later be revealed by MNP LLP, the Defendant's auditor, resigning, the Ontario Securities

Commission's enforcement proceeding against Benjamin Ward relating to a previous Ponzi scheme, and in the Defendant's underlying CCAA Proceeding.

[88] The price for Wayland shares decreased almost 80% during the proposed Class Period, was halted shortly after the proposed Class Period at $0.74 per share (May 6, 2019), and never resumed trading.

Impugned Statement #1

[89] The first Impugned Statement is Wayland's 2016 AIF dated January 24, 2018. This AIF contained multiple misrepresentations about the expansion of the Langton Facility including that:

> a) Construction of Phase One was on budget and on schedule (Exhibit P-1 at page 9);
>
> b) Phase Two was expected to be completed by the end of 2018 and represented additional production capacity (Exhibit P-1 at page 23); and
>
> c) Phase Three had commenced construction and represented additional production capacity (Exhibit P-1 at page 23).

[90] These statements in Wayland's 2016 AIF were either not true, or not reasonable when made.

Impugned Statement #2

[91] On March 28, 2018, Wayland released a final short form prospectus which represented that:

> a) Phase One of the expansion of the Langton Facility was already fully funded, and management expected the Phase One expansion to be completed during Q2 2018 (Exhibit P-2 at page 15);
>
> b) The vast majority of the net proceeds (approximately $30 million) would be used to fund Phase Two and Phase Three of the expansion, and the remaining $8 million would be used for brand development and corporate marketing initiatives and for working capital and general corporate purposes (Exhibit P-2);
>
> c) Phase Two and Phase Three were targeted for Q4 2018 completion (Exhibit P-2 at page 15); and
>
> d) By Q2 2018, the Company expected annual production capacity to be in excess of 95,000 kg of cannabis per year (Exhibit P-2).

Impugned Statements #3 to #6

[92] On April 27 (2017 annual report; Exhibit P-3), May 29 (Q1 2018; Exhibit P-4), June 29 (2017 AIF; Exhibit P-5) and August 24, 2018 (Q3 2018; Exhibit P-6), Wayland released quarterly reports with CEO and CFO certifications attesting that these core documents did not contain any misrepresentations. These core documents represented that Phase One of the Langton Facility was expected to be completed in Q4 2018 (without explaining why the deadline had been extended from Q2 2018), and did not correct the faulty representation in Wayland's March 28 prospectus that Phase One of the Langton Facility expansion was fully funded when it was not.

Impugned Statement #7 / Partial Public Correction #1

[93] On October 1, 2018, Wayland released another prospectus. This prospectus represented that approximately $15.1 million of the net proceeds would be allocated to the Phase One expansion at the Langton Facility which was now expected to be completed on January 30, 2019, and the first part of the Phase Two expansion was now not expected to be completed until Q3 2019 (Exhibit P-7).

[94] This core document revealed to shareholders that (i) Phase One of the Langton Facility expansion was not fully funded, contrary to the Company's representations in its March 28 prospectus, and that (ii) 2019 cannabis production would not be as much as previously represented. This news sent Wayland's share price down approximately 12.2%.

[95] This core document also contained misrepresentations by omission in that it failed to disclose why (i) Phase One was not completed by the previous deadline of Q4 2018, (ii) Phase One required further investment after being held out as fully funded since March 2018, (iii) Phase Two was now being described as a two-part process, and (iv) the first part of the Phase Two expansion would not be completed until Q3 2019.

Impugned Statement #8

[96] On October 15, 2018, Wayland released a preliminary short form prospectus which, under the heading "Use of Proceeds" represented that Wayland would use roughly $22.5 million of the expected $47.6 million in net proceeds for Phase One of the Langton Facility expansion and that amount was all the remaining cost required to complete Phase One. This prospectus also represented that Phase One of the expansion would be completed on January 30, 2019 and part one of Phase Two would be completed in Q3 2019 (Exhibit P-10).

[97] This document contained misrepresentations because Phase One was in fact still not fully funded, its construction would never be completed, and the promised additional future production would never materialize and, given the financial state of the Company revealed at the end of the Class Period, it was not reasonable in October 2018 to provide its shareholders with the completion dates it did.

Impugned Statement #9 / Partial Public Correction #2

[98] On November 28, 2018, Wayland released its Q3 2018 quarterly report as well as the CEO and CFO certifications that it did not contain any misrepresentations (Exhibit P-9). This core document contained a misrepresentation, and also served as a partial public corrective disclosure, because it revealed that its Phase One and Two expansions no longer had completion dates, and omitted the material facts that Phase One was not fully-funded nor why it was not completed during Q2 2018 (and whether it was going to be completed in Q4 2018 as represented). This news sent Wayland's share price down 8.3%.

Partial Public Correction #3

[99] On February 21 and 22, 2019, Wayland released statements that its directors Michael Stein (who was a member of Wayland's Audit Committee), and Eric Silver (who was a member of Wayland's Corporate Governance Committee), were resigning effective immediately (Exhibit P-9). These news releases served as partial public corrective disclosures because these directors leaving revealed to sophisticated investors that there were material problems with Wayland's books and record and corporate governance. This news sent Wayland's share price down approximately 16%.

Public Corrective Disclosure #4

[100] On April 23, 2019, Wayland released a statement that it would be forced to delay the release of its 2018 annual financial statements and MD&A and, implicitly, its Q1 2019 quarterly report (Exhibit P-12). This disclosure revealed to even unsophisticated investors that there were material problems with Wayland's books and records and corporate governance. This disclosure sent Wayland's share price down approximately 20% to $0.71 per share on May 1, 2019 (6 trading days after the disclosure), and halted at $0.74 per share on May 6, 2019 (9 trading days after the disclosure).

[101] In the statutory cause of action for secondary market misrepresentations, the statutory calculation for damages uses data from the 10 trading days following the final public corrective disclosure.

[102] A copy of Wayland's Trade Data on the TSX during the Class Period is shown as Exhibit P-17.

Events following the Class Period

[103] After the end of the proposed Class Period:

a) On April 30, 2019, Wayland confirmed that its financial statements and MD&A would be further delayed. This sent the price for Wayland shares down approximately 20%;

b) On May 6, 2019, the Ontario Securities Commission ordered that trading in Wayland's shares cease until the Company's failure to file its overdue quarterly reports was remedied. Wayland shares, which closed at $0.74 per share the day before, never resumed trading again;

c) On August 2, 2019, Wayland's auditor (MNP LLP) resigned, citing the conduct of Wayland's former CEO (Ben Ward) as the reason;

d) On September 13, 2019, the Ontario Securities Commission lodged charges of investment fraud against Ben Ward while conducting his duties as the CEO of Canada Cannabis Corporation (which occurred just prior to his involvement at Wayland) reflecting poor character as a CEO;

e) On December 3, 2019, Wayland filed for protection from its creditors under the CCAA, resulting in a stay of proceedings that was extended multiple times before finally expiring on February 22, 2022; and

f) Following the CCAA proceeding, Wayland no longer exists as a Company. The never completed Langton Facility (not even Phase One was completed), was liquidated to pay secured creditors. No distributions were made in the CCAA proceeding to shareholders.

Representatives' Personal Claims pursuant to the Fault provisions of the Québec Civil Code

[104] The Plaintiffs relied upon these faulty statements and omissions, which constitute both a breach of (i) the standard of reasonable behavior by an issuer, and (ii) a breach of the norms governing issuers, which caused their financial losses. The Representatives calculate their losses on the Defendant's shares to be approximately $76,000.

[105] Petitioners submit that aggregate Class Member losses exceed $25 million.

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