

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(“Class Action”)  
SUPERIOR COURT

---

No:

**Dwight Faithful** residing at 400 Elmridge street, Dorval, Quebec, H9S 2Z7 in the Judicial District of Montreal

Applicant

-vs-

**Montreal Airport Authority**, a not-for-profit corporation, with headquarters at 800, place Leigh-Capr  ol, bureau 1000, Dorval, Quebec, H4Y 0A5 in the Judicial District of Montreal

AND

**NAV Canada**, a not-for-profit corporation, having an office at 1750 St Fran  ois Rd, Dorval, Quebec H9P 2P6, in the Judicial District of Montreal

AND

**Air Canada**, having its headquarters at 7373 Boulevard de la C  te-Vertu Ouest, Saint-Laurent, QC H4S 1Z3, in the Judicial District of Montreal

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE  
A CLASS ACTION, TO OBTAIN THE STATUS OF REPRESENTATIVE**

(Article 976 C.C.Q.)  
(Article 1457 C.C.Q.)  
(Article 1465 C.C.Q.)  
(Article 906 C.C.Q.)  
(*Radiation Emitting Devices Act*)

**APPLICANT RESPECTFULLY SUBMITS:**

**JURISDICTION AND VENUE:**

1. The Applicants request that the class action be brought before the Superior Court of the District of Montreal for the following reasons:
  - A. The Montreal-Trudeau International Airport is located on the Island of Montreal in the Judicial district of Montreal;
  - B. The pollution complained of that caused the harm suffered by Applicant and the other class members was carried out in the Province of Québec, and the vast majority of the class members reside in Dorval;
  - C. There exists no better suited forum or district to render justice in the present dispute.

**THE PARTIES:**

2. The Applicant, Dwight Faithful, is a resident of Dorval. He lives less than 2km from the Montreal-Trudeau International Airport (“The Airport”). He wishes to represent the following class:

All Quebec residents, including owners, tenants, and subtenants of immovable property, who, at any time after July 22, 2019, were living both under the flight path of airplanes departing from or arriving at Montreal-Trudeau International Airport and within 6 kilometers of this airport. The flight path will be detailed in Appendix C.
3. Aéroports de Montréal (ADM) is a private, not-for-profit corporation. It controls and authorizes flights to and from The Airport.
4. Air Canada is a major airline operating out of The Airport. It operates a high percentage of flights to and from The Airport: far more than any other airline.

## THE FACTS ALLEGED JUSTIFY THE CONCLUSIONS SOUGHT (575 (2)):

### GENERAL

5. The class members live under the flight path of flights arriving at and departing from the Montreal-Trudeau International Airport.
6. The area affected is residential and ought to be quiet and peaceful.
7. Airplanes, especially larger, heavier jets, can emit sounds roughly between 120 and 150 decibels while taking-off and while landing.<sup>1</sup> When this sound reaches homes near The Airport, it often still reaches or even exceeds 80 db(A).<sup>2</sup> For perspective, 80 db(A) is roughly the volume of an *alarm clock*.<sup>3</sup>
8. The World Health Organization strongly recommends reducing airplane noise to below 45 decibels during the day and to below 40 decibels during the night.<sup>4</sup>
9. Class members are consequently seriously disturbed by airplane noise, in particular during the night.
10. The Defendants control flight departure and arrival times and routinely schedule flights to depart and land during the night despite the disturbance this causes in the neighbourhood.
11. In doing so, ADM, in conjunction with the other Defendants, frequently breaches its own noise abatement policies and relevant Federal regulations.
12. In addition to regular daytime flights, the Defendants, who control flight departure and arrival times, routinely schedule airplanes, including large jets, to depart and arrive between 11pm and 1am and between 6am and 7am. They even, although less frequently, permit flights between 1am and 6am.

---

<sup>1</sup> See <https://decibelpro.app/blog/decibel-chart-of-common-sound-sources/>.

<sup>2</sup> See the table of data included as Appendix A.

<sup>3</sup> See <https://decibelpro.app/blog/decibel-chart-of-common-sound-sources/>, *supra* note 2.

<sup>4</sup> See Exhibit R-3, Environmental Noise Guidelines for the European Region, World Health Organization, 2018, at 61ff.

13. While the number of flights in the night varies, as an example, there were 18 arrivals and 13 departures scheduled between 11pm and 7am on Wednesday, July 20<sup>th</sup> to Thursday, July 21<sup>st</sup>, 2022.<sup>5</sup> While a few of these flights may have been smaller planes, even 15 alarm clocks during the night would be an intolerable disturbance.<sup>6</sup>
14. Class members are naturally disturbed and should not be forced to tolerate noise as loud as an alarm clock during the night.
15. Defendants, in particular Defendant Air Canada, has been fined repeatedly for operating late flights.

#### **HISTORY OF PRIOR ACTIONS**

16. ADM and NAV Canada were named Defendants in another application for authorization filed in 2016 by Les Pollués de Montreal-Trudeau (LPDMT).<sup>7</sup> That action was authorized by Justice Chantal Tremblay in April 2018.<sup>8</sup> A class action has since been instituted by LPDMT on behalf of the following class:
  - A. « Toutes les personnes physiques, âgées de 18 ans et plus au 19 décembre 2014, qui ont résidé, entre le 19 décembre 2014 et le 19 décembre 2016, dans un immeuble situé dans l'une des zones décrites ci-dessous et délimitées par les adresses comprises au tableau révisé communiqué comme pièce R-6... »
17. That action also seeks to hold ADM and Nav Canada accountable for the noise pollution they have inflicted on the surrounding neighbourhood and in particular residents living under the flight path.
18. It was authorized to proceed against Nav Canada, the Attorney General of Canada, and ADM under articles 1457 CCQ and against ADM and the Attorney General of Canada under article 976 CCQ.<sup>9</sup>

---

<sup>5</sup> See the departure and arrival boards of The Airport.

<sup>6</sup> See below for greater precision regarding numbers of flights. It should be noted that the defendants will have the exact details of all departures and arrivals and the types of aircraft used.

<sup>7</sup> See Exhibit R-6 the Application for Authorization.

<sup>8</sup> See Exhibit R-7, the Judgement Authorizing the Class Action as corrected:  
Pollués de Montréal-Trudeau c. Aéroports de Montréal, 2018 QCCS 140.

<sup>9</sup> *Ibid.* "CCQ" is the Civil Code of Quebec.

19. This action differs as:
- A. The classes contain no overlap since they cover different time periods;
  - B. This action argues for liability under article 1465 CCQ in addition to articles 1457 and 976 CCQ.
  - C. The action argues liability pursuant to the prohibitions of the *Radiation Emitting Devices Act R-1*.
  - D. This action seeks an injunction to curtail the noise pollution during sleeping hours.
20. It should be noted that LPDMT also brought a class action for air quality pollution, which was not authorized,<sup>10</sup> and an action (not a class action) in damages and injunctive relief which was dismissed on a preliminary motion for dismissal.<sup>11</sup>

#### **ARTICLE 976 CCQ**

21. Class members are entitled to have annoyances beyond the limits of tolerance curtailed. They are also entitled to damages for the intolerable annoyance they have suffered.
22. Class members have been and continue to be affected by noise which are unreasonable and intolerable in a residential setting. They constitute a nuisance for which the Defendant is liable under article 976 CCQ:
- A. Article 976 CCQ creates a regime of strict liability independent of both civil liability and abuse of rights;<sup>12</sup>

---

<sup>10</sup> See *Pollués de Montréal-Trudeau (LPDMT) c. Aéroports de Montréal (ADM)*, 2021 QCCS 367.

<sup>11</sup> See Exhibit R-9 : *Pollués de Montréal-Trudeau (LPDMT) c. Aéroports de Montréal (ADM)*, 2020 QCCS 2432.

<sup>12</sup> See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64 at paras 72-75 [*Ciment du Saint-Laurent*].

B. No fault needs to be proved; this regime requires only proof that neighbours suffered or suffer “abnormal annoyances that were beyond the limit of tolerance;”<sup>13</sup>

23. The noise pollution is particularly egregious during sleeping hours: after 11pm and before 7am, and, during these hours, certainly surpasses the limits of tolerance.
24. Further aggravating this annoyance is the fact that airplane noise is a particularly troubling type of noise pollution with serious effects, as explained below.<sup>14</sup>
25. Applicants are therefore justified in seeking an injunction to curtail this noise pollution and damages for the loss of enjoyment of property, for stress and health effects, and for disturbed sleep.

### ***Airplane Noise***

26. Health Canada recognizes aircraft noise as “one of the most disturbing sources of noise in our environment.”<sup>15</sup>
27. The World Health Organization strongly recommends reducing airplane noise to below 45 decibels and noise during the night to below 40 decibels. <sup>16</sup>
28. Airplane noise is typically tied to weight with heavier airplanes creating more noise. For this reason, noise abatement policies usually focus on aircraft weighing more than 34,000kg (U.S. regulations use 75,000lb which is ~34,000kg). <sup>17</sup>
29. Class members consequently complain only of the larger airplanes and make no complaint about airplanes weighing less than 34,000kg.

---

<sup>13</sup> Ibid at para 95.

<sup>14</sup> See the sections below on airplane noise and on health effects, see also <https://www.flylakeland.com/aircraft-noise>.

<sup>15</sup> See health canada’s website at <https://www.canada.ca/en/health-canada/services/health-risks-safety/radiation/everyday-things-emit-radiation/health-effects-airplanes-aircraft-noise.html>.

<sup>16</sup> See Exhibit R-3: Environmental Noise Guidelines for the European Region, World Health Organization, 2018, at 61ff.

<sup>17</sup> See H Smith, Innovation in supersonic passenger air travel. See also Exhibit R-5 U.S. Department of Transport - Noise levels for U.S. certified and foreign aircraft.

30. While loudness or amplitude of sound is measured in decibels, certain noises are perceived as louder than others by humans usually because of their frequencies. The db(A) scale is an adjusted decibel scale which accounts for the varied perceptions of different sounds.<sup>18</sup> Db(A) is consequently the most useful measure of sounds, so it is used here exclusively.

### ***Health Effects of Airplane Noise***

31. Noise pollution can cause serious health harm:
- A. “They’ve shown that noise pollution not only drives hearing loss, tinnitus, and hypersensitivity to sound, but can cause or exacerbate cardiovascular disease; type 2 diabetes; sleep disturbances; stress; mental health and cognition problems, including memory impairment and attention deficits; childhood learning delays; and low birth weight.”<sup>19</sup>
  - B. The Environmental Noise Guidelines for the European Region by the World Health Organization, 2018, also recommend limiting airplane noise, particularly during the night, to protect human health.<sup>20</sup>

---

<sup>18</sup> See Colleen F. Moore, *Silent Scourge: Children, Pollution, and Why Scientists Disagree*, Chapter 5, “Noise and Children's Development”, at 158 for a more detailed explanation of db(A):

“Noise is the term for sounds that we do not want to hear. Sounds are alternating compressions and expansions (waves) transmitted through the air, water, or solids. Two characteristics of sound waves are important for understanding this chapter: frequency and amplitude.1 The amplitude or intensity of a sound is measured in decibels, and influences how loud sound seems when we hear it. There are different decibel scales, and the one that is most important in this chapter is dbA. The dbA scale weights the different frequencies of the sound in a way that takes the average sensitivity of human hearing into account. The distinction between amplitude and loudness is important. Amplitude in decibels is the scientist's measure of the physical intensity of the sound, but loudness is our perception of it. Loudness does not increase linearly with sound amplitude. A very important aspect of decibel scales is that they are log (base 10) scales of sound amplitude. In a log scale, each increase of one unit represents a multiplication of the previous unit by 10. In the db scale an increase of 3 units reflects a doubling of the amplitude of the sound, or the amount of energy in the sound.”

<sup>19</sup> See STTEPHANIE DUTCHEN, “THE EFFECTS OF NOISE ON HEALTH, HARVARD MEDICINE MAGAZINE, ALSO INCLUDED AS EXHIBIT R-10.

<sup>20</sup> See See Environmental Noise Guidelines for the European Region, World Health Organization, 2018, for details.

32. Sleep disturbance on its own is a health concern as sleep is vital to human health.<sup>21</sup>
33. Children are especially sensitive according to the attached chapter by Colleen F. Moore which details the health effects noise can have on children.<sup>22</sup>
34. Children also need proper sleep and more sleep than adults for their development,<sup>23</sup> so being sensitive to noise, they are more effected than adults by the airplane traffic.

### ***Legislative Framework and Regulations surrounding The Airport***

35. The Airport falls primarily into Federal jurisdiction. Authority to regulate it thus stems from the *Aeronautics Act* which empowers the *Canadian Aviation Regulations*.
36. The *Canadian Aviation Regulations* say:

#### **Noise Operating Criteria**

**602.105** No person shall operate an aircraft at or in the vicinity of an aerodrome except in accordance with the applicable noise abatement procedures and noise control requirements specified by the Minister in the *Canada Air Pilot* or *Canada Flight Supplement*, including the procedures and requirements relating to

- **(a)** preferential runways;
- **(b)** minimum noise routes;
- **(c)** hours when aircraft operations are prohibited or restricted;
- **(d)** arrival procedures;
- **(e)** departure procedures;
- **(f)** duration of flights;
- **(g)** the prohibition or restriction of training flights;
- **(h)** VFR or visual approaches;
- **(i)** simulated approach procedures; and
- **(j)** the minimum altitude for the operation of aircraft in the vicinity of the aerodrome.<sup>24</sup>

---

<sup>21</sup> See [sleepfoundation.org](http://sleepfoundation.org), which is also referenced in the Health Canada recommendations at <https://www.canada.ca/en/public-health/services/publications/healthy-living/canadian-adults-getting-enough-sleep-infographic.html>.

See also Colleen F. Moore, *Silent Scourge: Children, Pollution, and Why Scientists Disagree*, 2003, Chapter 5, “Noise and Children's Development” [Moore].

<sup>22</sup> Moore, *ibid*.

<sup>23</sup> See the National Sleep Foundation's updated sleep duration recommendations: final report at <https://pubmed.ncbi.nlm.nih.gov/29073398/>.

<sup>24</sup> See the *Canadian Aviation Regulations*, SOR/96-433.



### Noise-restricted Runways

- **602.106 (1)** Subject to subsection (2), no person shall operate a subsonic turbo-jet aeroplane that has a maximum certificated take-off weight of more than 34 000 kg (74,956 pounds) on take-off at a noise-restricted runway set out in column II of an item of the table to this section at an aerodrome set out in column I of that item, unless there is on board
  - **(a)** a certificate of noise compliance issued in respect of the aeroplane under section 507.20; or
  - **(b)** where the aeroplane is not a Canadian aircraft, a foreign certificate of noise compliance issued by the state of registry that has been validated by the Minister under section 507.23.
  - **(c)** [Repealed, SOR/2020-151, s. 14]
- **(2)** Subsection (1) does not apply
  - **(a)** to the extent that it is inconsistent with any obligation assumed by Canada in respect of a foreign state in a treaty, convention or agreement;
  - **(b)** where the pilot-in-command of an aircraft has declared an emergency; or
  - **(c)** where an aircraft is operated on
    - **(i)** an air evacuation operation,
    - **(ii)** any other emergency air operation , or
    - **(iii)** a departure from an aerodrome at which it was required to land because of an emergency.<sup>25</sup>

37. They therefore specify that, on noise restricted runways, aircraft weighing more than 34,000kg must be certified. All runways at The Airport are noise restricted.<sup>26</sup>

38. The *Canadian Aviation Regulations* empower the Canada Air Pilot and Canada Flight Supplement to delineate more specific noise abatement procedures.

39. ADM lists the following noise abatement policies on its website.<sup>27</sup> These are noise abatement policies attached specifically to The Airport, and they include restrictions on take-off and landing directions and on hours:

- A. “For jets weighing more than 45,000 kilograms, normal hours are between 7 a.m. and midnight for take offs and between 7 a.m. and 1 a.m. for landings.”

---

<sup>25</sup> All runways at The Airport are noise restricted. See *ibid* at article 602.106.

<sup>26</sup> *Ibid.*

<sup>27</sup> See the Defendant ADM’s website at

<https://www.admtl.com/en/adm/communities/soundscape/noise-abatement>: a PDF of which is attached as Exhibit R-2.

- B. “ADM grants exceptions to certain aircraft for departures before 7 a.m. and for late arrivals. However, only the quietest aircraft are eligible.”<sup>28</sup>
- C. There are also exceptions for medical emergencies.
40. The noise abatement policies exist to help create a reasonable co-existence between The Airport and its neighbours. They set out standards including a restriction on operating hours: breaching these standards should be considered a strong indication that the Defendants have departed from the rules of conduct incumbent on them and are acting in a manner that is unacceptable.
41. Conversely, abatement policies do not authorize any activity. They are restrictive only and not permissive. Not having contravened these policies is not a defence to creating an unreasonable neighbourhood annoyance nor to having departed from the rules of conduct incumbent on the Defendants. While many flights, which disturb the class members, do not contravene these policies, they nonetheless still create noise pollution that is an unreasonable neighbourhood annoyance and for which the Defendants are liable.<sup>29</sup>
42. By allowing flights during the night, the Defendants breach the noise abatement policies and create exactly the annoyance that these regulations exist to prevent.
43. Since noise abatement policies exist to prevent disruptions to class members and since some exceptional or emergency night-time flights are unavoidable, class members should be warned of flights that have been exceptionally authorized to breach the noise abatement policies, or, if warning is impossible, then they should be informed of the justifications for the late-night flights. The Applicants are therefore justified in suggesting that an accessible and dedicated page of ADM’s website publish this information, including the justification for the exception, in advance of or at the latest within 24h of a night-time flight.
44. A breach of section 602.105 or 602.106 leaves the culprit liable to a maximum fine of \$5,000 for an individual or of \$25,000 for a corporation.<sup>30</sup>

---

<sup>28</sup> *Ibid.*

<sup>29</sup> See *Ciment du St-Laurent*, *supra* note 12 at para 32 ff.

<sup>30</sup> See *Canadian Aviation Regulations, Appendix A, Schedule II, Part 6, subpart 2.*

45. At this stage, class members do not yet have information on the administration of these fines. If they are being applied to airlines or others, as the Defendants will be able to confirm or refute, then airlines are being fined for flying late flights because of the disruptive noise this causes. If so, then those disturbed by this disruptive noise, the class members, should benefit directly from these fines.<sup>31</sup>
46. Class members would then be justified in asking to receive the benefit of fines administered based on contraventions of articles 602.105 and 602.106 of the *Canadian Aviation Regulations* at The Airport.

### **FAULTS OF THE DEFENDANTS WHICH ALSO CREATE INTOLERABLE NEIGHBOURHOOD**

#### **ANNOYANCE**

47. The Defendant consistently begins scheduling departures and arrivals as of 6am.
48. It is also common for there to be numerous flights between 11pm and 1am.
49. There are, consistently, several flights each night between 1am and 6am.
50. These flights are not delayed flights or exceptions but rather are scheduled during these hours and many of them run at the same time each night. Many are regular, scheduled, nightly flights.
51. These flights are not only small craft and are certainly not only “the quietest aircraft”<sup>32</sup> but rather include full sized jets.
52. As an example, the arrivals one night, chosen only because it is recent and so the data is still recorded are included in Appendix A.<sup>33</sup> Note that the wind shifts during the night, so a different recording station gives the highest db(A) values for the flights after 6am.
53. The departures of a night chosen at random will be included as Appendix B.

---

<sup>31</sup> Applicants will add information relating to fines when it becomes available.

<sup>32</sup> This a quote from the ADM website quoted previously and included as Exhibit R-2.

<sup>33</sup> Appendix A

54. As can be seen, flights regularly create noise pollution over 80 db(A) and often over 90 db(A). This data comes from Webtrak which is operated in conjunction with ADM.<sup>34</sup>
55. The Defendants will have exact details of flight departure and arrival times during the period covered by this action, especially of scheduled flight departures and arrivals.
56. These actions run contrary to the noise abatement policies in place.
57. These actions run contrary to the recommendations of the World Health Organization.
58. These actions pollute the surrounding neighbourhood, particularly those living under the flight path, and unreasonably disturb its residents.
59. Scheduling these flights therefore constitutes a fault.
60. The Defendants cannot be unaware of the noise abatement policies in place. Defendant ADM has several of them listed on its website,<sup>35</sup> and Defendant NAV Canada was also included in the above-mentioned prior class action. Defendant Air Canada has been repeatedly fined, the Defendants will have precise numbers of fines, for running late flights and certainly cannot pretend it was unaware that of the policies behind those fines and that it is noise pollution that the noise abatement policies seek to prevent.
61. Despite this, the Defendants, knowing the annoyance they will create, choose to pollute the class members. They choose to run flights during the nights knowing the disruption this causes class members. It is therefore an intentional fault, for they knowingly and deliberately disrupt the sleep of class members. Even if it is not found to be intentional, these actions would constitute gross negligence.
62. Class members are therefore justified in seeking damages under article 1457 CCQ and in seeking an injunction to stop the harm being done to them.
63. These actions also constitute a breach of art. 6 of the *Charter of Human Rights and Freedoms*.<sup>36</sup> The intentional nature of the above-mentioned fault justifies punitive damages under article 49 of the *Quebec Charter*.

---

<sup>34</sup> Webtrak is available at <https://webtrak.emsbk.com/yul2>. It is also available through Defendant ADM's website. The data it uses is provided by Defendant NAV Canada. A PDF of ADM's webpage is attached as Exhibit R-4.

<sup>35</sup> See Exhibit R-2.

<sup>36</sup> *Charter of Human Rights and Freedoms*, CQLR c C-12 [*Quebec Charter*].

## ARTICLE 1465 CCQ

64. Sound moves in waves, and waves are deemed corporeal moveables by article 906 CCQ.

906 CCQ: “Waves or energy harnessed and put to use by man, whether their source is movable or immovable, are deemed corporeal movables”

65. Articles 1457 al fine and 1465 CCQ create a regime of liability for the autonomous acts of things under one’s control:

**1465.** The custodian of a thing is bound to make reparation for injury resulting from the autonomous act of the thing, unless he proves that he is not at fault.

**1457** Every person has a duty to abide by the rules of conduct incumbent on 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 liable for any injury he causes to another by such fault and is bound to make reparation for the injury, whether it be bodily, moral or material in nature.

**He is also bound, in certain cases, to make reparation for injury caused to another by the act, omission or fault of another person or by the act of things in his custody.**

66. Article 1465 CCQ creates a regime of presumed fault provided that three elements are first proved: prejudice, control and autonomous act.<sup>37</sup> These three elements can be proved for the sound waves emanating from airplanes.

A. The harm to residents is the disturbance caused by the sound waves.

B. As for control, only the Defendants, and in particular the Defendant airline, has control over its planes. It therefore controls the waves of sound created by the movement of its airplanes and by their engines. They also own the airplanes and derive profit from them both of which are indicators of control.<sup>38</sup>

---

<sup>37</sup> See *Institution royale pour l'avancement des sciences c. Ville de Montréal*, 2019 QCCS 929 at para 74 and see Baudouin, J.-L., P. Deslauriers et B. Moore, *La responsabilité civile*, Volume 1 - Principes généraux, 9e édition, 2020 [Baudouin] and see Vincent, Karim, *Les obligations [vol. 1]*, 5e éd. (2020), Art. 1465.

<sup>38</sup> See Baudouin, *ibid* at 1-962 to 1-966.

- C. Finally, the waves are autonomous because they are dynamic and not directly controlled by human intervention.”<sup>39</sup> They are clearly dynamic as they move rapidly through the air and other mediums. Unless, the Defendants are determined to have been directly responsible for the harm caused by the waves, then the waves are autonomous. *Baudoin* notes that there will always be a person distantly connected with the act of a thing and that this does not preclude liability.<sup>40</sup>
67. If the fault is in scheduling the flights during the night, then the fault lies directly on all three Defendants. If the fault is, however, in permitting the airplanes to travel through the air and therefore in allowing the sound waves to emanate out into the neighbourhood, then the controller of the soundwaves, which are corporeal moveables, is liable for the harm caused by them.
68. Air Canada controls the soundwaves, most directly, but ADM and NAV Canada exercise significant control over the direction and time of these waves as it dictates when and where the airplanes can emit them.
69. If Defendants are not directly liable for scheduling and operating late flights, then they are liable for the harm caused by the waves, which cause harm, are deemed to be things under art. 906 CCQ, and are under their control.

#### **BREACHES OF THE RADIATION EMITTING DEVICES ACT PROHIBITIONS**

70. Defendants’ pressure waves (aka noise) render airplanes “radiation emitting devices” as defined by *the Radiation Emitting Devices Act*, R.S.C., 1985, c. R-1;
71. By operation of the prohibition at section 4(b) (iii), radiation (noise) from 23:00 to 07:00 is prohibited unless explicitly authorized by *Regulation*. No such authorization is provided.

---

<sup>39</sup> *Ibid* at 1-946.

<sup>40</sup> *Ibid* at 1-948.

## THE FACTS GIVING RISE TO THE PERSON CLAIMS OF THE REPRESENTATIVE

72. Dwight Faithful leaves near The Airport with his two children.
73. He lives under the flight path at 400 Elmridge Street, Dorval which is within 2km of the airport.
74. He is disturbed by airplanes landing or departing from The Airport during the night.
75. These flights wake him and his children and prevent them from sleeping properly.
76. The flights are sufficiently common so as to create a disturbance which they cannot tolerate.
77. These disturbances increase his stress and that of his family.
78. In particular, his children are affected as they have the sharpened hearing of youth and the need for restful sleep that childhood demands.
79. See the authorities relating to the importance of sleep which stress the importance of sleep for all ages and, in particular, for children.<sup>41</sup>
80. Mr. Faithful and his family want to be able to rest for the 8h they need each night, so he wishes there to be no flights between 11pm and 7am.

## CONCLUSIONS SOUGHT

81. The conclusions sought by the Applicant are:
  - A. **ORDER** the Defendants to prevent air traffic with a maximum take-off weight of more than 34,000kg between 11pm and 7am;
  - B. **ORDER** the Defendant ADM to announce any exceptional night-time flights in advance if possible and to publish the justification for the exception;

---

<sup>41</sup> These are : National Sleep Foundation's updated sleep duration recommendations: final report at <https://pubmed.ncbi.nlm.nih.gov/29073398/>, and Health Canada recommendations at <https://www.canada.ca/en/public-health/services/publications/healthy-living/canadian-adults-getting-enough-sleep-infographic.html>, and [sleepfoundation.org](http://sleepfoundation.org).

- C. **CONDEMN** the Defendants to collectively pay each member an average \$300 per month of pollution for loss of enjoyment of property;
- D. **CONDEMN** the Defendants to collectively pay each adult member \$500 for moral damages including stress and inconvenience;
- E. **CONDEMN** the Defendants to collectively pay each child member \$1000 for moral damages including stress and inconvenience;
- F. **CONDEMN** the Defendants to collectively pay each member \$500 for punitive damages pursuant to article 49 of the *Charter*;
- G. **ORDER** Defendants to collectively pay all publication costs;
- H. **ORDER** the collective recovery of said damages;

**CLASS MEMBERS' CLAIMS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR  
FACT (575 (1))**

82. The identical, similar, or related questions of law or fact between each member of the class and the Defendants which the Applicant wishes to have decided by the class action are:
- A. Whether the Applicant and Defendants are neighbours per Art. 976 CCQ;
  - B. Whether the pollution constitutes a nuisance within the meaning of Article 976 C.C.Q. and whether it exceeds that which is reasonable and tolerable in a residential environment;
  - C. Whether, even if the Defendants are able to prove they complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault;
  - D. Whether the degree of harm suffered by the class representative and other class members is unreasonable and excessive in a residential environment;
  - E. Whether the Defendants' actions or inaction constitute a fault or negligence which may attract liability under art. 1457 CCQ;



- F. If yes, whether these actions or inactions caused harm to the class members;
  - G. Also if yes, whether these actions or inactions constitute an intentional fault;
  - H. If it is intentional or grossly negligent, whether the Defendants are liable for punitive damages;
  - I. Whether the Defendants' actions constitute an abuse of right thereby removing any authorization given;
  - J. Whether the sound waves created by the Defendants activities constitutes a thing under their control and whether they are liable for its acts under article 1465 CCQ;
  - K. Whether class members are entitled to injunctive relief;
  - L. What should be the proper quantum of compensation awarded to each affected class member.
83. Other questions, particularly those relating to quantum of harm, may be resolved through the creation of sub-groups.

**COMPOSITION OF THE CLASS RECOMMENDS A CLASS ACTION (ART. 575 (3))**

84. The composition of the class makes the application of articles 91 or 143 of the *Code of Civil Procedure* difficult or impractical because:
- A. The number of physical persons affected makes it impossible for these persons to meet together and negotiate a specific mandate in virtue of which they might name a mandatary, or act as plaintiffs together in the same case, as contemplated by Arts. 91 or 143 C.C.P. as well as the fact that some of them are under the age of 18;
  - B. It would be highly impracticable, costly, uneconomical, unjust, and inconsistent with the rule of proportionality, if not entirely impossible for each of the persons herein identified as class members to pursue an individual action, in particular given their economic and physical circumstances;

- C. All the members of the class are affected in the same or a very similar manner, although to different degrees, by the behavior of the Defendants, and their interests will be better protected in a class action where the Court will have broad powers to protect the rights of absent parties than they would be if a few of these parties took individual actions;
- D. Class action proceedings are the most effective, efficient and appropriate legal proceedings available to ensure that each of the Class members' rights are duly protected and preserved both now and in the future, in particular as concerns environmental matters\_as noted in *Comité d'Environnement de la Baie Inc. c. Société d'Électrolyse et de Chimie Alcan Ltée.*, 1990 CanLii 3338 (QCCA), [1990] R.J.Q. 665 where the Quebec Court of Appeal stated that class actions suits are by far the most appropriate manner of litigating environmental claims given the large number of victims and the exceptional cost of such litigation;

**THE CLASS MEMBER APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS (ART 575 (4))**

85. The Applicant Dwight Faithful is in a position to faithfully and properly represent the class members, for the following reasons:
- A. He lives near Trudeau Airport and has been directly affected by the pollution;
  - B. He has taken numerous steps to acquaint himself with the nature of the problems created as a result of the contamination and is informed on the impacts and consequences of this activity as it affected those in his neighbourhood;
  - C. He possesses all the personal, moral and intellectual qualities to see this class action through to its final resolution and will act for the benefit of the members of the class;
  - D. He has no conflict of interest with the class members.

**WHEREFORE, APPLICANT PRAYS THIS HONOURABLE COURT TO:**

**GRANT** the present Application;

**AUTHORIZE** the institution of the class action described above;

**IDENTIFY** the class as:

All Quebec residents, including owners, tenants, and subtenants of immovable property, who, at any time after July 22, 2019, were living both under the flight path of airplanes departing from or arriving at Montreal-Trudeau International Airport and within 6 kilometers of this airport. The flight path will be detailed in Appendix C.

**ATTRIBUTE** to Dwight Faithful the status of Representative plaintiff;

**IDENTIFY** as follows the principal questions of fact and of law to be treated collectively:

- A. Whether the Applicant and Defendants are neighbours per Art. 976 CCQ;
- B. Whether the pollution constitutes a nuisance within the meaning of Article 976 C.C.Q. and whether it exceeds that which is reasonable and tolerable in a residential environment;
- C. Whether, even if the Defendants are able to prove they complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault;
- D. Whether the degree of harm suffered by the class representative and other class members is unreasonable and excessive in a residential environment;
- E. Whether the Defendants' actions or inaction constitute a fault or negligence which may attract liability under art. 1457 CCQ;
- F. If yes, whether these actions or inactions caused harm to the class members;
- G. Also if yes, whether these actions or inactions constitute an intentional fault;
- H. If it is intentional or grossly negligent, whether the Defendants are liable for punitive damages;

- I. Whether the Defendants' actions constitute an abuse of right thereby removing any authorization given;
- J. Whether the sound waves created by the Defendants activities constitutes a thing under their control and whether they are liable for its acts under article 1465 CCQ;
- K. Whether class members are entitled to injunctive relief;
- L. What should be the proper quantum of compensation awarded to each affected class member.

**IDENTIFY** as follows the conclusions sought with relation to such questions:

**ORDER** the Defendants to prevent air traffic with a maximum take-off weight of more than 34,000kg between 11pm and 7am;

**ORDER** the Defendant ADM to announce any exceptional night-time flights in advance if possible and to publish the justification for the exception;

**CONDEMN** the Defendants to collectively pay each member an average \$300 per month of pollution for loss of enjoyment of property;

**CONDEMN** the Defendants to collectively pay each adult member \$500 for moral damages including stress and inconvenience;

**CONDEMN** the Defendants to collectively pay each child member \$1000 for moral damages including stress and inconvenience;

**CONDEMN** the Defendants to collectively pay each member \$500 for punitive damages pursuant to article 49 of the *Charter*;

**ORDER** Defendants to collectively pay all publication costs;

**ORDER** the collective recovery of said damages;

**AUTHORIZE** the distribution of the balance in equal amounts between the members of the class;

**DECLARE** that any member who has not requested his or her exclusion from the group be bound by any judgment to be rendered on the class action, in accordance with the law;

**FIX** the delay for exclusion at thirty (30) days following the Notice to Members, and that at the expiry members of the group who have not requested exclusion be bound by any judgment;

**ORDER** the publication at any date convenient to this Honourable Court of a Notice to Members in the Le Journal de Montréal, The Montreal Gazette, or any other appropriate newspaper or publication and further

**ORDER** all costs of publication be borne by Defendant;

**REFER** the present record to the Chief Justice of this Honourable Court so that he or she may determine the district in which the class action is to be brought;

**ORDER** that should the class action be in another district, the clerk of the Court, upon receiving the decision of the Chief Justice, transmit the present record to the clerk of the district designated.

**THE WHOLE** with costs.

**MONTREAL**, this 22 day of July, 2022

---

Charles O'Brien

**Lorax Litigation** for Dwight Faithful

NOTICE TO DEFENDANTS

**(Art. 119 C.C.P.)**

**TAKE NOTICE** that the Petitioner has filed this Application in the office of the Superior Court of the judicial district of Montreal.

To file an answer to this application, you must first file an Act of Representation, personally or by advocate, at the courthouse of Montreal, located at 1 Notre Dame Street East, Montreal, Quebec within 10 days of service of this application.

If you fail to file an Act of Representation within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an Act of Representation, the application will be presented before the Court **on a date and in a room to be determined** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding, unless you make a written agreement with the Plaintiffs' advocate on a timetable for the orderly progress of the proceeding.

In support of the Application, Petitioners allege the Exhibits, referred to in the links in the proceedings and will be provided via USB key.

**Request for transfer of a small claim**

If the amount claimed by the Plaintiff does not exceed \$15,000 exclusive of interest and if you could have filed such an action in Small Claims Court, you may request of the clerk for the action to be disposed of pursuant to the rules of Book VIII, C. C. P. (R.S.Q., c. C-25). If you do not make such a request, you could be liable for costs.

Montreal, Quebec, this 22 of July, 2022.

---

Charles O'Brien

Lorax Litigation for Petitioners

In support of the Application Seeking Authorization, Petitioners allege the following Exhibits, referred to in the links or available on request: *(provided on the attached USB key)*

*General*

**Exhibit R-1:** Radiation Emitting Devices act with highlighting.

**Exhibit R-2:** PDF of ADM's website describing noise abatement policies from

<https://www.admtl.com/en/adm/communities/soundscape/noise-abatement>.

**Exhibit R-3:** Environmental Noise Guidelines for the European Region-World health organization.

**Exhibit R-4:** PDF of ADM website describing Webtrak.

**Exhibit R-5:** U.S. Department of Transport - Noise levels for U.S. certified and foreign aircraft

*Les Pollués de Montreal-Trudeau Actions*

**Exhibit R-6:** Application for authorization

**Exhibit R-7:** Authorizing judgment : Pollués de Montréal-Trudeau c. Aéroports de Montréal, 2018

QCCS 1401

**Exhibit R-8:**

**Exhibit R-9:** Pollués de Montréal-Trudeau (LPDMT) c. Aéroports de Montréal (ADM), 2020 QCCS

2432.

*Other*

**Exhibit R-10 :** STEPHANIE DUTCHEN, "THE EFFECTS OF NOISE ON HEALTH,  
HARVARD MEDICINE MAGAZINE.

**Exhibit R-11:** Globalnews, “Residents in Montreal’s West Island want to join class action lawsuit against Trudeau airport – Montreal.”

Authorities:

Legislation:

*Aeronautics Act*, RSC 1985, c A-2.

*Canadian Aviation Regulations*, SOR/96-433.

*Radiation Emitting Devices Act*, R.S.C., 1985, c. R-1.

Jurisprudence:

*Institution royale pour l'avancement des sciences c. Ville de Montréal*, 2019 QCCS 929

*St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

Doctrine and Other Sources:

Baudouin, J.-L., P. Deslauriers et B. Moore, *La responsabilité civile*, Volume 1 - Principes généraux, 9e édition, 2020 [Baudouin]

Colleen F. Moore, *Silent Scourge: Children, Pollution, and Why Scientists Disagree*, 2003, Chapter 5, “Noise and Children's Development.”

Decibel Pro: dB sound Level Meter, “Comprehensive Decibel Chart of Common Sound Sources” (2022), online: <<https://decibelpro.app/blog/decibel-chart-of-common-sound-sources/>>.

Fly Lakeland: Lakeland Linder International Airport, “Aircraft Noise,” online: <<https://www.flylakeland.com/aircraft-noise>>.



H Smith, “Innovation in supersonic passenger air travel” (Cranfield University, UK: Woodhead Publishing Limited, 2012).

Health Canada, “Airplanes” (2019), online: *Everyday Things That Emit Radiation* <<https://www.canada.ca/en/health-canada/services/health-risks-safety/radiation/everyday-things-emit-radiation/health-effects-airplanes-aircraft-noise.html>>.

Health Canada, “Are Canadian adults getting enough sleep?”(2019), online: *Public Health Agency of Canada* <<https://www.canada.ca/en/public-health/services/publications/healthy-living/canadian-adults-getting-enough-sleep-infographic.html>>.

National Library of Medicine, “National Sleep Foundation's updated sleep duration recommendations: final report” (2015), online: <<https://pubmed.ncbi.nlm.nih.gov/29073398/>>.

Sleep Foundation, “How Sleep Works” (2022), online: <[sleepfoundation.org](https://sleepfoundation.org)>.

STEPHANIE DUTCHEN, “THE EFFECTS OF NOISE ON HEALTH, HARVARD MEDICINE MAGAZINE, ALSO INCLUDED AS EXHIBIT R-10.

Trevor M. Young, “Performance of the Jet Transport Airplane Analysis Methods Flight Operations and Regulations,” (John Wiley & Sons, Ltd, 2017).

Vincent, Karim, *Les obligations [vol. 1]*, 5e éd. (2020), Art. 1465.

## Appendix A

|           | Arrivals |                        |              | Note that the wind was easterly/southeasterly as it is 30% of the time resulting in planes taking off towards the city instead of lake St-Louis   |        |                             |                             |                                |                   |                   |
|-----------|----------|------------------------|--------------|---|--------|-----------------------------|-----------------------------|--------------------------------|-------------------|-------------------|
|           | Flight   | Scheduled arrival time | Arrival Time | Aircraft  | Origin | Max takeoff weight (1000kg) | Max landing weight (1000kg) | maximum noise recorded (db(A)) | Airline           | Recurring         |
| 18-Jul-22 |          |                        |              |   |        |                             |                             |                                |                   |                   |
|           | DL4937 4 | 23:02                  | 23:23        | Canadair (CRJ2)   | DTW    | 24.041                      | 21.319                      | 87                             | Delta Air Lines   | daily             |
|           | AA2702   | 23:15                  | 23:10        | Airbus A319   | MIA    | 68.492                      | 56.699                      | 93                             | American Airlines | 6/week            |
|           | AC1072 1 | 23:18                  | 1:17         | Airbus A220-300   | DEN    | 64.319                      | 54.975                      | 90                             | Air Canada        | 6/week            |
|           | AC8968   | 23:19                  |              | CRJ-900   | ORD    | 36.504                      | 33.34                       |                                | Air Canada        | daily             |
|           | TS483    | 23:25                  | 23:15        | Airbus A321neo  | MBJ    | 87.996                      | 71.849                      | 92                             | Air Transat       | 1/week            |
|           | DL4679 3 | 23:26                  | 22:54        | CRJ9  | MSP    | 36.504                      | 33.340                      | 88                             | Delta Air Lines   | daily             |
|           | RV1607   | 23:39                  | 1:45         | Airbus A321   | FLL    | 93.500                      | 77.800                      | 93                             | Air Canada Rouge  | daily             |
|           | AC430 4  | 23:44                  | 0:01         | Airbus A320   | YYZ    | 77                          | 64.5                        | 92                             | Air Canada        | daily             |
|           | DL2416 4 | 23:45                  | 23:31        | Boeing 717-200  | ATL    | 52.885                      | 45.586                      | 87                             | Delta Air Lines   | daily             |
|           | TS611    | 23:50                  | 0:18         | Airbus A321   | YYZ    | 93.500                      | 77.800                      | 90                             | Air Transat       | 1/week            |
|           | AC324    | 23:51                  | 1:13         | Airbus A220-300   | YYC    | 64.319                      | 54.975                      | 90                             | Air Canada        | 6/week            |
|           |          |                        |              |   |        |                             |                             |                                |                   |                   |
| 19-Jul    | WS598    | 0:32                   | 0:22         | Boeing 737-700  | YYZ    | 70.08                       | 58.604                      | 89                             | WestJet           | daily             |
|           | CM422    | 0:40                   | 0:26         | Boeing 737-800  | PTY    | 78.245                      | 65.317                      | 92                             | Copa Airlines     | every 2 days      |
|           | WG379    | 0:40                   | 6:53         | Boeing 737-800  | VRA    | 78.245                      | 65.317                      |                                | Sunwing Airlines  | 2/week            |
|           | AC312 1  | 0:42                   | 1:02         | Boeing 737 MAX 8  | YVR    | 82.191                      | 69.309                      | 90                             | Air Canada        | daily             |
|           | AC8450 1 | 1:44                   | 1:29         | Embraer ERJ-175   | YYZ    | 40.37                       | 34.1                        | 91                             | Air Canada        | daily             |
|           |          |                        |              | Note that the wind switched so that departures were towards lac St-Louis, this results in a different monitoring station capturing the data and airplanes arriving passing above it at a higher altitude. |        |                             |                             |                                |                   |                   |
|           | AC97     | 6:10                   | 6:03         | Boeing 787-9 Dreamliner   | GRU    | 254.000                     | 192.8                       | 80                             | Air Canada        | every 2 or 3 days |
|           | ACA41    | 6:32                   | 6:30         | Dash 8-400  |        | 29.256                      | 28.009                      | 74                             | Air Canada        | 6/week            |
|           | AC7901   | 6:40                   | 6:27         | Canadair Regional Jet 705   | YQX    | 38.33                       | 34.065                      | 77                             | Air Canada        | daily             |
|           | AC8002   | 6:49                   |              | Dash 8-400  | YOW    | 29.256                      | 28.009                      | 74                             | Air Canada        | daily             |
|           | AC7719   | 6:55                   | 6:37         | Embraer ERJ-175   | YDF    | 40.37                       | 34.1                        | 81                             | Air Canada        | daily             |
|           | AC8041 2 | 6:58                   |              | C-GJZD Bombardier DH8D  | YSJ    | 15.65                       | 15.65                       |                                | Air Canada        | daily             |